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Agencies in this issue—

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 11567

PRESCRIBING THE COMPENSATION OF CERTAIN OFFICIALS IN THE BUREAU OF DOMESTIC COMMERCE, DEPARTMENT OF COMMERCE

By virtue of the authority vested in me by section 703(a) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2153 (a)), and as President of the United States, it is ordered as follows:

SECTION 1. The compensation for the position of Director, Bureau of Domestic Commerce, Department of Commerce (formerly designated as Administrator, Business and Defense Services Administration, Department of Commerce) is hereby fixed at the rate now or hereafter prescribed by law for level V of the Executive Schedule (5 U.S.C. 5316).

SEC. 2. The compensation for the position of Deputy Director, Bureau of Domestic Commerce, Department of Commerce, is hereby fixed at the highest rate now or hereafter prescribed by law for grade 18 of the General Schedule (5 U.S.C. 5332).

SEC. 3. The letter of the President to the Secretary of Commerce, dated November 5, 1962, relating to the salary of the Administrator, Business and Defense Services Administration, Department of Commerce, is hereby superseded.

Richard Nixon

THE WHITE HOUSE,
November 16, 1970.

[F.R. Doc. 70-15585; Filed, Nov. 16, 1970; 1:00 p.m.]

Executive Order 11568

EXEMPTING A. EVERETTE MacINTYRE FROM COMPULSORY RETIREMENT FOR AGE

WHEREAS A. Everette MacIntyre, a member of the Federal Trade Commission, will, during the month of February 1971, become subject to compulsory retirement for age under the provisions of section 8335 of title 5, United States Code, unless exempted therefrom by Executive order; and

WHEREAS, in my judgment, the public interest requires that Mr. MacIntyre be exempted from such compulsory retirement:

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of section 8335 of title 5, United States Code, I hereby exempt A. Everette MacIntyre from compulsory retirement for age until February 29, 1972.

Richard Nixon

THE WHITE HOUSE,
November 16, 1970.

[F.R. Doc. 70-15586; Filed, Nov. 16, 1970; 1:00 p.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 151—POLITICAL ACTIVITY OF STATE OR LOCAL OFFICERS OR EMPLOYEES

Decision

Section 151.137(d) is amended to read as set out below.

§ 151.137 **Decision.**

* * * * *

(d) On appeal from or review of a decision of the hearing examiner, the Commission makes its decision on the record and notifies the State or local officer or employee and the State or local agency employing him. When a violation so warrants, the Commission recommends the removal of the State or local officer or employee. If the State or local officer or employee is not removed, or if he is removed and is reemployed within 18 months in a State or local agency of the same State, the Commission may direct the withholding from the next Federal loan or grant to the appropriate State or local agency of an amount equal to 2 years' pay at the rate the State or local officer or employee was receiving at the time of the violation.

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

[F.R. Doc. 70-15520; Filed, Nov. 17, 1970; 8:51 a.m.]

PART 213—EXCEPTED SERVICE

Department of Agriculture

Section 213.3313 is amended to show that one position of Private Secretary to the Deputy Under Secretary for Rural Development is excepted under Schedule C and that one position of Private Secretary to the Deputy Under Secretary for Congressional Liaison is excepted under Schedule C in lieu of a position listed in Schedule C as Private Secretary to the Deputy Under Secretary. Effective on publication in the FEDERAL REGISTER, subparagraph (3) is revoked and subparagraphs (4) and (5) are added to paragraph (c) of § 213.3313 as set out below.

§ 213.3313 **Department of Agriculture.**

* * * * *

(c) *Office of the Under Secretary.* * * *

(3) [Revoked]

(4) One Private Secretary to the Deputy Under Secretary for Congressional Liaison.

(5) One Private Secretary to the Deputy Under Secretary for Rural Development.

* * * * *

(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. 70-15518; Filed, Nov. 17, 1970; 8:51 a.m.]

PART 213—EXCEPTED SERVICE

Office of Economic Opportunity

Section 213.3373 is amended to show that an additional Special Assistant to the Executive Secretary (interdepartmental activities) is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (11) of paragraph (a) of § 213.3373 is amended as set out below.

§ 213.3373 **Office of Economic Opportunity.**

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

(11) Two Special Assistants to the Executive Secretary (interdepartmental activities)

* * * * *

(15 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. 70-15519; Filed, Nov. 17, 1970; 8:51 a.m.]

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 729—PEANUTS

Subpart—1971 Crop of Peanuts: Acreage Allotments and Marketing Quotas

Basis and purpose. The provisions of §§ 729.100 to 729.103 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.) (referred to as the "act") with respect to the 1971 crop of peanuts. The purposes of §§ 729.100 to 729.103 are to proclaim a national marketing quota, establish the national acreage allotment and apportion such allotment to the States for the 1971 crop of peanuts in accordance with section 358 of the act (7 U.S.C. 1358). Farmers voting in a referendum held in December 1968 favored marketing quotas for peanuts produced in 1969, 1970, and 1971 as set forth in the FEDERAL REGISTER of January 3, 1969 (34 F.R. 56); therefore, quotas will be effective for the 1971 crop. The findings and determinations made with respect to these matters are based on the latest available statistics of the Federal Government.

Notice that the Secretary was preparing to determine the acreage allotments and marketing quota for the 1971 crop of peanuts was published in accordance with 5 U.S.C. 553 (80 Stat. 383) in the FEDERAL REGISTER of August 18, 1970 (35 F.R. 13135). All submissions received in response to such notice have been considered.

In order that peanut farmers may be notified as soon as possible of farm allotments for the 1971 crop of peanuts, it is essential that §§ 729.100 to 729.103 be made effective as soon as possible. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest and §§ 729.100 to 729.103 shall be effective upon filing of this document with the Director, Office of the Federal Register.

Sec.
729.100 Proclamation of national marketing quota for the 1971 crop of peanuts.
729.101 National acreage allotment for the 1971 crop of peanuts.
729.102 National reserve for new farms.
729.103 Apportionment to States.

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

§ 729.100 **Proclamation of national marketing quota for the 1971 crop of peanuts.**

(a) *Statutory requirements.* Section 358(a) of the act provides that between July 1 and December 1 of each calendar year the Secretary shall proclaim a national marketing quota for the crop of peanuts to be produced in the next succeeding calendar year. The quota for such crop shall be a quantity of peanuts which will make available for marketing a supply equal to the average quantity of peanuts harvested for nuts during the immediately preceding 5 years, adjusted for current trends and prospective demand conditions. The national marketing quota shall be a quantity of peanuts sufficient to provide a national acreage

allotment of not less than 1,610,000 acres.

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

(1) Average quantity of peanuts harvested for nuts during the 5 year period 1965–69, adjusted for current trends and prospective demand conditions—1,021,000 tons;

(2) Normal yield per acre of peanuts for the United States on the basis of the average yield per acre of peanuts in the 5-year period 1965–69, adjusted for trends in yields and abnormal conditions of production affecting yields—1,930 pounds;

(3) Conversion of the quantity of peanuts determined under subparagraph (1) of this paragraph into acres on the basis of the normal yield, with an adjustment for under harvesting—1,218,031 acres.

(4) Conversion of the minimum national acreage allotment of 1,610,000 acres into tons of quota on the basis of the normal yield—1,553,650 tons.

(c) *National marketing quota.* The national marketing quota for the 1971 crop of peanuts is hereby proclaimed to be 1,553,650 tons on the basis of the minimum national acreage allotment determined under paragraph (b)(4) of this section since such amount of quota would not be obtained by the smaller amount determined under paragraph (b)(3) of this section.

§ 729.101 National acreage allotment for the 1971 crop of peanuts.

The national acreage allotment for the 1971 crop of peanuts based on the national marketing quota under § 729.100 (c) is hereby established at 1,610,000 acres.

§ 729.102 National reserve for new farms.

Section 358(f) of the act provides for the establishment of a national reserve of not more than 1 percent of the national acreage allotment for apportionment among farms on which peanuts are to be produced in 1971 but on which peanuts were not produced during any of the years 1968, 1969, or 1970. A national reserve for such new farms in the amount of 1,610 acres is hereby established.

§ 729.103 Apportionment to States.

The national acreage allotment for the 1971 crop of peanuts of 1,610,000 acres, less the national reserve for new farms of 1,610 acres, is hereby apportioned to the States on the basis of their share of the national acreage allotment for 1970 as provided under section 358 (c)(1) of the act:

State:	*State acreage allotment*
Alabama	216,742
Arizona	761
Arkansas	4,184
California	930
Florida	55,425
Georgia	529,193
Louisiana	1,945
Mississippi	7,492
Missouri	247
New Mexico	5,759
North Carolina	167,814
Oklahoma	138,272
South Carolina	13,887
Tennessee	3,606
Texas	357,310
Virginia	104,823
Total apportioned to States	1,608,390
National reserve for new farms	1,610
Total, United States	1,610,000

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

Signed at Washington, D.C., on November 10, 1970.

CLIFFORD M. HARDIN,
Secretary.

[F.R. Doc. 70-15465; Filed, Nov. 17, 1970; 8:47 a.m.]

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

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Subpart—Handler Regulations

FREE AND RESTRICTED PERCENTAGES FOR 1970–71 FISCAL PERIOD

Notice was published in the FEDERAL REGISTER issue of October 29, 1970 (35 F.R. 16736), that the Department was giving consideration to a proposed amendment of § 929.301 *Free and restricted percentages for the 1970–71 Fiscal period* (35 F.R. 15090), hereinafter designated as a part of Subpart—Handler Regulations, currently in effect pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Amendment was proposed by the Cranberry Marketing Committee, established pursuant to the amended marketing agreement and order as the agency to administer the provisions thereof. No written data, views, or arguments were filed with respect to said proposal during the period specified therefor in the notice.

After consideration of all relevant matters presented, including that in the notice, it is hereby found that amendment, as hereinafter set forth, of said handler regulations is in accordance with said amended marketing agreement and order and will tend to effectuate the declared policy of the act. The ending date of January 1, 1971, would provide ample opportunity for each handler to meet his withholding obligations before completion of the marketing season by permitting maximum flexibility in scheduling requests for inspection and certification of cranberries for withholding, while engaging in normal shipping operations. Accordingly, § 929.301, together with § 929.302, are hereby designated as Subpart—Handler Regulations, the current text in § 929.301 (35 F.R. 15090) is designated as paragraph (a) thereof, and a new paragraph (b) is added to read as follows:

§ 929.301 Free and restricted percentages for the 1970–71 fiscal period.

* * * * *

(b) Each handler shall meet his withholding requirement, as provided in § 929.54, not later than January 1, 1971.

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

Dated, November 13, 1970, to become effective 30 days after publication in the FEDERAL REGISTER.

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

[F.R. Doc. 70-15507; Filed, Nov. 17, 1970; 8:50 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. 70-296]

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:

1. In § 76.2, in paragraph (e)(9) relating to the State of Missouri, subdivision (iii) relating to Bates County is amended to read:

(9) *Missouri.* * * *

(iii) That portion of Bates County bounded by a line beginning at the junction of the Johnstown-Butler Airport

Road and State Highway BB; thence, following State Highway BB in a southerly direction to State Highway H; thence, following State Highway H in an easterly direction to State Highway BB; thence, following State Highway BB in a southwesterly direction to State Highway 52; thence, following State Highway 52 in a southerly and then southeasterly direction to State Highway W; thence, following State Highway W in a generally southwesterly direction to State Highway B; thence, following State Highway B in a westerly direction to State Highway N; thence, following State Highway N in a generally northwesterly direction to State Highway 52; thence, following State Highway 52 in a westerly direction to U.S. Highway 71; thence, following U.S. Highway 71 in a northeasterly direction to State Highway TT; thence, following State Highway TT in an easterly direction to the dividing line between Rs. 32 and 31 W.; thence, following the dividing line between Rs. 32 and 31 W. in a northerly direction to State Highway F; thence, following State Highway F in a westerly direction to State Highway FF; thence, following State Highway FF in a northerly direction to State Highway 18; thence, following State Highway 18 in an easterly direction to U.S. Highway 71; thence, following U.S. Highway 71 in a southerly direction to State Highway 18; thence, following State Highway 18 in an easterly direction to the dividing line between Rs. 31 and 30 W.; thence, following the dividing line between Rs. 31 and 30 W. in a southerly direction to the Long Mound Road; thence, following the Long Mound Road in an easterly direction to the East Mound Creek; thence, following the west bank of the East Mound Creek in a generally southerly direction to the Johnstown-Butler Airport Road; thence, following the Johnstown-Butler Airport Road in an easterly direction to its junction with State Highway BB.

2. In § 76.2, in paragraph (e)(12) relating to the State of North Carolina, subdivisions (ii) relating to Bertie County, and (viii) relating to Washington County are deleted.

(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 amendments shall become effective upon issuance.

The amendments quarantine a portion of Bates County, Mo., 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 amendments also exclude portions of Bertie and Washington Counties in North Carolina from the areas quarantined because of hog cholera. Therefore, 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 not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the areas excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

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

Done at Washington, D.C., this 12th day of November 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-15459; Filed, Nov. 17, 1970; 8:47 a.m.]

[Docket No. 70-297]

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:

1. In § 76.2, in paragraph (e)(15) relating to the State of Texas, new subdivisions (xiv) relating to Erath and Comanche Counties, and (xv) relating to Upton County are added to read:

(15) *Texas.* * * *

(xiv) The adjacent portions of Erath and Comanche Counties bounded by a line beginning at the junction of U.S. Highways 67, 377 and Farm-to-Market Road 219; thence, following Farm-to-Market Road 219 in a southeasterly direction to the Erath-Hamilton County line; thence, following the Erath-Hamilton County line in a Southwesterly direction to the Comanche-Hamilton County line; thence, following the Comanche-Hamilton County line in a southeasterly and then southwesterly direction to State Highway 36; thence, following State Highway 36 in a northwesterly direction to Farm-to-Market Road 1702; thence, following Farm-to-Market Road 1702 in a northerly direction to Farm-to-Market Road 591; thence, following Farm-to-Market Road 591 in a northwesterly direction to Farm-to-Market Road 1476; thence, following Farm-to-Market Road 1476 in a generally northerly direction to U.S. Highway 67, 377; thence, following U.S. Highway 67, 377 in a northeasterly direction to its junction with Farm-to-Market Road 219.

(xv) That portion of Upton County bounded by a line beginning at the junction of the Upton-Crane County line and Farm-to-Market Road 870; thence, following Farm-to-Market Road 870 in a northeasterly and then southeasterly direction, to U.S. Highway 67; thence following U.S. Highway 67 in a southwesterly direction to State Highway 349; thence, following State Highway 349 in a southwesterly direction to the Upton-Crockett County line; thence, following the Upton-Crockett County line in a westerly direction to the Upton-Crane County line; thence, following the Upton-Crane County line in a northerly direction to its junction with Farm-to-Market Road 870.

2. In § 76.2, in paragraph (e)(12) relating to the State of North Carolina, subdivisions (iii) relating to Chatham, Moore, and Randolph Counties, and (vi) relating to Northampton County are deleted, and subdivision (i) relating to Camden, Pasquotank, Perquimans, and Chowan Counties is amended to read:

(12) *North Carolina.* (i) Camden and Pasquotank Counties.

3. In § 76.2, in paragraph (e)(9) relating to the State of Missouri, subdivision (ii) relating to Stoddard County is deleted.

(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 amendments shall become effective upon issuance.

The amendments quarantine portions of Erath, Comanche, and Upton Counties in Texas 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 amendments also exclude all of Perquimans and Chowan, and portions of Chatham, Moore, Randolph, and Northampton Counties in North Carolina, and a portion of Stoddard County, Mo., from the areas quarantined because of hog cholera. Therefore, 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 not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the areas excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

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

Done at Washington, D.C., this 12th day of November 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-15460; Filed, Nov. 17, 1970; 8:47 a.m.]

[Docket No. 70-298]

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 reference to the States of Louisiana and Nebraska in the introductory portion of paragraph (e), paragraph (e)(6) relating to the State of Louisiana, and paragraph (e)(10) relating to the State of Nebraska are deleted.

(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 amendments shall become effective upon issuance.

The amendments exclude a portion of Madison Parish in Louisiana, and a portion of Nuckolls County, Nebr., from the areas quarantined because of hog cholera. Therefore, 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 not apply to the excluded areas, but will continue to apply to the quarantined areas described in § 76.2(e). Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the excluded areas. The amendments also release Louisiana and Nebraska from the list of States quarantined because of hog cholera.

The amendments relieve certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to affected persons. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 12th day of November 1970.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[F.R. Doc. 70-15461; Filed, Nov. 17, 1970; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 70-SO-91]

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

Alteration of Transition Area

Correction

In F.R. Doc. 70-15166 appearing on page 17249 in the issue of Tuesday, November 10, 1970, the Airspace Docket Number should be inserted in the heading as shown above.

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

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

Folpet

No comments or requests for referral to an advisory committee were received in response to the notice published in the FEDERAL REGISTER of September 10, 1970 (35 F.R. 14269), proposing that the established interim tolerance for residues of the fungicide folpet in or on the raw agricultural commodity citrus fruit at 15 parts per million be made permanent. The Commissioner of Food and Drugs concludes that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 58 Stat. 514; 21 U.S.C. 346(e)) and under authority delegated to the Commissioner (21 CFR 2.120), § 120.191 is amended by deleting the paragraph "15 parts per million in or on citrus * * *" and by revising the paragraph "15 parts per million in or on cucumbers * * *" to read as follows:

§ 120.191 Folpet; tolerances for residues.

* * * * *

15 parts per million in or on citrus fruits, cucumbers, garlic, melons, onions (dry bulb), pumpkins, summer squash, winter squash.

* * * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER.

(Sec. 408(e), 58 Stat. 514; 21 U.S.C. 346(e))

Dated: November 6, 1970.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-15435; Filed, Nov. 17, 1970; 8:45 a.m.]

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Bunamidine Hydrochloride

The Commissioner of Food and Drugs has evaluated a new animal drug application (35-016V) filed by William Cooper & Nephews, Inc., providing for the safe and effective use of bunamidine hydrochloride for the treatment of tapeworm infections in dogs and cats. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic

Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135c is amended by adding the following new section:

§ 135c.27 **Bunamidine hydrochloride.**

(a) *Chemical name.* *N,N*-Dibutyl-4-(hexyloxy)-1-naphthamidine hydrochloride.

(b) *Specifications.* The drug is an oral tablet containing bunamidine hydrochloride equivalent in activity to 200 milligrams of bunamidine per tablet.

(c) *Sponsor.* William Cooper & Nephews, Inc., 1909-25 Clifton Avenue, Chicago, Ill. 60614.

(d) *Conditions of use.* (1) The drug is intended for oral administration to dogs for the treatment of the tapeworms *Dipylidium caninum* and *Taenia pisiformis* and to cats for the treatment of the tapeworms *Dipylidium caninum* and *Taenia taeniaeformis*.

(2) It is administered to cats and dogs at the rate of 25 to 50 milligrams per kilogram of body weight. The drug should be given on an empty stomach and food should not be given for 3 hours following treatment.

(3) Tablets should not be crushed, mixed with food, or dissolved in liquid. Repeat treatments should not be given within 14 days. The drug should not be given to male dogs within 28 days prior to their use for breeding. Do not administer to dogs or cats having known heart conditions.

(4) For use only by or on the order of a licensed veterinarian.

Effective date. This order shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: November 9, 1970.

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

[F.R. Doc. 70-15436; Filed, Nov. 17, 1970; 8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments have been made to this chapter to permit assurance of completion to be in the form of an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract:

SUBCHAPTER D—RENTAL HOUSING INSURANCE

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

1. In § 207.19 the introductory text of paragraph (c)(6) and subdivision (ii) thereof are amended to read as follows:

§ 207.19 **Required supervision of private mortgagors.**

* * * * *

(c) *Requirements incident to insurance of advances.* * * *

(6) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

* * * * *

(ii) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

SUBCHAPTER E—COOPERATIVE HOUSING INSURANCE

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Projects

2. In § 213.27 the introductory text of paragraph (e) and subparagraph (2) thereof are amended to read as follows:

§ 213.27 **Assurances of completion.**

* * * * *

(e) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

* * * * *

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715e)

SUBCHAPTER G—HOUSING FOR MODERATE INCOME AND DISPLACED FAMILIES

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart C—Eligibility Requirements—Moderate Income Projects

3. In § 221.542 the introductory text of paragraph (a) and subparagraph (2) thereof are amended to read as follows:

§ 221.542 **Assurance of completion.**

(a) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement

shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

* * * * *

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, the amount of which shall be prescribed by the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 221, 68 Stat. 599, as amended; 12 U.S.C. 1715*l*)

SUBCHAPTER J—MORTGAGE INSURANCE FOR NURSING HOMES AND INTERMEDIATE CARE FACILITIES

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

4. In § 232.56 the introductory text of paragraph (a) and subparagraph (2) thereof are amended to read as follows:

§ 232.56 Assurance of completion.

(a) The mortgagor shall furnish assurance of completion of the project, in the form of a personal indemnity agreement, a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract, as required by the Commissioner. The personal indemnity agreement and the bonds shall be on forms approved by the Commissioner. The surety company executing a bond must be satisfactory to the Commissioner. Where a cash escrow deposit is used, it shall be established under an agreement with the mortgagee or with a depository satisfactory to the mortgagee and the Commissioner and shall involve cash, or securities of, or fully guaranteed as to principal and interest by, the United States of America. Where an agreement controlling the disbursement of construction funds coupled with a guaranty of performance of the construction contract is used, the agreement shall contain terms satisfactory to the Commissioner. The types of assurance to be furnished are as follows:

* * * * *

(2) Where the estimated cost of construction or rehabilitation is more than $500,000 or where such cost is less than $500,000 and a personal indemnity agreement is not executed, assurance shall be by a surety company bond or bonds, a cash escrow deposit, a letter of credit, or an agreement controlling the disbursement of construction contract, the amount of which shall be prescribed by the Commissioner.

* * * * *

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 232, 73 Stat. 663; 12 U.S.C. 1715w)

Issued at Washington, D.C., November 12, 1970.

EUGENE A. GULLEDGE,
Federal Housing Commissioner.

[F.R. Doc. 70-15503; Filed, Nov. 17, 1970; 8:50 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7073]

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

Change of Method of Accounting for Inventories and Other Items of Income and Expense

On December 19, 1968, notice of proposed rule making with respect to amendment of the regulations which relate to change of method of accounting for inventories and other items of income and expense was published in the FEDERAL REGISTER (33 F.R. 18936). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed and after a public hearing the Income Tax Regulations (26 CFR Part 1) are amended as follows:

Section 1.446-1 is amended by revising paragraphs (e) (2) and (3) to read as follows:

§ 1.446-1 General rule for methods of accounting.

* * * * *

(e) *Requirement respecting the adoption or change of accounting method.* * * *

(2) (i) Except as otherwise expressly provided in chapter 1 of the Code and the regulations thereunder, a taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such new method for purposes of taxation, secure the consent of the Commissioner. Consent must be secured whether or not such method is proper or is permitted under the Internal Revenue Code or the regulations thereunder.

(ii) (*a*) A change in the method of accounting includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of any material item used in such overall plan. Although a method of accounting may exist under this definition without the necessity of a pattern of consistent treatment of an item, in most instances a method of accounting is not established for an item without such consistent treatment. A material item is any item which involves the proper time for the inclusion of the item in income or the taking of a deduction. Changes in method of accounting include a change from the cash receipts and disbursement method to an accrual method, or vice versa, a change involving the method or basis used in the valuation of inventories (see sections 471 and 472 and the regulations thereunder), a change from the cash or accrual method to a long-term contract method, or vice versa (see § 1.451-3), a change involving the adoption, use or discontinuance of any other specialized method of computing taxable income, such as the crop method, and a change where the Internal Revenue Code and regulations thereunder specifically require that the consent of the Commissioner must be obtained before adopting such a change.

(*b*) A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of tax liability (such as errors in computation of the foreign tax credit, net operating loss, percentage depletion or investment credit). Also, a change in method of accounting does not include adjustment of any item of income or deduction which does not involve the proper time for the inclusion of the item of income or the taking of a deduction. For example, corrections of items that are deducted as interest or salary, but which are in fact payments of dividends, and of items that are deducted as business expenses, but which are in fact personal expenses, are not changes in method of accounting. In addition, a change in the method of accounting does not include an adjustment with respect to the addition to a reserve for bad debts or an adjustment in the useful life of a depreciable asset. Although such adjustments may involve the question of the proper time for the taking of a deduction, such items are traditionally corrected by adjustments in the current and future years. For the treatment of the adjustment of the addition to a bad debt reserve, see the regulations under section 166 of the Code; for the treatment of a change in the useful life of a depreciable asset, see the regulations under section 167(b) of the Code. A change in the method of accounting also does not include a change in treatment resulting from a change in underlying facts. On the other hand, for example, a correction to require depreciation in lieu of a deduction for the cost of a class of depreciable assets which had been consistently treated as an expense in the year of purchase involves the question of the proper timing of an item, and is to be treated as a change in method of accounting.

(*c*) A change in an overall plan or system of identifying or valuing items in inventory is a change in method of accounting. Also a change in the treatment of any material item used in the overall plan for identifying or valuing items in inventory is a change in method of accounting.

(iii) A change in the method of accounting may be illustrated by the following examples:

Example (*1*). Although the sale of merchandise is an income producing factor, and therefore inventories are required, a taxpayer in the retail jewelry business reports

his income on the cash receipts and disbursements method of accounting. A change from the cash receipts and disbursements method of accounting to the accrual method of accounting is a change in the overall plan of accounting and thus is a change in method of accounting.

Example (2). A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis except for real estate taxes which have been reported on the cash receipts and disbursements method of accounting. A change in the treatment of real estate taxes from the cash receipts and disbursements method to the accrual method is a change in method of accounting because such change is a change in the treatment of a material item within his overall accounting practice.

Example (3). A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis. Vacation pay has been deducted in the year in which paid because the taxpayer did not have a completely vested vacation pay plan, and, therefore, the liability for payment did not accrue until that year. Subsequently, the taxpayer adopts a completely vested vacation pay plan that changes its year for accruing the deduction from the year in which payment is made to the year in which the liability to make the payment now arises. The change for the year of deduction of the vacation pay plan is not a change in method of accounting but results, instead, because the underlying facts (that is, the type of vacation pay plan) have changed.

Example (4). From 1968 through 1970, a taxpayer has fairly allocated indirect overhead costs to the value of inventories on a fixed percentage of direct costs. If the ratio of indirect overhead costs to direct costs increases in 1971, a change in the underlying facts has occurred. Accordingly, an increase in the percentage in 1971 to fairly reflect the increase in the relative level of indirect overhead costs is not a change in method of accounting but is a change in treatment resulting from a change in the underlying facts.

Example (5). A taxpayer values inventories at cost. A change in the basis for valuation of inventories from cost to the lower of cost or market is a change in an overall practice of valuing items in inventory. The change, therefore, is a change of method of accounting for inventories.

Example (6). A taxpayer in the manufacturing business has for many taxable years valued its inventories at cost. However, cost has been improperly computed since no overhead costs have been included in valuing the inventories at cost. The failure to allocate an appropriate portion of overhead to the value of inventories is contrary to the requirement of the Internal Revenue Code and the regulations thereunder. A change requiring appropriate allocation of overhead is a change in method of accounting because it involves a change in the treatment of a material item used in the overall practice of identifying or valuing items in inventory.

Example (7). A taxpayer has for many taxable years valued certain inventories by a method which provides for deducting 20 percent of the cost of the inventory items in determining the final inventory valuation. The 20 percent adjustment is taken as a "reserve for price changes." Although this method is not a proper method of valuing inventories under the Internal Revenue Code or the regulations thereunder, it involves the treatment of a material item used in the overall practice of valuing inventory. A change in such practice or procedure is a change of method of accounting for inventories.

Example (8). A taxpayer has always used a base stock system of accounting for inventories. Under this system a constant price is applied to an assumed constant normal quantity of goods in stock. The base stock system is an overall plan of accounting for inventories which is not recognized as a proper method of accounting for inventories under the regulations. A change in this practice is, nevertheless, a change of method of accounting for inventories.

(3) (i) Except as otherwise provided under the authority of subdivision (ii) of this subparagraph, in order to secure the Commissioner's consent to a change of a taxpayer's method of accounting, the taxpayer must file an application on Form 3115 with the Commissioner of Internal Revenue, Washington, D.C. 20224, within 180 days after the beginning of the taxable year in which it is desired to make the change. The taxpayer shall, to the extent applicable, furnish (*a*) all information requested on such form, disclosing in detail all classes of items which would be treated differently under the new method of accounting and showing all amounts which would be duplicated or omitted as a result of the proposed change and (*b*) the taxpayer's computation of the adjustments to take into account such duplications or omissions. The Commissioner may require such other information as may be necessary in order to determine whether the proposed change will be permitted. Permission to change a taxpayer's method of accounting will not be granted unless the taxpayer and the Commissioner agree to the terms, conditions, and adjustments under which the change will be effected. See section 481 and the regulations thereunder, relating to certain adjustments required by such changes, section 472 and the regulations thereunder, relating to changes to and from the last-in, first-out method of inventorying goods, and section 453 and the regulations thereunder, relating to certain adjustments required by a change from an accrual method to the installment method.

(ii) Notwithstanding the provisions of subdivision (i) of this subparagraph, the Commissioner may prescribe administrative procedures, subject to such limitations, terms, and conditions as he deems necessary to obtain his consent, to permit taxpayers to change their accounting practices or methods to an acceptable treatment consistent with applicable regulations. Limitations, terms, and conditions, as may be prescribed in such administrative procedures by the Commissioner, shall include those necessary to prevent the omission or duplication of items includible in gross income or deductions.

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

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

Approved: November 12, 1970.

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

[F.R. Doc. 70-15492; Filed, Nov. 17, 1970; 8:49 a.m.]

Title 30—MINERAL RESOURCES

Chapter III—Board of Mine Operations Appeals, Department of the Interior

PART 301—PROCEDURES UNDER FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

Assessment of Penalties

It is the purpose of the following amendments to delete the Schedule of Payments contained in § 301.50, Subpart F of Part 301, Chapter III of Title 30, Code of Federal Regulations, as published March 28, 1970 (35 F.R. 5257) and as amended May 7, 1970 (35 F.R. 7181–7182).

Since these amendments involve rules of agency organization, procedure, or practice, the notice, hearing, and effective date provisions of section 553 of Title 5 of the United States Code are not applicable.

Section 301.50, Subpart F of Part 301, Chapter III of Title 30, Code of Federal Regulations, is amended to read as follows:

§ 301.50 How initiated.

Proceedings for the assessment of penalties shall be initiated upon the filing by the Bureau of a copy of the Notice of Violation or Order of Withdrawal with the Board.

§ 301.53 [Amended]

Section 301.53 is amended by deleting paragraph (d) thereof.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

WALTER J. HICKEL,
Secretary of the Interior.

NOVEMBER 12, 1970.

[F.R. Doc. 70-15474; Filed, Nov. 17, 1970; 8:48 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

PART 75—INTEGRITY OF UNITS

PART 76—MOBILIZATION OF THE READY RESERVE

PART 126—READY RESERVISTS INVOLUNTARILY ORDERED TO ACTIVE DUTY; DELAY, EXEMPTION, AND EARLY RELEASE

PART 127—INVOLUNTARY ORDER TO ACTIVE DUTY OF THE READY RESERVE

The Deputy Secretary of Defense approved the following on October 27, 1970:

Sec.
76.1 Purpose.
76.2 Applicability and scope.
76.3 Definitions.
76.4 Mobilization policies.

Sec.
76.5 Responsibilities.
76.6 Delegation of authority to Secretaries of the Army, Navy, and Air Force to order certain members of the Reserve Components to active duty.
76.7 Mobilization statutory authority, title 10, United States Code.
76.8 Alert notification procedure.

AUTHORITY: The provisions of this Part 76 issued under sec. 280, 70A Stat. 14; 10 U.S.C. 280.

§ 76.1 Purpose.

This part establishes Department of Defense policies, assigns responsibilities, and furnishes general guidance for the administration and management of the Reserve Components during the planning, alerting, and mobilization of National Guard and Reserve units and individual reservists of the Ready Reserve for active Federal service.

§ 76.2 Applicability and scope.

(a) The provisions of this part give policy guidance to the military departments in the administration and management of Reserve Components under their respective jurisdictions during the planning, alerting and mobilization of Reserve and National Guard units and individual reservists of the Ready Reserve for active Federal service.

(b) This part is applicable to all degrees of mobilization of the Ready Reserve of the Reserve Components as defined in § 76.3.

(c) Section 673 of title 10, United States Code, provides the President upon declaration of a national emergency with the authority to mobilize up to 1 million Ready Reservists without their consent to meet the requirements of the national emergency. This authority can be used to meet external threats to the security of the United States such as an attack or to provide forces to meet domestic emergencies.

(d) The provisions of this part do not abrogate the policies, guidance or responsibilities established by Parts 185 and 187 of this subchapter; however, whenever feasible and appropriate mobilization policies prescribed herein shall apply.

(e) Mobilization of the National Guard by Presidential call: The National Guard may be called into Federal service by the President to enforce Federal authority, prevent interference with State and Federal law, aid the States in suppressing insurrection and to repel invasion under the provisions of chapter 15 and sections 3500 or 8500 of title 10, U.S.C. Guard units in one State may be called for duty in another State, if necessary. They also may serve outside the United States, when required to repel an invasion. A Presidential call is issued through the Governor of the State concerned. The Guard units, and members thereof, continue to be State units and members, even though they retain their dual status as a Reserve of the Army or the Air Force. They are subject to the laws and regulations governing the Army or the Air Force, other than those applicable only to members of the Regular Components and certain other exceptions, as promotions. Administrative, logistical and funding support is provided by the regular gaining Department. When the units are not committed to specific operations relating to the purpose of the call, unit training is accomplished as prescribed by the gaining Command. By virtue of law, they are considered for the purposes of pay and benefits the same as though they were serving on active duty under an order in their Reserve of the Army or the Air Force status.

(f) Statutory authority for mobilization: See § 76.7 for extracts from the United States Code, title 10, for laws pertaining to the mobilization of the Reserve Forces.

§ 76.3 Definitions.

For the purpose of this part:

(a) "Selective mobilization": Expansion of the active Armed Forces by mobilization of Reserve Component units and/or individual reservists, by authority of Congress or the President, to satisfy an emergency requirement for a force tailored to meet that requirement, e.g., mobilization for domestic emergencies such as civil disturbances or instances where Federal Armed Forces may be used to protect life or Federal property and functions or to prevent disruption of Federal activities. Differs from partial mobilization in that it would not normally be associated with requirements for contingency plans involving external threats to the national security.

(b) "Partial mobilization": Expansion of the active Armed Forces (short of full mobilization) resulting from action by Congress or the President, to mobilize Reserve Component units and/or individual reservists to meet all or part of the requirements of particular contingency and/or operational war plans, or to meet the requirements incident to hostilities. Units mobilized to meet the requirements of this paragraph will be ordered to active duty at their authorized strength.

(c) "Full mobilization": Expansion of the active Armed Forces resulting from action by Congress or the President to mobilize all units in the existing approved force structure and all individual reservists, and the materiel resources needed for these units.

(d) "Total mobilization": Expansion of the Active Armed Forces by organizing and/or activating additional units beyond the existing approved troop basis to respond to requirements in excess of that troop basis and the mobilization of all national resources needed to round out and sustain such forces.

(e) "M-Day": The day the Secretary of Defense, based on decision by the President and/or Congress, directs a mobilization. All mobilization planning (e.g., alert, movement, transportation, and deployment/employment) will be based on that date.

(f) "Unit": For the purpose of mobilization planning a "unit" is (1) any military element whose structure is prescribed by competent authority, such as a table of organization and equipment; specifically, part of an organization, (2) an organization title of a subdivision of a group in a task force and (3) any organized unit in the Selected Reserve.

(g) "Obligor": A member of a Reserve Component who has a statutory obligation to serve a specified period of time in the Reserve Components of the Armed Forces.

(1) *Nonprior service obligor.* Any individual with a military service obligation, and without prior military service, who receives a commission or enlists directly into a Reserve Component.

(2) *Prior service obligor.* Any member of the Reserve Components of the Armed Forces who has been credited with 2 or more years active duty with any of the Armed Forces and who has a remaining Ready Reserve obligation prior to being eligible for transfer to the Standby Reserve.

(h) "Individual Ready Reserve (IRR)": Consists of members of the Ready Reserve not assigned to the Selected Reserve and not on active duty. These reservists may be mobilized as individuals (1) to meet replacement requirements of active force units or mobilized Reserve Component units, (2) to form new active force units and (3) to replace combat losses.

(i) "F" Hour: The effective time of announcement to the military departments by the Secretary of Defense of a decision to mobilize reserve units.

(j) "Selected Reserve" consists of members of the Ready Reserve in pay groups A, B, C, and F as defined in Part 102 of this subchapter. These reservists are either (1) members of units who (i) regularly participate in drills and annual active duty for training or annual field training in the case of the National Guard, or (ii) are on initial active duty for training, or (2) individuals who participate in regular drills and annual active-duty-for-training on the same basis as members of reserve units. Excluded from the Selected Reserve are (3) reservists who are paid only for participation in annual active-duty-for-training although they may attend regular drills in a nondrill pay status (Pay Groups D and E), (4) reservists enrolled in Reserve Officers Training Corps (ROTC) training, (5) members of the individual Ready Reserve pool, and (6) reservists on extended active duty.

(k) "Authorized strength" is the total number of personnel prescribed in the authorized column of an approved manpower authorization document of a reserve unit (Table of Organization and Equipment, Organization Table, Table of Distribution and Allowances, Unit Manning Document, etc.).

(l) "Delay" is considered to be a postponement in reporting to active duty by Ready Reservists not to exceed thirty (30) days from date initially designated to report to active duty. This delay period may be extended by the appropriate Secretary if the merits of the individual case so warrant.

(m) "Exemption" is considered to be total relief from the requirement of reporting to active duty.

(n) "Early release" is considered to be the release of a Ready Reservist from active duty prior to the normal expiration of the scheduled release date.

§ 76.4 Mobilization policies.

(a) *General.* Historically, each mobilization of Reserve Forces has borne little similarity to the one which preceded it. The reason for the mobilization, the political and military climate, degree of international tension and political decisions at the time of alert made each mobilization unique within itself. Accordingly, during mobilization planning, situations and problems requiring policy decisions by the Secretary of Defense, the Congress or the President should be identified early, and recommendations for resolution of same expeditiously submitted to the Secretary of Defense through those agencies responsible for initiating action.

(b) *Selection of units to be mobilized for a partial mobilization.* During planning for and/or execution of a partial mobilization consideration will be given to the following factors when selecting units to be mobilized. It is recognized that actual selections will depend upon the reason for the mobilization and the domestic and international situations that exist at M-Day, whether or not units will be mobilized according to their authorized or assigned strength; military service obligations and enlistments are to be extended; filler action is authorized; and if individuals from the Ready Reserve are to be mobilized.

(1) Units with highest training, logistical and personnel readiness should be selected first. Whenever the situation is appropriate, consideration should be given to phased mobilizations of National Guard and Reserve units, thus providing for rotation into and out of the active forces.

(2) Units, within the types and the organizational stationing desired, should be selected from as wide a geographical area as is feasible.

(3) Selection of units previously mobilized should be avoided, if possible, unless sufficient time has elapsed to allow turnover of a majority of personnel previously mobilized.

(4) Select only those units necessary to meet stated mobilization objectives. Those subordinate units within an organization not immediately required to further the objectives of the mobilization should either be exempted from mobilization or delayed until such time as there is a clear need for them.

(5) In order to achieve maximum utilization or resources within the period for which they have been mobilized, units selected for deployment will be deployed as soon as practicable following mobilization. Other units, the primary mission of which can be accomplished at the mobilization station or which were selected to replace an active force unit being deployed, or as part of a general military buildup, will remain at the mobilization station indefinitely.

(6) Army training base capabilities will be expanded preferably by order to active duty of Army Reserve Training Divisions as necessary in order to expedite the required training of nonprior service personnel.

(7) Training base capabilities of the Reserve Components other than the Army will be expanded by augmentation units when and if organized, or by the selective recall of individuals from the Ready Reserve.

(c) *Alert and notification.* (1) Section 672(e) of title 10, U.S.C., provides that a reasonable time shall be allowed between the date when a reservist ordered to active duty (other than for training) is alerted for that duty and the date he is required to enter upon that duty. Unless the Secretary concerned determines that the military requirements do not allow it, this period shall be at least thirty (30) days. However, the urgency of the reason to mobilize may dictate immediate mobilization or considerably less alert time than thirty (30) days.

(2) Members of the Selected Reserve and of Selected Reserve units who have an "M-Day" designation will be considered to have been "notified" upon assignment thereto.

(3) Insofar as practical, it is the policy of the Department of Defense to notify reservists concerned in a mobilization prior to the public release of this information. Accordingly, each military department will continue to maintain alert and notification plans of the "F Hour" concept as shown in § 76.8. However, in view of the rapidity of communication of the news media (directly from the seat of Government to the private citizen within minutes of release) it may be patently impossible to achieve this objective in a future mobilization and commanders and reservists at all echelons should be aware of this possibility.

(d) *Integrity of units.* (1) Section 672(c) of title 10, U.S.C., provides that insofar as practicable, members of units organized and trained to serve as units who are ordered to active duty without their consent shall be so ordered only with their units. In the event that circumstances warrant deviation from this policy, prior approval of the Secretary concerned will be obtained. The request for approval will contain the reasons therefor and the number of individual reservists required for involuntary order to active duty.

(2) Once a unit, organized and trained to serve as a unit, is ordered to active duty its members shall not be immediately reassigned. The unit should remain intact insofar as practicable. However, the administration of a mobilized unit shall be comparable to the administration of a unit of the active forces as to policies on transfer of individuals in and out of units of the active forces. In implementing this policy due regard shall be given to the length of time for which the unit has been mobilized.

(e) *Manpower and personnel*—(1) *Screening.* The screening of Ready Reservists who have been alerted for involuntary order to active duty will be suspended until release from active duty or alert status. Ready Reservists who have not been alerted for involuntary order to active duty will continue to be screened in accordance with Part 125 of this subchapter.

(2) *Extension of terms of service.* (i) Sections 511(a) and 511(c) of title 10, U.S.C., provide for the extension of the terms of reserve enlistments, or terms of service in Reserve Components, only in time of war or national emergency declared by Congress. Section 671a of title 10, U.S.C., provides that the period of active service of a member is extended for the duration of any war in which the United States is engaged plus 6 months. However, section 671b of title 10, U.S.C., provides that when Congress is not in session, the President may authorize the Secretary of Defense to extend, for not more than 6 months, enlistments, periods of active duty, etc., which would expire before the 30th day after Congress next convenes or reconvenes.

(ii) Section 673 of title 10, U.S.C., does not provide authority for extending terms of enlistments or periods of obligated service based on Ready Reserve agreements.

(3) *Reservists awaiting or in training.* Nonprior service obligors who are awaiting orders for or who are engaged in initial active duty for training may be mobilized with their units. However, unless conditions dictate otherwise, such personnel who are awaiting orders to initial active duty for training should be ordered to such training as soon as practicable and those actually engaged in initial active duty for training or technical training should be permitted to complete such training. Depending upon the situation as it affects the duration for which units are being mobilized, scheduled deployments and other mitigating circumstances, the Secretary concerned may prescribe the disposition of personnel covered by this subparagraph.

(4) *Exemptions.* (i) Reservists (*a*) who are enrolled in a course of graduate study or training in medicine, dentistry, veterinary medicine, osteopathy, or optometry; and (*b*) who are doctors of medicine or osteopathy undergoing intern or residency training under Part 58 of this subchapter and DOD Instruction 1120.9, "Osteopathic Residency Deferment Program," July 7, 1969,[1] will not be involuntarily ordered to active duty while so engaged (see DOD Directive 1200.14, "Reservists Who are Engaged in Graduate Study or Training in Certain Health Profcssions," July 30, 1969).[1]

(ii) Reservists whose involuntary order to active duty would result in prolonged, extreme personal or community hardship may be exempted from mobilization under procedures established by the military departments and approved by the Secretary concerned. Personnel thus exempted will be transferred forthwith to the Standby Reserve or Retired Reserve, or discharged, as appropriate,

[1] Filed as part of original. Copies are available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention: Code 300.

except in the case of short term selective mobilizations.

(iii) Enlisted prior service obligors who are involuntarily assigned to units of the Selected Reserve will be exempted from order to active duty in a partial mobilization, except when individuals in the Individual Ready Reserve pool are involuntarily ordered to active duty.

(iv) If extensions of enlistments or periods of obligated service are not authorized by the Congress or required, enlisted members of the Ready Reserve who have 180 days or less obligated service remaining as of the date Reserve Forces are mobilized, may be exempted from mobilization under procedures established by the military departments and approved by the Secretary concerned.

(v) Members of the Ready Reserve who are preparing for the ministry in a recognized theological or divinity school are exempt from being involuntarily ordered to active duty (section 685 of title 10, U.S.C.).

(5) *Retention in Ready Reserve.* (i) Guard and Reserve officers are appointed for an "indefinite" term, the appointment to be held during the pleasure of the President (593(b) of title 10, U.S.C.). Consequently, even though he completes his service obligation under section 651 of title 10, U.S.C., his status as an officer continues indefinitely. So long as his status as an officer continues he remains subject to being ordered to or to being retained on active duty without his consent in accordance with law. However, if a Reserve officer has completed his obligation under section 651 of title 10, U.S.C., and any other service obligation he may have had, his request for discharge from his Reserve appointment should normally be honored, unless he must be temporarily retained to meet an overriding military need for his services which cannot otherwise be met.

(ii) After the date of an alert or notice of Reserve mobilization, applications for transfer or discharge from the Ready Reserve, by individuals who are voluntarily serving under a Ready Reserve agreement (Part 125 of this subchapter), will not be approved unless required by law or are based on reasons of extreme personal or community hardship.

(6) *Delays.* Reservists who have been alerted for involuntary order to active duty may be granted a delay in reporting for active duty as follows:

(i) High school students engaged in a normal resident course of study will be delayed from entry on involuntary active duty until such time as they cease to pursue such course satisfactorily, graduate, or attain age 20, whichever occurs first.

(ii) Undergraduate and graduate college students engaged in a normal resident course of study may, upon request, be delayed until completion of the quarter or semester in which they are enrolled at the time they are alerted for order to active duty.

(iii) Reservists whose involuntary order to active duty would result in temporary, extreme personal or community hardship may, upon request, be delayed for a period not to exceed 60 days beyond the date of mobilization as deemed appropriate and approved by the Secretary concerned.

(7) *Fair treatment.* Pursuant to section 673(b) of title 10, U.S.C., if the involuntary mobilization of individuals from the Individual Ready Reserve (IRR) pool is authorized and required, consideration shall be given to (i) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow; (ii) family responsibilities and (iii) employment necessary to maintain the national health, safety, or interest. Further, specific priority for their mobilization, to the maximum extent practicable, will be as follows:

(*a*) Nonprior service obligors not assigned to units of the Selected Reserve.

(*b*) Prior service Reservists who are voluntary members of the Ready Reserve.

(*c*) Prior service obligors who performed no active duty in a hostile area.

(*d*) Prior service obligors who performed some active duty in a hostile area.

(8) *Use of fillers.* When authorized, individual Reservists may be mobilized to meet active force shortages, including those in mobilized Reserve Component units. Mobilized Reserve Component units should be provided filler personnel on an expeditious basis.

(9) *Early release.* In the event Reserve units are released from active duty prior to their planned expiration date, it is the policy of the Department of Defense to retain those Reservists requesting such action for the fully planned length of active duty for which they were recalled when a hardship would be created by early release.

(10) *Authorized strength adjustments.* (i) The average strength prescribed by authorizing legislation for the fiscal years concerned for the Selected Reserve of any Reserve Component will be proportionately reduced by:

(*a*) The total authorized strength of units of the Selected Reserve of such component which are on active duty (other than for training) any time during the fiscal year and

(*b*) The total number of individual members not in units of the Selected Reserve of such component who are on active duty (other than for training) without their consent in any time during the fiscal year.

(*c*) Whenever any such units or such individuals are released from active duty during any fiscal year, the average strength for such fiscal year for the Selected Reserve shall be proportionately increased by the total authorized strength of such units and by the total number of such individuals.

(ii) Upon partial mobilization, departmental manpower ceilings will be increased by the total authorized strengths of the units so mobilized.

(11) *Proficiency pay.* Mobilized enlisted proficiency pay will be awarded as provided in DOD Directive 1304.14, "Award of Variable Reenlistment Bonus and Proficiency Pay for Enlisted Personnel," dated September 3, 1970,[3] and DOD Instruction 1304.15, "Administration of Variable Reenlistment Bonus and Proficiency Pay Programs," September 3, 1970.[3]

(12) *Medical examinations.* Pursuant to section 1004(a) of title 10, U.S.C., members of the Ready Reserve will be medically examined at least every 4 years. Members medically examined within 12 months preceding the effective date of order to active duty need not be examined again unless there has been a significant change in their physical condition.

§ 76.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower and Reserve Affairs) will provide policy and overall guidance in the mobilization of the Ready Reserve of the Reserve Components of the Armed Forces of the United States. The other ASD's and military departments will coordinate any actions concerning mobilization of Reserves with ASD (M&RA) or his Deputy Assistant Secretary for Reserve Affairs.

(b) The Assistant Secretary of Defense (Comptroller) will provide planning guidance to the military departments concerning budgetary constraints and additional or special funding during the planning phase for a mobilization.

(c) The Assistant Secretary of Defense (Public Affairs) will develop an information plan for each specific mobilization in accordance with the notification procedures outlined in § 76.8.

(d) The Assistant to the Secretary of Defense (Legislative Affairs) will coordinate briefings of the Chairmen of the Armed Services and Appropriations Committees of the Senate and House of Representatives in accordance with the notification procedures outlined in § 76.8.

(e) The Secretaries of the military departments will conduct on a periodic basis as deemed necessary mobilization tests of Selected Reserve units and nonunit members of the Ready Reserve. Such test exercises will include a random audit of Ready Reserve Personnel Data Management systems to determine accuracy of information and responsiveness of systems to mobilization. Information copies of the results of such tests will be provided the Assistant Secretary of Defense (M&RA).

§ 76.6 Delegation of authority to Secretaries of the Army, Navy and Air Force to order certain members of the Reserve Components to active duty.

Under the provisions of section 133(d) of title 10, U.S.C., there is hereby delegated to the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, with the power to redelegate, the authority vested in the Secretary of Defense by Executive Order 10762, March 28, 1958, to order to active duty (other than for training) for a period of not more than 24 consecutive months, with or without his consent, any member of a Reserve Component of the

Armed Forces of the United States who is in a medical, dental, or allied specialist category, who has not attained the 35th anniversary of the date of his birth, and who has not performed at least 1 year of active duty (other than for training).

§ 76.7 Mobilization statutory authority, title 10, United States Code.

(a) *Section 263.* Basic policy for order into Federal service. Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and Air National Guard of the United States, or such part of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

(b) *Section 672.* Reserve components generally.

(1) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for 6 months thereafter. However—

(i) A member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available; and

(ii) A member of the Standby Reserve may not be ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty.

(2) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the Governor of the State or Territory Puerto Rico, or the Canal Zone, or the commanding general of the District of Columbia National Guard, as the case may be.

(3) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty (other than for training) members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty (other than for training).

(4) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the Governor or other appropriate authority of the State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia, whichever is concerned.

(5) A reasonable time shall be allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when he is required to enter upon that duty. Unless the Secretary concerned determines that the military requirements do not allow it, this period shall be at least 30 days.

(c) *Section 673.* Ready Reserve.

(1) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(2) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(i) The length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(ii) Family responsibilities; and

(iii) Employment necessary to maintain the national health, safety, or interest. The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committees on Armed Services of the Senate and the House of Representatives.

(3) Not more than 1 million members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) *Section 331.* Federal aid for State governments. Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

(e) *Section 332.* Use of militia and armed forces to enforce Federal authority. Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, makes it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

(f) *Section 333.* Interference with State and Federal law. The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) So hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) Opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws. In any situation covered by subparagraph (1) of this paragraph, the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(g) *Section 3500.* Army National Guard in Federal service: Call. Whenever—

(1) The United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) There is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) The President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the Army National Guard of any State or Territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(h) *Section 8500.* Air National Guard in Federal service: Call. Whenever—

(1) The United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) There is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) The President is unable with the regular forces to execute the laws of the United States; the President may call into Federal service members and units of the Air National Guard of any State or Territory, Puerto Rico, the Canal Zone,

or the District of Columbia in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States, the Territories, Puerto Rico, and the Canal Zone, and, in the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

§ 76.3 Alert notification procedure.

(a) F hour: The effective time of announcement to the military departments by the Secretary of Defense of a decision to mobilize reserve units.

(b) F hour: The Secretary of Defense directs military departments to mobilize and makes a general public announcement of total numbers to be mobilized by service and duration of requirement for service. Unit designations will not be indicated at this time.

(c) F+12 hours: All active headquarters concerned are notified.

(d) F+12 to F+18 hours: Unit commanders and advisors Instructor/Inspectors of all affected reserve units are notified by secure means. Briefing of Chairmen of the Armed Services and Appropriations Committees of the Senate and of the House of Representatives will be coordinated by the Assistant to the Secretary of Defense (Legislative Affairs.

(e) F+18 hours: Units institute alert notification to individuals. Detailed information including unit designations will be provided to all members of Congress in accordance with an information plan developed by the Assistant Secretary of Defense (Public Affairs) and the Assistant to the Secretary of Defense (Legislative Affairs).

(f) F+19 hours: News media will be notified of details of mobilization in accordance with above mentioned information plan.

(g) Implementing military departments plans will minimize the chances of early public release, and will assure notification of the maximum number of individual reservists between F+18 hours and F+19 hours.

(h) Notification to Congressional Committees will precede major public announcements. Additional coordination and briefing of the Congress and any agencies of the Executive Department who are concerned with the mobilization will be specified as required.

Supersessions. Parts 75, 126, and 127 are hereby superseded.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Administration).

[F.R. Doc. 70-15441; Filed, Nov. 17, 1970; 8:45 a.m.]

Chapter VII—Department of the Air Force

SUBCHAPTER B—SALES AND SERVICE

PART 817—CREDIT UNIONS

Part 817 of Title 32 of the Code of Federal Regulations is revised to read as follows:

Sec.
817.1 Purpose.
817.2 Organization of credit unions.
817.3 Policy on credit unions.
817.4 CONUS credit unions.
817.5 Oversea credit unions.
817.6 Operating policy.
817.7 Use of military real property and space.

AUTHORITY: The provisions of this Part 817 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 817.1 Purpose.

This part sets forth Air Force policy on the establishment and support of, the cooperation and relationships with, and administrative and logistic assistance to credit unions that serve Air Force military and civilian personnel in the United States and its possessions, the Panama Canal Zone, and Puerto Rico.

§ 817.2 Organization of credit unions.

(a) *Federal credit union.* A Federal credit union is incorporated and operated under the authority of the Federal Credit Union Act (12 U.S.C. 1751 et seq.). It is a legal entity with the specific powers and authorities approved by law, and is examined periodically by the Bureau of Federal Credit Unions, Department of Health, Education, and Welfare.

(b) *State credit union.* A State credit union is organized under a State's credit union law. It operates on the same general principles as a Federal credit union. Usually State credit unions are under the jurisdiction of State banking departments.

(c) *Regulated oversea credit union.* A regulated oversea credit union is federally chartered, and furnishes services at U.S. military installations in foreign jurisdictions as suboffices of U.S.-based Federal credit unions.

(d) *Nonregulated oversea credit union.* A nonregulated oversea credit union does not fall under the jurisdiction of the Bureau of Federal Credit Unions or of State agencies, but operates on a military installation and serves DOD personnel in accordance with the provisions of appropriate DOD and Air Force regulations.

§ 817.3 Policy on credit unions.

(a) *Advantages of a credit union.* Full service credit unions, as stated in Federal Government policy are recognized as cooperative associations created for the purpose of stimulating systematic savings and creating a source of credit for provident or productive purposes. They emphasize self-help and wise management of resources, thereby raising standards of living, strengthening the family unit and increasing the self-reliance of the member. A full service credit union is nondiscriminatory in nature, and provides normal counter transaction services. It is staffed with a loan officer, a person authorized to sign checks and a full-time counselor. Such credit unions should be recognized and assisted at all echelons as important morale and welfare resources which extend mutual benefits to Air Force personnel by:

(1) Urging habits of thrift through savings.

(2) Combating usurious practices by providing money for personal loans at relatively low-cost rates.

(3) Extending full counseling services on personal and family financial planning problems, true costs of installment buying contracts, and related matters of interest to credit union members and their dependents. Credit unions may offer money orders and travelers checks for sale to their members at all times.

(b) *Membership in credit unions.* Credit union service will be made available to all Air Force personnel regardless of rank and grade. Failure to reflect a fair proportion of loan service to all ranks, grades, or classes of personnel is to be considered inconsistent with the recognized spirit of the credit union movement. In this regard, commanders should recognize the right of all military and civilian personnel to organize and/or affiliate with credit unions formed under duly constituted authority.

§ 817.4 CONUS credit unions.

(a) *Establishing credit unions.* Where there is a demonstrated need for credit union services, primary emphasis will be placed on the establishment of an on-site facility when sufficient personal interest exists. Otherwise, the possibility of using suboffice services of an existing credit union should be explored consistent with the common bond concept.

(b) *Two credit unions on a base.* At certain installations, two credit unions, each with independent and/or overlapping fields of membership, now exist. These credit unions should be encouraged to take voluntary action to request charter amendments which would permit full credit union services without discrimination.

(1) Where charter amendment is neither desired nor deemed appropriate by the officials of the credit union or where such proposed amendment is disapproved by the Bureau of Federal Credit Unions or the appropriate State agency, affected credit unions should be encouraged to consider the advantages of merger. However, mergers will not be directed by military officials.

(2) Where neither charter amendments nor mergers are practical, existing credit unions not offering full services without discrimination because of charter limitations, grade, rank, race, or component may retain, but not expand facilities, or may elect to operate from an off-base location.

(3) Excepting for those already in existence, only one credit union on a military installation is permitted.

§ 817.5 Oversea credit unions.

(a) *Refiulated oversea credit unions.* Such credit unions established as a suboffice of a U.S.-based Federal union, will be limited to on-base operations, and will confine membership to DOD military and civilian personnel and their dependents who are U.S. citizens. They will operate under instructions used by the appropriate Joint or Unified Command Commander and such Air Force Command supplements as are deemed necessary.

(b) *Nonregulated oversea credit unions.* Such credit unions are not chartered by the Bureau of Federal Credit Unions or State agencies. They serve DOD personnel exclusively on military installations, and are entitled to and receive allotments of pay. Effective November 24, 1969, the formation of new nonregulated credit unions is prohibited. Existing nonregulated oversea credit unions may merge with a U.S.-based Federal credit union. Such action is voluntary and will be subject to any specific requirements imposed by the Bureau of Federal Credit Unions. Joint and Unified Command Commanders are responsible for monitoring existing nonregulated oversea credit unions, and for having them examined periodically. Specific instructions will be issued by such commanders and may be supplemented as necessary by Air Force commanders with the approval of the appropriate Joint and Unified Commander.

§ 817.6 Operating policy.

(a) *Lending policies.* In accordance with accepted credit union practice, lending policies will be as liberal as possible and still be consistent with the interests of the credit union and the individual member. Special attention will be given to assisting the military members in the pay grades of E–1, E–2, and E–3 who apply for loans for provident purposes.

(b) *Counseling members.* Counseling service will be made available to credit union members without charge. The services will be oriented toward helping members, particularly youthful and inexperienced servicemen and young married families, to solve money problems and to budget their earnings.

(c) *Savings plans.* Credit union management will encourage members to participate in a regular savings plan by establishing:

(1) Reasonable limitations on amounts that may be deposited at any one time or the total amount that may be held in shares.

(2) A reasonable dividend on return of savings.

(d) *Relationships with other credit unions.* Cooperation, liaison, and exchange of information between Air Force credit unions and credit unions of other services is encouraged, as is participation in credit union associations, credit union leagues, and councils formed by credit unions serving DOD personnel.

(e) *Duty hours.* Credit unions may conduct operations during normal duty hours providing there is no conflict with the performance of official duties. Operating hours should be consistent with the needs of the military installation and service the overall needs of the membership.

(f) *Use of the allotment system.* Under no circumstances will the initiation of an allotment of pay become a prerequisite of a loan approval. Allotments to a credit union will be in accordance with appropriate Air Force regulations.

(g) *Relocation processing.* Personnel departing for PCS, separation, or retirement, if obligated to the installation credit union, will contact that agency for action as deemed appropriate.

(h) *Advertising policy.* The use of bulletin boards for promotional or informational material on credit union services is authorized. Additionally, credit unions will be afforded advertising space in appropriate publications on a paid-for or no-charge basis consistent with the policies of the media concerned.

§ 817.7 Use of military real property and space.

(a) *Air Force-owned facility.* (1) Credit unions at each Air Force installation may be furnished Government office space, when available. They will be provided services such as light, heat, janitorial services, fixtures, and maintenance without charge. Credit unions assigned military real property space will reimburse the Government for services such as telephone, long distance toll calls, and space alterations.

(2) Criteria for governing the assignment of existing office space to credit unions as stated in AFM 86–4 (Standard Facility Requirements).

(b) *Credit union-owned facility.* (1) Facilities may be constructed by credit unions at their own expense on Air Force installations in accordance with AFM 86–4 and AFM 85–26 (Military Construction Programming).

(2) Land required for approved construction at credit union expense will be made available at fair rental, by lease, provided the credit union agrees that such structures so erected will be conveyed to the Government without reimbursement, or will be removed, and the land restored to its original condition in the event of:

(i) Installation inactivation, closing or other disposal action.

(ii) Liquidation of the credit union.

(iii) Revocation of the credit union lease.

(3) Costs for all maintenance, utilities and services furnished credit union-owned buildings will be paid by the credit unions.

By order of the Secretary of the Air Force.

ALEXANDER J. PALENSCAR, Jr.
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 70–15440; Filed, Nov. 17, 1970; 8:45 a.m.]

SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

PART 901—APPOINTMENT AND DISENROLLMENT OF UNITED STATES AIR FORCE ACADEMY CADETS

Miscellaneous Amendments

Part 901 of Title 32 of the Code of Federal Regulations is amended as follows:

1. The heading for Part 901 is amended to read as set forth above.

2. Section 901.1 is revised to read as follows:

§ 901.1 Purpose.

This part explains the methods of application and appointment to the Air Force Academy, and procedures for separation or discharge of those cadets disenrolled before being commissioned.

§ 901.5 [Amended]

3. Reference in paragraph (d)(3) of § 901.5 is changed to read: "MCM 1969, (Rev.)".

4. A new Subpart A heading "Subpart A—General" is added. This subpart includes §§ 901.1 thru 901.9.

5. A new Subpart B is added to read as follows:

Subpart B—Disenrollment

Sec.
901.10 Definitions.
901.11 Legal provisions.
901.12 Policy.
901.13 Specific policy for nonprior service cadets who are disenrolled before beginning the second class academic year.
901.14 Specific policy for nonprior service cadets who are disenrolled after beginning the second class academic year.
901.15 Nonwilliful separations.
901.16 Specific policy for prior service cadets.
901.17 Failure to accept a commission.
901.18 Grade awarded.
901.19 Separation and discharge certificates.
901.20 Special provisions for breaches of the Cadet Honor Code.

AUTHORITY: The provisions of this Subpart B issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, 9331–9355, Public Law 88–276, Mar. 3, 1964, and Public Law 89–650, Oct. 13, 1966.

Subpart B—Disenrollment

§ 901.10 Definitions.

(a) *Academic year.* Period beginning at 1 minute after midnight on the first day of the fall semester when classes formally convene.

(b) *Academy.* The U.S. Air Force Academy.

(c) *Discharge.* Complete severance from military status without condition. Operates to terminate any remaining service obligation.

(d) *First Classmen.* Seniors.

(e) *Fourth Classmen.* Freshmen.

(f) *Second Classmen.* Juniors.

(g) *Separation.* Termination of cadet appointment with later assignment to another component of the armed forces of the United States.

(h) *Third Classmen.* Sophomores.

§ 901.11 Legal provisions.

(a) A cadet who is a U.S. citizen and who enters the U.S. Air Force Academy directly from civilian status assumes a military service obligation of 6 years (10 U.S.C. 651).

(b) If he fails to fulfill the agreement to complete the course of instruction and accepts a commission, he may be transferred to the Air Force Reserve in an appropriate enlisted grade and ordered to active duty for a period of time not to exceed 4 years (10 U.S.C. 9348b).

(c) A cadet who enters the Academy from the Regular or Reserve component of any of the U.S. Armed Forces and who

is disenrolled before graduation reverts to his former status for the completion of any prior service obligation (10 U.S.C. 516). However, completion or partial completion of any prior service obligation in no way exempts a separated cadet from being transferred to a Reserve component and ordered to active duty under 10 U.S.C. 9348b.

§ 901.12 Policy.

(a) A cadet's resignation is accepted if deemed to be in the best interest of the service.

(b) A cadet who tenders a resignation is required to state a specific reason for his action. However, before disenrollment, the Academy Superintendent determines if the case should be in the category of demonstrated unfitness or unsuitability for military service.

(c) A cadet who is disenrolled because of demonstrated unsuitability or unfitness for military service is discharged in accordance with AFR 36-12 (Administrative Separation of Commissioned Officers and Warrant Officers of the Air Force) for officers on active duty with the U.S. Air Force; a cadet who is disenrolled for physical disqualification is discharged in accordance with AFM 35-4 (Physical Evaluation for Retention, Retirement and Separation). In either case, cite this section as the authority for discharge.

§ 901.13 Specific policy for nonprior service cadets who are disenrolled before beginning the second class academic year.

If a cadet in this category is disenrolled, he is discharged. The appropriate Selective Service System board is notified of the cadet's disenrollment through use of DD Form 44—Record of Military Status of Registrant. Included in Item 12, Remarks, is the statement "cadet is eligible for service under appropriate Selective Service Directives. Cadet has no prior active military service."

§ 901.14 Specific policy for nonprior service cadets who are disenrolled after beginning the second class academic year.

If a cadet in this category is disenrolled, he is administered the Airman Classification Test (ACT) and the Specialty Knowledge Test (SKT) to provide a standard basis for the award of an AFSC in the bypass specialty category. If the SKT is passed successfully, an AFSC at the three level may be awarded, the cadet transferred to the Air Force Reserve, and ordered to duty in the awarded specialty for a minimum of 2 years of active service. If the cadet does not achieve a qualifying score on the SKT, he may be awarded an AFS at the one level, receive either a directed duty assignment (DDA) to an operational squadron or an assignmnt to a technical training school, be transferred to the Air Force Reserve in an enlisted status and ordered to active duty for a minimum of 2 years. Orders are issued by the U.S. Air Force Academy.

§ 901.15 Nonwillful separations.

When separation occurs as a result of deficiencies which are not considered willful, the active duty provisions of § 901.14 may be waived by the Secretary of the Air Force.

§ 901.16 Specific policy for prior service cadets.

A cadet who was a member of a Regular or Reserve component of the armed forces of the United States on entry into the Academy, and who is separated before beginning the Second Class academic year, reverts to his former status for the completion of any prior service obligation. (Exception: If his initial enlistment has expired (or is within 180 days of expiration) he is reassigned to the Reserve component (not on EAD) of the same armed services in which he served as an enlisted man.) A cadet in this category who has begun his Second Class academic year is processed in accordance with the procedures specified for nonprior service cadets in § 901.14. (If his prior service was not with the Air Force, the pertinent service secretary is requested to separate the cadet from his former status so that he may be processed in accordance with § 901.14. If such separation is denied, he reverts to his former status to complete any prior service obligation.)

§ 901.17 Failure to accept a commission.

Any First Classman who completes the course of instruction and declines to accept an appointment as a commissioned officer is transferred to the Air Force Reserve in an enlisted status, processed in accordance with procedures in § 901.14, and ordered to active duty for 4 years.

§ 908.18 Grade awarded.

Individuals who are ordered to active duty upon disenrollment are awarded in the separation order the grades shown in this section unless entitled to a higher grade:

(a) Second Classmen—E-3.

(b) First Classmen—E-4. (Individuals awarded E-4 are required to qualify at the 5-skill level AFSC (or 3 if no 5 exists) not later than 1 year after entrance on active duty.)

§ 901.19 Separation and discharge certificates.

(a) Each cadet who is separated under this part is issued a DD Form 214, Armed Forces of the United States Report of Transfer or Discharge.

(b) Each cadet who is discharged under this part is awarded one of the following certificates, depending on the classification of type of service by the Personnel Council of the Secretary of the Air Force:

(1) DD Form 256 AF: Honorable Discharge.

(2) DD Form 257 AF: General Discharge (Under Honorable Conditions).

(3) DD Form 794 AF: Under Other Than Honorable Conditions Discharge.

(c) A cadet disenrolled for any of the following reasons normally is honorably separated or discharged. He may tender his resignation for one of the reasons listed in subparagraphs (1) through (12) of this paragraph:

(1) Career goals.

(2) Personal reasons.

(3) Hardship.

(4) Marriage.

(5) Fear of flying.

(6) Environmental adjustment.

(7) Academics.

(8) Admitted or court-adjudicated paternity claims.

(9) Physical disability, service incurred with no willful misconduct involved or existing prior to entering service.

(10) Deficiency in academics.

(11) Deficiency in conduct.

(12) Deficiency in aptitude for commissioned service.

(d) A cadet disenrolled under one of the following sets of conditions normally is awarded a general discharge certificate "under honorable conditions" or a discharge certificate "under other than honorable conditions."

(1) A cadet discharged for physical disability incurred through his intentional misconduct or willful neglect, or incurred during a period of unauthorized absence, is discharged "under honorable conditions." A cadet who tenders his resignation for this reason does so with the understanding that, if accepted, he will be discharged "under honorable conditions."

(2) A cadet discharged for possessing undesirable habits or traits of character of such a nature as to preclude an honorable discharge is discharged "under honorable conditions" (general discharge certificate DD Form 257 AF) or "under other than honorable conditions" (DD Form 794AF), depending on the seriousness of the offense. Chronic alcoholism, drug addiction, sexual perversion, habitual shirking, repeated commission of minor offenses not warranting trial by court-martial, and financial irresponsibility, are examples of acts or conduct exhibiting undesirable habits or traits of character. A cadet who tenders his resignation for any of these reasons tenders his resignation for the good of the service with the understanding that, if accepted, he may be discharged "under other than honorable conditions."

(3) A cadet who commits a major offense triable by court-martial—such as murder or manslaughter—normally is brought to trial unless special circumstances exist which would warrant consideration by a board of officers convened under Part 866 of this chapter to consider the cadet for administrative discharge. A cadet who is administratively discharged under these conditions is discharged "under other than honorable conditions." A cadet who commits an offense as outlined in this subparagraph may tender a resignation for the good of the service, regardless of whether or not formal court-martial charges have been preferred. A cadet who tenders such a resignation does so with the understanding that, if accepted, he may be discharged "under other than honorable conditions."

(4) A cadet who has been tried by court-martial for an offense or offenses for which maximum punishment authorized by MCM, 1969, (Rev), includes a punitive-type separation, but upon conviction, is sentenced to less than dismissal may be administratively discharged "under other than honorable conditions," notwithstanding trial by court-martial.

(5) A cadet who has been convicted by a civil court of any offense involving moral turpitude may be administratively discharged "under other than honorable conditions."

(6) If information is received which indicates that the retention of a cadet may not be consistent with the interests of national security, report the facts and circumstances to the local office of special investigation (OSI) and request an investigation by that office. On receipt of the report of investigation, take action as outlined in AFR 35-62 (Security Program).

§ 901.20 Special provisions for breaches of the Cadet Honor Code.

(a) A cadet who breaches the cadet honor code may be tried by court-martial when in the opinion of the Superintendent such action is necessary in the interest of good order and discipline. Court-martial proceedings are instituted only when there is reasonable assurance that the evidence at hand will result in conviction. A cadet in this category may tender a resignation for the good of the service, regardless of the fact that formal court-martial charges have or have not been preferred. A cadet who tenders such a resignation does so with the understanding that if accepted he may be discharged "under other than honorable conditions."

(b) A cadet who commits a breach of the cadet honor code which would warrant trial by court-martial, but, because of the facts of the case, court-martial action is not deemed appropriate, normally is administratively discharged "under other than honorable conditions." A cadet in this category may tender a resignation with the understanding that if accepted he may be discharged "under other than honorable conditions."

(c) A cadet who commits a breach of the cadet honor code which would not warrant trial by court-martial, but which is not considered to be a minor violation, normally is administratively discharged under honorable conditions. He may tender a resignation with the understanding that if accepted he may be discharged "under honorable conditions."

(d) A cadet who commits an offense which is considered to be a less serious breach of the cadet honor code than those referred to in paragraph (a), (b), or (c) of this section, is honorably separated/discharged. He may tender a resignation with the understanding that if accepted he will be "honorably separated/discharged."

(e) When a cadet is being processed for separation under paragraph (a), (b), or (c) of this section, attach to the forwarding correspondence a statement indicating the type of offense committed and other pertinent facts. These statements are used at secretarial level in determining the character of separation to be awarded, and are not made a part of the cadet's official records.

By order of the Secretary of the Air Force.

ALEXANDER J. PALENSCAR, Jr.,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 70-15438; Filed, Nov. 17, 1970; 8:45 a.m.]

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PART 202—MEDICAL ASSISTANCE TO STATE RESIDENTS

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

PART 248—COVERAGE AND CONDITIONS OF ELIGIBILITY FOR MEDICAL ASSISTANCE

Residence

Interim policy relating to the prohibition of durational residence requirements for determination of eligibility under title I, IV-A, X, XIV, or XVI of the Social Security Act was published in the FEDERAL REGISTER on June 3, 1969 (34 F.R. 8715). Views of interested persons were requested, received and considered. Changes made in the interim policy and contained in the regulations set forth below include, in addition to clarifying, editorial and codification changes:

(1) Incorporation of regulations on residence for the medical assistance program under title XIX of the act, previously contained in part 202, chapter II, title 45 of the Code of Federal Regulations and in Handbook of Public Assistance Administration, Supplement D-5620;

(2) Deletion of § 202.3(c) of the interim policy, which specified that eligibility determinations with respect to residence are to be made in accordance with general Federal policies on such determinations (this material will be included in guides);

(3) Deletion of § 202.3(d) of the interim policy, which required State agencies affected by the policy change to give notification both generally and to specific individuals concerned. The time period for completing such notification has expired.

Accordingly, Chapter II of Title 45 of the Code of Federal Regulations is amended as set forth below.

1. Part 202 is vacated and reserved and its content is revised and transferred to § 248.40 of this chapter.

2. Part 233 is amended by adding a new § 233.40 as set forth below:

§ 233.40 Residence.

Condition for plan approval: A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act may not impose any residence requirement which excludes any individual who is a resident of the State. For purposes of this section:

(a) A resident of a State is one who is living in the State voluntarily with the intention of making his home there and not for a temporary purpose. A child is a resident of the State in which he is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether he is there voluntarily or for a "temporary purpose."

(b) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

3. Part 248 is amended by adding a new § 248.40 as set forth below:

§ 248.40 Residence.

(a) *State plan requirements.* A State plan under title XIX of the Social Security Act must provide that:

(1) Medical assistance will be furnished to eligible individuals who are residents of the State but are absent therefrom to the same extent that such assistance is furnished under the plan to meet the cost of medical care and services rendered to eligible individuals in such State, at least to the extent that medical care and services are needed in any other State (as defined in section 1101(a)(1) of the Social Security Act, as amended, 42 U.S.C. 1301(a)(1)), under any of the following circumstances:

(i) Where an emergency arises from accident or illness;

(ii) Where the health of the individual would be endangered if the care and services are postponed until he returns to the State in which he resides; or

(iii) Where his health would be endangered if he undertook travel to return to such State.

(2) Medical care and services will be provided outside the State to eligible residents of the State, at least in the following situations:

(i) When it is general practice for residents of a particular locality to use medical resources outside the State; or

(ii) When the medical care and services available, or the availability of needed supplementary resources, make it desirable for the individual to use medical facilities outside the State for short or long periods, in accordance with plans developed jointly by the agency and the individual, consistent with medical advice.

(3) The State agency will facilitate the meeting of medical needs within the State for residents from other States.

(b) *Condition for plan approval.* A State plan under title XIX of the Act

may not impose any resident requirement which excludes any individual who is a resident of the State. For purposes of this section:

(1) A resident of a State is one who is living in the State voluntarily with the intention of making his home there and not for a temporary purpose. A child is a resident of the State in which he is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether he is there voluntarily or for a "temporary purpose."

(2) Residence is retained until abandoned. Temporary absence from the State, with subsequent returns to the State, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

(Sec. 2, 49 Stat. 620, 74 Stat. 987, sec. 402, 49 Stat. 627, sec. 1002, 49 Stat. 645, sec. 1402, 64 Stat. 555, sec. 1602, 76 Stat. 198, sec. 1902, 79 Stat. 344, sec. 1102, 49 Stat. 647; 42 U.S.C. 302, 602, 1202, 1352, 1382, 1396a, 1302)

Effective date. These regulations shall become effective on the date of their publication in the FEDERAL REGISTER.

Dated: October 7, 1970.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

Approved: November 11, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70-15493; Filed, Nov. 17, 1970; 8:49 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 70-1204]

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

National Radio Astronomy Service

Order. In the matter of amendment of Part 2, § 2.106, the Table of Frequency Allocations of the Commission's rules and regulations, to shift the National Radio Astronomy Service allocation in the band 404–406 MHz to the new band 406–410 MHz.

1. The Interdepartment Radio Advisory Committee (IRAC), by action taken on September 8, 1970, approved the reallocation in the above entitled matter. Prior to taking this action, coordination was effected with the Committee on Radio Frequencies, National Academy of Sciences.

2. The band 404–406 MHz is presently a shared band in the United States, with radio astronomy on a secondary basis to meteorological aids in both the Government and non-Government sectors, while the band 406–420 MHz is allocated nationally for the exclusive use of the Government. Shifting this particular radio astronomy band entails conversion of the 406–410 MHz segment to a shared basis, with the radio astronomy service afforded primary status. Of greater significance, the national allocation now will fall in line with those of administrations in Regions 1 and 3, thereby enhancing the provisions for the radio astronomy service by moving toward a common band on a worldwide basis.

3. The five radio astronomy observatories directly affected, the protection areas agreed upon, power limitations on future assignments, and other provisions pertinent to this move are stipulated in new footnote US117 as noted below.

4. Since the actions taken herein provide an additional frequency band for non-Government use not formerly available, will not result in any adverse effects to non-Government users, and will provide other benefits accruing to the general public, compliance with the notice and effective date provisions of 5 U.S.C. 553 is unnecessary. Therefore, pursuant to authority provided by sections 4(i) and 303 of the Communications Act of 1934, as amended: *It is ordered*, Effective November 30, 1970, That § 2.106 of the Commission's rules is amended as set forth below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: November 10, 1970.

Released: November 13, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

In § 2.106, the frequency band 404–420 MHz in columns 5–11 is amended, and footnote US117 is added to read as follows:

Band (MHz)	Allocation	Band (MHz)	Service	Class of station	Frequency (MHz)	Nature {OF SERVICES of stations
5	6	7	8	9	10	11
404–406	G, NG (US70)	404–406	METEOROLOGICAL AIDS.	Radiosonde.		Radiosonde.
406–410	G, NG (US13) (US74) (US117)	406–410	RADIO ASTRONOMY.	Radio astronomy.		RADIO ASTRONOMY.
410–420	G (US13)					

* * * * *

US117 In the band 406–410 MHz, all new authorizations will be limited to a maximum of 7 watts per kHz of necessary bandwidth; existing authorizations as of November 30, 1970, exceeding this power are permitted to continue in use.

New authorizations in this band for stations, other than mobile stations, within the following areas are subject to prior coordination by the applicant with the Secretary of the Committee on Radio Frequencies of the National Academy of Sciences:

Arecibo Observatory: Rectangle between latitudes 17°30' N. and 19°00' N. and between longitudes 65°10' W. and 68°00' W.

Five College Radio Astronomy Observatory: Rectangle between latitudes 41°40' N. and 42°50' N. and between longitudes 71°20' W. and 73°20' W.

Owens Valley Radio Observatory: Two contiguous rectangles, one between latitudes 36° N. and 37° N. and longitudes 117°40' W. and 118°30' W., and the second between latitudes 37° N. and 38° N. and longitudes 118° W. and 118°50' W.

Pennsylvania State University Radio Astronomy Observatory: Rectangle between latitudes 40°00' N. and 41°40' N. and longitudes 77°15' W. and 78°40' W.

Vermilion River Observatory: Rectangle between latitudes 38°35' N. and 41°31' N. and longitudes 86°15' W. and 89°30' W.

(The foregoing provisions will be reviewed in connection with U.S. implementation of the Final Acts of the 1971 Space WARC.)

The non-Government use of this band is limited to the radio astronomy service and as provided by footnote US13.

[F.R. Doc. 70-15470; Filed, Nov. 17, 1970; 8:48 a.m.]

[Docket No. 18574; FCC 70-1213]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments; Lineville and Roanoke, Ala.

In the matter of amendment of § 73.202, Table of Assignments, FM Broadcast Stations. (Lineville and Roanoke, Ala.; Bloomington, Ind.; St. George, S.C.; Muskegon, Mich.; Paintsville and Jackson, Ky.; Exmore, Va.; Montour Falls, N.Y.; Catlettsburg, Ky.; Winona, Miss.; Braddock Heights or elsewhere in Maryland, Virginia, or West Virginia), Docket No. 18574, RM-1394, RM-1397, RM-1400, RM-1405, RM-1407, RM-1416, RM-1420, RM-1426, RM-1431, RM-1404.

[1] Commissioner Bartley absent.

Third report and order. 1. In response to a series of petitions filed by various interested parties the Commission adopted, on June 18, 1969, a notice of proposed rule making in the above-entitled matter, released on June 20, 1969 (FCC 69-669) which proposed various FM allocations throughout the country. All of the matters involved have been disposed of except for the petition of Robert E. Haynes, Jimmy E. Woodard, and Dendy L. Jackson, doing business as Clay County Broadcasters, a licensee of daytime only AM Station WANL at Lineville, Ala. In view of Clay County's petition for rule making (RM-1394) received on December 2, 1968, and its supplement received on January 9, 1969, our notice proposed the reassignment of Channel 237A from Roanoke, Ala., to Ashland or Lineville, Ala., and the replacement of that channel in Roanoke with Channel 272A.

2. Originally, interested parties were afforded an opportunity to comment on or before July 28, 1969, and to reply to such comments on or before August 8, 1969. After the filing of a series of petitions concerning the filing of comments, the time for filing them was set for August 12, 1969, and replies on September 8, 1969.[1] Vigorous comments and replies were filed by both petitioner (supporting) and Roanoke Broadcasting Co. (opposing). Roanoke Broadcasting Co. is the present licensee of WELR-FM which operates on Channel 237A at its present location—Roanoke, Ala.

3. Clay County, Ala., population 12,400, contains the two communities here considered for assignment of a first FM frequency, Lineville and Ashland—respective populations 1,612 and 1,610, the latter being the county seat. The county's sole facility is daytime only AM Station WANL, Lineville (licensed to petitioner). Roanoke, with a population of 5,288, is located in Randolph County, which has 19,477 residents.[2] The community and county have two broadcast services, both licensed to Roanoke Broadcasting Co. at Roanoke—WELR (a daytime only AM service) and WELR-FM, using Channel 237A. The proposal before us in this proceeding, if adopted, will in no way alter the number or capability of these facilities. It would, however, require the shift of the WELR-FM service from Channel 237A to Channel 272A.

4. Petitioner, in its pleadings, vigorously supports the reassignment of Channel 237A from Roanoke to either Lineville or Ashland and its replacement in Roanoke with Channel 272A. Its foremost public interest argument lies in the fact that rural Clay County has no local full-time service of any kind and that the adoption of its proposal would provide such a needed service in the FM band. In maintaining that there is a need for a first local FM service in the area, petitioner points out

> * * * Clay County is not located within any urbanized area. Clay County has 142 retail stores, with annual sales of $7,296,000. These stores have 204 paid employees, with an annual payroll of $450,000 (1963 Census of Business, Retail Trade, Alabama, pages 2-8). The county has seven wholesale houses, with annual sales of $2,370,000 (1963 Census of Business, Wholesale Trade, Alabama, pages 2-8). The county also has 49 selected service establishments, with annual receipts of $465,000. These establishments have 35 employees (1963 Census of Business, Selected Services, pages 2-8). Clay County has 28 manufacturing establishments with 893 employees. Their annual payroll is $2,657,000 (1963 Census of Manufacturers, Alabama, pages 1-7).

In concluding, its pleadings indicate that the adoption of the FM reassignments presently before us for consideration is the only way of bringing the county a needed FM facility, without in any way depriving any other community of FM service or its present potential therefor.

5. Roanoke Broadcasting Co., the licensee of WELR-FM now on Channel 237A at Roanoke, firmly opposes petitioner's proposal in that its adoption would require WELR-FM to relocate its facility to a new channel, 272A, a new position on the FM dial. The core of its objection, as set out in its lengthy pleadings, lies in the fact that, if the proposal is adopted, its present position on the FM dial would be made available to a direct competitor for use, to a large degree, in the same service area that WELR-FM pioneered and developed for FM broadcasting. Lineville is but 24 miles distant from Roanoke, with WELR-FM primary service (1 mv/m contour) falling short of serving Lineville only by 5 miles. Roanoke Broadcasting Co. expresses the serious concern that the adoption of the proposal in simple effect will result in Clay County Broadcasters coming on the air on the established frequency with programming either identical or very similar to that presently being broadcast by WELR-FM, and thereby obtaining the windfall of an audience developed by WELR-FM. It maintains that such an event would result in serious economic damage to WELR-FM in that advertisers in the community would desert its operation (on a new frequency) in order to continue to have the advantage of the established audience on the established FM frequency. As a matter of equity, it asserts that it should be permitted to retain the benefits resulting from its strenuous and lengthy efforts to develop and make feasible FM broadcasting in the area.

6. In examining, evaluating, and determining an allocation matter of this type, we must first underline the fact that our primary duty, directed by the Communications Act of 1934, as amended, is to forward the public interest convenience and necessity by making a fair, efficient and equitable distribution of broadcast facilities among the various States and communities. In view of this obligation the primary question before us in this matter is the need of Clay County for a first full-time local service (the proposal does not involve the diminution of Roanoke's potential for having local service). We have examined the pleadings in their entirety which include, inter alia, the statistics concerning Clay County, Ashland and Lineville set out in paragraphs 3 and 4 above, and have come to the conclusion that under the circumstances before us it is in the public interest to assign Channel 237A to Ashland, Ala., and replace it in Roanoke, Ala., with Channel 272A. Clay County clearly appears to encompass a rural area which at the present time has but one daytime only local broadcast facility (WANL at Lineville) to inform its citizens of the activities (political, economic, and social) which affect their day-to-day lives, judgments, and futures. A first full-time FM facility will not only aid in the distribution of information and activity in the area but in addition, in our view, may well stimulate additional interest in FM broadcasting, in that the activation of such a station will provide a choice from two FM services, for the first time, in a significant area. Our choice for assignment, i.e., Ashland as opposed to Lineville, is based primarily on the facts that the two communities are of the same size, Lineville has a facility whereas Ashland has none, and with its position as the county seat Ashland has the greater ability and need to provide the county with news concerning local governmental matters and activities affecting the county as a whole. In view of the close proximity of these communities (less than 6 miles) the assignment can be used at either and will serve the other. As a concluding comment in respect to the reallocation we are making, we wish to note that the pleadings and our own engineering analyses indicate that the proposal set out in our notice and herein adopted is the only method whereby Clay County (Lineville or Ashland) could have a first full-time local FM service without deleting an existing assignment in another community.

7. Although the mandate of section 307(b) of the Communications Act of 1934, as amended, clearly calls for the channel reallocation we are ordering in this document, and section 301 of the Act negates any vested interest of Roanoke Broadcasting Co. in Channel 237A at Roanoke, presently licensed to it, we are of the view that the practical and equitable considerations set forth by it

[1] Among the various petitions before us at the time of the final designation of the time for filing comments and replies were two of Roanoke Broadcasting Co., entitled: (1) "Petition for Reconsideration of Notice of Proposed Rulemaking RM-1394 and Request for Its Withdrawal", and (2) "Petition for Immediate Postponement of Rulemaking Comments Until Commission Consideration and Action upon Petition for Reconsideration Thereof", both received on July 16, 1969. The decision to proceed in accordance with the normal rulemaking procedure was and is based on our judgment that the public interest requires that all interested parties have an opportunity to have their views, in their entirety, before us before we made a final evaluation of the public interest factors involved in this proceeding. These petitions are denied herein.

[2] These population statistics are from the 1960 U.S. Census. 1970 preliminary Census reports show: Ashland, 1,879; Lineville, 1,971; Roanoke, 5,068; Clay County, 12,083; Randolph County, 17,653.

(see paragraph 5 above) should be protected to the fullest extent possible insofar as they do not conflict with the public interest. Therefore, we will act to conserve WELR–FM's significant "investment" in the development of public acceptance of its unique programing and location on the dial, by providing for a hiatus in operation on 237A in the area if WELR–FM requests it. Thus, if requested, we will defer grant of program test authority on the new Channel 237A assignment at Ashland until a period up to 60 days after WELR–FM has received authority for operation on Channel 272A at Roanoke. This hiatus, along with use of its present facilities to inform its public of its shift in channel, should fully protect any legitimate interest which WELR–FM has secured in public good will and acceptance, while at the same time permitting prompt activation of a new and first FM service in Clay County.

8. Clay County Broadcasters has stated its intention to apply for the new assignment and has agreed to reimburse Roanoke Broadcasting Co. for any reasonable costs connected with its frequency shift. Such reimbursement is settled Commission policy in these situations. See the report and order, Docket No. 15543, RM–544, Kenton and Bellefontaine, Ohio (31 F.R. 7238, 7 RR 2d 1600). Hence, we are requiring that Roanoke Broadcasting Co. be reimbursed for the reasonable costs of its channel change by petitioner, Clay County Broadcasters (who has stated its intention to apply for Channel 237A in the event of its assignment to Ashland or Lineville) or whatever other party becomes the permittee on the new Ashland channel. From the material before us in this proceeding we cannot, at this time, determine what the amount of the reimbursement should be; therefore we are leaving the matter of determining the appropriate costs to the good faith judgment of the interested parties, subject to Commission approval in the event of disagreement. As guidelines we reiterate the following principles: (1) Costs appropriate for reimbursement are not necessarily limited to strictly engineering costs since as a practical matter other expenses may be involved;[3] (2) WELR–FM is not entitled to reimbursement for "business losses". These are highly speculative and conjectural in nature. Furthermore, the holding of a license is not a guarantee of revenues or profits, and the holder is not entitled to reimbursement for loss thereof if the public interest requires a change in his facilities.

[3] At the present time Roanoke Broadcasting Co. operates its AM and FM facilities at Roanoke independent of each other, with separate towers. Our engineering studies indicate that it can operate on Channel 272A from either tower site in full compliance with our minimum mileage spacing requirements. The determination to use the new channel at its existing FM tower site as a continued independent service or to join the new FM antenna with its AM antenna at the AM tower site is solely within the discretion of WELR–FM.

9. Authority for the actions taken herein is contained in sections 4(i), 301, 303, and 307(b) of the Communications Act of 1934, as amended.

10. In view of the foregoing we make the finding that it is in the public interest to reassign Channel 237A from Roanoke, Ala., to Ashland, Ala., and to replace it in Roanoke with Channel 272A.

11. *Accordingly, it is ordered,* That effective January 4, 1971, the Table of Assignments in § 73.202 of the Commission's rules is amended, insofar as the cities listed below are concerned, to read as follows:

Cities	*Channels*
Ashland, Ala.	237A
Roanoke, Ala.	272A

12. *It is further ordered,* That effective January 4, 1971, the license of Roanoke Broadcasting Co. for Station WELR–FM, Roanoke, is modified to specify Channel 272A instead of Channel 237A, subject to the conditions set forth below.

13. *It is further ordered,* That the "Petition for Reconsideration of Notice of Proposed Rule Making RM–1394 and Request for its Withdrawal" and "Petition for Immediate Postponement of Rule-making Comments until Commission Consideration and Action upon Petition for Reconsideration Thereof", both filed on July 16, 1969, by Roanoke Broadcasting Co., are denied.

14. Station WELR–FM may operate on Channel 237A until January 4, 1971, or until 45 days after it receives notice from the Commission that a construction permit on Channel 237A is assigned at Ashland, Ala., whichever is later; or the licensee may apply earlier for temporary authority to operate on Channel 272A. The licensee of Station WELR–FM, at least 30 days before it wishes to commence operation on Channel 272A, or within 30 days of receiving notification from the Commission that operating authority on the current channel is about to terminate, shall submit to the Commission the technical information normally required of an applicant for construction permit on Channel 272A, including any changes in antenna and transmission line; and within 30 days after receiving Commission authority to operate on the newly assigned channel, it shall submit measurement data normally required of an applicant for an FM station license.

15. *It is further ordered,* That this proceeding, Docket No. 18574, is terminated.

(Secs. 4, 301, 303, 307, 48 Stat., as amended, 1066, 1081, 1082, 1083; 47 U.S.C. 154, 301, 303, 307)

Adopted: November 10, 1970.

Released: November 13, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[4]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–15471; Filed, Nov. 17, 1970; 8:48 a.m.]

[4] Commissioner Bartley absent.

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. 1–40]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Authority With Respect to U.S. International Aeronautical Exposition

The purpose of this amendment is to redelegate, to the Federal Aviation Administrator, the authority delegated to the Secretary of Transportation by Executive Order 11538 of June 29, 1970, with respect to the U.S. International Aeronautical Exposition. The Exposition is authorized by section 709 of the Military Construction Authorization Act of 1970.

Since this amendment relates only to the internal management of the Department, notice and public procedure thereon are not required and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, effective September 10, 1970, § 1.47 of Title 49, Code of Federal Regulations, is amended by adding the following paragraph at the end thereof:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(i) Plan, establish, and manage the U.S. International Aeronautical Exposition (83 Stat. 317).

(Sec. 3, Executive Order 11538, 35 F.R. 10645)

Issued in Washington, D.C., on September 10, 1970.

JAMES M. BEGGS, *Acting Secretary of Transportation.*

[F.R. Doc. 70–15437; Filed, Nov. 17, 1970; 8:45 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Tewaukon National Wildlife Refuge, N. Dak.

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

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

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, Cayuga, N. Dak.,

is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 1,470 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge extends from December 15, 1970, through March 27, 1971, inclusive.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Part 33, and are effective through March 27, 1971.

HERBERT G. TROESTER,
Refuge Manager, Tewaukon National Wildlife Refuge, Cayuga, N. Dak.

NOVEMBER 5, 1970.

[F.R. Doc. 70-15444; Filed, Nov. 17, 1970; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 22]

DRAWBACK

Preparation of Statements

Notice is hereby given that under the authority of sections 313 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1313, 1624), it is proposed to amend §§ 22.4, 22.6, and 22.43 of the Customs Regulations relating to the establishment of rates of drawback. The amendments proposed would discontinue the present practice of conducting an investigation at the applicant's premises prior to issuance of a drawback rate. Under the present procedure an applicant for such a rate is given assistance in preparing his drawback statement at the time of the preliminary investigation. This is a burden on customs officers which, in our view, should be assumed by the applicant himself.

The drawback application (Customs Form 4477) is filed with the port or district director or with the regional commissioner of customs. Under the proposed new procedure, when the application shows that the drawback will be claimed under the direct identification provisions of the tariff act (section 313 (a)), it will be forwarded by the receiving officer to the regional commissioner in charge of the region where such drawback claims will be filed. The applicant will be provided a sample drawback statement and appropriate instructions for completion of his drawback statement by the regional office. When the application shows that drawback is to be claimed under the substitution provisions of section 313(b) of the tariff act, or under 313(d) or 313(g) thereof, or under any combination of section 313(a) with section 313 (b), (d), or (g), the application will be forwarded by the receiving office to the Bureau in order that the applicant may be given an appropriate sample drawback statement and instructions for completion of his drawback statement.

The regional commissioner concerned will continue to issue drawback rates in those cases covered by section 313(a), Tariff Act of 1930, and the Bureau will issue drawback rates in cases covered by section 313 (b), (d), or (g) of the Tariff Act of 1930, as amended, and in the case of any combination of section 313(a) with section 313 (b), (d), or (g).

Under the revised procedure, the first drawback entry which is filed by a claimant will be referred to the Customs Agency Service for the verification of the claim and the material set forth in the drawback statement. Thereafter claims will be occasionally referred to the Customs Agency Service, as now, under § 22.43 of the Customs Regulations.

The terms of the proposed amendments of the Customs Regulations, in tentative form, are as follows:

In § 22.4, paragraphs (h), (i), (j), and (o), not including paragraph (o)(1), and paragraphs (p), and (q) are amended to read:

§ 22.4 Identification of imported merchandise and ascertainment of quantities for allowance of drawback; establishment of drawback rates.

* * * * *

(h) Each manufacturer or producer shall submit to the regional commissioner of customs where his drawback entries will be liquidated a statement in quadruplicate describing the methods which he will follow and the records which he will keep for the purpose of establishing that the articles upon which drawback will be claimed have been manufactured or produced in the United States with the use of imported duty-paid merchandise within the meaning of section 313(a), Tariff Act of 1930, and that the records of identification, manufacture, or production and storage prescribed in this section have been maintained. In the case of operations under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of operations under any combination of section 313(a) with section 313 (b), (d), or (g), the statement in quintuplicate shall be submitted to the Commissioner of Customs. The statement shall contain an agreement to follow the methods and keep the records described therein with respect to all articles manufactured or produced for exportation with benefit of drawback. Provision for the use of duty-paid merchandise or drawback products, the manufacture or production of articles not specified in the application for the rate, or the use of factories not named therein may be included in the statement prepared as a result of such application.

(i) If drawback entries are to be liquidated at more than one regional office, two additional copies of the statement shall be required for each additional office. The procedure outlined in this and the preceding paragraph shall be followed, so far as applicable, when applications for amendments of drawback rates, or supplemental statements, schedules, or supplemental advisory schedules are filed in accordance with paragraph (o), (p), or (q) of this section.

(j) If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations, the regional commissioner in a case under section 313(a), Tariff Act of 1930, or the Bureau in a case under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of any combination of section 313(a) with section 313 (b), (d), or (g), will issue the rate of drawback on the articles described in the statement. In cases under § 22.6, the procedure in paragraphs (a) and (b) of that section shall be followed. When the statement in a case under section 313(a), Tariff Act of 1930, shows that entries are to be filed with more than one regional commissioner, the regional commissioner at the place first listed shall issue the rate, if that action is warranted.

* * * * *

(o) When a manufacturer or producer in whose behalf a rate of drawback has been established desires to have his rate amended under section 313(a), Tariff Act of 1930, or to change his statement filed under § 22.6 to cover additional articles, to include additional factories, to permit the use of other kinds of imported duty-paid merchandise or drawback products, to provide for a different basis for the liquidation of drawback entries, or to cover different methods of identification or manufacture, or other changes, he shall file an application therefor with the regional commissioner, district director, or port director of customs. The supplemental statement prepared as a result of such application shall be submitted to the regional commissioner where drawback entries filed under the existing rate of drawback are liquidated who shall issue the amendment, if that action is warranted. If entries are liquidated by more than one regional commissioner, the supplemental statement shall identify all such regional commissioners and the regional commissioner at the place first listed shall issue the amendment. The foregoing procedure shall also apply to applications for amendments under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, and in the case of any combination of section 313(a) operations with section 313 (b), (d), or (g) operations, but the supplemental statement in such cases shall be submitted to the Commissioner of Customs except as provided in subparagraph (1) of this paragraph. No drawback shall be allowed on articles exported before the date on which the application was received by the regional commissioner, district director, or port director, unless specifically authorized by the Bureau, or by the regional commissioner in cases within the provisions of § 22.6 or of this paragraph.

* * * * *

(p) When a rate of drawback provides that the drawback allowance shall be determined on the basis of a schedule filed by the manufacturer or producer showing the quantity of imported material used or appearing in each unit of finished articles, and the rate authorizes the filing of supplemental schedules

showing changes in the quantity of imported materials used or appearing in each unit, or different styles or capacities of containers, such supplemental schedules shall be filed with the regional commissioner, district director, or port director of customs. Drawback may be allowed on the articles covered by a supplemental schedule after it has been approved by the regional commissioner.

(q) In cases where the drawback allowance is determined on a quantity-used or appearing-in basis, regional commissioners of customs may request, for the information of liquidating officers in addition to the information required to be filed with the drawback entry, a supplemental advisory schedule showing the quantity of imported merchandise used or appearing in each unit of finished articles. Such schedules shall be filed with the regional commissioner, district director, or port director of customs. Drawback may be allowed on articles covered by a supplemental advisory schedule after it has been approved by the regional commissioner.

In § 22.6 paragraphs (a) and (b) are amended to read:

§ 22.6 General drawback rates in effect; approval of drawback statements by the Bureau and by regional commissioners.

(a) *Drawback statements; filing and approval by one regional commissioner.* Each manufacturer or producer of articles covered by a drawback rate in this section, except under paragraph (g)(1) of this section, shall submit to the regional commissioner where drawback entries will be filed, a statement in duplicate describing the methods used in the manufacture or production of the products involved and setting forth the records it agrees to keep for the purpose of complying with the drawback law and regulations and for providing all the data required for the proper liquidation of certificates of manufacture and drawback entries filed hereunder. If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations, the regional commissioner shall approve the statement and promptly notify the applicant, in writing, of such action. Statements and supplemental statements in quintuplicate relating to products covered by paragraph (g)(1) of this section shall be referred to the Bureau for approval.

(b) *Drawback statements; filing and approval at more than one place.* If drawback entries are to be liquidated at more than one regional office, two additional copies of the statement shall be required for each additional office. In such case, the regional commissioner at the place first listed in the drawback statement shall approve the statement, if that action is warranted, and promptly notify the applicant, in writing, of such action.

* * * * *

Section 22.43 is amended to read:

§ 22.43 Verification of drawback claims by Customs Agency Service.

The first drawback claim filed under a drawback rate, together with copies of all relevant papers not previously furnished the special agent in charge of the area in which the factory covered by the drawback rate is located, shall be forwarded by the regional commissioner to such agent for verification. The agent shall verify the claim and the material set forth in the drawback statement. Similar action shall be taken upon receipt of the first drawback claim filed under an amendment of a drawback rate, as well as claims which involve the use of schedules, supplemental schedules, and supplemental advisory schedules. Regional commissioners shall cause drawback documents to be referred to the Customs Agency Service for verification whenever such reference is believed to be required for orderly and efficient administration of the drawback law and regulations, and occasionally in any case. Verification under this provision shall include an examination of not only the manufacturing records but also the sales and financial records relating to the transaction.

(Secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U.S.C. 1624)

Prior to issuance of the proposed amendment, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] MYLES J. AMBROSE,
Commissioner of Customs.

Approved: November 9, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-15506; Filed, Nov. 17, 1970; 8:50 a.m.]

DEPARTMENT OF THE INTERIOR

Oil Import Administration

[32A CFR Ch. X]

ALLOCATIONS OF IMPORTS OF ASPHALT, DISTRICTS I–IV AND DISTRICT V

Notice of Proposed Rule Making

The Director of the Office of Emergency Preparedness has found, with the advice of the Oil Policy Committee, that the adoption for 1 year of a liberalized policy with respect to imports of asphalt will not impair the national security and is necessary in order to assure adequate supplies of asphalt during the calendar year 1971.

Accordingly, there is attached in the form of a section of Oil Import Regulation 1 (Revision 5), as amended, a proposal which would provide for allocations of imports of asphalt during the calendar year 1971 by persons who demonstrate a need for such imports in order to meet contractual obligations or manufacturing requirements.

The adoption of a proposal along the following lines will be subject to concurrence by the Director of the Office of Emergency Preparedness.

Interested persons are invited to submit written comments upon the proposal to the Administrator, Oil Import Administration, Department of the Interior, Washington, D.C. 20240, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Each person who submits comments is asked to provide fifteen (15) copies.

RALPH W. SNYDER, Jr.,
Acting Administrator, Oil Import Administration.

NOVEMBER 13, 1970.

Sec. _____.

(a) As used in this section, the term "asphalt" means a solid or semisolid cementitious material obtained in refining crude oil, which gradually liquefies when heated, in which the predominating constituents are bitumins, and which has a viscosity of not less than 60 seconds saybolt furol at 100° F.

(b) For the allocation period January 1, 1971, through December 31, 1971, the Administrator shall make an allocation of imports of asphalt into Districts I–IV and District V to any person who certifies that such imports are required to meet obligations under contracts with, or purchase orders from, customers in Districts I–IV or District V or to meet his own construction or manufacturing requirements. The allocation shall be in the quantity which such person certifies in writing is required to meet such obligations or requirements.

(c) Asphalt imported under an allocation made pursuant to paragraph (b) may be further processed only for the purpose of meeting specification requirements for a specific type of asphalt, such as roofing stocks and highway construction requirements: *Provided, however,* That such further processing does not include cracking, reforming, coking or other refining processes.

(d) Applications for allocations under this section may be filed with the Administrator at any time during the period. Applications shall be filed in such form as the Administrator may prescribe. Licenses issued under allocations made pursuant to this section shall be valid only during the period January 1, 1971, through December 31, 1971.

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

[F.R. Doc. 70-15457; Filed, Nov. 17, 1970; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 930]

[Docket No. AO-370]

CHERRIES GROWN IN MICHIGAN AND CERTAIN OTHER STATES

Decision and Referendum Order With Respect to Proposed Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Grand Rapids, Mich., June 2-4, 1970, and continued at Sturgeon Bay, Wis., on June 5, 1970, at Rochester, N.Y., on June 9, 1970, and at Gettysburg, Pa., on June 11, 1970, after notice thereof published in the FEDERAL REGISTER (35 F.R. 7077) on a proposed marketing agreement and order for regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland, to be made effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601-674).

On the basis of the evidence adduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed on October 2, 1970, with the Hearing Clerk, U.S. Department of Agriculture. The notice of the filing of such recommended decision, affording opportunity to file written exceptions thereto, was published in the FEDERAL REGISTER (F.R. Doc. 70-13489; 35 F.R. 15817). No exception was filed within the time provided for filing exceptions to the recommended decision.

The discussion in the recommended decision clearly states that all meetings of the Board shall be open meetings and growers and handlers and any other interested person may attend. It also states that it is the responsibility of the Board to give public notice of such meetings in such newspapers as the Board deems appropriate. Finally, it states that the Board should mail a notice of such meeting to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose. However, the terms of the order in the recommended decision do not fully and clearly reflect the findings and conclusions. To make the terms of such order conform to the findings and conclusions, paragraph (c) of § 930.51 appearing at 35 F.R. 15833 is revised to read as follows:

"(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose."

Although it is implied that the Secretary has the right to effectuate compliance with order provisions, the provisions in § 930.64 of the order in the recommended decision 35 F.R. 15835 do not specifically authorize the Secretary to examine handlers' books and records. To prevent misunderstanding and to make it abundantly clear that the Secretary has the authority to examine books and records of handlers, § 930.64 should be modified. Accordingly, 35 F.R. 15835, § 930.64 Verification of Reports and Records is revised to read as follows:

"For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part."

To correct a typographical error the first full paragraph, third column, appearing at 35 F.R. 15830, is corrected to read as follows:

"The brief stated, in general, that (1) the proposed program was not authorized by the act, (2) the evidence of record does not justify the proposed program, and (3) the program would, if made effective, result in inequities to certain persons regulated by the program."

On October 26, 1970, the Hearing Clerk received an exception to the recommended decision. This exception was filed by Jeno's, Inc., by Jerry H. Udesen, Assistant Secretary and Associate Counsel, Jeno's, Inc., and Michael E. Bress of Dorsey, Marquart, Windhorst, West and Halladay, Attorneys for Jeno's, Inc. This exception was postmarked October 24, 1970, a date later than the final date for filing exceptions. This exception renewed the proposed findings and conclusions contained in the brief dated July 30, 1970, and pointed to possible inconsistencies with respect to providing notice of Board meetings to growers and handlers and other interested persons as discussed in the recommended decision and as set forth in § 930.51(c) of the order. Section 930.51(c) is being revised, as noted hereinbefore, to make the order reflect the findings and conclusions set forth in the recommended decision.

It should be noted that in connection with the brief of Jeno's, Inc., with respect to proposed findings and conclusions, subject firm through its attorneys requested and was granted additional time to file the brief. No request for additional time was received with respect to the brief containing exceptions to the recommended decision.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the order including:

(a) Definition of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, and duties of a Board and of a person designated as chairman and his alternate which shall be the administrative agency for assisting the Secretary in administration of the order;

(c) The incurring of expenses and the levying of assessments;

(d) The method for regulating the handling of cherries grown in the production area, including the establishment of a reserve pool of cherry products and providing for its disposition;

(e) The granting of exemptions from regulation of cherries used for such purposes, as the Board, with the approval of the Secretary, may specify;

(f) The establishment of reporting and related recordkeeping requirements upon handlers;

(g) The requirements of compliance with all provisions of the order and with regulations issued pursuant thereto; and

(h) Additional terms and conditions as set forth in §§ 71 through 80 and published in the FEDERAL REGISTER (35 F.R. 7077) on May 5, 1970, which are common to marketing agreements and orders, and certain other terms and conditions as set forth in §§ 81 through 83, and also published in the said issue of the FEDERAL REGISTER, which are common to marketing agreements only.

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

(1) Red tart cherries, also called red sour cherries, are grown commercially in Michigan and in portions of the States of Wisconsin, Ohio, Pennsylvania, and New York bordering the Great Lakes. Such cherries are also grown commercially in the southern part of Pennsylvania and in the northern Appalachian regions of Virginia, West Virginia, and Maryland. In addition, there is commercial production of red tart cherries in several Western and Northwestern States but such production represents, on the average, less than 10 percent of that for the entire United States, is marketed almost entirely in the Western States, and presently does not materially affect the prices that the producers of red tart cherries in the other commercial areas receive for their cherries.

Practically all of the red tart cherry production in the Great Lakes States

(Michigan, New York, Ohio, Pennsylvania, and Wisconsin) and in the Appalachian region (Maryland, Virginia, and West Virginia) all included in the production area, is processed into canned or frozen products. Minor market outlets are fresh sales and brining which comprise less than 5 percent and 1 percent, respectively, of total sales. Cherries are received by handlers and processed into canned and frozen products without regard to whether such products are to be sold within or without the State of production. In addition, the individual products of cherries, as they move to market, tend to be similar in that they are sold under standardized packs, grades, and names or brands. Generally, no handler supplies any single segment of the market to the exclusion of every other handler. The market for red tart cherry products is broad and not limited to any sectional part of the United States. Handlers sell a large portion of their production to other than the ultimate consumer of the cherries—such as commercial bakers and institutional users—which can substitute canned red tart cherries for frozen or vice versa if price differentials are such that it is profitable to do so. Therefore, all canned and frozen products of red tart cherries are in competition in the market and handlers generally sell such cherry products at comparable f.o.b. prices both with respect to sales within the State of production and sales in interstate commerce.

The order contemplates, if it is made effective, the imposing of certain restrictions which are to be applicable to red tart cherries received by handlers from growers. Such regulation would require each handler to set aside and hold for disposition by the administrative board, established under the order, that portion of such receipts as may be fixed by the Secretary. In this manner, the total quantity of cherries which handlers may freely handle for their own respective accounts should be limited to the volume which reasonably conforms to commercial requirements. If an attempt was made artifically to separate, under marketing order requirements, the production, processing, and sale of red tart cherries for intrastate commerce from that for interstate and foreign commerce, the result would be to burden unduly handler operations in that, as each lot of such cherries was received from growers, handlers would have to make such determinations as the market in which the cherries, after processing, would be disposed of, and the type of pack and product to be made therefrom. Separate records and reporting with respect to the red tart cherries processed for intrastate sale and for interstate and foreign commerce would have to be required under the order.

In these circumstances, it is found and determined that the intrastate handling of red tart cherries, grown in the production area, directly burdens, obstructs, and affects the handling of such cherries in interstate and foreign commerce, and that it is necessary for all such cherries to be subject to the order so as to regulate effectively the interstate and foreign commerce thereof.

(2) The hearing evidence shows that the production of red tart cherries in the Great Lake States—those States within the production area—is trending upward. Prior to 1961, the largest production of red tart cherries in the Great Lake States was 147,360 tons. Since 1958, production has exceeded this amount during four seasons and nearly equaled that amount during last season. Production of red tart cherries in the production area has fluctuated widely from year to year. This may be illustrated by the production of 134,450 tons in 1957, 92,600 tons in 1958, and 129,800 tons in 1959. With few exceptions, large crops have been followed by short crops. Only three times during the past 25 years have large crops followed large crops. These were in 1950–51, in 1961–62, and in 1964–65. Also, since the price that processors pay to growers is based primarily on the available supply, grower returns have fluctuated from year to year to reflect the change in production.

The hearing evidence shows that the demand for red tart cherries for canning and freezing, the major market outlet, is inelastic when total available supplies exceed 300 million pounds. This means that by restriction of the supplies of red tart cherries available to handlers during years when there are large crops, the total returns to growers can be increased. Also, the alternate production characteristics of the red tart cherry industry in the Great Lake States provides an opportunity to increase total earnings of growers by converting, at the expense of the growers, the excess production of large crop years into storable products, which would constitute reserve pools to be liquidated in a year when the available supplies are short. Returns from the pool, after deduction of the expense of processing and storage, would be distributed to the growers.

In view of the foregoing, it is concluded that a marketing order program providing for (1) restrictions on the volume of red tart cherries, grown in the production area as hereinafter defined, which may be received and freely used by handlers, and (2) establishing a reserve pool of red tart cherry products, would tend to establish orderly marketing conditions for such cherries and to effectuate the declared policy of the act.

(3) The term "cherries" should be defined in the order to identify the commodity to be regulated thereunder. Such term, as used in the order, should include all cherries of the Meteor variety of cherries and all varieties of cherries classified botanically as Prunus cerasus. Montmorency is the major variety of red tart cherries and accounts for approximately 90 percent of red tart cherries production within the production area. Thus, all cherries commonly referred to as red tart cherries or red sour cherries grown in the production area would be included. It is necessary and desirable to include the Meteor variety because, even though it is not classified as Prunus cerasus, its history indicates it is definitely a red tart or red sour cherry. It is considered a red tart cherry in the order.

The order should not include cherries of the Prunus avium type, including the so-called Duke cherries, as it is not intended, nor is it necessary, to regulate "sweet cherries" under the order. Sweet cherries are considered a separate commodity from red tart (or sour) cherries as they are marketed differently and have different uses. The principal market outlet for sweet cherries is fresh sales and brining whereas red tart cherries usually are canned or frozen. The sweet cherries that are canned generally retail at considerably higher prices than the prices for canned red tart cherries. Most canned and frozen red tart cherries are used in pies while sweet cherries are seldom used for this purpose. Red tart cherries are readily identifiable from sweet cherries. The term cherries should be limited to the red tart (or sour) cherries grown in the production area as the order would apply only to such cherries.

A definition of the term "production area" should be incorporated into the order to designate the specific area in which the red tart cherries (hereinafter called "cherries") to be regulated are grown. Such area should include all of the commercial cherry producing areas in the eight States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. These States have accounted for over 90 percent of the commercial cherry production, and approximately 95 percent of canned and frozen cherry products produced, during the past 5 years. The remaining commercial cherry production is in the Western States of Montana, Idaho, Colorado, Utah, and Washington. These States do not produce sufficient canned and frozen cherries to supply the west coast markets. Consequently, such cherries generally have not been shipped to eastern markets, which are the largest markets for cherries produced in the Eastern States, and have not competed with the eastern cherries except when the latter are shipped to west coast markets. Thus, western cherry production has had only a minor effect on the prices that the eastern cherry growers have received for their cherries. Moreover, if the western cherry producing States were included in the production area it would greatly increase the costs of administration of the order.

The eight-State eastern production area is the smallest practicable area for application of the order because of the similarity of producer prices and marketing. There are some handlers who have plants for processing cherries in more than one of the States in this eight-State area and brokers often represent the handlers in several of the States of the eight-State area. Applying the order to any lesser production area than the eight Eastern States which have commercial cherry production could materially decrease the effectiveness of the order. If Ohio were excluded from the production area, as requested at the hearing, only a small percentage of the tonnage of the eight-State area would be excluded from coverage by the order.

However, Ohio production usually is ready for market a little before the earliest sections in Michigan. Such cherries are marketed in the same manner and often in direct competition with cherries grown in the early districts in Michigan. Also, the acreage in Ohio could be expanded if that State were excluded from the order. Moreover, if any portion of the eight-State area were excluded from the order, the producers in the excluded portion would benefit from the operation of the order without making any contribution to its operation.

(4) The term "handler" should be defined in the order to identify the persons who would be subject to regulation under the order. Therefore, the term should apply to all persons who perform any of the activities within the scope of the term "handle," as hereinafter defined. In other words, any person who pits, cans, freezes, dehydrates, presses, or brines cherries, or in any other way converts cherries commercially into a processed product, should be a handler under the order and be required to comply with all requirements of the order and the regulations issued thereunder. The term "handler" should also include any person who causes cherries to be handled. There are persons who do not have any processing facilities, i.e., they do not have facilities for personally performing the activities of the pitting, canning, freezing, etc., of cherries, who nevertheless should be handlers under the order. For example, a grower or some other person may own cherries and may have a handler can or freeze such cherries for a fee. In such instances, the handler who cans or freezes the cherries is known as a custom packer. While the custom packer performed the "handling activity" it is the person who has the cherries custom packed who should be the handler as (1) the custom packer merely provides a service for a fee and (2) the person owning the cherries makes all of the decisions concerning the type of pack, container size, and disposition of the canned or frozen product the same as if he processed the cherries in his own plant.

There also are persons who purchase cherries that have been pitted and placed in containers by a handler and then have such cherries frozen for later use. In such instances, the person who performed the pitting operation performed a handling activity. So that the regulation under the order apply only once to a particular lot of cherries, the person who first performs a handling function in connection with a particular lot of cherries should comply with the provisions of the order and any regulations issued pursuant to it. The applicability of a marketing agreement and order program under the act to first handlers is not an unusual application. For example, the regulatory program (7 CFR Part 910) under the act regulating the handling of lemons grown in California and Arizona makes applicable to the first handler (7 CFR 910.53) the provisions relative to the issuance of prorate bases and allotments for handlers.

"Handle" should be defined to include the pitting, canning, freezing, dehydrating, pressing, or brining of such cherries since these specific processes are the common means of commercially preparing cherries for sale in the channels of trade. This term should also include the conversion of cherries into a processed product by any other commercial method so that any new methods of processing cherries that may be developed would be covered. The act does not authorize the regulation of canned or frozen cherries so, in order for the program to be effective, it is necessary to provide that cherries are handled at the time they are processed into products.

"Handle" should be defined to cover such processing of cherries both within and outside of the production area. The record does not show that there presently is any handling of cherries, grown in the production area, outside such area. However, there are processing plants, in northern Indiana for example, which may be capable of handling cherries or with minor changes could be made capable of handling cherries. Such plants are sufficiently near the cherry producing area of southwest Michigan that cherries could be transported to such plants for processing if it were advantageous to do so. Regulations under the order would tend to provide such advantage if only handlers within the area were regulated as other handlers could use all of the cherries received without any limitation.

Record evidence shows that it is not necessary to regulate all cherries grown in the production area that are pitted, canned, frozen, dehyrated, pressed, brined, or otherwise converted into processed products in order to effectuate the declared policy of the act. The handling of cherries which are for home use and not for resale, according to record evidence, have little effect upon the marketing of cherries in the commercial market outlets. The regulation of such cherries would be costly and would present considerable problems of administration. Therefore, such handling activities should not be included as a handling function under the order.

Under the order, authority should be provided for growers to divert cherries to uses to be specified if they choose to do so rather than to participate in the reserve pool. Such diversion outlets should include uses, such as converting the diverted cherries into dehydrated cherries. It is necessary, therefore, to exclude from the definition of handle, cherries which are diverted to specified uses. Otherwise the specification of certain outlets for diverted cherries could not accomplish its intended purpose because all cherries received for handling would be subject to application of any free and restricted percentage that are established.

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the order. These terms should be defined for the purpose of designating specifically their applicability and establishing appropriate limitations on their respective meanings wherever they are used.

"Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "act" provides the correct legal citations for the statute pursuant to which the proposed regulatory program is to be operative and avoids the need for referring to these citations throughout the order.

The definition of "person" follows the definition of that term as set forth in the act, and will insure that it will have the same meaning as it has in the act.

The term "fiscal period" or "fiscal year" should be defined to set forth the period with respect to which financial records of the Cherry Administrative Board—the Administrative agency established by the order—are to be maintained. The most desirable period for such purpose, at the present time, is the 12-month period ending the last day of April of each year. Such a period would fix the beginning of each fiscal period reasonably close to the time harvesting and handling of cherries normally begins. This would facilitate fixing the term of office of members and alternates to coincide with such period and it would allow sufficient time prior to the time of harvest for the Board to organize and develop information necessary to its functioning during the ensuing year, and would still ensure that a minimum of expense would be incurred during a fiscal period prior to the time assessment income is available to defray such expenses. It is recognized that in the event the requisite producer and processor approvals materialize and the regulatory program is made effective at any time prior to May 1, 1971—the indicated beginning date of a fiscal period—the initial fiscal period would not cover a full 12-month period. Therefore, the initial fiscal period should commence at the same time the program becomes effective. This would also mean that the initial fiscal period of a member's term of office, as hereinafter discussed to comprise three consecutive fiscal periods, would be of the same short duration.

A definition of "Board" should be incorporated in the order to identify the administrative agency established under the provisions of the program. Such board is authorized by the act, and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating its full name each time it is referred to.

The term "grower" should be synonymous with "producer" and should be defined to include any person who is engaged in the production area, in the

production of cherries that are to be marketed in canned, frozen, or other processed form, and who has a proprietary interest therein. A definition of the term "grower" is necessary to determine eligibility to vote for nominees for, and serve as, grower members or alternate members of the Cherry Administrative Board. The term should be restricted to those who produce cherries that are to be processed because the order does not apply to cherries sold in fresh market outlets for distribution or retail to consumers as fresh fruit. It should also include persons who purchase cherries from the grower and resell them to a processor. Such a person is not a producer, as the term generally is used in the order, since he did not grow the cherries—neither is he a handler. However, should he purchase cherries on the tree, for example, he should have the same privileges as the grower of the cherries with respect to diversion, as hereinafter discussed, prior to delivery of the cherries to the processor. The term grower should, therefore, be defined as hereinafter set forth.

"District" should be defined as set forth in the order to provide a basis for nomination and selection of the members of the Board. The districts (i.e., the geographical divisions of the production area) as established and set forth in the notice of hearing represent a reasonable basis for providing a fair, adequate, and equitable representation on the Board. The provision for redistricting is desirable because it allows the Board and the Secretary to consider, from time to time, whether the basis for representation on the Board should be changed.

(b) It is desirable to establish an agency to administer the order under and pursuant to the act, as an aid to the Secretary in carrying out the purpose of the order and the declared policy of the act. The term "Cherry Administrative Board" is a proper identification of the agency and reflects the character thereof. A Board of 12 members, with a like number of alternates, should provide adequate industry representation on the Board to recommend marketing regulations and to perform other administrative functions. Record evidence shows that because of the size of the production area and the nature of the area involved, a Board of 12 is the least number which would allow good representation from all areas. In order to insure a Board that will represent the cherry industry within the production area, six of the members should be growers and six should be handlers. Although, it is primarily a grower's program, the restrictions are placed at the handler level so it is only right that the handlers have representation on the committee. Handlers are usually closer to the marketing situation, and six members on the Board should provide advice and counsel to the Board. An alternate member should have the same qualifications as the member for whom he is an alternate. Some growers of cherries are companies, either incorporated or otherwise, and a company, as such, could not serve as a member or alternate member on the Board. However, each such company may have one or more employees who are well versed in the growing and handling of cherries, and it is desirable, as evidenced by record testimony, that such a person be eligible to serve as grower member or grower alternate member on the Board. There are growers who are members of a cooperative and all such grower members' cherries are handled by the cooperative as one lot of cherries. Record evidence shows that each grower should be entitled to cast his ballot for any one who would be eligible from his group (cooperative or independent), to serve as grower member and grower alternate member on the Board.

Some handlers of cherries are companies, either incorporated or otherwise, and a company, as such, could not serve as a member or alternate member on the Board. These companies have employees who are in charge of the packing, marketing, and handling operations, and such employees would be qualified from the standpoint of knowledge and experience for service on the Board, and it would not be in the best interest of the industry to deny them the opportunity to be nominated for and serve as handler members on the Board.

There are growers throughout the production area who do not have any processing facilities but may have all or a portion of the cherries they produced handled. In other words, they pay a processor a fee for performing certain processing operations while retaining control of the cherries. The order should not permit such a grower-handler to serve as, to be nominated for, or to participate in the selection of nominees for, the handler member or alternate on the Board. Rather it should limit handler membership to those handlers who own or lease and operate processing equipment. Record evidence shows that, often, several years may elapse between one such custom pack operation for a grower and the next. Also, a grower who pays a fee for having all or a portion of his cherries custom packed may not, by reason of such action, obtain information concerning the problems encountered in the pitting, canning, freezing, or other handling operation. If such a grower-handler were permitted to serve on the Board as handler member or alternate member, it could result in the Board membership lacking the handler experience so vital to the successful operation of the program. It was also testified that the processors who own or lease and operate processing equipment are a relatively stable group, knowledgeable of industry problems, and able to provide advice and counsel to the Board with respect to handler problems. Therefore, it is concluded that handler membership on the Board should be restricted to handlers who own or lease and operate processing equipment. The classification of a grower as a grower-handler, as noted above, should not in any way interfere with or prevent such grower from participating in the nominations for, or serving as, a grower member or grower alternate member on the Board.

For representation on the Board, the production area should be divided into districts as specified in the order. District 1 should include the State of New York and Erie County, Pa., and be represented by one grower member and one handler member with an alternate for each such member. District 2 should include the States of Maryland, Pennsylvania except Erie County, Virginia, and West Virginia. Representation on the Board from this district should be one grower member and one handler member and their respective alternates. District 3 should include that portion of the State of Michigan which is north of a line drawn along the boundary of Mason and Manistee Counties and extending easterly to Lake Huron, and the State of Wisconsin. Representation on the Board from this district should be two grower members and two handler members and their respective alternates. District 4 should include that portion of the State of Michigan which is south of District 3 and north of a line drawn along the boundary of Allegan and Ottawa Counties and extending easterly to the St. Clair River. Representation on the Board from this district should be one grower member and one handler member and their respective alternates. District 5 include the State of Ohio and that portion of the State of Michigan not included within Districts 3 and 4. Representation on the Board from this district should be one grower member and one handler member and their respective alternates. Such representation recognizes to the extent practicable the relative volume of production in the various districts, the geographic boundaries normally recognizes within the industry, and the large geographic area represented in District 2. Provision to redefine the districts and to reapportion membership on the Board among districts should be provided so that, if it becomes apparent that through shifts in production, or other reasons, such district boundaries or such representation is inappropriate, the Secretary may, upon recommendation of the Board, redefine the districts into which the production area is divided, and make such reapportionment as he finds warranted. Record evidence shows that this authority should be limited to redefining the boundaries and not to include changing the number of districts. Thus, there will continue to be five districts.

Each member of the Board and his alternate should be a grower, or an officer, or employee of a grower, or a handler, or officer, or employee of a handler of cherries in the district from which selected. Persons with such qualifications should be intimately acquainted with the problems of producing and handling of cherries grown in such district and may be expected to present accurately the problems incident to the production and handling of cherries in that district.

A modification was proposed at one session of the hearing which would permit persons who use handled cherries to vote for and serve as handler members

of the Board. The proposal would include persons who use handled cherries in the manufacture of cherry products, such as cherry pie filling. The justification of this modification cited the interest of such persons in the cherry industry based on the volume of cherries that may be used by such persons. This modification provided no requirement as to business address or the residence of such person. Thus, the person in this category, both within and outside the production area, would be eligible to vote for and serve as handler member of the Board.

The record does not establish that persons, who are engaged in the manufacture of cherry products and perform no handling function, possess the experience and handling knowledge so necessary for recommending regulations under the order. The record does show that the persons who first handle cherries are located within the production area. They have knowledge about the size and quality of the forthcoming crop. They also know the size and composition of the carryover. They work with the grower in trying to provide a supply of cherries for marketing throughout the year. They seek new outlets for cherries and strive to increase sales in the present outlets. They have the marketing experience, current production information, and background knowledge upon which to rely in formulating a recommendation for regulation of the crop of cherries. Thus, it is concluded that such handlers should be the ones eligible to serve as the handler members or alternate handler members of the Board, and that it is not necessary to extend eligibility to include persons who manufacture cherry products from the cherries that were previously handled.

In addition to the 12 members constituting the Board, there should be an individual who should serve as nonvoting chairman of the Board, and an invididual who should serve as his alternate. The nominee for each position may be a grower, a handler, or from another segment of the industry, or may not be associated with the cherry industry in any official capacity.

The order should provide that at the first meeting of the Board, and at such times as may be necessary thereafter, by a majority vote of those present, an individual be nominated to serve as nonvoting chairman of the Board, and an individual to serve as his alternate. The chairman and his alternate should be appointed by the Secretary and should serve at the pleasure of the Secretary. Record evidence shows that these appointments should be made by the Secretary from nominations submitted by the Board or from other qualified individuals.

The term of office which will permit such chairman to serve at the pleasure of the Secretary should provide a capable individual to serve in this position. As one of the principal duties of this office will be to preside at Board meetings, there should be no need to make frequent changes in this office so long as the chairman is performing in a satisfactory manner. The duties of the nonvoting chairman should not be restricted to presiding at Board meetings, however. This office may be able to serve the Board and the industry in other ways and the order should permit such activities. For example, the Board may want the chairman or his alternate to serve on committees, or to represent the Board at inter-food industry meetings. It should be the responsibility of the Board to specify any appropriate duties, other than to preside at Board meetings, of the chairman and his alternate and the order should so provide.

The term of office of Board members and alternates under the proposed program should be for 3 fiscal years. However, the term of office for two of the initial grower members and two of the initial handler members and their respective alternates should end April 30, 1971, and the term of office for two of the initial grower members and two of the initial handler members and their respective alternates should end April 30, 1972. This procedure would set up a necessary and desirable rotation process whereby one-third of the Board would be elected each year. This rotation procedure will also provide a Board, two-thirds of which will be familiar with the workings of the order and will be able to acquaint the new members of the Board with the operations of the program. The term of office starting May 1, will begin sufficiently in advance of the time when cherries are harvested each season to allow adequate time for the Board to organize and start operating. Since it is possible that the new Board members may not be appointed immediately upon the expiration of the term of existing members, or that some may fail to qualify immediately, provision should be made for members to continue to serve on the Board until their successors are selected and have qualified. This is necessary to insure continuity of Board operations. Evidence presented at the hearing indicated that it would be desirable to assure that the same Board members would not serve continuously. Accordingly, provision should be made so that a member would be precluded from serving continuously on the Board for longer than two consecutive terms of office. This provision should not apply to alternate members as alternates actually serve on the Board only when the member for whom he is an alternate is unable to serve. Record evidence shows that this provision should also not apply to all those initial term of office of members who are appointed for less than the full 3-year term of office.

It was testified that it would be appropriate to determine from the first nominations which members will serve for 1 year, which members will serve for 2 years, and which members for 3 years. This should be accomplished by a random drawing in which the names of the grower nominees are placed in a container.

Two names should be drawn for the 3-year term. Two other names should be drawn for the 2-year term, and the remaining two names would be for the 1-year term. The term of office for the alternate should be the same as the member for whom he is the alternate, and no separate drawing for the alternate should be necessary.

A similar procedure should be followed for determining the term of office for the initial handler members and their alternates.

As the administrative Board will not be in a position to act until after the selection by the Secretary of its initial members, the order should provide a procedure for the selection of the initial members. Record evidence shows that the industry desires the names of the nominees for appointment to the initial Board be obtained from nominations made at meetings of growers and handlers and that the Secretary should hold such meetings. Such meetings should be held as soon as practicable after the order becomes effective. These meetings should be conducted in the manner hereinafter discussed for meetings of successor members.

Nomination meetings for the purpose of electing nominees should, insofar as possible, be scheduled by the Board at such times and places as will result in maximum grower and handler participation. At each such nomination meeting, the industry should elect one nominee for each position to be filled on the Board. The Board should be authorized to adopt procedural rules for the conduct of nomination meetings so that such meetings will be held in an orderly and uniform manner.

Elections for the purpose of designating nominees for successor members of the Board and their alternates whose term of office expire on the last day of April of a year should be held during such year by the Board. Such meetings should be held prior to April 1 and at such places that may be designated by the Board so that the names and addresses of the nominees should be submitted to the Secretary not later than April 15, so that the Board can be appointed and functioning by the beginning of the fiscal year, May 1.

The order should provide that only growers, including duly authorized officers or employees of growers who are present at nomination meetings may participate in the nomination and selection of grower members and their alternates because it is proper that growers nominate the persons who are to represent them. Each grower should be permitted only one vote for each nominee to be elected in the district in which he produces cherries as this is a democratic method of voting. To prevent growers who produce cherries in more than one district from having a bigger voice in nominating representatives than do growers who produce cherries in only one district, no grower should be permitted to participate in the election of grower nominees in more than one district in any one fiscal year.

Only eligible handlers, including duly authorized employees of such handlers, who are present at nomination meetings should be permitted to participate in the

nomination and election of handler members and their alternates since the handlers should be the ones to indicate the persons they desire to represent them on the Board. Also, handlers should be eligible to cast only one vote for each nominee to be elected in the district in which he handles cherries and no handler should be permitted to participate in the election of handler nominees in more than one district in any 1 fiscal year. Such provisions are necessary and desirable in order to assure that each handler is given an equal voice in the selection of the nominees for handler membership.

In order that there will be an administrative Board in existence at all times to administer the order, and the Secretary not be limited as to nominees from which to select the Board membership he should be authorized to select Board members and alternate members without regard to nomination if, for some reason, nominations are not submitted to him in conformance with the procedure prescribed herein, or the selection of other than a nominee is deemed warranted by the Secretary as to the makeup of the Board. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the Board will at all times continue as prescribed in the order. Likewise, if the Board does not submit the names of nominees for the chairman and his alternate, the Secretary should be authorized to select the chairman and his alternate without regard to nominations.

Each person selected by the Secretary as chairman or his alternate or as Board member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will know whether or not the position has been filled. Such acceptance should be filed within 10 days after notification of such selection. It was testified that 10 days is a reasonable and desirable requirement since each nominee will know soon after the nomination meeting that he has been nominated and if he is at all interested in serving, 10 days should give ample time for him to forward his acceptance. By limiting the time for accepting, there would remain sufficient time for selection of another person and the organization of the Board would not be unduly delayed.

Provision should be set forth in the order for the filling of any vacancies on the Board, including selection by the Secretary without regard to nominations where such nominations are not made as prescribed, in order to provide for maintaining a chairman and his alternate and a full membership on the Board.

The order should provide that an alternate member shall be selected for each member of the Board in order to insure that each district will generally have representation at meetings. Each alternate who is selected should have the same qualifications for membership as the member for whom he is an alternate so that, should the member die, resign, be removed from office, or be disqualified, the representation on the Board will remain unchanged. The alternate should serve until a successor to such member has been appointed and has qualified. So that as large a representation as possible will be present at meetings, the order should provide that, in the event neither a member nor his alternate is able to attend a meeting, an alternate member who is not acting as member may be designated, as hereinafter provided, to serve in such member's place and stead.

The order should provide that only the handler members present and alternates acting as such at the meeting may participate in the designation of an alternate handler member to serve in the place and stead of an absent handler member, and that only the grower members present and alternates acting as such at the meeting may participate in the designation of an alternate grower member to serve in the place and stead of the absent grower member. This seems logical as the handler members would likely have knowledge of handler problems in the district of the absent handler member, and would know and recommend the alternate handler member that would be most familiar with those problems. The same situation prevails with respect to grower members. Accordingly, it is concluded that only handler members who are present and alternates acting as such, at the meeting may participate in the designation of an alternate handler member to serve in the place and stead of an absent handler member, and only grower members who are present and alternates acting as such, at the meeting may participate in the designation of an alternate grower member to serve in the place and stead of an absent grower member. Of course, the designation of an alternate member to serve for an absent member, grower or handler, should be only for the said meeting.

The Board should be given those specific powers which are set forth in section 8c(7)(C) of the act. Such powers are necessary to enable an administrative agency of this character to function.

The Board's duties including those of the chairman and his alternate, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the chairman and his alternate and by the members of the Board will be confined to those which reasonably are necessary for the Board to carry out its responsibilities as prescribed in the program. It should be recognized that these specified duties are not necessarily all inclusive, and that it may develop that there are other duties the Board may need to perform.

At least eight members of the Board, including alternates acting for members, should be present at any meeting of the Board in order for the Board to make decisions; and any Board action should require a majority vote of those present.

It is very desirable that a high percentage of the Board membership present agree to any action so as to obtain the necessary support of the industry.

The Board should be authorized to hold simultaneous meetings of groups of its members assembled in two or more places or by means of a conference call on the telephone. Such meetings would expedite the transaction of Board business during rush seasons. Such meetings should be subject to the establishment of proper communications, that is, all persons should be able to hear and all should be able to participate in the discussion and other action the same as at an assembled meeting at one place. Any such meeting should be considered an assembled meeting.

In addition to meetings held where the Board is assembled in one place, or when simultaneous meetings are held at two or more designated places, or a meeting takes the form of a telephone conference call, the Board should be authorized to vote by telephone, telegraph, or other means of communications when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or participate in a conference call meeting. Any votes cast in this fashion should be confirmed promptly in writing to provide a written record of the votes cast. It was testified that the use of the conference call meeting should be when an emergency situation exists and there is not sufficient time to hold an assembled meeting. In the case of an assembled meeting, however, all votes should be cast in person.

It is appropriate that the chairman and his alternate, and members and alternates of the Board be reimbursed for actual out-of-pocket reasonable expenses incurred when performing Board business, since it would be unfair to require them to bear such expenses incurred in the interest of all cherry growers and handlers.

In order for an alternate adequately to represent his district at any Board meeting in place of an absent member, it may be desirable that he should have attended previous meetings along with the member, so as to have a full understanding of all background discussion leading up to action that may be taken at the meeting. Likewise, an alternate may, in future years, be selected as a member on the Board; and to this extent, attendance at meetings by alternate members could be helpful. Although, only Board members, and alternates acting as members, have authority to vote on actions taken by the Board, it is often important for the Board to obtain as wide a representation as practicable of producer and handler attitudes towards a proposed regulation or other matter. Therefore, the order should provide that the Board, at its discretion, may request the attendance of alternate members at any or all meetings notwithstanding the expected or actual presence of the respective member, when a situation so warrants. The same reimbursement of expenses that is available to members should be available also to alternate members when they are requested and attend such meetings as alternates.

(c) The Board should be authorized to incur such expenses as the Secretary

finds are reasonable and likely to be incurred by it for its maintenance and functioning and to enable it to exercise its powers and perform its duties pursuant to the order. The funds to cover the expenses of the Board should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of expenses by the administrative agency established under the order and requires that each order of this nature contain provisions requiring handlers to pay, pro rata, the necessary expenses.

As his pro rata share of such expenses, each person who first handles cherries during a fiscal period should pay assessments to the Board at a rate fixed by the Secretary, on all cherries he so handles. In this way, each handler's total payments of assessment during a fiscal period would be proportional to the quantity of cherries such handler may handle, and assessments would be levied on the same cherries only once.

The Board should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. Such budget and report should also recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. While expenses and income cannot be anticipated with exact mathematical certainty the Board, because of its knowledge of conditions within the industry, will be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The rate of assessment should be established by the Secretary on the basis of the Board's recommendation, or other available information, so as to assure the imposition of such assessments as are consistent with the act. Such rate should be fixed on a fair and equitable unit basis, such as a ton, the common unit of measurement used throughout the industry.

The budget and rate of assessment submitted by the Board should not contain any expenses with respect to the reserve pool cherries as expenses in connection with the reserve pool should be borne proportionately by the persons having a beneficial interest in the reserve pool or from the proceeds from disposition of the reserve pool.

In most years handling of cherries from the production area begin about the first of July. The period just prior to the shipping season will be the period of greatest activity, as the Board will be surveying the crop and marketing situation, developing a marketing policy, and holding meetings to develop recommendations for regulations. This means that in all probability a large percentage of the Board's expenses will ordinarily be incurred before income for the current fiscal period is collected in amounts equal to outgoing expenses.

In order to provide funds for the administration of this program prior to the time assessment income becomes available during the fiscal period, the Board should be authorized to accept advance payments of assessments from handlers and also, when such action is deemed to be desirable, to borrow money for such purpose. The provision for the acceptance by the administrative agency of advance assessment payments is included in other marketing agreements and orders and has been found to be a satisfactory and desirable method of providing funds to cover costs of operation prior to the time when assessment collections are being made in an appreciable amount. During years of normal growing conditions, revenue available to the Board from assessments would provide the means of repaying any loans.

Should it develop that assessment income, during a fiscal period plus any funds in reserve would not, at the previously fixed rate, provide sufficient income to meet expenses, the funds to cover such expenses should be obtained by means of increasing the rate of assessment. Since the act requires that the administrative expenses shall be paid by handlers, this is the only source of income to meet such expenses. The increased assessment rate should be applied to all free percentage cherries handled during the particular fiscal period so that the total payments by each handler during each fiscal period will be proportional to the total volume of cherries he may freely handle during that period.

Should the provisions of the order be suspended, during any portion or all of a fiscal period, it will be necessary to secure funds to cover expenses during such period unless funds in the reserve are sufficient for such purpose. The Board will continue to have duties to perform and incur expenses during such fiscal period even though the order may be inoperative during a particular period. To cease incurring any expenses when operations under the order were suspended for short periods, it would be necessary to eliminate the payment of any salaries, rent, or utilities. Since such expenses will not always cease when the order is inoperative for a period, authorization should be provided to require the payment of assessments to meet any necessary expenses during such periods.

The production area is susceptible to frosts immediately prior to harvest and to wind and hail damage during harvest. The assessment rates under the program would be set at the beginning of the season based on a crop of an estimated volume. Should crop failure or partial crop loss reduce the crop so that assessment income falls below expenses, it would be necessary for handlers in light of the reduced crop to cover the deficit. It would constitute an extra burden on the industry to increase the assessment rate after some disaster had materially reduced the crop.

Evidence was presented at the hearing to the effect that it would be equitable, and far less burdensome, for handlers to contribute to the establishment of an operating reserve during years of normal production rather than to be required to pay a high rate of assessment occasioned by a deficit during a year when a crop is materially reduced. The reserve fund should be built up to the desirable amount slowly, over a period of years, as funds in excess of expenses may be available. In order that reserve funds not be accumulated beyond a reasonable amount, however, a limit of not to exceed approximately one fiscal period's expenses should be provided. A reserve of that amount should be adequate to meet any foreseeable need. In view of the foregoing, it is concluded that authority should be provided, as hereinafter set forth, to permit the establishment and use of a reserve fund in the manner heretofore described.

Except as necessary to establish and maintain an operating reserve as set forth in the order, handlers who have paid part of any excess should be entitled to a proportionate refund of any excess assessments that remain at the end of a fiscal period.

Upon termination of the order, any funds in the reserve that are not used to defray the necessary expenses of liquidation should, to the extent practicable, be returned to the handlers from whom such funds were collected. However, should the order be terminated after many years of operation, the precise equities of handlers may be difficult to ascertain, and any requirement that there be a precise accounting of the remaining funds could involve such costs as to nearly equal the monies to be distributed. Therefore, it would be desirable and necessary to permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances.

Funds received by the Board pursuant to the levying of assessments should be used solely for the purposes of the order. The Board should be required, as a matter of good business practice, to maintain books and records clearly reflecting the true, up-to-date operation of its affairs so that its administration should provide the Secretary with periodic reports at appropriate times, such as at the end of each marketing season or at such other times as may be necessary, to enable him to maintain appropriate supervision and control over the Board's activities and operations.

The order should provide authority which would permit the Board to levy an interest charge on assessments that are not paid by the time specified by the Board. It is not anticipated that the Board will levy an interest charge immediately as it is expected that handlers in general will promptly pay their assessments. However, should handlers become "slow pay" due perhaps to high interest charged on borrowed money, the Board may wish to levy an interest charge to stimulate prompt payment of assessments.

It would be appropriate for the Board to recommend the rate of interest and

the time following the date of billing during which payments of assessment by handlers should be made free of interest. The Secretary should approve both the interest rate and the time prescribed during which handlers may make payment without interest being added. It is expected that the Board, when it recommended an interest rate, will recommend an interest rate comparable to that normally charged by commercial business establishments in the production area. It is also expected that the Board will give consideration to the matter of levying an interest charge at the time it considers a budget and rate of assessment. This would provide ample time for handlers to become aware of this recommended action before it is made effective.

(d) The declared policy of the act is to establish and maintain such orderly marketing conditions for cherries, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of cherries, as authorized in the order, provides a means for carrying out such policy.

In order to facilitate the operation of the program, the Board should each year, before recommending any regulation applicable to cherries produced that year, prepare and adopt a marketing policy for the ensuing marketing season. A report on such policy should be submitted to the Secretary and made available to growers and handlers of cherries. The policy so established would serve to inform the Secretary and persons in the industry, in advance of the marketing of the crop, of the Board's plans for regulation and the bases therefor. Handlers and growers could then plan their operations in accordance therewith. The policy also should be useful to the Board and the Secretary when specific regulatory action is being considered, since it would provide basic information necessary to the evaluation of such regulation.

In order to plan a comprehensive and effective policy for regulating the handling of cherries in any crop year, it is necessary that all of the important economic factors having a bearing on the marketing of the crop be considered by the Board. Hence, the Board in preparing its marketing policy, should give consideration to the supply and demand factors, set forth in the order, affecting marketing conditions for cherries.

The marketing policy report should contain information regarding estimated total production of cherries in the United States during the approaching harvesting and marketing season. Information should be included in the report regarding crop estimates of cherry production in the States covered by the marketing order and in the Western States. Total production of cherries is a key factor in the determination of annual prices. Thus, information regarding total cherry production is crucial for wise decisions regarding the extent of regulation, if any, because of the effects it has upon prices and grower incomes.

The marketing policy report should also include the expected quality of cherry production during the coming marketing season. Estimates of the general quality of the crop provide useful information regarding the amounts of the crop that: (1) Will go to juice, (2) will be sorted out as defects in the plant, or (3) will be left unharvested because of inferior quality. In these ways the general quantity of the crop may affect total supply available for sale in major commercial channels. Thus, this type of information should be taken into account by the committee in making its decision regarding regulations.

The expected carryover as of July 1 of canned and frozen cherries and other cherry products will need to be taken into account by the Board. The Board will have available a record of the carryover as of June 1 and will need only to project the June movement to arrive at the expected carryover as of July 1. The carryover of cherry products from the previous marketing season influences the available supply and hence prices for that crop. Information regarding expected carryover is thus an important factor which the Board should consider in arriving at policy decisions.

Expected demand conditions for cherries in different market outlets should be included in the marketing policy report. Demand conditions should be considered in the different market outlets such as frozen or canned, and within either of these two categories, the consumer or institutional pack. Demand conditions should also be evaluated for cherries for juice purposes and for the relatively new products such as dried cherries, jellied cherry sauce, and individually quick frozen (IQF) cherries. Conditions in the markets for the new products would be influenced by consumer acceptance of these new products and would thus need to be taken into account. Demand conditions in the different market outlets would also be influenced by general changes in consumer tastes. The Board would also need to obtain information and estimates of the amount of the crop which can be expected to be used for juice, fresh sales, and farm use. The amount of the crop which will be used in these various market outlets will influence the amount of the crop left for major commercial processed items and thus have a bearing upon the Board's decision regarding the level of the regulation, if any.

Supplies of competing commodities such as apples, blueberries, and other fruits having similar uses to that for cherries will need to be taken into account by the Board because supplies of these commodities will influence the demand for cherries and cherry products.

Information regarding the trend and level of consumer income should also be included in the marketing policy report. Changes in consumer income, particularly disposable income, influence the demand and prices for cherry products, and will, therefore, need to be taken into account by the Board.

The marketing policy report should also contain information regarding any other factors which have a bearing upon the marketing of cherries and upon the economic and price-making situation for cherries. These other factors would include U.S. population and export demand conditions, as well as any other relevant factors.

The notice of hearing contained a proposal, paragraph (i) of section 50, marketing policy, which would have authorized the Board to stipulate the total quantity of cherries that may be placed in the reserve pool. This proposal was not supported at the hearing and is not included in the order.

The order should provide for regulations under which the volume of cherries handled during any year could be limited to such quantity as may be expected to meet market demands at fair returns to growers. The evidence of record indicates the proposed order for cherries, set forth in the notice of hearing, and as hereinafter set forth, would provide an effective method of so regulating the handling of cherries.

The order should provide that the Cherry Administrative Board, as the local administrative agency, should recommend to the Secretary whether regulation of a particular crop of cherries is needed. The members of the Board would be representatives of cherry growers and handlers. Consequently, it is only fitting that the Board should be given the responsibility for determining whether, and the extent that, the available supplies of cherries are excessive and whether, in the judgment of the Board, restriction of the quantity of cherries which handlers may freely handle is needed to improve grower returns.

The Board should be required to make its recommendation for regulation for any crop to the Secretary not later than June 25. This is the latest date that such a recommendation should be made as the record indicates that, in the earliest districts, the harvesting of cherries often begins on or about June 25. This does not mean that the Board should, or could, wait until June 25 to make its recommendations for regulation in most years. The evidence of record also indicates that in some years the cherry harvest may begin in the earliest areas somewhat earlier than June 25 and the Board would have to make its recommendation for regulation prior to the time that such cherries would be handled. The Board must, of course, delay making its recommendation as long as possible inasmuch as the official crop estimate of the cherry production is not released until about June 20 or a few days later in the event June 20 falls on a weekend. The Board should have this information, if possible, when it decides whether to recommend regulation for the particular year but may, in some years, have to proceed on the basis of the other information its members have concerning the bloom and subsequent growing conditions in the various parts of the production area.

All assembled meetings of the Board should be open to growers and handlers and all other interested persons because such persons have a vital interest in the

actions of the Board and should be afforded opportunity to express their views at Board meetings. In order to assure that growers and handlers and other interested persons are aware of when Board meetings are being held, the order should provide that notice of assembled meetings shall be published in such newspapers as the Board deems appropriate for this purpose and also that it shall mail notices of such meeting to each grower and handler and any other person who files his name and address with the Board and requests such notice. By this means growers and handlers who are most likely to attend meetings will have direct notices when meetings are to be held.

The order should authorize the Secretary, on the basis of recommendation of the Board, or other available information, to issue regulations establishing such free and restricted percentages as will tend to establish more orderly marketing conditions for cherries and thus tend to improve grower's returns up to, but not in excess of, the parity level. The Secretary should not be precluded from using such information as he may have, and which may or may not be available to the Board for consideration, in issuing such regulations as may be necessary to effectuate the declared policy of the act. Also, the Secretary has certain responsibilities under the act which make it necessary that he not bind his actions to those recommended by the Board and the order provisions should recognize this fact.

Several witnesses at the hearing proposed that provisions be included in the order to permit the regulations to be applied differently to districts, or to restricted areas, so as to provide relief to those who may have short crops during years when the overall production is too large and regulation is needed. It was asserted that the cherries of those having short crops should not be subject to the same percentage restriction as that applying to others when they had already suffered substantial losses in production from natural disasters. The evidence of record does not contain information to show how such a provision could be applied equitably or be made administratively feasible. In most districts nearly every year there are some growers or restricted areas having crop loss because of adverse weather conditions. Such losses may occur at any time up to harvest by reason of hail or windstorm which may affect large areas or only a few growers. Even where a considerable area is affected, there will be growers within the area whose crops are not damaged. Consequently, any "hardship" provision which could be devised probably would give advantages to certain growers while denying them to others similarly situated. It is concluded, therefore, that the same free and restricted percentage should apply under the order to all cherries produced in the production area. However, as pointed out heretofore, the evidence of record shows that all growers should benefit from the order since returns from the portion of their crops that would be available for unrestricted use should exceed the amount that would be obtained for the crop as a whole in the absence of a restrictive percentage under the order.

Since the Board is responsible for assisting the Secretary in the administration of the programs, it follows that it should be notified immediately of any and all regulations issued. Similarly, it should be the responsibility of the Board to notify handlers promptly of each regulation issued by the Secretary and publicly announce such regulation to the growers.

The free percentage specified in a regulation issued by the Secretary would represent the percentage of the oncoming crop which would fulfill the expected demand for processed cherries. Thus, this portion of the crop should be available for handling without restriction and all handlers should be afforded the opportunity to compete for the free percentage cherries and to use such cherries in any manner they choose. The restricted percentage would represent the excess cherry production which should be withheld from the market in order to prevent the disorderly marketing conditions which result when the entire crop, in years of excess production, is available for sale. This situation could be relieved, and grower returns improved, merely by destroying the excess. However, production statistics show that as a general rule a large crop has been followed by a small crop. In those instances where large production has followed a large crop, the next one or two crops have been smaller. This production characteristic provides another means, assuming that this condition will continue in the future, of increasing producer returns. That is, the restricted percentage cherries could be set aside in a reserve pool during one year and disposed of during a following short crop year at prices which could result in sizable returns to those having an equity in these cherries. However, fresh cherries cannot be stored for the period that would be necessary. Consequently, it would be impracticable to set aside the excess cherries in fresh form. The order should provide, therefore, that whenever free and restricted percentages have been fixed by the Secretary for a fiscal period, each handler set aside cherries in a reserve pool for such period, in the form of storable cherry products specified by the Board, in an amount equivalent to the restricted percentage cherries he receives.

Because of the limited storage life of canned cherries and canned cherry products, such as pie filling, the order should provide that reserve pool cherries may not be packed in the form of canned cherries or as canned cherry products. Juice is a product of cherries. However, it is not referred to in the trade as a canned cherry product. It is referred to as juice. In the order, juice is not included when the words "canned cherry products" are used, as juice is a storable product. The order should authorize the Board to designate, if it desires to do so, juice as a form for storing reserve pool cherries.

Because frozen cherries represents such a large percentage of the total pack of any cherry crop, it is probable that frozen cherries will be specified by the Board as the form or one of the forms for the reserve pool cherries whenever the Board recommends and the Secretary fixes the free and restricted percentages. It may be desirable for a portion of the reserve pool cherries to be processed in the form of juice during some or all fiscal years. Record evidence shows that the need for and the industry's desire to have juice specified as an authorized form for storing a portion of the reserve pool cherries stems from the following: (1) Some handlers who process cherries into juice do not process cherries into frozen cherries; (2) the cherries used in the manufacture of juice often are of a different quality than the cherries used for frozen cherries; and (3) the quantity of cherry juice is increasing and is the next largest volume of cherry products that can be stored for a considerable length of time.

Reserve pool cherries should be held for the account of the Board. As restricted percentage cherries may be processed only for the purposes of reserve pool and growers or others delivering cherries will be the equity holders in the reserve pool, as hereinafter discussed, it is necessary, of course, that the reserve pool be vested in the Board. The precise products to be set aside should not be designated in the order. While most handlers pack frozen cherries, not all of them do so. Consequently, the Board should be permitted to work out the precise form, including container size, in which reserve pool cherries will be packed. The product and container designated for the reserve pool should, to the extent practicable, be the one that is most convenient for the handler. However, the Board should be given the final determination in this regard because it should not be forced to permit the packaging of special packs which would present problems in the disposition thereof. Generally, the reserve pool is likely to be the institutional packs of frozen cherries in 30-pound tins. However, the order should authorize the Board to recommend that reserve pool cherries be packed in whatever form and type of container it determines to be appropriate.

When cherries are processed there are certain losses, such as that resulting from the removal of defective cherries and the pits. Also, sugar is usually added to the frozen packs and sometimes is added to canned packs. In addition, the quality of the cherries produced from year to year varies sufficiently to affect the yield of finished product. For example, the amount of raw fruit required for a case of six No. 10 cans has ranged, during recent years, from 42 to 45 pounds. Therefore, the Board should be authorized to establish uniform conversion factors to be used in converting a handler's reserve pool obligation, which first would be computed on the basis of the restricted percentage cherries he receives, to the processed form or forms in

which the reserve pool is to be packed. The Board, composed of growers and handlers from all parts of the production area and having knowledge of the quality of the crop in all areas and past yields of processed products from raw fruit, should be able to recommend and the Secretary to establish the necessary uniform conversion factors which would be fair and equitable to all handlers.

All reserve pool cherries should be required to meet such standards of grade, quality, and condition as the Board, with the approval of the Secretary, may prescribe. This provision is necessary to assure that the handlers do not use reserve pool to dispose of all low-grade or poor-quality cherries that they may pack. It was testified at the hearing that it would be desirable for the standards of grade and quality for the reserve pool cherries to be fixed for each handler in the same relationship of Grade A and Grade C cherries as such grades constitute his total production. Otherwise, it was contended, the standards could be set at levels so high that some handlers would not be able to meet them because the quality of the particular pack is too low. Let us assume for illustrative purposes only, that a handler's pack consists of 10,000 30-pound tins of frozen cherries and that 8,000 tins meet the requirements of Grade A and 2,000 tins meet the requirements of Grade C. Let us further assume that the Secretary had fixed, for that particular year, the free and restricted percentages at 80 percent and 20 percent, respectively. The handlers reserve pool obligation in this example would be 2,000 30-pound tins of cherries (20 percent of his acquisition with adjustments for shrinkage). The grade obligation for the reserve pool of this handler would be 1,600 30-pound tins of Grade A (80 percent of his 2,000 reserve pool obligation) and 400 30-pound tins of Grade C (20 percent of his 2,000 reserve pool obligation).

Let us assume another handler's total pack was 10,000 30-pound tins, with the same free and restricted percentages. This handler's pack consisted of 60 percent, or 6,000 tins, Grade A and 40 percent, or 4,000 tins, Grade C. His reserve pool obligation would be 2,000 30-pound tins. The grade obligation would be different, however. Twelve hundred 30-pound tins of reserve pool cherries should be Grade A (60 percent of the 2,000 obligation) and 800 tins need only meet the requirements of Grade C (40 percent of the 2,000 obligation).

As hereinafter discussed, when reserve pool cherries are made available by the Board to the handlers, each handler will be offered those cherries that he packed if he still has the cherries in his storage or stored under his control. Thus, each handler will be afforded the opportunity to market in years of short production those cherries that he processed and placed in the reserve pool during years of heavy production. This will allow him to supply his customers with cherries of like grade and quality during those years when reserve pool cherries are used as he provided his customers during other years and when marketing his free percentage cherries.

So that the Board will have information with respect to the grade and quality of the pack, the order should provide that each handler should furnish information as to the grade and quality of his pack to the Board at such time and in such manner as the Board, with the approval of the Secretary, may prescribe. As hereinafter discussed, under reports, this information may be furnished (1) by submitting or causing to be submitted, a copy of each inspection certificate issued to him, or (2) by submitting a certification in which he certifies to the quality of his total pack.

All reserve pool cherries should be required to be inspected and certified, by the Processed Products Standardization and Inspection Branch, U.S. Department of Agriculture, as meeting the standards prescribed for reserve pool cherries. Such inspection and certification provides the best possible method to determine whether the required standards have been met. The Processed Products Standardization and Inspection Branch is the agency that is used by the industry for inspection and certification of the grade of cherry products and all handlers are familiar with such service. The record indicates this is the only public agency making inspections of this nature. The certificate of inspection should show, among other things, the name and address of the handler, number and type of containers in the lot, the grade of the product, its location, and identification marks such as can codes or lot stamp. Such information will be needed by the Board to determine whether the reserve pool obligations of handlers have been met and for later checks to see that reserve pool cherries are being held and stored properly. Each handler should be responsible for submitting proof of inspection to the Board as he is the only one who will know when his reserve pool is ready for inspection and he should deal directly with the inspection agency. Similarly he should pay the costs of the inspection and certification but should be reimbursed for such costs as explained hereinafter.

The order should provide that each handler hold, and store in accordance with good commercial practice, the reserve pool cherries he processes until such time as the Board disposes of such reserve pool or otherwise releases such handler of this responsibility. It would be unreasonable to require handlers to process for the reserve pool the restricted percentage cherries in each lot of cherries he receives. Consequently, during the processing season, a handler should be considered in compliance with reserve pool requirements so long as he has on hand at such time as the Board may specify sufficient cherries of the product and container size, as specified by the Board, to meet his reserve pool obligation. Immediately following completion of his processing operations, however, the handler should not be considered as having met his reserve pool obligation unless he has on hand and properly stored, separate and apart from other cherries in his possession, the requisite quantity and pack of cherries which have been inspected and certified as meeting the prescribed standards. By this it is meant that the reserve pool cherries must be stored so as to maintain them in good condition and the storage conditions should be at least comparable to the storage conditions under which his own cherries are being held. Also, while the reserve pool need not be in a separate storage room, it should be stacked separately from the handler's own cherries in such a manner that the identity of the reserve pool to the related inspection certificate is maintained at all times. Only by this means could the Board check and determine with any assurance that the handler has complied with the reserve pool obligation and that the reserve pool cherries are being stored so as to avoid deterioration and loss.

Generally, it is expected that a handler will hold his reserve pool cherries on his own premises. However, he should be permitted to arrange to hold his reserve pool cherries on the premises of another handler or in a commercial storage. In some instances it would place an undue burden on the handler to require him to hold the reserve pool cherries in his own storage because he may have only limited storage facilities. Consequently, he should be permitted to make such other arrangements for storage as may be agreeable to the Board. The Board should be made aware of the storage location so it can check to see that the cherries are being properly stored and meet all other requirements of the order.

As there may be instances when it would be to the advantage of a handler to purchase from others the cherries needed to meet his reserve pool obligation, he should be permitted to do so. It is possible, of course, for cherry production to be light in one area even though the overall production may be large. In such instances, handlers in one area often purchase from handlers in other areas the cherries needed to supply their customers. Generally, the handler would rather ship to his customers cherries of his own pack. Also, it may be easier to arrange for shipping from his own plant. So the handler, under such conditions, may prefer to use purchased cherries to meet his reserve pool obligation and there seems to be no reason not to permit him to do so. All such purchased cherries should reflect the same grade composition as if the reserve pool was comprised of his own production. The equity holders would continue to be the growers who delivered the cherries to the handler. Of course, the handler should continue to have full responsibility for his reserve pool cherries. The handler's reserve pool obligation arises from the act of handling cherries and is not transferable.

There may be other conditions where it would constitute an undue hardship on a handler to require him to continue to hold reserve pool cherries; and the handler should be able to obtain relief when the circumstances justify. Handlers

should be permitted, therefore, to request the Board to remove reserve pool cherries from his premises and, if the Board finds that relief is warranted, it should comply with the request as soon as it is possible to do so considering the availability to the Board of suitable storage for the product. In order to discourage unwarranted requests, however, the handler should be required to share with the Board, on a 50–50 basis, the costs of removing the reserve pool cherries from the handler's premises, including transportation and any other costs incidental to such removal. The handler should also forfeit, to the extent of the removed volume, any share in an offer by the Board to sell reserve pool cherries to handlers. It is expected that the Board, in looking for suitable storage for reserve pool cherries to be removed, will first see whether other handlers in the vicinity would be willing to store the cherries since this would probably be the most economical way to handle the matter. In the event the removed reserve pool cherries are placed in another handler's storage, the latter should be given the opportunity to purchase any reserve pool cherries that otherwise would have been offered to the initial handler. This could serve as an inducement to handlers to accept storage of reserve pool cherries removed from another handler's storage and assist the Board in finding suitable storage space. Of course, a handler having reserve pool cherries removed from his storage should refund any of the prepaid storage charges he had collected from growers and other equity holders and which had not been earned.

Under the order the reserve pool cherries would be held for the account of the Board for the benefit of persons, primarily growers, delivering cherries to handlers. Therefore, in the basic sense of the program, handlers receiving cherries for handling will be placing excess supplies in the reserve pool for the benefit of cherry producers. Hence, it is but right and proper that the costs of receiving, processing, storing, and other expenses, such as inspection costs, relating to the reserve pool be paid by the producers. Handlers should not be required to wait until the reserve pool is disposed of before recovering their costs. The practical solution, therefore, is to authorize handlers to deduct such costs from the amounts due producers, or others, for their free percentage cherries. In order that all producers be charged the same rate to pay such costs, the deductions should be made in accordance with charges established by the Board with the approval of the Secretary. The Board will be composed of six growers and six handlers and should be able to agree on a uniform charge for such services which would be reasonable and equitable to both growers and handlers. This charge should be applicable as to all persons having cherries in the reserve pool since they will receive benefits from the reserve pool, after its disposition, in direct proportion to the quantity of restricted percentage cherries each delivers to handlers regardless of the form in which the receiving handler packs his reserve pool cherries. However, as the costs of processing cherries into the designated products for reserve pool may differ and the costs of storing juice and frozen cherries differ substantially, there also should be uniform processing and storage allowances established for handlers for each reserve pool product.

The order should provide that all matters relating to reserve pools, including costs relating thereto which are to be paid by equity holders, and for which handlers are to receive compensation, and the manner in which the proceeds from the reserve pool are to be equitably distributed should be in accordance with rules and regulations established by the Board and approved by the Secretary.

The record of the hearing shows that growers may not always benefit by having an equity in the reserve pool. Should there be large crops 2 years in a row, growers may have to take a loss on those cherries placed in the reserve pool during the first of these 2 years because storage and other costs may exceed the sale price for reserve pool cherries. Also, the reserve pool cherries should not be held indefinitely and continue to incur costs for storage without any assurance that it would be profitable to do so. Consequently, the reserve pool may have to be liquidated at a time when the available supplies of cherries are large. Based on past history this situation should not be experienced too often however since most long crops have been followed by a short crop. Thus there should be about an 80 percent chance that the value of the restricted percentage cherries in the reserve pool would be greater than the costs of processing and holding the cherries.

In recognition of the possible loss on the reserve pool cherries, the order should provide growers with a choice as to whether any of their cherries are to be placed in the reserve pool. Therefore, the order should contain provisions permitting a grower to voluntarily divert, subject to necessary safeguards to assure that the cherries are diverted, a quantity of cherries that would be referable to the cherries which upon acquisition by a handler would create a reserve pool obligation. The outlets which would be available for this purpose would be limited, of course, since the primary outlet for cherries is for canned and frozen cherries. However, a limited quantity of cherries can, at times, be sold in fresh fruit channels. Also, some of these cherries might be made available for experimental purposes or other uses that may be exempted under other provisions of the order. In addition, there may be other uses which may be found could be designated for this purpose and not interfere with the primary objective of the order. One such other type of diversion, set forth in the notice of hearing, was to permit growers to divert by leaving cherries unharvested. While there undoubtedly would be problems in connection with this type of diversion, the evidence of record shows that there are cost advantages to the growers or successors in interest which justify including in the order provisions authorizing such diversion. The costs of harvesting cherries is approximately 3 cents per pound and a grower and others electing to divert cherries rather than to participate in the reserve pool should be permitted to make this saving if it is at all possible to do so.

The order should establish a general procedure to be followed in connection with any authorized grower diversion of the portion of his crop which would, otherwise, be restricted percentage cherries. An application for permission to divert cherries should, of course, be necessary. Such application should contain information showing, in detail, the manner in which the applicant proposed to divert cherries, including, if the cherries were to be diverted by not being harvested a description of the orchard, its location, and the number and ages of the trees therein. This information would be necessary so that the Board could determine whether the proposed diversion was in accordance with the program and arrange for supervision of the actual diversion as described by the applicant. Supervision of the diversion is necessary to assure that the cherries are, in fact, diverted. Only after the Board is satisfied that diversion has been effected should it give the applicant a certificate showing the quantity of cherries diverted. This certificate should also show the related quantity of free percentage cherries the applicant may deliver to handlers without the latter being required to consider a portion of such cherries restricted percentage cherries. The certificate should be designed to provide such information to the handler receiving cherries from the diverting grower so that he will have evidence that no reserve pool obligation attaches to such applicant's deliveries of cherries. Growers and others electing to divert cherries should pay to the Board its costs of supervising the diversion. Any such diversion would be at the election of the growers and other eligible persons; and while it is not expected that the costs of supervision would be large, it would not be reasonable to require others to pay such costs.

There are some persons in the industry, generally referred to as brokers, who purchase cherries from growers and resell such cherries to handlers. Such brokers would, of course, have their purchased cherries subject to the same requirements, when delivered to handlers, as would apply to a grower delivering cherries directly to a handler. Consequently, brokers should be given the same privileges of diverting cherries as those afforded growers. Similarly, handlers should be authorized to deduct the costs relating to reserve pool cherries from brokers deliveries of cherries. The order should provide, therefore, that the term "grower," when used in connection with these provisions of the order, should include those persons who purchase cherries from growers and resell them to handlers.

Growers electing to divert cherries rather than to participate in the reserve

pool should, of course, not be eligible to receive any of the proceeds from the disposition of the pool. However, should a grower's diversion of cherries not be equal to the quantity required to make all of his deliveries to handlers free percentage cherries, then the handler receiving such grower's cherries should deliver to the reserve pool the requisite quantity of cherries referable to the portion of the grower's excess deliveries and, to that extent, the grower would have an equity in the reserve pool.

Handlers should be required to determine and report to the Board the weight of each lot of cherries received and the name and address of the grower, or other person, delivering such cherries. Such determinations should be made in accordance with uniform rules adopted by the Board and approved by the Secretary. This information is essential to the determination of each person's equity in the reserve pool. Weight determinations should be made on a uniform basis so that each handler and grower (including others delivering cherries) will be treated equally with respect to the reserve pool and equity in the reserve pool.

The order should contain specific provisions for the disposition of reserve pool. This is proper and necessary so that handlers and the trade will know the manner in which the Board may make disposition of the reserve pool. The Board should, at all times, strive to sell reserve pool cherries at the best prices obtainable. The order should provide that the Board should release reserve pool cherries to handlers in the manner and only during the periods hereinafter provided. When the total quantity of free percentage cherries handled is less than the quantity, determined earlier by the Board, that should be handled, the Board should recommend that a portion or all of the reserve pool cherries be released to handlers for use in normal commercial outlets. This could occur by reason of an overestimate of the crop or a portion of the crop may be lost by wind or hail storms or other causes. When the Board meets as soon as the current crop has been processed, it should take steps to feed into the market sufficient reserve pool cherries processed from the current crop to bring the quantity available for sale up to the quantity it had earlier determined would be needed in normal outlets. A practical means of achieving such objective of meeting normal outlet needs would be to provide for the computation of each handler's reserve pool obligation on the basis of a revised restricted percentage as soon as practicable after the processing of the crop. In this manner the Board would be in a position to recommend to the Secretary such upward revision in the free percentage and complementary downward revision in the restricted percentage previously fixed for the then current fiscal period as may be necessary to make the requisite quantity of processed cherries available for free use. Thus, there would be no need for any specific release of reserve pool cherries of the then current crop. Rather, the recomputation of each handler's restricted obligation would have the effect of such a release by increasing his aggregate quantity of free percentage cherries and reducing his aggregate reserve pool obligation.

In a short crop year, the Board should use reserve pool cherries of prior fiscal periods to supplement the supplies that would be available from the current production. In this instance, the Board should be required to offer the quantity of reserve pool cherries to be released in normal trade outlets to handlers. As hereinafter discussed, it would be desirable and in keeping with the wishes of the industry for the older reserve pool cherries to be released first, to the extent practical. Should there be more than one form of cherries in the pool (e.g. juice and frozen cherries), the release should be on the basis of market demand and not on the basis of the length of time the cherry product was in the pool. Thus, if there was a demand for frozen cherries, frozen cherries from the reserve pool should be released even though there were in the reserve pool a supply of juice processed from an earlier fiscal period, but for which there was no demand.

This offer should be made so that handlers may make purchases of reserve pool cherries during the 10 day period, September 15–25 of each year. Record evidence shows that handlers generally complete the processing of the then current crop of cherries and records which show the composition of the total pack should be available to the Board for it to make offerings of cherries to handlers prior to September 15 of any year.

Record evidence indicates that new varieties may be developed which mature either earlier or later than present varieties, and new processing methods may be developed which would result in an earlier or later completion date for processing the crop. Thus, if it is found that the September 15–25 dates are undesirable, the order should authorize the Board, with the approval of the Secretary, to specify another 10-day period during which handlers may purchase reserve pool cherries.

When the demand for cherries has increased and it appears that the supply is insufficient to meet the market demands, the Board should recommend that a portion or all of the reserve pool be released to handlers for use in normal commercial outlets. This situation may likely occur late in the season and before cherries from the ensuing crop are ready for market. The demand for cherries may increase due to increased promotional activities, new uses, or there may be a shortage of competing commodities, such as blueberries and apple pie filling. It would not be a good business practice nor in keeping with order objectives to keep cherries in the reserve pool when there is a demand for cherries. Thus, the Board, if it deems it advisable to do so based on such demand conditions or other factors, should recommend that a portion or all of the reserve pool be released to handlers. To prevent a disruption of the marketing process and to permit handlers and the trade to adequately plan their operations, the order should permit the Board to make only one recommendation, other than the one authorized to be made in September, concerning such release. The most appropriate period would be on or after March 15 of each year and prior to June 1 of such year. The evidence of record shows that before March 15, the Board is not likely to have adequate information available to make a recommendation. A recommendation after June 1 would not allow sufficient time to complete the release and move the cherries into marketing channels before the on-coming crop of cherries are ready for market.

The order should provide that, based upon the recommendation of the Board or other available information, the Secretary should be authorized to release reserve pool cherries to handlers. The reserve pool cherries to be released should be from the oldest reserve pool or pools to the extent necessary. However, the release should be limited to one 10-day period within the March 15–June 1 period. A shorter period would not afford handlers ample time to make the necessary decisions and a longer period would serve no useful purpose. If there is sufficient demand for cherries to warrant the release of reserve pool cherries, record evidence attests that handlers will have knowledge of this situation and can act within a 10-day period. The release should be limited to one period so that handlers could make plans accordingly and the trade could purchase cherries with confidence since more cherries could not be released at a later date and perhaps disrupt the marketing of such cherries.

If the entire amount in the reserve pool is to be released, then each handler should be offered the opportunity to purchase the reserve which he holds for the committee. If less than the entire amount is to be released, then the Board should offer to sell to each handler holding reserve pool cherries the same percentage of the reserve pool he holds as the percentage of the total reserve pool being released. In this manner each handler would be given the same opportunity to increase his salable supplies of cherries. Of course, there may be some handlers who would not want to purchase the share of the reserve pool offered to them. In such case, the refused portion should be offered to the other handlers who had purchased the reserve pool offered to them. Such provisions are necessary to assure that the available supplies are brought as nearly in balance as is possible with the quantity estimated by the Board as needed to meet the demand in normal outlets.

As shown heretofore, it is not likely that, in all instances, the reserve pool can be disposed of in the manner just described. The Board should, therefore, be authorized to sell reserve pool cherries directly for conversion into animal feed or any other manufactured product other than for normal outlets. It should also be authorized to use excess reserve pool cherries for experimental purposes, for

any new use that it may develop, and for new geographical outlets. For example, there are many foreign countries to which no juice or frozen cherry products are exported and the excess reserve pool cherries might be used to develop a demand for cherries in these countries. These avenues of disposition by the Board should not be restricted to the two release periods hereinbefore discussed. The need for and opportunity to pursue research goals may become available at any time and the Board should be afforded the opportunity to pursue these outlets at every opportunity. It is recognized that these outlets would offer only a limited opportunity for the disposition of excess reserve pool cherries at this time and the return for any sales in these outlets may be very low. It would not be proper, however, to authorize the sale of the excess reserve pool cherries in normal outlets, except as indicated, even though a greater return might be realized, after handlers and the trade had purchased cherries on the basis of the limited quantity supply resulting from establishment of free and restricted percentages. This is so for the reason that if this should be done, no further benefit could be expected from operation of the order as it would be known that any excess reserve pool cherries could later be dumped on the market.

Any proceeds from the disposition of reserve pool should be distributed, after deducting the expenses incurred by the Board in carrying out its functions in connection therewith, to the persons having an equity in the reserve pool. Such persons would be those delivering restricted percentage cherries to handlers, unless they had assigned their respective equities to others, in which case, the assignees would be the equity holders. The method for determining each equity holder's share in the proceeds from the reserve pool, should be on the basis of the weight of the quantity of restricted cherries delivered.

The Board should disburse the total amount of the proceeds due to members of a cooperative association which are handlers and have reserve pool directly to the association. The association should then make disbursement to its members. This would be consistent with the fact that such associations are formed for the purpose of disposing of the cherries delivered to, and handled by, the association and the distribution of the proceeds from such cherries to its members. It would also tend to reduce the costs to the Board of distributing the proceeds from the reserve pool. It is recognized, of course, that there may be more than one form of cherry product in the reserve, as, for example, frozen cherries and juice. The Board should adopt rules and regulations, with the approval of the Secretary, setting forth the method or methods of accountability and the manner in which each equity holder's share in the reserve pool will be calculated.

(e) The Board should be authorized, with the approval of the Secretary, to establish certain exemptions under the order. These exemptions might include the cherries handlers use for experimental purposes or for minor products which have used less than 5 percent of the preceding 5-year average production of cherries. Such exemptions may tend to encourage handlers to step-up their search for new or better products and to place additional emphasis on expanding the market for products which have not, as yet, resulted in any substantial outlet for cherries. To the extent that this could be accomplished, the need for controlling the excess production would be lessened. However, such exemptions should be provided only if adequate safeguards can be established by the Board, with the approval of the Secretary, to assure that the exemptions do not result in cherries being handled in other channels contrary to the intent and purpose of the exception.

(f) The Board should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as may be needed for the performance of its functions under the order. Handlers have such necessary information in their possession, and the requirement that they furnish such information to the Board in the form of reports would not constitute an undue burden.

One such report would be the composition of the total pack of cherries. It is difficult to anticipate every type of report or kind of information which the Board may find necessary in the conduct of its operations under the order. Therefore, the Board should have the authority to request, with approval of the Secretary, reports and information, as needed, of the type set forth in the order, and at such times and in such manner as may be necessary.

Any reports and records submitted for use of the Board by handlers should remain confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the releases of information compiled from handlers' reports may be helpful to the Board and the industry generally in planning for operations under the order during the marketing season. However, such reported information should not be released other than on a composite basis, and such release of information should disclose neither the identity of handlers nor their individual operations. This is necessary to prevent the disclosure in information that may affect detrimentally the trade or financial position or the business operations of individual handlers.

Since it is possible that a question could arise with respect to compliance, handlers should be required to maintain for each fiscal period complete records on their receipts, handling, and disposition of cherries. Such records should be retained for not less than 2 years after the termination of the fiscal year in which the transaction occurred, so that, if needed in connection with enforcement, the requisite records will be available for that purpose.

The successful operation of a program of this type depends upon the degree of compliance with its provisions. In this connection, it is necessary that the Board be given the authority to examine and verify the records, check inventories of cherries and determine the quantity of cherries received, handled, stored, and placed in the reserve pool. The verification of records and reports and inspection needed in connection therewith should be performed by the Board during reasonable working hours and in such manner that normal operations would not be interrupted.

(g) Except as provided in the order, no handler should be permitted to handle cherries, the handling of which is prohibited pursuant to the order; and no handler should be permitted to handle cherries except in conformity with the order. If the program is to operate effectively, compliance therewith is essential; and, hence, no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to the handlers who are in compliance and would tend, thereby, to impair the effective operation of the program.

(h) The provisions of §§ 930.71 through 930.80, as hereinafter set forth, are similar to those which are included in other marketing agreements and orders now operating. The provisions of §§ 930.81 through 930.83, as hereinafter set forth, also are included in other marketing agreements now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing agreement and order and to effectuate the declared policy of the act. Testimony at the hearing supports the inclusion of each such provision.

Those provisions which are applicable to both the proposed marketing agreement and the proposed order, identified by section numbers and heading, are as follows: § 930.71 *Right of the Secretary;* § 930.72 *Effective time;* § 930.73 *Termination;* § 930.74 *Proceedings after termination;* § 930.75 *Effect of termination or amendment;* § 930.76 *Duration of immunities;* § 930.77 *Agents;* § 930.78 *Derogation;* § 930.79 *Personal liability;* and § 930.80 *Separability.*

With respect to the provisions dealing with termination (§ 930.73) of the order and the requirement for the conduct of a referendum during the month of March of the fifth year after the effective date of the order and within the month of March every fifth year thereafter, the order should provide the opportunity for producers and handlers to express themselves as to whether or not the regulatory program should continue in effect. Five years after the effective date should provide a sufficient amount of time for producers and handlers to evaluate the worth of the program. If the results of the referendum show that (1) more than 50 percent of the producers by number or volume of production represented in the referendum or (2) more than 50 percent of the handlers, who during the current fiscal period handled more than 50 percent of the total volume of cherries

handled by handlers voting in the referendum, favor termination of the order, the Secretary should consider termination of the order. If such a large percentage of the producers or handlers express themselves as favoring termination, it seems reasonable that the program is not measuring up to expectations. Under such circumstances it may be difficult to operate. Therefore, the Secretary should terminate the program in accordance with the act. This action should be taken so as to become effective on the last day of April of that year.

Those provisions which are applicable to the proposed marketing agreement only, identified by section number and heading, are as follows: § 930.81 *Counterparts;* § 930.82 *Additional parties;* § 930.83 *Order with marketing agreement.*

Rulings on proposed findings and conclusions. July 15, 1970 was set by the Hearing Examiner at the hearing as the latest date by which briefs would have to be filed by interested parties with respect to facts presented in evidence at the hearing and the conclusions which should be drawn therefrom. The time by which briefs would have to be filed was extended by the Hearing Examiner on July 13 to July 31, 1970.

A brief was filed by Jenos, Inc., in opposition to the proposed marketing agreement and order by Jerry H. Udesen, Assistant Secretary and Associate Counsel, Jenos, Inc., and Michael E. Bress of Dorsey, Marquart, Windhorst, West, and Halladay, Attorneys for Jenos, Inc.

The brief stated, in general, that (1) the proposed program was not authorized by the act, (2) the evidence of record does not justify the proposed program, and (3) the program would, if made effective, result in inequities to certain persons regulated by the program.

With respect to whether the program is authorized by the act, one need only look to the declared policy of Congress which authorizes the Secretary to establish and maintain such orderly marketing conditions as will establish parity prices. Further the Secretary is required to protect the interest of consumers by a gradual correction of the current level at as rapid a rate as the Secretary deems to be in the public interest. A marketing order containing reserve pool provisions is authorized in section 608c(6) of the act. Additionally, the Congress has expressly authorized the Secretary of Agriculture "to enter into marketing agreements with processors (i.e., handlers), producers, associations of producers, and others engaged in the handling of any agricultural commodity (i.e., red tart cherries) or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce of which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful:".

With respect to the proposed finding that there is insufficient evidence to support a finding as to need for the proposed program as pointed out in the recommended decision, the evidence clearly sets forth the marketing problem confronting the industry. This problem is greatly compounded due to the irregular supplies of cherries that are available for market. The program is designed to correct this situation by tailoring the supply to that which the market can use. This would be accomplished by removing a portion of the crop from marketing channels during years of large production and adding such cherries to the available supplies during years when cherry production is below market needs.

Evidence with respect to the need for the program was from both growers and handlers. Testimony supports each provision of the order.

With respect to the proposed finding concerning inequities that may result if the order is made effective, such is speculative and not based on fact.

Each point included in the brief was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions hereinbefore set forth. To the extent that any suggested findings or conclusions contained in the brief are inconsistent with the findings and conclusions contained herein, the request to make such findings or to reach such conclusions is denied on the basis of the facts found and stated in connection with this recommended decision.

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

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of cherries grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applications to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of cherries grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of cherries grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that referenda be conducted:

(1) Among the producers who, during the period May 1, 1969, through November 1, 1970 (which period is hereby determined to be a representative period for the purpose of such referenda), were engaged in the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland in the production of red tart cherries for processing, and

(2) Among processors who, during the aforesaid representative period, were engaged within said production area in the canning or freezing of red tart cherries to ascertain whether such producers and processors favor the issuance of the said annexed order regulating the handling of cherries.

George B. Dever, Jr., and Robert W. Forney, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, are hereby designated agents of the Secretary of Agriculture to conduct said referenda.

The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended" (7 CFR 900.400 et seq.).

The ballots used in each such referendum shall contain a summary describing the terms and conditions of the proposed order.

Copies of the aforesaid annexed order and of the aforesaid referendum procedure may be examined in the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Ballots to be cast in the referenda, and other necessary forms and instructions, may be obtained from any referendum agent or any appointee.

It is hereby ordered, That all of this decision and referendum order, except the annexed marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the said marketing agreement are identical with those contained in the said order which will be published with this decision.

Dated: November 13, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Regulating the Handling of Cherries Grown in the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland

Sec.

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

AUTHORITY: The provisions of this Part 930 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 930.0 Findings and determinations.

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held at Grand Rapids, Mich., June 2–4, 1970, and continued at Sturgeon Bay, Wis., on June 5, 1970, at Rochester, N.Y., on June 9, 1970, and at Gettysburg, Pa., on June 11, 1970, upon a proposed marketing agreement and a proposed marketing order regulating the handling of cherries grown in the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) This order, and all the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) This order regulates the handling of cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) This order is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of cherries grown in the production area which make necessary different terms applicable to different parts of such area; and

(5) All handling of cherries grown in the production area, as defined in this order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of cherries grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of this order; and such terms and conditions are as follows:

Sections 930.1 to 930.80, inclusive, of the recommended marketing agreement and order, as published in the FEDERAL REGISTER (F.R. Doc. 70–13489; 35 F.R. 15817), as hereinafter changed, are hereby adopted and incorporated into this order as the terms and conditions thereof as if set forth in full herein:

35 F.R. 15833, paragraph (c) of § 930.51 is revised to read as follows:

(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose.

35 F.R. 15835, § 930.64 is revised to read as follows:

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handler premises and any and all records of such handlers with respect to matters within the purview of this part.

DEFINITIONS

§ 930.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 930.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 930.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 930.4 Production area.

"Production area" means the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, West Virginia, Virginia, and Maryland.

§ 930.5 Cherries.

"Cherries" means all cherries grown in the production area of the Meteor variety, and all cherries of any or all varieties of cherries, grown in the production area, classified botanically as Prunus cerasus.

§ 930.6 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on May 1 of one year and ending of the last day of April of the following year: *Provided,* That the initial fiscal period shall begin on the effective date of this part.

§ 930.7 Board.

"Board" means the Cherry Administrative Board established pursuant to § 930.20.

§ 930.8 Grower.

"Grower" is synonymous with "producer" and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein.

§ 930.9 Handler.

"Handler" means any person who first handles cherries or causes cherries to be handled.

§ 930.10 Handle.

"Handle" means to pit, can, freeze, dehydrate, press, or brine cherries, or in any other way convert cherries commercially into a processed product: *Provided,* That the term "handle" shall not include the pitting, canning, freezing, dehydration, pressing, or brining or the converting, in any other way, (a) of cherries into a processed product for home use and not for resale; or (b) of cherries, which are diverted pursuant to § 930.56, into a processed product.

§ 930.11 District.

"District" means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 930.30(e):

District 1—The State of New York and Erie County, Pa.

District 2—The States of Maryland, Pennsylvania except Erie County, Virginia, and West Virginia.

District 3—That portion of the State of Michigan which is north of a line drawn along the boundary of Mason and Manistee Counties and extended east to Lake Huron and the State of Wisconsin.

District 4—That portion of the State of Michigan which is south of District 3 and north of a line drawn along the boundary of Allegan and Ottawa Counties and extended east to the St. Clair River.

District 5—The State of Michigan not included in Districts 3 and 4, and the State of Ohio.

ADMINISTRATIVE BODY

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Administrative Board consisting of 12 members, each of whom shall have an alternate having the same qualifications as the member for whom he is an alternate. Six of the members and their alternates shall be growers or officers or employees of growers. Six of the members and their alternates shall be handlers or officers or employees of handlers. There shall be an individual who shall serve as nonvoting chairman of the Board, and an individual who shall serve as his alternate.

(b) District representation on the committee shall be as follows:

District	Grower members	Handler members
1	1	1
2	1	1
3	2	2
4	1	1
5	1	1

§ 930.21 Term of office.

The term of office of each member and alternate member of the Board shall be for 3 fiscal years: *Provided*, That one-third of the initial members and alternates shall serve only until April 30, 1971, and one-third of such members and alternates shall serve only until April 30, 1972 (Determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, and 3 fiscal years shall be by lot). Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members shall be limited to two 3-year terms. The nonvoting chairman of the Board and his alternate shall serve at the pleasure of the Secretary. The Secretary shall give consideration to any recommendation of the Board with respect to termination of the appointment of the chairman or his alternate.

§ 930.22 Nomination.

(a) Initial members: The Secretary shall hold, or cause to be held, meetings of growers and of handlers to nominate the initial members and alternate members of the Board. Such meetings shall be held as soon as practicable after the effective date of his part, and shall be conducted in the manner provided in paragraph (b) of this section.

(b) Successor members:

(1) Nominations for successor members of the Board, and their respective alternates, shall be made at separate meetings of growers and handlers. Such meetings shall be held at such times (on or before April 1 of each year) and places as the Board shall designate. One nominee shall be elected at nomination meetings for each member and one nominee for each alternate member position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than April 15 of each year. The Board shall prescribe such procedure for the conduct of the nomination meetings as shall be fair to all persons concerned.

(2) Only growers, including duly authorized officers or employees of growers, who are present and who are eligible to serve as grower members of the Board, shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the selection of nominees in more than one district during any fiscal period. If a producer produces cherries in more than one district, he shall select the district in which he will so participate and notify the Board of his choice.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present and who are eligible to serve as handler members of the Board, shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a person is both a grower and a handler of cherries, such person may vote either as a grower or handler, but not as both. However, if a person is a grower and a grower-handler, because he had some cherries custom packed but who does not own or lease and operate a processing facility, such person may vote only as a grower.

(c) The members of the Board appointed by the Secretary pursuant to § 930.23 shall, at the first meeting, and whenever necessary thereafter, by a majority vote of those present, nominate an individual to serve as nonvoting chairman of the Board, and an individual to serve as his alternate.

§ 930.23 Appointment.

From the nominations made pursuant to § 930.22, or from other qualified individuals, the Secertary shall appoint the chairman of the Board and his alternate and the members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20.

§ 930.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 930.22, the Secretary may, without regard to nominations, select the chairman and his alternate and select the members and alternate members of the Board on the basis of representation provided for in § 930.20.

§ 930.25 Acceptance.

Any person selected by the Secretary as the chairman or his alternate or as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary within 10 days after notified of such appointment.

§ 930.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and appointed in the manner specified in §§ 930.22 and 930.23. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 930.20.

§ 930.27 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and has qualified. In the event that a grower member and his alternate are unable to attend a Board meeting, the grower members present at such meeting may designate any other grower alternate to serve in such absent grower member's place and stead at that meeting. In the event that a handler member and his alternate are unable to attend a Board meeting, the handler members present at such meeting may designate any other handler alternate to serve in such absent handler member's place and stead at that meeting.

§ 930.28 Eligibility for membership on Cherry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

§ 930.29 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.30 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, other than the chairman, as may be necessary, and to define the duties of such officers, and the duties of the chairman and his alternate;

(b) To appoint such employees, agents, and representatives as it may deem necessary and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(i) To submit to the Secretary the same notice of meeting of the Board as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part; and

(l) With the approval of the Secretary, to re-define the districts into which the production area is divided, and to reapportion the representation of any district on the Board: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in cherry production within the districts and the production area.

§ 930.31 Procedure.

(a) Eight members of the Board, including alternates acting for members, shall constitute a quorum and any action of the Board shall require a majority vote of those present.

(b) The Board may provide for simultaneous meetings of groups of its members at two or more designated places or may use a telephone conference call meeting: *Provided*, That such meetings shall be subject to the establishment of communications so that each member may participate in the discussions and other actions the same as if the Board were assembled in one place.

(c) The Board may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 930.32 Expenses and compensation.

The members of the Board, and alternates when acting as members, and the chairman of the Board, and his alternate when acting as chairman, or when either or any of them are performing other prescribed duties, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates, including the alternate to the nonvoting chairman, at any or all meetings, notwithstanding the expected or actual presence of the chairman or the respective member, and may pay expenses, as aforesaid.

EXPENSES AND ASSESSMENTS

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be paid to the Board by handlers in the manner prescribed in § 930.41.

§ 930.41 Assessments.

(a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board, upon demand, assessments on all cherries handled by him during such period as the handler thereof. The payment of assessments for the maintenance and functioning of the Board may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance, and may also borrow money for such purposes. If a handler does not pay his assessment within the time prescribed by the Board, the unpaid assessment may be subject to an interest charge at a rate prescribed by the Board, with the approval of the Secretary.

§ 930.42 Accounting.

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

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

REGULATIONS

§ 930.50 Marketing policy.

Each season prior to making any recommendations pursuant to § 930.51, the Board shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relating to:

(a) The estimated total production of cherries;

(b) The expected general quality of such cherry production;

(c) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(d) The expected demand conditions for cherries in different market outlets;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cherries; and

(h) The regulation expected to be recommended during the marketing season.

§ 930.51 Recommendations for volume regulation.

(a) Not later than June 25 of each year the Board, if it deems it advisable to regulate the handling of cherries in the manner provided in § 930.52, shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulations pursuant to paragraph (a) of this section, the Board shall give consideration to current information with respect to the factors affecting the

supply of and demand for cherries during the then current fiscal period. With each such recommendation for regulation, the Board shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

(c) All assembled meetings of the Board shall be open to growers and handlers and other interested persons. The Board shall publish notice of such meetings in such newspapers as it deems appropriate and shall mail notice of such meetings to each grower and handler and any other interested person who has filed his name and address with the Board for such purpose.

§ 930.52 Issuance of volume regulations.

(a) The Secretary shall limit, in the manner specified in this section, the quantity of cherries which handlers may acquire and freely handle during the then current fiscal period, whenever he finds from the recommendations and information submitted by the Board, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation shall fix the free and restricted percentages, totaling 100 percent, which shall be applied in accordance with § 930.54 to cherries acquired by handlers during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

§ 930.53 Revision of percentages; release of reserve pool cherries.

(a) *Revision of percentages.* As soon as practicable after completion of the processing of the current crop of cherries, the Board shall determine the total quantity of free percentage cherries handled from the current crop. If the determination reveals that the total quantity of free percentage cherries handled is less than the quantity determined earlier by the Board as the quantity of cherries which should be available for handling, it shall recommend to the Secretary revision of the free and restricted percentages for the current fiscal year to become effective during the period September 15–25 of the fiscal year, or during such other 10-day period as may be recommended by the Board and approved by the Secretary. The additional amount of cherries so recommended referable to the revised free percentage shall be the amount required to make the total available supplies for use in normal commercial outlets equal, but not exceed, the amount, as estimated by the Board, needed to meet the demand in such outlets.

(b) *Release of reserve pool cherries.* (1) If the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand pursuant to paragraph (a) of this section, in such outlets, the Board shall recommend to the Secretary that during the period September 15–25 of the fiscal period or such other 10-day period as may be recommended by the Board and approved by the Secretary, that a portion or all of the reserve pool cherries of prior fiscal years be released to handlers for such use.

(2) On and after March 15 of each year and prior to June 1 of such year, the Board may recommend to the Secretary that a portion or all of the oldest reserve pool or pools be released for use in normal commercial channels to the extent that the total available supply in normal commercial outlets is less than needed to meet the demand in such outlets. Such reserve pool cherries shall be offered for sale to handlers for a period of 10 days: *Provided*, That only one period shall be authorized by the Secretary from March 15 to June 1 of each year.

(3) Whenever the Secretary finds, from the recommendation and information submitted by the Board pursuant to this paragraph, or from other available information, that a portion or all of the cherries in the reserve pools should be released, he shall authorize the Board to release such cherries as provided in § 930.59.

§ 930.54 Reserve pool.

(a) Whenever the Secretary has fixed the free and restricted percentages for any fiscal period, as provided for in § 930.52(a), each handler shall set aside for the reserve pool for such period, at such time and in such manner and form, other than as canned cherries or canned cherry products, as the Board may prescribe, a portion of the cherries he acquires during such period. Except as otherwise permitted pursuant to §§ 930.56 and 930.61, such reserve pool portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided*, That in converting cherries in each lot to the form prescribed by the Board the reserve pool obligations shall be adjusted, in accordance with uniform rules adopted by the Board, to recognize shrinkage and loss resulting from processing.

(b) Reserve pool cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may prescribe. All such cherries shall be inspected by the Processed Standardization and Inspection Branch, U.S.D.A. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries.

(c) Each handler shall hold his reserve pool for the account of the Board until relieved of such responsibility by the Board. Such reserve pool cherries shall be stored in accordance with good commercial practice and shall be separate and apart from any other cherries in possession of the handler. Each handler so holding reserve pool shall deliver to the Board, upon demand, such portion of the reserve pool held by him as the Board may specify.

(d) All matters dealing with reserve pools, including, but not being limited to, the costs to be borne and shared by equity holders and for which handlers are to be compensated and the distribution of proceeds from the disposition of reserve pools shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary, and shall be equitable to equity holders and handlers.

§ 930.55 Off-premise reserve pool.

No handler may transfer a reserve pool obligation but any handler may, upon notification to the Board, arrange to hold reserve pool, of his own production or which he has purchased, on the premises of another handler or in an approved commercial storage in the same manner as though the reserve pool were on his own premises.

§ 930.56 Diversion privilege.

As used in this section and in §§ 930.58 and 930.60, "producer" includes any person who purchased cherries from the grower and is reselling them to a handler. Any producer may voluntarily elect to divert, in accordance with provisions of this section, all or a portion of his cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting producer a diversion certificate which shall entitle such producer to deliver to a handler, and such handler to receive, the specified weight of cherries free from all reserve pool requirements.

(a) *Eligible diversion.* Diversion certificates shall be issued to producers only if the cherries are diverted in accordance with the following terms and conditions to such of the following outlets as the Board with the approval of the Secretary may designate: uses exempt under § 930.61; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(1) Application: The producer electing to so divert cherries shall first make application to the Board for permission to do so. Such application shall describe in detail the manner in which the applicant proposes to divert cherries including, if the diversion is to be by means of leaving the cherries unharvested, a detailed description of the location of the orchard and the ages of the trees therein. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant.

(2) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting producer a diversion certificate stating the weight of cherries which may be delivered to a handler free from all reserve pool requirements; the latter of which shall be in an amount having the same relationship to the weight of cherries diverted as that existing between the free and restricted percentages fixed pursuant to § 930.52 or § 930.53, as applicable. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule as the Board, with the approval of the Secretary, may prescribe.

(b) Any producer who diverts cherries pursuant to the provisions of this section shall be entitled to participate in proceeds from the disposition of reserve pool cherries only if he delivers cherries to handlers in excess of the quantity shown on his diversion certificate and then only to the extent of such excess delivery of cherries. The Board, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this section.

§ 930.57 Equity holders.

A grower's equity in the reserve pool may be transferred to another person upon notification to the Board. So that the Board may determine each producer's, or his successor's in interest, equity in the total reserve pool, each handler who receives cherries shall determine and certify to the Board the weight of cherries received, the name and address of the producer or successor in interest. Each weight and determination shall be made in accordance with uniform rules adopted by the Board and approved by the Secretary.

§ 930.58 Handler compensation.

Each handler shall be compensated for receiving, processing, storing and such other costs relating to the reserve pool as the Board may deem to be appropriate. The Board shall, as near the beginning of the fiscal year as may be practicable, with the approval of the Secretary, establish a schedule of charges for receiving, processing, storing and other costs related to the reserve pool. The payment of such costs shall be by the producers having an interest in the reserve pool, or their successors in interest, and may be deducted from any monies owed by handlers to such persons. A handler may request the Board to remove pool cherries from his premises upon expiration of prepaid storage charges or refund of unearned charges, and the Board shall comply within a reasonable time consistent with the availability of suitable storage. Upon any such removal the handler shall also pay one-half of the cost of such removal and shall forfeit to the extent of the removed volume, his pro rata share in any offer to sell reserve pool and such share shall be allocated to the successor storing handler.

§ 930.59 Disposition of reserve pool.

(a) The Board shall offer reserve pool cherries for purchase by handlers for disposition in accordance with § 930.53 (b). Reserve pool cherries shall be sold to handlers at prices and in a manner intended to maximize returns to equity holders and achieve complete disposition of such cherries.

(b) The Board shall offer each handler his share of each reserve pool to be sold by the Board. Each such share shall be determined by applying to the total quantity of cherries in such reserve pool, the percentage that the cherries in such reserve pool that were handled by such handler is of the total quantity of cherries in the reserve pool handled by all handlers. If any handler declines, or fails to purchase all or any part of his share, the share or remainder shall be offered in accordance with the terms and conditions of the offer to all handlers who have purchased their respective shares.

(c) The Board shall have the power and authority to dispose of, at any time throughout the year as it may deem appropriate, any or all reserve pool cherries for any experimental purposes and for any nonhuman use, including animal feed, or any use other than normal commercial outlets.

§ 930.60 Disposition of proceeds from sale of reserve pool.

The proceeds from the disposition of any reserve pool shall be distributed, after deduction of any expenses incurred by the Board in receiving, handling, holding, and disposing thereof, to the respective producers or their successors in interest, on the basis of the tonnage of their respective contributions to the reserve pool. The distribution of proceeds to producer members of cooperative associations, which are handlers and have reserve pool cherries pursuant to § 930.54, shall be made to the appropriate association.

§ 930.61 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.52 through 930.60 cherries used for experimental purposes or processed into products which used less than 5 percent of the preceding 5-year average production of cherries. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to insure that cherries handled under the provisions of this section are handled only as authorized.

REPORTS AND RECORDS

§ 930.62 Reports.

(a) *Inventory.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing such information as the Board shall specify with respect to any cherries or cherry products which were held on such date as the Board may designate.

(b) *Receipts.* Each handler shall, upon request of the Board, file promptly with the Board a certified report showing the name and address of each grower and the total weight of cherries delivered for the season.

(c) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

§ 930.63 Records.

Each handler shall maintain such records of all cherries acquired, handled, or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct.

§ 930.64 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.65 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board, who shall disclose such information to no person other than the Secretary.

MISCELLANEOUS PROVISIONS

§ 930.70 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part and the regulations issued hereunder. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.56(a).

§ 930.71 Right of the Secretary.

The chairman of the Board and his alternate, and members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time.

Each and every regulation, decision, determination, or other act of the chairman and his alternate and of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the chairman and his alternate and of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.72 Effective time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 930.73.

§ 930.73 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cherries which were produced within the production area. Such termination shall become effective on the last day of April subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every fifth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and handlers. If it develops from said referenda that (1) more than 50 percent of the producers by number or volume of production represented in the referendum or (2) more than 50 percent of the handlers, who during the current fiscal period handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum favor termination of this part, the Secretary shall give consideration to terminating the provisions of this part in accordance with paragraph (c) of this section.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.74 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members f the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part or any regulation issued thereunder, or (b) release or extinguish any violation of this part or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.77 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture to act as his agent or representative in connection with any provisions of this part.

§ 930.78 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.79 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board nor the chairman of the Board and his alternate shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, chairman alternate, employee, or agent, except for act of dishonesty, willful misconduct, or gross negligence.

§ 930.80 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

[F.R. Doc. 70-15508; Filed, Nov. 17, 1970; 8:51 a.m.]

[7 CFR Part 966]

TOMATOES GROWN IN FLORIDA

Proposed Reestablishment of Districts

Consideration is being given to the approval of a proposal to reestablish Districts No. 1 and No. 2 which was recommended by the Florida Tomato Committee, established pursuant to Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966).

This marketing order program regulates the handling of tomatoes grown in the Florida production area, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

Statement of consideration. Currently District No. 1 consists of the counties of Dade and Broward. The proposed change would remove Broward County from District No. 1 and add it to District No. 2. In recommending this change, the Committee indicated such redistricting would result in more efficient administration of the program and provide for better representation on the Committee for producers in Broward County.

Broward County is a continuation of the southern part of District No. 2 and its production and marketing practices are the same as those in District No. 2. Economies in administration should result from the proposed change because it would no longer be necessary for the management to separate production and marketing data for the contiguous area of District No. 2 of Broward County.

The interests of Broward County producers would be better represented if the proposed change is made in that no producers from that county are presently on the Committee and their cultural practices differ from those in Dade County, which has always supplied District No. 1 members to the Committee.

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

§ 966.160 Reestablishment of districts.

(a) Pursuant to § 996.25 and the recommendation of the Florida Tomato Committee, the county of Broward (currently a portion of District No. 1) is reestablished as a part of District No. 2.

(b) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

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

Dated: November 12, 1970.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-15463; Filed, Nov. 17, 1970; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 191]

LIQUID DRAIN CLEANERS CONTAINING 10 PERCENT OR MORE OF SODIUM AND/OR POTASSIUM HYDROXIDE

Proposed Listing as Banned Hazardous Substance

Through investigations by the Food and Drug Administration, from review of death certificates, and from other available information, the Commissioner of Food and Drugs has learned that liquid drain cleaners containing more than 10 percent of sodium and/or potassium hydroxide have caused a large number of serious injuries and some deaths following accidental ingestion of these solutions by children. These injuries and deaths have occurred despite the fact that the labeling of such products is required to bear the word "poison" and other cautionary labeling. In 1969, 169 accidental ingestions were reported to the Food and Drug Administration involving such products. Of these, 51 required hospitalization.

Ingestion of such liquid drain cleaners has caused, among other things, acute injury due to corrosion and destruction of the esophageal wall and the stomach wall, which in turn may lead to mediastinitis, peritonitis, and death. Shrinkage of scars following damage to the wall of the esophagus and stomach may produce strictures causing partial or total obstruction to the passage of food and require prolonged medical and surgical treatment. The repeated operative procedures required for children with nonfatal injuries result in extensive physical and psychological trauma.

Experimental work in animals has shown that less than 1 teaspoonful of strong sodium hydroxide solution in contact for a period of less than 3 seconds will produce full thickness destruction of the esophagus. Hence, no antidote would be of any value. Experience has shown that some people have sustained injury of the esophagus from swallowing just the amount left in the cap or in an "empty" bottle.

Therefore, the Commissioner of Food and Drugs proposes that liquid drain cleaners containing more than 10 percent of sodium and/or potassium hydroxide be classified as "banned hazardous substances" within the meaning of section 2(q)(1)(B) of the Federal Hazardous Substances Act because the aforementioned information indicates that the degree or nature of the hazard involved in the presence or use of such substances in or around the household is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substances out of the channels of interstate commerce, unless such articles are packaged in containers so designed as to prevent children 5 years of age or younger from gaining access to the contents of the package.

Accordingly, pursuant to provisions of that act (sec. 2(q)(1)(B), (2), 74 Stat. 374, as amended 80 Stat. 1304–5; 15 U.S.C. 1261) and of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that § 191.9(a) be amended by adding thereto a new subparagraph, as follows:

§ 191.9 Banned hazardous substances.

(a) * * *

(4) Liquid drain cleaners containing 10 percent or more by weight of sodium and/or potassium hydroxide; except that this subparagraph shall not apply to such liquid drain cleaners when packaged in containers so designed as to prevent children 5 years of age or younger from gaining access to the contents of the package.

* * * * *

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: November 12, 1970.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[F.R. Doc. 70-15455; Filed, Nov. 17, 1970; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19091; FCC 70-1212]

TELEVISION BROADCAST STATIONS

Table of Assignments; State College, Pa.

In the matter of amendment of § 73.606, *Table of Assignments*, Television Broadcast Stations. (State College, Pa.), Docket No. 19091, RM–1564.

1. On February 4, 1970, TV Networks, Inc., a Pennsylvania corporation, filed a petition for rule making in which it requested that UHF Channel 17 be assigned, on a short-spaced basis, to State College, Pa. On August 20, 1970, petitioner filed a supplement to the petition requesting that UHF Channel 29 be assigned to State College, rather than Channel 17. The use of Channel 17 is precluded in State College because of the "land mobile" spacing requirements recently adopted in Docket No. 18261. Petitioner states it will apply for the facility if the proposed channel is allocated to State College. Channel *55 is now assigned to this city; there is no commercial assignment in the city or county.

2. The site proposed for use is approximately 9.5 miles northwest of State College and this site would meet all separation requirements of the Commission's rules, though it is very close to the minimum separation from Channel 29 assignments at Buffalo, N.Y., and Philadelphia, Pa. No specific statements supporting or opposing the petition have been filed. The Association of Maximum Service Telecasters, Inc. (MST), responded to the original petition with an objection to a short-spaced Channel 17 operation, but stated that it would not oppose a Channel 17 assignment if it were used consistent with the rules. It has not filed in relation to the new Channel 29 proposal.

3. Petitioner sets forth considerable economic and population data to support the need for additional television service to Centre County, Pa., and the surrounding area. Translator stations bring in the signals of Station WTPA, Harrisburg, WJAC–TV, Johnstown and WGAL–TV, Lancaster, all in Pennsylvania. Station WFBG–TV, Altoona, provides an off-the-air Grade A signal to State College and most of the Centre County and a Grade B signal to the remainder of Centre County. The area also receives a Grade A signal from VHF educational Station WPSX–TV, Clearfield, Pa. (Channel *3).

4. Centre County, Pa., located in central Pennsylvania, is the fifth largest county in the State (1,115 square miles). Pennsylvania State University, with a 1969 main campus enrollment of 26,823 students, is located in State College. Petitioner sets forth projected 1970 Census figures of 35,900 in State College (including Bellefonte) with 107,900 persons in Centre County.

5. Retail and wholesale trade for 1963 in Centre County amounted to $95 million and $24.7 million, respectively, and revenues for certain selected services were $22.5 million for that year. Cash income from crops and livestock was $10.7 million in 1965; in 1966, 90 manufacturing plants employed 7,488 workers paying an estimated $39,525,000 in wages and salaries. In 1965, 455 residential building permits were issued and construction work of over $12 million was done. Centre County has 180 churches, two hospitals, three public libraries and primary and secondary school enrollment of 19,000 pupils. Its transportation needs are met by three airports, two airlines,

three bus lines, nine motor freight lines, and three railroads. There are four newspapers in the county, four AM and three FM radio stations.

6. Petitioner contends that this Channel 29 UHF assignment can be made under and is consistent with the UHF channel assignment policy because of the lack of a Grade A signal to certain portions of Centre County, Pa., and because the assignment is consistent with all the spacing requirements of the Commission's rules and policies. We believe that petitioner has set forth sufficient facts concerning service to the area and population to warrant exploration of the proposed assignment in a rule making proceeding.

7. Accordingly, pursuant to the authority contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, it is proposed to amend the Table of Assignments in § 73.606(b) of the Commission's rules by assigning Channel 29, unreserved, to State College, Pa. We emphasize that the proposal is advanced only on the assumption that the assignment will be used in compliance with our mileage separation rules.

8. Pursuant to applicable procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before December 21, 1970, and reply comments on or before December 31, 1970. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

9. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all written comments, replies, pleadings, briefs, or other documents shall be furnished the Commission.

Adopted: November 10, 1970.

Released: November 13, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70-15472; Filed, Nov. 17, 1970; 8:48 a.m.]

[47 CFR Parts 89, 91, 93]

[Docket No. 19086; FCC 70-1205]

EXPANDED USE OF NONVOICE EMISSION

Notice of Proposed Rule Making

In the matter of expanded use of nonvoice emission under Parts 89, 91, and 93 of the Commission's rules, Docket No. 19086; petition of Dynacoustic Laboratories, Inc., seeking amendment of Parts 89, 91, and 93 of the Commission's rules to permit use of tone signals, RM-1458.

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

2. Land mobile frequencies available under Parts 89, 91, and 93 of our rules have developed primarily for radiotelephony with tone signals or signaling devices permitted when they are used solely to establish and maintain communication between stations. In addition, the rules permit, on a limited basis, the use of nonvoice emissions for radioteleprinter, tone paging and for certain types of alarming, remote control and telemetering functions all limited to certain frequencies and radio services. Many of these uses are on a secondary, noninterference basis to the primary telephone uses contemplated by the rules. In addition, the rules permit other emissions on a case-by-case basis, subject to special showings, but general use of nonvoice emissions in land mobile frequency bands is clearly not contemplated.

3. With increasing congestion on land mobile frequencies, interest is growing in the use of nonvoice techniques as a means of speeding up certain routine communications and thereby reducing on-the-air time. Nonvoice techniques appear to offer advantages over voice communications for certain specialized uses. Communications can be completed quickly and with an apparant reduction in the redundancy found in voice systems. In many radio services, cochannel sharing is required to conserve frequencies and licensees are able to control interference by mutual cooperation by waiting for the channel to clear before transmitting. On the other hand, in nonvoice systems the act of switching on the receiver before transmitting may take as much or more time than the transmission itself and in busy systems such as those used for tone paging, monitoring is often neglected. This can and does result in serious interference conflicts between voice and nonvoice systems. Further, nonvoice techniques permit the accomplishment of functions not economically achieved by voice methods. This can lead to increased usage and in some cases could result in increased channel congestion.

4. Dynacoustic Laboratories, Inc., asks us to amend our rules governing the Public Safety Industrial and Land Transportation Services to permit the use of tone devices for signaling purposes. Petitioner believes that the use of tone signaling techniques on land mobile frequencies would enable users operating in so-called saturated channels to provide status reporting functions to reduce air time and increase the efficiency of utilization of the channel. To provide protection from nonvoice communications uses that might overwhelm other users, the following provision for nonvoice use is proposed by petitioner:

> Nothing herein shall be construed to prevent the use of tones, or groups of tones, not exceeding 3 seconds in any one transmission, for communication.

5. If, by the use of nonvoice techniques, land mobile users can improve the efficiency of their use of available frequencies and thereby reduce waiting times, our rules should encourage their use. The full implementation of nonvoice land mobile systems would be relatively easy if we were providing new frequency space for this use. This is not the case, however, since nonvoice systems must share frequencies with voice systems and they will, in most cases, be operated in a radiotelephone environment. Absent conclusive evidence that the mixture of voice and nonvoice emissions will not result in serious and disruptive interference problems, and since additional exclusive frequency space sufficient to meet anticipated requirements cannot be provided for this purpose, limitations on the use of nonvoice systems appear necessary. Such limitations can be revised if operational experience indicates that both systems can coexist, or developments indicate the desirability of phasing out radiotelephone use on specific frequencies.

6. Accordingly, we are proposing to amend our rules to permit nonvoice systems to operate on land mobile frequencies on a secondary, noninterference basis to radiotelephone systems. Further, the length of any one transmission or report may not exceed 2 seconds. This should help to eliminate interference from devices that utilize excessive redundancy. No limit will be placed on the number of nonvoice communications at this time, but pending further developments, such installations must be the secondary use; i.e. licensees must have a primary voice requirement. Further, since nonvoice techniques are expected to improve efficiency, we will not authorize an additional or separate frequency for this use. The rule changes we are proposing are not intended to apply to land mobile telemetering,[2] radioteleprinter,[3] radio facsimile or automatic vehicle locating systems (AVM)[4] including those employing interrogation - transponder techniques. Rule changes to accommodate these devices are under consideration in separate proceedings.

7. In planning for the implementation of extensive use of nonvoice communication techniques, we believe that the potential advantages that can be achieved by standardization must be considered now. Tone devices have been used for many years to establish and maintain communication in mobile systems and many of these undoubtedly can be converted to accomplish additional nonvoice functions. On the other hand, we have extensive use of digital techniques in remote control devices and digital devices are widely used in the computer field.

We are proposing to standardize on the ASCII [4] code for the transmission of nonvoice instructions, canned messages and identification. Comments are sought concerning the specific audio tones to be employed and whether audio-tone shift or audio-phase shift modulation should be adopted.

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[1] Commissioner Bartley absent.

[2] Industrial land mobile telemetering—Notice of Proposed Rule Making, Docket 18924, 35 F.R. 12131.

[3] Land mobile radioteleprinter—First Report and Order, Docket 18108, 34 F.R. 1359.

[4] Automatic vehicle locator—Notice of Inquiry, Docket 18302, 33 F.R. 12265.

[4] American Standard Code for Information Interchange.

8. The rule changes proposed will apply only to mobile service nonvoice systems and devices and will not affect the present rule provisions for secondary alarming or the use of any frequencies that have been specifically designated for F2, F9, A2, or A9 emissions. The rules will also apply only to frequencies below 950 MHz, since multiplexed communication systems that include both voice and nonvoice emissions are normally authorized for point-to-point microwave systems operating in frequency bands above 950 MHz. During the pendency of this rule making proceeding, developmental authorizations will be considered where the uses are generally in accordance with our proposals; i.e. involve secondary use of a voice channel. All developmental authorizations will, however, be expected to comply with the rules that may ultimately be adopted as a result of this rule making proceeding.

9. The proposed amendments, as set forth below, are issued pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before December 21, 1970, and reply comments on or before December 31, 1970. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

11. In accordance with the provision of § 1.419 of the Commission's rules, an original and fourteen copies of all statements, brief, or comments filed shall be furnished the Commission.

Adopted: November 10, 1970.

Released: November 13, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[1] Commissioner Bartley absent.

It is proposed to amend Parts 89, 91, and 93 in substance similar to the following proposed amendment to § 89.105(d).

In § 89.105, paragraph (d) is amended by deleting the present text and substituting new paragraphs (d), (e), and (f) to read as follows:

§ 89.105 Types of emission.

* * * * *

(d) A2, F2, or F9 emission (audiofrequency tone shift or tone phase shift) may be authorized on a secondary noninterference basis to radiotelephony. The maximum duration of any transmission shall not exceed 2 seconds.

(e) Other types of nonvoice emission may be authorized only where specific provision is included elsewhere in this chapter.

(f) Operational fixed stations operating on frequencies above 952 MHz may use F2 or F9 emissions for multiplexed carrier operation. A5 or F5 emission may be used where authorized bandwidth requirements can be maintained.

[F.R. Doc. 70-15473; Filed, Nov. 17, 1970; 8:48 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Partial Termination of Proposed Withdrawal and Reservation of Lands

Notice of a Bureau of Land Management, U.S. Department of the Interior application Riverside 2042, for withdrawal and reservation of land for recreation value in the California Desert, was published as F.R. Doc. No. 69-837 on pages 1080 and 1081 of the issue for Thursday, January 23, 1969. The applicant agency has cancelled its application insofar as it affects the following described land:

SAN BERNARDINO MERIDIAN

T. 10 N., R. 2 E.,
Sec. 18, lots 1 and 2, W½NE¼, E½NW¼.

Therefore, pursuant to the regulations contained in 43 CFR Part 2300 (formerly 43 CFR Part 2311), such lands at 10 a.m. on December 4, 1970, will be relieved of the segregative effect of the above-mentioned application.

J. R. PENNY,
State Director.

[F.R. Doc. 70-15442; Filed, Nov. 17, 1970; 8:46 a.m.]

[Serial No. N-1574-A]

NEVADA

Notice of Proposed Amendment to Final Classification of Public Lands for Multiple-Use Management; Correction

NOVEMBER 10, 1970.

In F.R. Doc. 70-13903 appearing on page 16189 in the issue for Thursday, October 15, 1970, the third line under the heading "Mount Diablo Meridian, Nevada" now reading "Sec. 29, NE¼, N¼ SE½." should read "Sec. 29, NE¼, N½ SE¼."

For the State Director.

ROLLA E. CHANDLER,
Manager, Nevada Land Office.

[F.R. Doc. 70-15443; Filed, Nov. 17, 1970; 8:46 a.m.]

National Park Service

GRAND CANYON NATIONAL PARK

Notice of Intention To Extend Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contract with Emery C. Kolb, authorizing him to provide concession facilities and services for the public at Grand Canyon National Park, Ariz., for a period of one (1) year from January 1, 1971, through December 31, 1971.

The foregoing concessioner has performed its obligations under the expiring contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief, Office of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: November 5, 1970.

THOMAS FLYNN,
Acting Director,
National Park Service.

[F.R. Doc. 70-15446; Filed, Nov. 17, 1970; 8:46 a.m.]

Office of the Secretary

H. J. PECKHEISER

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 15, 1970.

Dated: October 26, 1970.

H. J. PECKHEISER.

[F.R. Doc. 70-15468; Filed, Nov. 17, 1970; 8:48 a.m.]

WATCHES AND WATCH MOVEMENTS

Rules for Allocation of Quotas for Calendar Year 1971 Among Producers Located in the Virgin Islands and Guam

CROSS REFERENCE: For a document issued jointly by the Department of Commerce and the Department of the Interior regarding rules for allocation of quotas of watches and watch movements for the calendar year 1971 among producers located in the Virgin Islands and Guam, see F.R. Doc. 70-15596, Department of Commerce, *infra*.

DEPARTMENT OF COMMERCE

Maritime Administration

AMERICAN PRESIDENT LINES, LTD.

Notice of Application for Approval of Certain Cruises

Notice is hereby given that American President Lines, Ltd., has applied for approval, pursuant to section 613 of the Merchant Marine Act, 1936, as amended, of the following cruises with the "SS President Wilson":

Approximate Cruise Dates	*Itinerary*
Dec. 14, 1971–Dec. 28, 1971.	San Francisco, Los Angeles, Honolulu, Nawiliwili, Lahaina, Hilo, San Francisco.
Dec. 29, 1971–Jan. 10, 1972.	San Francisco, Los Angeles, Honolulu, San Francisco.
Jan. 11, 1972–Mar. 20, 1972.	San Francisco, Los Angeles, Papeete, Pago Pago, Suva, Auckland, Sydney, Port Moresby, Bali, Singapore, Bangkok, Hong Kong, San Fernando, Manila, Yap, Honolulu, San Francisco.

Any person, firm or corporation having any interest within the meaning of section 613 of the Merchant Marine Act, 1936, as amended, in the foregoing who desires to offer data, views, or arguments, should submit the same in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20235, by close of business on November 30, 1970.

In the event an opportunity to present oral argument is also desired, specific reason for such request should be included. The Maritime Subsidy Board will consider these comments and views and take such action with respect thereto as in its discretion it deems warranted.

Dated: November 13, 1970.

By order of the Maritime Subsidy Board/Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-15512; Filed, Nov. 17, 1970; 8:51 a.m.]

WAR RISK INSURANCE

Binders After September 7, 1970

In F.R. Doc. 70-11535 appearing in the FEDERAL REGISTER issue of August 29, 1970

(35 F.R. 13802), notice (herein called "Original Notice") was given regarding the status of outstanding binders.

Title XII, War Risk Insurance, of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1281–1293) expired on September 7, 1970, and was reinstated effective October 21, 1970, for a period which expires September 7, 1975, by operation of section 34 of Public Law 91–469, approved October 21, 1970.

Therefore, notice is hereby given that effective as of 4 p.m. October 21, 1970, G.m.t. (noon, e.d.s.t.), all interim binders in effect on September 7, 1970, as amended by the original notice were reinstated and made effective.

Notice is also given that said binders as amended by the original notice, are hereby further amended by deleting the paragraph reading:

> This binder shall automatically expire at midnight, December 7, 1970, G.m.t. unless insurance hereunder has attached prior to that date.

and inserting in lieu thereof the following:

> This binder shall automatically expire at midnight, February 7, 1971, G.m.t. unless insurance hereunder has attached prior to that date.

By order of the Maritime Administrator.

Dated: November 10, 1970.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70–15511; Filed, Nov. 17, 1970; 8:51 a.m.]

National Oceanic and Atmospheric Administration

LOANS TO COMMERCIAL FISHERMEN

Intent To Request Proposals for Master Hull Policies

NOVEMBER 12, 1970.

Under the terms of the mortgages utilized in connection with loans to commercial fishermen authorized in section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742c) and Reorganization Plan No. 4 of 1970 (35 F.R. 15627), a mortgagor is required to obtain, among other things, hull insurance satisfactory to the Secretary of Commerce. Some of the basic requirements as respects the hull insurance coverage are that (a) the United States of America be the sole loss payee; (b) the vessel be insured for its full commercial value but in no event less than 110 percent of the outstanding balance of the note secured by the mortgage; and (c) the policy contain satisfactory Inchmaree and Breach of Warranty Clauses. In the past, as a service to our borrowers and to potential borrowers, the interested public was notified that the Commercial Fishermen's Inter-Insurance Exchange had a Master Hull Policy which, both in form and substance, met the requirements of our mortgage. This notice was merely informational and did not require the utilization of said Master Hull Policy. This Master Hull Policy expires on January 1, 1971.

The National Marine Fisheries Service in fulfilling its obligations under the Fish and Wildlife Act of 1956, as amended, and Reorganization Plan No. 4 of 1970, desires to again notify the interested public of the existence of any Master Hull Policies which may be available to commercial fishing vessel owners or operators whose vessels serve as collateral for fisheries loans. The name of any qualifying insurance company submitting a Master Hull Policy, found acceptable for use in connection with the National Marine Fisheries Service lending program, will be placed in an informational release along with the applicable premium charges. While this release will be distributed to the interested public there will be no compulsion that a borrower utilize any Master Hull Policy listed in such release.

Notice is hereby given of the intent to issue a request for such proposals. Interested persons may submit written comments, suggestions or objections with respect to this request for proposals to the Director, National Marine Fisheries Service, Department of Commerce, Interior Building, Washington, D.C. 20235, by December 15, 1970.

PHILIP M. ROEDEL,
Director.

[F.R. Doc. 70–15445; Filed, Nov. 17, 1970; 8:46 a.m.]

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Rules for Allocation of Quotas for Calender Year 1971 Among Producers Located in the Virgin Islands and Guam

On August 8, 1970, the Departments of Commerce and the Interior published a joint notice of proposed rule making under Public Law 89–805, setting out the proposed formula for allocation of 1971 watch quotas among producers located in the Virgin Islands and Guam (35 F.R. 12677). Interested parties were invited to participate in the proposed rule making by submitting their written views within 30 days from the filing date of the notice of proposed rule making with the FEDERAL REGISTER.

The Departments have reviewed carefully the comments received and have concluded that the proposed rules should not be changed or modified in substance. Accordingly, the following rules shall be effective as of the date of filing with the FEDERAL REGISTER.

SECTION 1. Upon effective date of these rules, or as soon thereafter as practicable, each watch producer located in the Virgin Islands and Guam which received a duty-free watch quota allocation for calendar year 1970, will receive an initial quota allocation for calendar year 1971 equal to 50 percent of the number of watch units assembled by such firm in the particular territory and entered duty-free into the customs territory of the United States during the first 10 months of calendar year 1970, or 5,000 units, whichever is greater.

SEC. 2. Each firm to which an initial quota has been allocated pursuant to section 1 hereof must, on or before April 1, 1971, have assembled and entered duty-free into the customs territory of the United States at least 30 percent of its initial quota allocation. Any firm failing to enter duty-free into the customs territory of the United States on or before April 1, 1971, a number of watch units assembled by it in a particular territory equal to, or greater than, 30 percent of the number of units initially allocated to such firm for duty-free entry from that territory will, upon receipt of a show cause order from the Departments, be given an opportunity, within 30 days from such receipt, to show cause why the duty-free quota which it would otherwise be entitled to receive should not be canceled or reduced by the Departments. Such a show cause order may also be issued whenever there is reason to believe that shipments through December 31, 1971, by any firm under the quota allocated to it for calendar year 1971 will be less than 90 percent of the number of units allocated to it. Upon failure of any such firm to show good cause, deemed satisfactory by the Departments, why the remaining, unused portion of the quota to which it would otherwise be entitled should not be canceled or reduced, said remaining, unused portion of its quota shall be either canceled or reduced, whichever is appropriate under the show cause order. In the event of a quota cancellation or reduction under this section, the Departments will promptly reallocate the quota involved, in a manner best suited to contribute to the economy of the territories, among the remaining firms: *Provided however*, That if in the judgment of the Departments it is appropriate, competitive bids from new firms may, in lieu of such reallocation, be invited for any part or all of any unused portions of quotas remaining unallocated as a result of cancellation or reduction hereunder. Every firm to which a quota is granted is required to file a report on April 15, July 15, and on October 15, of each year covering the periods January 1 to March 31, April 1 to June 30, and July 1 to September 30, respectively, via registered mail on Form BDSAF–844, copies of which will be forwarded to each firm at its territorial address of record at least 15 days prior to the required reporting date. Copies of this form may also be obtained from the Scientific and Business Equipment Division, Bureau of Domestic Commerce, U.S. Department of Commerce, Washington, D.C. 20230. Form BDSAF–844 will provide the Departments with information regarding the firm's watch movement assembly operation in the insular possessions. Such information may include the status of beginning and ending finished watch movement and component parts inventories, scheduled delivery dates and number of watch movement parts and components ordered, number of watch movements assembled, number of watch

movements entered into the customs territory of the United States, and a list of confirmed orders for shipment of finished watch movements into the customs territory of the United States prior to December 31, 1971. Each firm to which a quota is granted will also report on Form BDSAF-844 any change in ownership and control of the firm which has occurred subsequent to the filing of an application for a watch quota on Form BDSAF-764 (see section 8, below).

SEC. 3. (Virgin Islands only.) The annual quotas for calendar year 1971 for the Virgin Islands will be allocated as soon as practicable after April 1, 1971, on the basis of (1) the number of units assembled by each firm in the territory and entered by it duty-free into the customs territory of the United States during calendar year 1970, (2) the total dollar amount of wages subject to FICA taxes paid by such firm in the territory during calendar year 1970 to persons whose pay was attributable to its Headnote 3(a) watch assembly operation, and (3) the total combined net dollar amount of income taxes, gross receipts taxes, trade and excise taxes and customs duties (on imports into the territory of watch parts and watch components, attributable to its Headnote 3(a) watch assembly operation) applicable to its calendar year 1970 Headnote 3(a) watch assembly operation, irrespective of whether such taxes are partially or fully exempt by the territorial government. In making allocations under this formula, an equal weight of 40 percent will be assigned to production and shipment history and to wages subject to FICA taxes, and a weight of 20 percent will be assigned to the combined net dollar amount of the four above stated taxes applicable to calendar year 1970 Headnote 3(a) watch assembly operations. The addition to the allocation formula for calendar year 1971 of 20 percent for the specified taxes is expected to distribute the available quota among watch assembly firms on a basis which more adequately reflects their respective contributions to the economic development of the territory.

SEC. 4. (Virgin Islands only.) In the determination of watch quota allocations for calendar year 1971, the Departments propose to take into account and make appropriate adjustments for any new entrant or entrants to whom a watch quota allocation was made during calendar year 1970 pursuant to section 4 of the Rules for Allocation of Watch Quotas for Calendar Year 1970 (35 F.R. 603-605, Jan. 16, 1970), and who would not have a full year's operation as a basis for computation of a quota for calendar year 1971.

SEC. 5. (Guam only.) The annual quotas for calendar year 1971 for Guam will be allocated as soon as practicable after April 1, 1971, on the basis of the number of units assembled by each firm in the territory and entered by it duty-free into the customs territory of the United States during calendar year 1970, and the total dollar amount of wages subject to FICA taxes paid by such firm in the territory during calendar year 1970 to persons whose pay was attributable to its Headnote 3(a) watch assembly operation. In making allocations under this formula, equal weight will be assigned to production and shipment history and to wages subject to FICA taxes.

SEC. 6. For purposes of allocating watch quotas for calendar year 1971 under sections 3, 4, and 5 above, any watches or watch movements shipped from the Virgin Islands or Guam during calendar year 1970 for duty-free entry into the customs territory of the United States against a firm's 1970 watch quota, and which were lost prior to admission into the customs territory of the United States, shall nevertheless be considered as having been entered into the customs territory for purposes of quota fulfillment: *Provided*, That the Departments have been satisfied that shipment was in fact made but lost prior to admission into the customs territory.

SEC. 7. Application forms will be mailed to recipients of initial quota allocations as soon as practicable and must be filed with the Departments on or before January 31, 1971. All data required must be supplied as a condition for annual allocations and are subject to verification by the Departments. In order to accomplish this verification it will be necessary for representatives of the Departments to meet with appropriate officials of quota recipients in the insular possessions in order to have access to company records. Representatives of the Departments plan to perform this verification beginning on or about February 15, 1971, in Guam and beginning on or about March 1, 1971, in the Virgin Islands, and will contact each firm locally regarding the verification of its data.

SEC. 8. The rules restricting transfers of duty-free quotas issued on January 29, 1968, and published in the FEDERAL REGISTER on January 31, 1968 (33 F.R. 2399), are hereby incorporated by reference as applicable to transfers of quotas issued during calendar year 1971 except that detailed reporting of ownership and control will be reported on an annual basis on Form BDSAF-764 at the time the firm applies for an annual duty-free watch quota for calendar year 1971. Subsequent change in ownership and control will be reported on April 15, July 15, and October 15, 1971, on Form BDSAF-844, required in section 2 above.

Any interested party has the right to petition for the amendment or repeal of the foregoing rules and may seek relief from the application of any of their provisions upon a showing of good cause under the procedures relating to reviews by the Secretaries of Commerce and the Interior which were published in the FEDERAL REGISTER on November 17, 1967 (32 F.R. 15818).

Dated: November 16, 1970.

WALTER A. HAMILTON,
Deputy Assistant Secretary, Department of Commerce.

HARRISON LOESCH,
Assistant Secretary for Public Land Management, Department of the Interior.

[F.R. Doc. 70-15596; Filed, Nov. 17, 1970; 8:52 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA-Petitions-Nos. 17 and 19]

AMERICAN SHORT LINE RAILROAD ASSOCIATION ET AL.

Petition for Exemption From Hours of Service Requirements

Petition of the American Short Line Railroad Association et al., for exemption from the hours of service requirements in Public Law 91-169.

The hearing in this proceeding which was set for November 23, 1970 by notices served October 8, 1970, and November 2, 1970 is hereby postponed.

The hearing will now be held on December 1, 1970, at 9:30 a.m., e.s.t., in conference room 4432, Nassif Building, 400 Seventh Street SW., Washington, D.C.

Issued this 12th day of November 1970 in Washington, D.C.

ROBERT R. BOYD,
Director, Office of Hearings and Proceedings, and Hearing Examiner.

[F.R. Doc. 70-15469; Filed, Nov. 17, 1970; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

CONFORMITY OF PUBLIC ASSISTANCE PLAN OF STATE OF CONNECTICUT WITH SOCIAL SECURITY ACT

Notice of Hearing

Notice is hereby given that the place for the resumption of the hearing for the Connecticut State Welfare Department set forth in the notice of hearing published in the FEDERAL REGISTER, October 7, 1970 (35 F.R. 15773), has been changed to New England Life Hall, 225 Clarendon Street, Boston, Mass.

Dated: November 16, 1970.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

[F.R. Doc. 70-15604; Filed, Nov. 17, 1970; 9:37 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

WHEAT

Notice of Postponement of Marketing Quota Referendum for 1971 Crop

Notice of a marketing quota referendum for the 1971 crop of wheat to be

held during the period October 12 to 15, 1970, each inclusive, was given in the FEDERAL REGISTER of October 3, 1970 (35 F.R. 15452). By legislation enacted October 14, 1970 (Public Law 91-455), the time for conducting the marketing quota referendum on the 1971 crop of wheat was extended to not later than 30 days after adjournment sine die of the second session of the 91st Congress. Pursuant to said legislation, the referendum is postponed to such later period or date as may hereafter be designated.

Signed at Washington, D.C., November 10, 1970.

CLIFFORD M. HARDIN,
Secretary.

[F.R. Doc. 70-15464; Filed, Nov. 17, 1970; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-238]

MARITIME ADMINISTRATION AND FIRST ATOMIC SHIP TRANSPORT INC.

Notice of Issuance of Amendment Transferring Facility License

The Atomic Energy Commission (the Commission) has issued Amendment No. 7 to Facility License No. NS-1. The license presently authorizes First Atomic Ship Transport Inc. (FAST) to operate the pressurized water nuclear reactor facility aboard the Nuclear Ship "Savannah" (the "Savannah") at steady-state power levels up to a maximum of 80 thermal megawatts under a Bareboat Charter Agreement with the Maritime Administration (MARAD), the owner of the ship. By application of September 4, 1970, as supplemented September 18 and October 20, 1970, MARAD sought the transfer of the license from FAST to MARAD and the extension of the license for a period of 15 years. MARAD proposes to use substantially the same operating staff responsible for the facility while operated by FAST, and to execute a Service Agreement with American Export Isbrandtsen Lines for operation of the facility. The only change in staffing proposed is the substitution of MARAD shore staff for the FAST shore staff.

The Commission has found that:

a. MARAD is qualified to be the holder of the license;

b. The transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto; and

c. Prior public notice of proposed issuance of this license amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license, as amended, does not involve significant hazards considerations different from those previously evaluated.

The Commission has also made the additional findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment transferring and extending the license will not be inimical to the common defense and security or to the health and safety of the public.

This amendment for transfer of Facility License No. NS-1 is effective as of the date of issuance, and FAST's interest in the license is considered terminated.

Within fifteen (15) days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) MARAD's application for license transfer and extension dated September 4, 1970, and supplements thereto dated September 18 and October 20, 1970, (2) the amendment to the facility license with revised Technical Specifications, and (3) the related Safety Evaluation by the Division of Reactor Licensing, which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Copies of items (2) and (3) above may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 9th day of November 1970.

For the Atomic Energy Commission.

FRANK SCHROEDER,
Acting Director,
Division of Reactor Licensing.

[F.R. Doc. 70-15447; Filed, Nov. 17, 1970; 8:46 a.m.]

[Dockets Nos. 50-338, 50-339]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Availability of Detailed Statement on Environmental Considerations

Pursuant to the National Environmental Policy Act of 1969 and to the Atomic Energy Commission's regulations in 10 CFR Part 50, notice is hereby given that a document entitled "Detailed Statement on the Environmental Considerations by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Related to the Proposed Construction of North Anna Power Station, Units 1 and 2 by Virginia Electric and Power Co.," is being placed in the following locations where it will be available for inspection by members of the public: The Commission's Public Document Room, 1717 H Street NW., Washington, D.C., the Office of the Chairman of the Board of Supervisors, Louisa County Courthouse, Louisa, Va., and the Office of the Clerk of Court, Orange County Courthouse, Orange, Va.

A public hearing on the application of Virginia Electric and Power Co. for construction permits for North Anna Power Station, Units 1 and 2, is scheduled to begin on November 23, 1970, in Louisa, Va.

Copies of (1) Virginia Electric and Power Co's. letter, dated June 17, 1970, with environmental information, and (2) comments received from Federal agencies, along with the applicant's response to these comments, which are contained in Virginia Electric and Power Co's. letter, dated September 29, 1970, also are available at the above location. The response from the State of Virginia is appended to the statement. Single copies of the statement and items (1) and (2) above may be obtained by writing to the Director, Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 16th day of November 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 70-15340; Filed, Nov. 17, 1970; 8:52 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 21866; Order 70-11-45]

ALLEGHENY AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of November 1970.

Proposals to specifically publish family fares, children's fares, and clergy fares by Allegheny Airlines, Inc., Docket 21866.

By tariff revisions marked to become effective November 15, 1970,[1] and December 1, 1970,[2] Allegheny Airlines, Inc. (Allegheny), proposes to specifically publish family fares, children's fares, and clergy fares. Presently these fares are stated by rule as a percentage of the applicable full adult regular fare.

Upon consideration of the tariff filings and all other relevant matters, the Board has determined that the proposals may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be suspended. These tariff proposals are automatically under investigation in the Domestic Passenger Fare Investigation, Docket 21866. This action is consistent with the Board's decision in Order 70-10-145 dated October 30, 1970, in which the Board suspended family fares and children's fares which were constructed on the same basis Allegheny here proposes.

[1] Revisions to Allegheny's Tariff CAB No. 23.

[2] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB Nos. 136 and 142.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204, 403, 404, and 1002 thereof:

It is ordered, That:

1. Pending hearing and decision by the Board, the fares and provisions described in Appendix A hereto[3] are suspended and their use deferred to and including February 12, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board; and

2. A copy of this order will be filed with the aforesaid tariffs and be served on Allegheny Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-15505; Filed, Nov. 17, 1970; 8:50 a.m.]

[Docket No. 22572]

GERMANAIR BEDARFSLUFTFAHRT GESELLSCHAFT m.b.H & CO. KG

Notice of Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding now assigned to be held on December 1, 1970, is hereby postponed to December 22, 1970, at 10 a.m., e.s.t., in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C. before the undersigned examiner.

Dated at Washington, D.C., November 13, 1970.

[SEAL] EDWARD T. STODOLA,
Hearing Examiner.

[F.R. Doc. 70-15504; Filed, Nov. 17, 1970; 8:50 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Title Change in Noncareer Executive Assignment

By notice of May 3, 1969, F.R. Doc. 69-5358, the Civil Service Commission authorized the Department of Commerce to fill by noncareer executive assignment the position of Deputy Assistant Secretary for International Trade and Financial Policy, in the Office of the Assistant Secretary for Domestic and International Business. This is notice that the title of this position is now being changed to Deputy Assistant Secretary for International Economic Policy.

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

[F.R. Doc. 70-15514; Filed, Nov. 17, 1970; 8:51 a.m.]

DEPARTMENT OF JUSTICE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of civil service rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Deputy Director, Community Relations Service.

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

[F.R. Doc. 70-15515; Filed, Nov. 17, 1970; 8:51 a.m.]

DEPARTMENT OF JUSTICE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Associate Director for Program Planning and Policy, Community Relations Service.

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

[F.R. Doc. 70-15516; Filed, Nov. 17, 1970; 8:51 a.m.]

OFFICE OF ECONOMIC OPPORTUNITY

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Director, Economic Development Division, Office of Program Development.

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

[F.R. Doc. 70-15517; Filed, Nov. 17, 1970; 8:51 a.m.]

PHYSICIAN ASSISTANT, VA HOSPITAL, MUSKOGEE, ALA.

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage on September 11, 1970, for two positions of Physician Assistant, GS-603-7, Veterans Administration Hospital, Muskogee, Ala. The finding is self-canceling when these two positions are filled.

Assuming other legal requirements are met, appointees to these two positions may be paid for the expense of travel and transportation to first post of duty.

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

[F.R. Doc. 70-15513; Filed, Nov. 17, 1970; 8:51 a.m.]

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order 739]

CERTAIN OFFICERS

Authority and Order of Precedence To Act as Deputy Governor and Director of Production Credit Service

NOVEMBER 12, 1970.

1. In the event that the Deputy Governor and Director of Production Credit Service, Farm Credit Administration, is absent or is not able to perform the duties of his office for any reason, the officer who is the highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Deputy Governor and Director of Production Credit Service:

(1) Julius H. Porter, Assistant Director, Production Credit Service.

(2) Lee R. Brobst, Assistant Director, Production Credit Service.

(3) John F. Hudson, Jr., Chief, Fiscal and Operations Division, Production Credit Service.

2. This order shall be and become effective on the date above written and supersedes Farm Credit Administration Order No. 736 (35 F.R. 12299).

E. A. JAENKE,
Governor,
Farm Credit Administration.

[F.R. Doc. 70-15454; Filed, Nov. 17, 1970; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

AMERICAN BANK AND TRUST CO.

Order Approving Application for Approval of Consolidation of Banks

There has come before the Board of Governors, pursuant to the Bank Merger

[3] Filed as part of the original document.
[4] Dissenting statement of Vice Chairman Gilliland filed as part of the original document.

Act (12 U.S.C. 1828(c)), an application by American Bank and Trust Co., Lansing, Mich., a State member bank of the Federal Reserve System, for the Board's prior approval of the consolidation of that bank with The National Bank of Eaton Rapids, Eaton Rapids, Mich. Notice of the proposed consolidation, in form approved by the Board, has been published pursuant to said Act.

Upon consideration of all relevant material in the record, including reports received pursuant to the Act on the competitive factors involved in the proposed consolidation, in the light of the factors set forth in said Act,

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved: *Provided*, That said consolidation shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,[2] November 9, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-15467; Filed, Nov. 17, 1970; 8:47 a.m.]

FEDERAL OPEN MARKET COMMITTEE

Current Economic Policy Directive

In accordance with § 271.5 of its Rules Regarding Availability of Information, there is set forth below the Committee's Current Economic Policy Directive issued at its meeting held on August 18, 1970.[3]

The information reviewed at this meeting suggests that real economic activity, which edged up slightly in the second quarter after declining appreciably earlier in the year, may be expanding somewhat further. Prices and wage rates generally are continuing to rise at a rapid pace. However, improvements in productivity appear to be slowing the rise in costs, and some major price measures are showing moderating tendencies. Credit demands in securities markets have continued heavy, and interest rates have shown mixed changes since mid-July after declining considerably in preceding weeks. Some uncertainties persist in financial markets, particularly in connection with market instruments of less than prime grade. In July the money supply rose moderately on average and bank credit expanded substantially. Banks increased holdings of securities and loans to finance companies, some of which were experiencing difficulty in refinancing maturing commercial paper. Banks sharply expanded their outstanding large-denomination CD's of short maturity, for which rate ceilings had been suspended in late June, and both banks and nonbank thrift institutions experienced large net inflows of consumer-type time and savings funds. The overall balance of payments remained in heavy deficit in the second quarter, despite a sizable increase in the export surplus. In July the official settlements deficit continued large, but there apparently was a marked shrinkage in the liquidity deficit. In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions conductive to orderly reduction in the rate of inflation, while encouraging the resumption of sustainable economic growth and the attainment of reasonable equilibrium in the country's balance of payments.

To implement this policy, the Committee seeks to promote some easing of conditions in credit markets and somewhat greater growth in money over the months ahead than occurred in the second quarter, while taking account of possible liquidity problems and allowing bank credit growth to reflect any continued shift of credit flows from market to banking channels. System open market operations until the next meeting of the Committee shall be conducted with a view to maintaining bank reserves and money market conditions consistent with that objective, taking account of the effects of other monetary policy actions.

By order of the Federal Open Market Committee, November 9, 1970.

ARTHUR L. BROIDA,
Deputy Secretary.

[F.R. Doc. 70-15448; Filed, Nov. 17, 1970; 8:46 a.m.]

LONG ISLAND TRUST CO.

Order Approving Merger of Banks

In the matter of the application of Long Island Trust Co., Garden City, N.Y., for approval of merger with Seaside Bank, Westhampton Beach, N.Y.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Long Island Trust Co., Garden City, N.Y. (Long Island Trust), a State member bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank and Seaside Bank, Westhampton Beach, N.Y., under the charter and name of Long Island Trust. As an incident to the merger, the sole office of Seaside Bank would become a branch of the resulting bank. Notice of the proposed merger, in form approved by the Board, has been published pursuant to said Act.

In accordance with the Act, the Board requested reports on the competitive factors involved from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act, including the effect of the proposal on competition, the financial and managerial resources and prospects of the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Long Island Trust, with deposits of $242 million, is the second largest of 11 banks headquartered in Nassau County, where it operates 13 branch offices; its remaining seven offices are situated in Suffolk County. (All banking data are as of June 30, 1970.) Seaside Bank, deposits $11 million, operates its only office in Westhampton Beach, Suffolk County. In terms of deposits held, it ranks 15th of 16 banks located in the county. The closest offices of Long Island Trust and Seaside Bank are about 30 miles apart, and there is no significant competition existing between them. It appears that no substantial amount of potential competition would be foreclosed by the merger, because of the size of Seaside Bank and due to the restrictions placed on branching by State laws. Consummation of the proposed transaction would not result in concentration levels being significantly increased on a local or statewide basis.

Based upon all the facts revealed in the record, the Board concludes that the merger would not have an adverse effect on competition in any relevant area. Consummation of the merger would provide customers of Seaside Bank with more convenient access to certain banking services, which are now available to them only from banks located several miles from Westhampton Beach; these considerations lend weight toward approval of the transaction. Considerations relating to the financial condition, management and prospects of Long Island Trust, Seaside Bank, and the resulting Bank are consistent with approval of the application. It is the Board's judgment that consummation of the proposal would be in the public interest, and that the action should be approved.

It is hereby ordered, On the basis of the findings summarized above, that said application be and hereby is approved: *Provided*, That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[1] November 12, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-15466; Filed, Nov. 17, 1970; 8:47 a.m.]

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[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Chicago. Dissenting Statement of Governors Robertson, Maisel, and Brimmer filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, and Sherrill. Voting against this action: Governors Robertson, Maisel, and Brimmer.

[3] The Record of Policy Actions of the Committee for the meeting of Aug. 18, 1970, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Maisel, Brimmer, and Sherrill. Absent and not voting: Governors Robertson and Daane.

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 80]

HOMESTEAD FINANCIAL CORP.

Notice of Receipt of Application for Permission To Retain Control of Homestead Savings and Loan Association

NOVEMBER 13, 1970.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from the Homestead Financial Corp., San Francisco, Calif., for approval of retention of control of the Homestead Savings and Loan Association, San Francisco, Calif., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies. Said control was acquired by the exchange of all of the outstanding shares of the guarantee stock of Homestead Savings and Loan Association for shares of the common stock of Homestead Financial Corp. Comments on the application should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] JACK CARTER,
Secretary,
Federal Home Loan Bank Board.

[F.R. Doc. 70-15509; Filed, Nov. 17, 1970; 8:51 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[Files Nos. 7-3536—7-3543]

ABBOTT LABORATORIES ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Abbott Laboratories	7-3536
Bankers Trust New York Corp	7-3537
The Bank of New York Co., Inc.	7-3538
Central Illinois Light Co	7-3539
Central Illinois Public Service Co.	7-3540
Charter New York Corp	7-3541
Chemical New York Corp	7-3542
C.N.A. Financial corp	7-3543

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-15481; Filed, Nov. 17, 1970; 8:49 a.m.]

[Files Nos. 7-3554—7-3562]

AUSTRAL OIL CO., INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of applications of the Philadelphia - Baltimore - Washington Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Austral Oil Co., Inc.	7-3554
Cablecom-General, Inc.	7-3555
Dome Petroleum, Ltd.	7-3556
Nortek, Inc.	7-3557
Rollins International, Inc.	7-3559
Spencer Shoe Corp.	7-3561
Vernitron Corp.	7-3562

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-15488; Filed, Nov. 17, 1970; 8:49 a.m.]

[70-4944]

CENTRAL AND SOUTH WEST CORP. AND SOUTHWESTERN ELECTRIC POWER CO.

Notice of Proposed Issue and Sale of Common Stock to Holding Company

NOVEMBER 12, 1970.

Notice is hereby given that Central and South West Corp. (Central), 800 Delaware Avenue, Wilmington, Del. 19899, a registered holding company, and one of its subsidiary companies, Southwestern Electric Power Co. (Southwestern), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, and 12(f) of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Southwestern proposes to issue and sell 285,715 shares of its authorized but unissued common stock, $14 par value per share, to Central prior to December 15, 1970, and Central proposes to acquire, for $4,000,010, the aggregate par value thereof, such shares of common stock.

The application-declaration states that the proceeds from the sale of common stock will be used by Southwestern to pay for additions or improvements to its electric utility system. The estimated construction expenditures of Southwestern for 1971 are $42 million.

The fees and expenses in connection with the proposed transactions are estimated at $200. In addition, counsel for the company estimate that $500 of their annual retainer is allocable to the proposed transactions. It is stated that 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 8, 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 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 the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be 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.

NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 70-15494; Filed, Nov. 17, 1970; 8:49 a.m.]

[70-4941]

COLUMBIA GAS SYSTEM SERVICE CORP. AND COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Charter Amendment and Issuance and Sale of Common Stock and Installment Notes by Subsidiary Service Company to Holding Company

NOVEMBER 10, 1970.

Notice is hereby given that The Columbia Gas System, Inc. (Columbia), a registered holding company, and its wholly owned subsidiary service company, Columbia Gas System Service Corp. (Service), 20 Montchanin Road, Wilmington, Del. 19807, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, and 13 of the Act as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Service proposes to issue and sell to Columbia a maximum of 10,000 shares of its common stock, $100 par value, at an aggregate of $1 million and a maximum aggregate amount of $2,500,000 principal amount of installment promissory notes. The notes are to be issued in the years 1970 through 1974 and will be unsecured. The notes will be dated the date of their issue and will be payable in 25 equal annual installments beginning May 31, 1972, through 1996. The interest rate on each of such notes shall be the actual cost of money with respect to Columbia's then most recent sales of debentures, decreased by the amount necessary in order that the interest rate be a multiple of one-tenth of 1 percent. In connection with the issuance of the common stock, Service proposes to amend its certificate of incorporation to increase the number of authorized shares of its common stock to 48,000 from the presently authorized 38,000 shares.

The proceeds of the proposed common stock and notes aggregating $3,500,000 will be applied by Service to the reduction of overhead clearing accounts in the amount of $231,000, towards payment of construction requirements estimated at $1,840,000 during 1970-71, towards meeting current maturities on installment promissory notes of $377,000 during 1970-71, and for providing additional working capital for the years 1970-74 in the amount of $1,600,000.

It is stated that the fees and expenses to be incurred in connection with the proposed transactions are estimated at $1,025 for Service and $75 for Columbia. It is further stated that 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 November 25, 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 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 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 declaration, as filed or as it may be amended, may be 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. 70-15476; Filed, Nov. 17, 1970; 8:48 a.m.]

[File No. 1-3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

NOVEMBER 10, 1970.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange, is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period November 12, 1970, through November 21, 1970, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-15489; Filed, Nov. 17, 1970; 8:49 a.m.]

[File No. 24D-2859]

DELTA PACIFIC CORP.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor and Notice of Opportunity for Hearing

NOVEMBER 10, 1970.

I. Delta Pacific Corp. (issuer), 325 South Third Street, Las Vegas, Nev., a Nevada corporation with offices located at Las Vegas, Nev., filed with this Commission on May 23, 1969, a notification on Form 1-A and an offering circular relating to a proposed offering of 300,000 for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof, and Regulation A promulgated thereunder. The offering commenced on November 4, 1969, with officers and directors of the issuer acting as underwriters. Subsequently, the notification and offering circular was amended and Wanderon & Co., Inc. (underwriter), Jersey City, N.J., was designated as underwriter for the issue and would receive 15-percent commission. The offering was recommenced on February 23, 1970.

II. The Commission has reasonable cause to believe from information reported to it by the staff that:

A. The terms and conditions of Regulation A have not been complied with, in that:

1. Issuer failed to disclose under Item 3 (a) and (b) of Form 1-A a change in officers and directors of the issuer during June and July 1970.

2. Issuer failed to disclose under Item 10 of Form 1-A other present or proposed offerings by the issuer in that

during late April 1970 a note of the company was executed and shares of the issuer were sold in the acquisition of other companies.

3. The aggregate offering price of $300,000 under Regulation A was exceeded as a result of transactions referred to in 2. above.

4. The offering circular after April 15, 1970, failed to include proper financial statements as required by Item 11 of Schedule I.

5. The offering circular after April 15, 1970, failed accurately to state the use to which proceeds of the offering were to be applied as required by Item 6(a) of Schedule I.

6. The offering circular after June 1, 1970, failed accurately to state names and addresses of officers and directors of issuer as required by Item 9 of Schedule I.

7. The offering circular after April 15, 1970, failed to disclose with respect to the issuer's business as required by Item 8 (b) and (c) of Schedule I.

B. The offering circular contains untrue statements of material facts and omits to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The failure to describe adequately and accurately by transactions whereby the issuer acquired a major portion of its assets, in that G. William Harrison, then president of the issuer, acquired those assets in an arm's-length transaction and thereafter assigned them to the issuer for stock, whereas the property was in fact previously owned by his mother who retained a three-sixteenth royalty interest.

2. The failure to disclose in the offering circular the fact that Mrs. Mary A. Ferris is the mother of G. William Harrison.

3. As a result of information described in paragraph 1, the offering circular fails to state that, because of a conflict of interest regarding these assets, Harrison was unable to make an independent judgment with respect to these assets.

4. The failure accurately to reflect in the offering circular subsequent to June 1, 1970, the names and addresses of the officers and directors of the issuer.

5. The failure to disclose that the underwriter had not promptly transmitted the proceeds of this offering to the issuer.

6. The failure to disclose that the underwriter has been manipulating the price of the issuer's stock by trading in the stock during the distribution of said stock.

7. The failure to disclose that on May 17, 1970, the issuer drilled a dry hole on its Louisiana lease location.

8. The failure to disclose that in late April 1970 the issuer had abandoned exploration of its copper property in Utah.

9. The failure to disclose that the issuer had acquired in April 1970 three small companies for cash, notes and stock, thereby causing the aggregate offering price under Regulation A to be exceeded.

10. Failure to disclose that Harrison, as an officer of the issuer, executed a note of $28,000 for the acquisition of another company without the approval of the issuer's board of directors.

11. Failure to disclose that an officer of the issuer attempted to create a spurious transaction of the issuer's stock to individuals known to him in order that he could announce the close-out of this offering.

12. The failure to disclose that proceeds from the offering had been and were being used for purposes other than as stated.

C. The Issuer and underwriter in the use of issuer's offering circular and in the distribution of these securities have engaged in transactions, practices and a course of business which would operate and did operate as a fraud and deceit upon purchasers of the securities in violation of sections 5 and 17(a) of the Securities Act of 1933, as amended.

III. It appearing to the Commission that it is in the public interest and for the protection of investors that the exemption of the Issuer under Regulation A be temporarily suspended:

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the Issuer under Regulation A be, and it hereby is, temporarily suspended.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that the Issuer file an answer to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within 30 days after the entry of this order; that within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless it is modified or vacated by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15490; Filed, Nov. 17, 1970; 8:49 a.m.]

[811-1155]

FLORIDA BANCGROWTH, INC.

Notice of Proposal To Terminate Registration

NOVEMBER 9, 1970.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 (Act) to declare by order upon its own motion that Florida Bancgrowth, Inc. (Bancgrowth), Post Office Box 520, 855 South Federal Highway, Boca Raton, Fla. 33432, formerly a Florida corporation registered under the Act as a management closed-end nondiversified investment company, has ceased to be an investment company.

Bancgrowth registered under the Act on March 16, 1962. A registration statement under the Securities Act on Form S-4 was made effective on February 14, 1963.

Information available to the Commission indicates that a special meeting of shareholders was held on December 21, 1967, at which time shareholders voted to merge with and into Castleton Industries, Inc. (Castleton), a Delaware corporation, primarily engaged through wholly owned subsidiaries in the business of manufacturing textiles and precision gears, food processing and land investments; that the merger became effective on December 29, 1967; that the shareholders of Bancgrowth voting in favor of the merger became shareholders of Castleton; and that Bancgrowth no longer exists as a corporate entity. In addition, none of the principals of Bancgrowth are now available for the purpose of filing an application pursuant to section 8(f) of the Act.

Section 8(f) of the Act provides, in pertinent part, that when the Commission finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 27, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Bancgrowth at the address stated above. Proof of such service (by affidavit or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date,

as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued by the Commission upon the basis of the information stated in this notice, unless an order for hearing upon this matter shall be issued upon request or upon the Commission's own motion. 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. 70-15477; Filed, Nov. 17, 1970; 8:48 a.m.]

[Files Nos. 7-3544—7-3551]

ILLINOIS POWER CO. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Illinois Power Co	7-3544
Indianapolis Power & Light Co	7-3545
Kellogg Co	7-3546
Louisville Gas and Electric Co	7-3547
Manufacturers Hanover Corp	7-3548
Northern Illinois Gas Co	7-3549
Northern Indiana Public Service Co	7-3550
Public Service Co. of Indiana	7-3551

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15482; Filed, Nov. 17, 1970; 8:49 a.m.]

[811-2057]

INSTITUTIONAL MULTI-MANAGEMENT FUND

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

NOVEMBER 9, 1970.

Notice is hereby given that Institutional Multi-Management Fund (Applicant), 3450 Wilshire Boulevard, Los Angeles, Calif. 90005, a California corporation registered as an open-end diversified management investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Applicant represents that subsequent to registering under the Act on April 10, 1970, it abandoned its proposed public offering and is presently in the process of being dissolved. Applicant's registration statement under the Securities Act of 1933 was withdrawn on November 4, 1970.

Applicant also represents that its outstanding securities are beneficially owned by William O'Neil & Co., Inc. Employees' Profit Sharing Retirement Plan, which Plan has less than 100 participants.

Section 3(c)(1) of the Act excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 27, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in the case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. 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. 70-15480; Filed, Nov. 17, 1970; 8:48 a.m.]

[File No. 7-3564]

INTERLAKE, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of application of the Pacific Coast Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Interlake, Inc., File No. 7-3564.

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information

contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15484; Filed, Nov. 17, 1970; 8:49 a.m.]

[70-4943]

LOUISIANA POWER & LIGHT CO.

Notice of Proposed Issue and Sale of Notes to Banks and to Dealer in Commercial Paper and Exception From Competitive Bidding and Transfer by Subsidiary Company of a Portion of Earned Surplus to Common Capital Stock Account

NOVEMBER 10, 1970.

Notice is hereby given that Louisiana Power & Light Co. (Louisiana), 143 Delaronde Street, New Orleans, La. 70114, an electric utility subsidiary company of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Louisiana proposes, from time to time but not later than December 31, 1972, to issue and sell short-term notes (including commercial paper), in an aggregate principal amount outstanding at any one time of not more than $40 million. Louisiana intends to utilize the proceeds of the sale of its notes for construction expenditures and other corporate expenditures. Louisiana's construction program contemplates construction expenditures of approximately $75,700,000 for 1970, $110 million for 1971, and $120 million for 1972. The proposed bank notes will bear interest at the prime commercial bank rate, in effect from time to time or as of the dates the notes are executed and will be subject to prepayment at any time without penalty. No commitments have been obtained for such bank loans, but it is expected that they will be obtained from one or more banks in New York City and Louisiana. The names of the banks will be provided by amendment.

Louisiana also proposes to issue and sell, from time to time, commercial paper in the form of short-term promissory notes to an investment banker and dealer in commercial paper to mature not later than December 31, 1972. The total amount of commercial paper and bank loans outstanding at any one time will not exceed $40 million. The commercial paper notes will be of varying maturities, with no such notes maturing more than 270 days after the date of issue. Such notes, in denominations of not less than $50,000 and not more than $1 million, will be issued and sold by Louisiana directly to the dealer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by issuers thereof to commercial paper dealers. No commercial paper notes will be issued having a maturity of more than 90 days, at an effective interest cost which exceeds that at which Louisiana could borrow from banks.

No commission or fee will be payable in connection with the issue and sale of the commercial paper notes. The dealer, as principal, will reoffer such notes at a discount of one-eighth of 1 percent per annum less than the prevailing discount rate to Louisiana. The notes will be reoffered in a manner which will not constitute a public offering to no more than 100 identified and designated customers in a list (nonpublic) prepared in advance by the dealer.

Louisiana expects to retire the bank notes and commercial paper from the net proceeds of the sale of first mortgage bonds and/or preferred stock and/or other securities prior to December 31, 1972.

Louisiana requests exception from the competitive bidding requirements of Rule 50 for the proposed issue and sale of its commercial paper pursuant to paragraph (a)(5) thereof. It is stated that it is not practical to invite competitive bids for commercial paper and that current rates for commercial paper for such prime borrowers as Louisiana are published daily in financial publications. The company further states that the proposed commercial paper notes will have a maturity of 270 days or less and generally will be sold at effective interest costs that will not exceed the effective interest cost at which the Company could borrow from banks. Louisiana also requests authority to file certificates under Rule 24 with respect to the issue and sale of commercial paper on a quarterly basis.

Louisiana also proposes to transfer $3,125,000 from its Retained Earnings Account to its Common Capital Stock Account. It is stated that the transfer will strengthen Louisiana's capital structure for the benefit of holders of all classes of its securities.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. It is also stated that the fees and expenses to be incurred in connection with the proposed transactions will not exceed $2,000.

Notice is further given that any interested person may, not later than November 30, 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 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 declarant 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 declaration, as filed or as it may be amended, may be 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. 70-15478; Filed, Nov. 17, 1970; 8:48 a.m.]

[File Nos. 7-3552, 7-3553]

MGIC INVESTMENT CORP. AND NORTHGATE EXPLORATION, LTD.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of applications of the Midwest Stock Exchange for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
MGIC Investment Corp.	7-3552
Northgate Exploration, Ltd.	7-3553

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application

will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15483; Filed, Nov. 17, 1970; 8:49 a.m.]

[812-2826]

METROPOLITAN CAPITAL CORP.

Notice of Filing of Application for Order

NOVEMBER 12, 1970.

Notice is hereby given that Metropolitan Capital Corp. (Applicant), 2550 Huntington Avenue, Alexandria, Va. 22303, a Delaware corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant, all the capital stock of which is owned by Value Engineering Co. (Engineering), was incorporated May 21, 1970, and has applied to the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended. Applicant has outstanding 155,000 shares of common stock which were issued to Engineering at a price of 2 dollars per share.

Engineering, at June 30, 1970, had outstanding 579,739 shares of common stock, which were held by approximately 1,395 shareholders of record; and total assets on a consolidated basis of approximately $3,794,000. It is engaged in mechanical, chemical, and electrical design; systems engineering and producibility studies; value analysis; nondestructive testing and evaluation; technical writing and graphic communications; management information systems development; configuration management studies; welding inspection and welder certification; quality assurance programing and software value engineering studies. A wholly owned subsidiary produces communications material ranging from graphic brochures and exhibits to electronically controlled audio-visual devices.

Engineering has considered diversification into the SBIC field as an adjunct to its present operations, which would allow it to use certain of its existing management and technical resources to assist in the infusion of venture capital into new industries.

Applicant is an "investment company" as defined in section 3(a) of the Act. Section 3(b)(3) of the Act excepts from the definition of investment company any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are owned by a company primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

Applicant represents that Engineering is primarily engaged, and intends to engage in a business other than that of investing, reinvesting, owning, holding, or trading in securities, and that Applicant would be excepted from status as an investment company, pursuant to section 3(b)(3), except for the fact that it purposes to issue debt securities, in the form of subordinated notes and debentures, to the SBA. Applicant asserts that there is no public interest in regulating Applicant under the Act solely on the basis of such debt not held by Engineering, since the SBA is in a position to protect itself with respect to such debt securities.

It is proposed that, if the requested exemption is granted, such exemption may be made subject to conditions providing that no person other than Engineering or the SBA shall at any time own any security of Applicant (other than short-term paper) and providing for the periodic filing with the Commission of certain financial and other information concerning Applicant and Engineering.

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 27, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-in-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. 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.

It is ordered, That the Secretary of the Commission shall send a copy of this notice by certified mail to the Associate Administrator for Investment, Investment Division, Small Business Administration, Washington, D.C. 20416.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 70-15495; Filed, Nov. 17, 1970; 8:49 a.m.]

[File No. 500-1]

PICTURE ISLAND COMPUTER CORP.

Order Suspending Trading

NOVEMBER 10, 1970.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Picture Island Computer Corp. (a New York corporation) and all other securities of Picture Island Computer Corp. being traded otherwise than on a national securities exchange, is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period November 12, 1970, through November 21, 1970, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15491; Filed, Nov. 17, 1970; 8:49 a.m.]

[File No. 7-3558]

PLESSEY CO., LTD.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of application of the Philadelphia - Baltimore - Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

The Plessey Co., Ltd., depositary receipts for American shares each representing 6½ of the dollar shares, 10 shillings par value, File No. 7-3558.

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application shall be set down

for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15487; Filed, Nov. 17, 1970; 8:49 a.m.]

[811-1672]

SCHOLARSHIP BONDS OF LOUISIANA, INC.

Notice of Proposal To Terminate Registration

NOVEMBER 9, 1970.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that Scholarship Bonds of Louisiana, Inc., 1626 Barrow Street, Houma, La. 70360 (Scholarship), a face-amount certificate investment company registered under the Act, has ceased to be an investment company.

On June 17, 1968, Scholarship filed a Form N-8A Notification of Registration under the Act.

Subsequent to the filing of such form, counsel for Scholarship orally informed the staff of the Division of Corporate Regulation that Scholarship does not intend to engage in any business in the future and that Scholarship has been dissolved and liquidated. Attempts to have counsel file an application pursuant to section 8(f) of the Act have failed in every respect.

Section 8(f) of the Act provides, in pertinent part, that when the Commission finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 27, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be address: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Scholarship at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued by the Commission upon its own motion on the basis of the information stated in this notice, unless an order for hearing upon this matter shall be issued upon request or upon the Commission's own motion. 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. 70-15479; Filed, Nov. 17, 1970; 8:48 a.m.]

[File No. 7-3560]

SONY CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of application of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Sony Corp., Depositary receipts for American shares each representing two shares of dollar validated common stock, 50 yen par value, File No. 7-3560.

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15486; Filed, Nov. 17, 1970; 8:49 a.m.]

[File No. 7-3563]

UAL, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

NOVEMBER 10, 1970.

In the matter of application of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the preferred stock of the following company, which, security is listed and registered on one or more other national securities exchange:

UAL, Inc., $0.40 cumulative preferred stock, Series A, no par value, File No. 7-3563.

Upon receipt of a request, on or before November 25, 1970, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 70-15485; Filed, Nov. 17, 1970; 8:49 a.m.]

DEPARTMENT OF LABOR

Office of the Secretary

CONNECTICUT

Notice of Availability of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation payable when unemployment is high (according to indicators set forth in the law) to unemployed workers who have received all of the regular compensation to which they are entitled. Pursuant to section 203(b)(2) of the Act, notice is hereby given that Renato E. Riccuiti, Commissioner of the Connecticut Labor Department, has determined that there was a State "on" indicator in Connecticut for the week beginning September 20, 1970, and that an extended benefit period began in the State with the week beginning October 11, 1970.

Signed at Washington, D.C., this 10th day of November 1970.

J. D. HODGSON,
Secretary of Labor.

[F.R. Doc. 70-15449; Filed, Nov. 17, 1970; 8:46 a.m.]

MASSACHUSETTS

Notice of Availability of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation payable when unemployment is high (according to indicators set forth in the law) to unemployed workers who have received all of the regular compensation to which they are entitled. Pursuant to section 203(b)(2) of the Act, notice is hereby given that Herman V. LaMark, Director, Division of Employment Security, Commonwealth of Massachusetts, has determined that there was a State "on" indicator in Massachusetts for the week beginning September 20, 1970, and that an extended benefit period began in the State with the week beginning October 11, 1970.

Signed at Washington, D.C., this 10th day of November 1970.

J. D. HODGSON,
Secretary of Labor.

[F.R. Doc. 70-15450; Filed, Nov. 17, 1970; 8:46 a.m.]

MICHIGAN

Notice of Availability of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation payable when unemployment is high (according to indicators set forth in the law) to unemployed workers who have received all of the regular compensation to which they are entitled. Pursuant to section 203(b)(2) of the Act, notice is hereby given that William R. Ford, Director, Michigan Employment Security Commission, has determined that there was a State "on" indicator in Michigan for the week beginning September 20, 1970, and that an extended benefit period began in the State with the week beginning October 11, 1970.

Signed at Washington, D.C., this 10th day of November 1970.

J. D. HODGSON,
Secretary of Labor.

[F.R. Doc. 70-15451; Filed, Nov. 17, 1970; 8:46 a.m.]

RHODE ISLAND

Notice of Availability of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation payable when unemployment is high (according to indicators set forth in the law) to unemployed workers who have received all of the regular compensation to which they are entitled. Pursuant to section 203(b)(2) of the Act, notice is hereby given that Mary C. Hackett, Director, Rhode Island Department of Employment Security, has determined that there was a State "on" indicator in Rhode Island for the week beginning September 20, 1970, and that an extended benefit period began in the State with the week beginning October 11, 1970.

Signed at Washington, D.C., this 10th day of November 1970.

J. D. HODGSON,
Secretary of Labor.

[F.R. Doc. 70-15452; Filed, Nov. 17, 1970; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

NOVEMBER 13, 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. 42077—*Liquid caustic soda from LeMoyne, Ala.* Filed by O. W. South, Jr., agent (No. A6207), for and on behalf of the Southern Railway Co. Rates on sodium (soda), caustic (sodium hydroxide), in tank carloads, as described in the application, from LeMoyne, Ala., to Augusta, Ga.

Grounds for relief—Market competition.

Tariff—Supplement 7 to Southern Freight Association, agent, tariff ICC S-938.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-15498; Filed, Nov. 17, 1970; 8:50 a.m.]

[Notice 28]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 13, 1970.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)), and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification, and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 567), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, Ohio 44113, filed November 3, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over deviation routes as follows: (1) From Louisville, Ky., over Interstate Highway 64 to junction U.S. Highway 60 near Duckers, Ky., with the following access routes: (a) From Frankfort, Ky., over U.S. Highway 127 to junction Interstate Highway 64; and (b) from Shelbyville, Ky., over U.S. Highway 53 to junction Interstate Highway 64; and (2) from Lexington, Ky., over Interstate Highway 64 to junction U.S. Highway 60 near Grayson, Ky., with the following access routes: (a) From Owingsville, Ky., over Kentucky Highway 36 to junction Interstate Highway 64; (b) from Mount Sterling, Ky., over Kentucky Highway 11 to junction Interstate Highway 64; and (c) from Winchester, Ky., over U.S. Highway 227 to junction Interstate Highway 64, and return over the

same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: Between Huntington, W. Va., and Henderson, Ky., over U.S. Highway 60.

No. MC 58719 (Sub-No. 1) (Deviation No. 1), INGRAM BUS LINES, INC., 313 Jordon Avenue, Tallassee, Ala. 36078, filed October 19, 1970, amended November 2, 1970. Carrier's representative: J. Douglas Harris, 409–412 Bell Building, Montgomery, Ala. 36104. Carrier proposes to operate as a *common carrier*, by motor vehicle of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Montgomery, Ala., over Interstate Highway 85 to Opelika, Ala., with the following access routes: (1) From Opelika, Ala., over U.S. Highway 280 to junction Interstate Highway 85; (2) from Opelika, Ala., over U.S. Highway 431 to junction Interstate Highway 85; (3) from the Auburn Airport, at Auburn, Ala., over East Glenn Ave., and U.S. Highway 29 to junction Interstate Highway 85; and (4) from Montgomery, Ala., over city streets to junction Interstate Highway 85, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Montgomery, Ala., over U.S. Highway 231 to Wetumpka, Ala., thence over Alabama Highway 14 to Opelika, Ala., thence over U.S. Highway 280 to Columbus, Ga., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70–15499; Filed, Nov. 17, 1970; 8:50 a.m.]

[Notice 37]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 13, 1970.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 30504 (Deviation No. 7), TUCKER FREIGHT LINES, INC., 1415 South Olive Street, South Bend, Ind. 46621, filed November 6, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highway 20 and Interstate Highway 65 over Interstate Highway 65 to Indianapolis, Ind., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From junction U.S. Highways 6 and 31 over U.S. Highway 6 to junction U.S. Highway 35, thence over U.S. Highway 35 to La Porte, Ind., thence over Indiana Highway 2 to South Bend, Ind.; (2) from Elkhart, Ind., over U.S. Highway 33 to South Bend, Ind., thence over Indiana Highway 2 to junction U.S. Highway 20, thence over U.S. Highway 20 to Chicago, Ill.; and (3) from Grand Rapids, Mich., over U.S. Highway 131 to the Michigan-Indiana State line, thence over Indiana Highway 15 to Bristol, Ind., thence over Indiana Highway 120 to Elkhart, Ind., thence over U.S. Highway 33 to South Bend, Ind., thence over U.S. Highway 31 to Indianapolis, Ind., and return over the same routes.

No. MC–42487 (Deviation No. 85), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025, filed November 3, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Flagstaff, Ariz., over Interstate Highway 40 to junction Interstate Highway 25 (U.S. Highway 85) at or near Albuquerque, N. Mex., thence over Interstate Highway 25 (U.S. Highway 85) to Denver, Colo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Salt Lake City, Utah, over U.S. Highway 91 to junction Utah Highway 15, thence over Utah Highway 15 to junction U.S. Highway 89, thence over U.S. Highway 89 to Phoenix, Ariz. (also from Salt Lake City over the above-specified route to Spanish Fork, Utah, thence over U.S. Highway 89 to Phoenix, Ariz.); (2) from Salt Lake City, Utah, over U.S. Highway 40 via Kimball Junction, Utah, to Silver Creek Junction, Utah, thence over U.S. Highway 189 via Warship and Echo, Utah, to Evanston, Wyo., thence over U.S. Highway 30S to Little America, Wyo., thence over U.S. Highway 30N to Granger, Wyo., thence return over U.S. Highway 30N to Little America, thence over U.S. Highway 30 to Rock Springs, Wyo.; (3) from Salt Lake City, Utah, over U.S. Highway 89 via Farmington and Uintah, Utah, to Ogden, Utah (also from Salt Lake City over U.S. Highway 91 via Clearfield, Utah, to Ogden); (4) from Uintah, Utah, over U.S. Highway 30S to Echo, Utah; (5) from Rawlins, Wyo., over U.S. Highway 287 to Muddy Gap, Wyo., thence over Wyoming Highway 220 to Casper, Wyo.; and (6) from Denver, Colo. over U.S. Highway 287 to Laramie, Wyo. (also from Denver over U.S. Highway 85 to Cheyenne, Wyo., thence over U.S. Highway 30 to Laramie), thence over U.S. Highway 30 to Little America, Wyo., thence over U.S. Highway 30S via Uintah, Utah, to Ogden, Utah, thence over U.S. Highway 91 to Provo, Utah (also from Denver over the above-specified route to Uintah, Utah, thence over U.S. Highway 89 to junction Alternate U.S. Highway 89, near Farmington, Utah), thence over Alternate U.S. Highway 89 to junction U.S. Highway 91, thence over U.S. Highway 91 to Provo, and return over the same routes.

No. MC 52709 (Deviation No. 25), RINGSBY TRUCK LINES, INC., 3201 Ringsby Court, Denver, Colo. 80216, filed November 2, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Chicago, Ill., and Gillette, Wyo., over Interstate Highway 90 (using U.S. Highway 16 and U.S. Highway 14 where portions of Interstate Highway 90 are not completed), for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Omaha, Nebr., over U.S. Highway 6 to junction unnumbered highway (formerly U.S. Highway 6), thence over unnumbered highway via Brooklyn, Carnforth, and Victor, Iowa, to junction U.S. Highway 6, thence over U.S. Highway 6 via Marengo, Iowa, to Moline, Ill., thence over Illinois Highway 92 to junction U.S. Highway 34, thence over U.S. Highway 34 to La Moille, Ill., thence return over U.S. Highway 34 to junction Illinois Highway 92, thence continue over U.S. Highway 34 to junction unnumbered highway (formerly U.S. Highway 34) near Earlville, Ill., thence over unnumbered highway via Earlville to junction U.S. Highway 34, thence over U.S. Highway 34 to junction unnumbered highway (formerly U.S. Highway 34) near Leland, Ill., thence over unnumbered highway via Leland to junction U.S. Highway 34, thence over U.S. Highway 34 to Chicago, Ill.; (2) from Denver, Colo., over U.S. Highway 85 to Greeley, Colo., thence over U.S. Highway 34 to Brush, Colo., thence over U.S. Highway 6 via Sterling, Colo., and Hastings, Nebr., to Omaha, Nebr.; (3) from Denver to Sterling as specified above, thence over U.S. Highway 138 to junction U.S. Highway 30, thence over U.S. Highway 30 via Grand Island, Nebr., to junction U.S. Highway 275, thence over U.S. Highway 275 to junction U.S. Highway 6, thence as specified above to Omaha, Nebr.; (4) from Ogallala, Nebr., over U.S. Highway 26 to Scottsbluff, Nebr.; (5) from Torrington, Wyo., over U.S. Highway 26 to

Scottsbluff, Nebr., thence over Nebraska Highway 29 to Gering, Nebr.; (6) from Denver, Colo., over U.S. Highway 85 to Torrington, Wyo., thence over U.S. Highway 26 to junction U.S. Highway 87; (7) from Denver, Colo., over U.S. Highway 287 (formerly U.S. Highway 87) to junction Colorado Highway 1 (formerly U.S. Highway 87), thence over Colorado Highway 1 to junction U.S. Highway 87, thence over U.S. Highway 87 via Douglas, Wyo., to Casper, Wyo.; and (8) from Denver, Colo., to Douglas, Wyo., as specified above, thence over Wyoming Highway 59 (formerly Wyoming Highway 87) to junction unnumbered highway, thence over unnumbered highway via Verse and Hilight, Wyo., to junction Wyoming Highway 59 (formerly Wyoming Highway 87), thence over Wyoming Highway 59 to Gillette, Wyo., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-15500; Filed, Nov. 17, 1970; 8:50 a.m.]

[Notice 104]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 13, 1970.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 134206 (Sub-No. 2) (Republication), filed January 16, 1970, published in the FEDERAL REGISTER issue of February 12, 1970, and republished this issue. Applicant: F & K MILK SERVICE, INC., Post Office Box 67, Union Grove, Wis. 53182. Applicant's representative: Rolfe E. Hanson, 121 West Doty Street, Madison, Wis. 53703. The modified procedure has been followed in this proceeding and a report and order of the Commission decided October 23, 1970, and served November 5, 1970, finds; that operation by applicant, in interstate or foreign commerce, as a *contract carrier*, by motor vehicle, over irregular routes, of dairy products, synthetic creams, puddings, fruit drinks, and noncarbonated beverages (except commodities in bulk); (1) from Whitewater, Wis., to points in Illinois, Indiana, Iowa, Michigan, Ohio, Pennsylvania, New Jersey, New York, Kentucky, and Missouri; and (2) from the plantsites of Hawthorn-Mellody, Inc., at points in the destination States named in (1) above to Whitewater, Wis., under a continuing contract or contracts with Hawthorn-Mellody, Inc., of Chicago, Ill., will be consistent with the public interest and national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that a permit authorizing such operations should be issued subject to the following conditions: (1) The prior receipt of applicant's request in writing for the coincidental cancellation of its certificate of public convenience and necessity No. MC 119009 dated July 6, 1970; and (2) because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in the proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 14552 (Sub-No. 38), filed October 5, 1970. Applicant: J. V. McNICHOLAS TRANSFER COMPANY, a corporation, 555 West Federal Street, Youngstown, Ohio 44501. Applicant's representative: Paul F. Beery, 88 East Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: (A) Over regular routes: *General commodities* (except household goods, livestock, and commodities in bulk); (1) between Akron and Dover, Ohio: From Akron over U.S. Highway 224 to junction Ohio Highway 241, thence over Ohio Highway 241 to junction Interstate Highway 77, thence over Interstate Highway 77 to Dover, Ohio, and return over the same route, serving all intermediate points and the off-route points in Summit, Stark, and Tuscarawas Counties, Ohio; (2) between Akron and Salem, Ohio: From Akron over U.S. Highway 224 to junction Ohio Highway 14, thence over Ohio Highway 14 to Salem, Ohio, and return over the same route, serving all intermediate points and the off-route points in Summit, Portage, Mahoning, and Columbiana Counties, Ohio; (3) between Akron and Willard, Ohio: From Akron over U.S. Highway 224 to junction Ohio Highway 103, thence over Ohio Highway 103 to Willard, Ohio, and return over the same route, serving all intermediate points and the off-route points in Summit, Medina, Ashland, and Huron Counties, Ohio; (4) between Dover and Sandyville, Ohio: From Dover over Ohio Highway 800 to Sandyville, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas and Stark Counties, Ohio; (5) between Dover and Byesville, Ohio: From Dover over Interstate Highway 77 to Byesville, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas and Guernsey Counties, Ohio; (6) between Dover and Coshocton, Ohio: Over Interstate Highway 77 to junction Ohio Highway 36, thence over Ohio Highway 36 to Coshocton, Ohio, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas and Coshocton Counties, Ohio;

(7) Between Dover and Newcomerstown, Ohio: From Dover over Ohio Highway 250 to Dennison, Ohio, thence over U.S. Highway 36 to Newcomerstown, Ohio, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas and Coshocton Counties, Ohio; (8) between Dover and Strasburg, Ohio: From Dover over Wooster Avenue to junction U.S. Highway 21, thence over U.S. Highway 21 to Strasburg, Ohio, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas County, Ohio; (9) between Dover and Baltic, Ohio: From Dover, Ohio, over Ohio Highway 39 to junction Ohio Highway 93, thence over Ohio Highway 93 to Baltic, Ohio, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas, Holmes, and Coshocton Counties, Ohio; (10) between Dover and New Philadelphia, Ohio: From Dover over Tuscarawas Avenue to New Philadelphia, and return over the same route, serving all intermediate points and the off-route points in Tuscarawas County, Ohio; and (11) between Akron and Strongsville, Ohio: From Akron over Ohio Highway 18 to junction U.S. Highway 42, thence over U.S. Highway 42 to Strongsville, Ohio, and return over the same route, serving all intermediate points and the off-route points of Summit, Medina, and Cuyahoga Counties, Ohio, restricted to traffic moving from, to, or through, Akron, Ohio, in routes (1) through (11); and (B) *Over irregular routes: General commodities* (except household goods, livestock, and commodities in bulk), between Akron, Ohio, on the one hand, and, on the other, points in Ohio. NOTE: Dual operations may be involved. Applicant states that by tacking at Akron, Ohio, it would be able to serve between points in Ohio, on the one hand, and, on the other, points on its regular route, and points within Pennsylvania and Ohio within 35 miles of Youngstown, Ohio. It can tack with applicant's existing authority to also transport certain specified commodities to points in numerous States. This is a matter directly related to MC-F-10982, published in the FEDERAL REGISTER issue of October 14, 1970, wherein it seeks the rights of Lee Freight Lines, Inc., who operates under a certificate of registration, MC 99917. The purpose of this

application is to convert same to a certificate of public convenience and necessity. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio.

No. MC 120872 (Sub-No. 7), filed October 26, 1970. Applicant: COLORADO CARTAGE COMPANY, INC., Post Office Box 7178, Park Hill Station, Denver, Colo. 80217. Applicant's representatives: John H. Lewis, The 1620 Grant Street Building, Denver, Colo. 80203, and Edward T. Lyons, Jr., 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: Irregular Routes: Part A (1) *General commodities:* (a) Between points in the following described area: Commencing at the junction of the city and county of Denver north boundary and Interstate Highway 25, thence north on Interstate Highway 25 to the intersection of Colorado Highway 52, thence east on Colorado Highway 52 to its junction with U.S. 85 at or near Fort Lupton, Colo., thence north on U.S. 85 to its junction with unnumbered highway approximately 5 miles north of Fort Lupton, Colo., thence east on said unnumbered highway to its junction with unnumbered highway approximately 3 miles north of Interstate Highway 80S, thence south on said unnumbered highway to its junction Interstate Highway 80S, thence northeasterly on Interstate Highway 80S to Roggin, thence south on unnumbered highway to Colorado Highway 52, thence on Colorado Highway 52 to Prospect Valley, thence south on Colorado Highway 79 to its junction with Interstate Highway 70, thence west on Interstate Highway 70 to its junction with the city and county of Denver boundary, thence along the north and west boundary of the city and county of Denver to point of beginning except Northglenn and Thorton, restricted against service on Interstate Highway 25 or on Interstate Highway 70; (b) between points in (1) above, on the one hand, and on the other, Denver and its commercial zone; (c) between points within Denver and its commercial zone, except Thorton and Northglenn.

(2) *Farm supplies* from Golden, Colo., to points in the area described in (1) above. (3) *Livestock, farm machinery, stock feeds and farm supplies*, between points in Larimer County lying north of the south boundary line of the city of Fort Collins, as extended, and between those points, on the one hand, and on the other, points in the State of Colorado. Regular Routes: (4) *General commodities:* (a) Between Longmont and Wellington, Colo., serving on intermediate points and off route points within 6 miles of Longmont; from Longmont over Colorado Highway 119 to junction U.S. Highway 87 (Interstate Highway 25), thence over U.S. Highway 87 (Interstate Highway 25) to junction Colorado Highway 1, thence over Colorado Highway 1 to Longmont and return over the same route. (b) Between Longmont, Colo., and Wellington, Colo., serving intermediate points located north of Berthoud, Colo., and off route points within 6 miles of Longmont; from Longmont over U.S. Highway 287 to junction Colorado Highway 1, thence over Colorado Highway 1 to Wellington and return over the same route. (c) Between Berthoud, Colo., and Greeley, Colo., serving all intermediate points; from Berthoud over Colorado Highway 56 to junction U.S. Highway 87 (Interstate Highway 25), thence over U.S. Highway 87 Interstate Highway (Interstate Highway 25) to junction Colorado Highway 60, thence over Colorado Highway 60 to junction Colorado Highway 257, thence over Colorado Highway 257 to junction U.S. Highway 34, thence over U.S. Highway 34 to Greeley and return over the same route. (d) Between Loveland, Colo., and Greeley, Colo., serving all intermediate points; from Loveland over U.S. Highway 34 to Greeley and return over the same route. (e) Between Fort Collins, Colo., and Greeley, Colo., serving all intermediate points; (1) from Fort Collins over Colorado Highway 14 to junction U.S. Highway 85, thence over U.S. Highway 85 to Greeley, and return over the same route; (2) from Fort Collins over Colorado Highway 14 to junction Colorado Highway 257, thence over Colorado Highway 257 to junction U.S. Highway 34, thence over U.S. Highway 34 to Greeley, and return over the same route.

(5) *General Commodities* (a) between Fort Collins, Colo., and Eaton, Colo., serving all intermediate points; from Fort Collins over U.S. Highway 87 (Interstate Highway 25) to junction unnumbered Weld County Highway near Timnath, thence over unnumbered Highway via Timnath and Severance, to Eaton and return over the same route. (b) Between Fort Collins, Colo., and Lucerne, Colo., serving all intermediate points and off route points located within 5 miles of Windsor; from Fort Collins over U.S. 87 (Interstate Highway 25) to junction Colorado Highway 392, thence over Colorado Highway 392 to Lucerne and return over the same route. Restrictions: Part (A) above is restricted (1) against service between Fort Collins and Loveland, (2) against service between Longmont and Berthoud, and (3) against service between points located within 6 miles of Longmont. Part (B) (1) between Denver, Colo., and Wellington, Colo., serving all intermediate points between Windsor and Wellington, Colo., the off-route points of Severance and Timnath, Colo., and off-route points within 5-miles of Windsor, Colo.; (a) from Denver over U.S. Highway 87 (Interstate Highway 25) to junction U.S. Highway 34, thence over U.S. Highway 34 to junction Colorado Highway 257, thence over Colorado Highway 257 to Windsor, thence over Colorado Highway 392 to junction U.S. Highway 87 (Interstate Highway 25), thence over U.S. Highway 87 (Interstate Highway 25) to junction of Colorado Highway 1, thence over Colorado Highway 1 to Wellington and return over the same route. (b) From Denver over U.S. Highway 87 (Interstate Highway 25) to junction Colorado Highway 1, thence over Colorado Highway 1 to Wellington and return over the same route. (2) Between Windsor, Colo., and Wellington, Colo., serving all intermediate points, the off route of Severance and Timnath and off-route points within 5 miles of Windsor; from Windsor over Colorado Highway 257 to junction Colorado Highway 14, thence over Colorado Highway 14 to junction Colorado Highway 1, thence over Colorado Highway 1 to Wellington and return over the same route. Restrictions: The operating rights described in part (B) above are restricted (1) against service between Denver and Fort Collins, Colo., and (2) against tacking with the operating rights described in part (A) above to provide a through service. NOTE: Applicant states that the requested irregular route authority cannot be tacked with its existing authority. The instant application is a matter directly related to MC-F-11004, published in the FEDERAL REGISTER issue of November 4, 1970. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 134925, filed September 11, 1970. Applicant: CUMMINGS TRUCKING COMPANY, INC., 1321 Seventh Street, Birmingham, Ala. 35401. Applicant's representative: John P. Carlton, 327 Frank Nelson Building, Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular and irregular routes, transporting: (1) *Paper, iron and steel pipe, pipe fittings, contractors' equipment, building material, coal, cotton, cotton seed, cottonseed meal and hulls, pitch, and fertilizer*, between Birmingham and Tuscaloosa, in Ala.; and between Birmingham and Tuscaloosa, Ala., on the one hand and Mobile, Ala., on the other hand, in truck loads only, minimum 16,000 pounds, over the following routes: (a) Between Birmingham and Tuscaloosa over Alabama Highway No. 7; (b) between Birmingham and Mobile over Alabama Highway No. 5; and (c) between Tuscaloosa and Mobile as follows: Beginning at Tuscaloosa thence over Alabama Highway No. 13 to Greensboro; thence over Alabama Highway No. 61 to Uniontown; thence over U.S. Highway No. 80 to Browns; thence over Alabama Highway No. 5 to Mobile, with no service to or from any intermediate points on routes a, b, and c except that applicant may transport fertilizer and pitch to and from intermediate points; (2) *household goods* such as personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, between points in Alabama located within an area of 200 miles from Tuscaloosa, Ala., and including

Tuscaloosa in truck loads only, minimum 2,000 pounds.

(3) *General commodities*, between Birmingham and Anniston, Ala., over U.S. Highway No. 78, serving all intermediate points; (4) *explosives*, between the U.S. Ordnance Depot located at or near Bynum and Camp Rucker, Ala., as follows: Commencing at Bynum, thence over U.S. Highway No. 78 to Anniston, to Oxford, thence to the junction of Alabama State Highway No. 37, thence over Alabama State Highway No. 37 to Opelika, thence over U.S. Highway No. 29 to Banks, thence over U.S. Highway No. 231 to Ozark, thence over Alabama State Highway No. 85 to Camp Rucker, with no service to intermediate points; (5) *general commodities*, except commodities which cannot be handled by motor vehicle, between Tuscaloosa, Ala., on the one hand, and all points located within a radius of 50 miles of Tuscaloosa, on the other hand; and (6) *general commodities*, except uncrated household goods and commodities injurious or contaminating to other lading: (1) Between Birmingham and the Alabama-Tennessee State line over U.S. Highway No. 31, with service to and from all intermediate points; (2) between Florence and the Alabama-Tennessee State line over U.S. Highway No. 72, with service to and from all intermediate points except that no intermediate service as authorized on this route between Huntsville and Athens, Ala.; (3) between Decatur and Florence over Alabama Highway No. 20; between Decatur and Russellville over Alabama Highway No. 24;

(4) between Scottsboro and Guntersville over Alabama Highway No. 32, with service to and from all intermediate points and with service to the Tennessee Valley Authority Dam; applicant may operate over U.S. Highway No. 431 between Huntsville and Guntersville as an operating convenience but shall not perform any transportation to or from intermediate points located between Guntersville and Huntsville when such route is used (U.S. Highway No. 431 was previously known as U.S. Highway No. 231); (5) between Birmingham and Huntsville over Alabama Highway No. 38, said route to be an alternate route, and the authority granted herein shall not authorize said applicant to offer service either to or from any intermediate point located between Birmingham and Huntsville on Alabama Highway No. 38, or to offer or perform any local service between said intermediate points on said route; and (6) between all points within a radius of 15 miles of Huntsville, Ala. Authority is sought to serve all points in Alabama within the police jurisdictions of all incorporated municipalities now specifically authorized to be served, except that this amended authority shall not be construed to authorize any service to or from a city or town not presently specifically authorized to be served. Restrictions: No traffic may be handled between Birmingham, on the one hand, and Florence, Sheffield, or Tuscumbia, on the other hand, and this restriction shall apply to local and interline traffic. No interline traffic may be handled between Decatur, on the one hand, and Florence, Sheffield, or Tuscumbia, on the other hand, but local traffic which originates either at Decatur or Florence, Sheffield or Tuscumbia, may be handled between Decatur, on the one hand, and Florence, Sheffield, or Tuscumbia, on the other hand. No traffic may be handled to or from Birmingham, on the one hand, and Russellville, Florence, Sheffield, or Tuscumbia, on the other hand, and this restriction shall apply to local and interline traffic. No interline traffic may be handled between Decatur, on the one hand, and Florence, Sheffield, or Tuscumbia, on the other hand, but local traffic which originates either at Decatur or Florence, Sheffield or Tuscumbia, may be handled between Decatur, on the one hand, and Florence, Sheffield, or Tuscumbia, on the other hand. NOTE: This application is a matter directly related to MC-F-10952, published in the FEDERAL REGISTER issue of September 23, 1970. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 11936 (Sub-No. 12), filed October 2, 1970. Applicant: MURROW'S TRANSFER, INCORPORATED, 708 West Fairfield Street, High Point, N.C. 27263. Applicant's representative: J. Ruffin Bailey, Post Office Box 2246, 1012 Durham Life Insurance Building, Raleigh, N.C. 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except those requiring special equipment and except leaf tobacco); (a) between points within a 75 mileage radius of Eden (formerly Spray), N.C.; and (b) between Eden (formerly Leaksville, Spray, and Draper) on the hand, and, on the other, Charlotte, N.C.; and (2) *bagging*, from Eden (formerly Leaksville, Spray, and Draper) to Henderson. NOTE: Applicant states that joinder is intended with Murrow's Transfer, Inc., at High Point, N.C. The instant application is a matter directly related with MC-F-10974, published in the FEDERAL REGISTER issue of October 14, 1970. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11010. Authority sought for purchase by ACE LINES, INC., 4143 East 43d Street, Des Moines, Iowa 50317, of the operating rights of LINDSAY TRANSFER, INC., Post Office Box 384, Sutton, Nebr. 68979, and for acquisition by L. D. EASTER, L. B. EASTER, R. L. EASTER, J. L. EASTER, T. C. MILLER, V. L. JONES, E. R. MORSE, LYNN W. EASTER, TRUSTEE OF TRUST OF SUSAN K. EASTER, BEVERLY JEAN PERRY, and MARILYN PROVOST, all of Des Moines, Iowa 50317, of control of such rights through the purchase. Applicants' attorney: William L. Fairbank, Hubbell Building, Des Moines, Iowa 50309. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, heavy machinery, and commodities injurious or contaminating to other lading, as a *common carrier* over regular routes, between Grand Island, Comstock, and Burwell, Nebr., on the one hand, and, on the other, Omaha, Nebr., serving certain intermediate and off-route points, with certain restrictions; *hides*, from Hastings, Nebr., to Chicago, Ill.; *household goods* as defined by the Commission, *livestock, and agricultural commodities*, as a *common carrier* over irregular routes, between Sargent, Nebr., and points within 50 miles thereof, on the one hand, and, on the other, points in Iowa and Kansas; *salt*, from Kanopolis, Kans., to Sargent, Nebr., and points within 50 miles thereof; *agricultural machinery, implements, and parts therefor, and binder twine*, from Chicago, Canton, Moline, East Moline, and Rock Island, Ill., to points in 26 counties in central Nebraska, from Moline, East Moline, and Rock Island, Ill., to points in eight counties in Kansas and 32 counties in western and southern Nebraska. Vendee is authorized to operate as a *common carrier* in Missouri, Kansas, Oklahoma, Iowa, Illinois, Nebraska, Indiana, Wisconsin, North Dakota, Minnesota, South Dakota, Michigan, Colorado, Montana, and Wyoming. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11011. Authority sought for purchase by MAIN TRUCKING & RIGGING CO., INC., 21 Camden Street, Paterson, N.J. 07503, of the operating rights of COASTAL VAN LINES, INC., 5801 Foster Avenue, Brooklyn, N.Y. (ALBERT ALTESMAN-TRUSTEE), 7 Dey Street, New York, N.Y. 10007 and for acquisition by AL LEE, 74 Winding Way, Cedar Grove, N.J., and PHILIP LEVINE, Bancroft Hotel, Miami, Fla., of control of such rights through the purchase. Applicants' attorney and representative: Rona Goldsmith, 21 Camden Street, Paterson, N.J. 07503 and William Traub, 10 East 40th Street, New York, N.Y. Operating rights sought to be transferred: *Household goods* as defined by the Commission, as a *common carrier* over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in New Jersey, Connecticut, and New York, between New York, N.Y., on the one hand, and, on the other, points in Massachusetts, Pennsylvania, Maryland, Virginia, and the District of Columbia, between Brooklyn, N.Y., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North

Carolina, South Carolina, Georgia, Florida, and the District of Columbia, between New York, N.Y., on the one hand, and, on the other, points in Ohio, Michigan, and Illinois. Vendee is authorized to operate as a *common carrier* in Connecticut, Rhode Island, Massachusetts, New York, New Jersey, and Pennsylvania. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11012. Authority sought for purchase by MARY ELLEN STIDHAM, N. M. STIDHAM, A. E. MANKINS, and JAMES E. MANKINS, SR. (INEZ MANKINS, EXECUTRIX), doing business as EAGLE TRUCKING COMPANY, Post Office Box 471, Kilgore, Tex. 75662, of the operating rights of F. P. ARRINGTON, doing business as PAT ARRINGTON TRUCK COMPANY, Post Office Box 94372, Oklahoma City, Okla. 73109. Applicants' attorney: James W. Hightower, 136 Wynnewood Professional Building, Dallas, Tex. 75224. Operating rights sought to be transferred: *Machinery, equipment, materials, and supplies* used in replacing, servicing, or repair of machinery and equipment, and production of natural gas and petroleum and their products and byproducts, as a *common carrier*, over irregular routes, between points in Oklahoma County, Okla., on the one hand, and, on the other, points in Arkansas on and west of a line beginning at the Arkansas-Missouri State line and extending along U.S. Highway 65 to junction U.S. Highway 167, thence along U.S. Highway 167 to the Arkansas-Louisiana State line, points in Kansas on and south of U.S. Highway 40, and points in Texas on and north of U.S. Highway 80, with restriction; and *plastic pipe, plastic tubing, plastic conduit, valves, fittings, compounds, joint sealer, bonding cement, primer, coating, thinner and accessories used in the installation of such products*, from Oklahoma City, Okla., to points in that part of Arkansas on and west of a line beginning at the Arkansas-Missouri State line and extending along U.S. Highway 65 to junction U.S. Highway 167, and thence along U.S. Highway 167 to the Arkansas-Louisiana State line, that part of Kansas on and south of U.S. Highway 40, and that part of Texas on and north of U.S. Highway 80. Vendee is authorized to operate as a *common carrier*, in Arkansas, Louisiana, Mississippi, Texas, Georgia, Alabama, Florida, Colorado, Wyoming, Utah, Montana, Oklahoma, Kansas, New Mexico, Nevada, Kentucky, Iowa, Illinois, Indiana, Arizona, Delaware, Maryland, Michigan, Minnesota, Nebraska, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, South Dakota, Virginia, West Virginia, Wisconsin, Missouri, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11013. Authority sought for purchase by ST. JOHNSBURY TRUCKING COMPANY, INC., 38 Main Street, St. Johnsbury, Vt. 05819, of a portion of the operating rights of HUNNEWELL TRUCKING, INC., 551 Commercial Street, Portland, Maine 04101, and for acquisition by HARRY D. ZABARSKY, 38 Main Street, St. Johnsbury, Vt. 05819, MILTON J. ZABARSKY, MAURICE ZABARSKY & MARTIN N. ZABARSKY, all of 40 Erie Street, Cambridge, Mass. 02139, of control of such rights through the purchase. Applicants' attorneys: Francis E. Barrett and Francis P. Barrett, 60 Adams Street, Milton, Mass. 02187. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over irregular routes between Boston, Mass., and points in Massachusetts within 15 miles of Boston, on the one hand, and, on the other, points in that part of Maine on and south of a line beginning at the Maine-New Hampshire State line and extending along Maine Highway 16 to Milo, Maine, thence along unnumbered highway (formerly portion Maine Highway 16) to West Enfield, Maine, thence along Maine Highway 155 (formerly portion Maine Highway 16) to Lincoln, Maine, thence along Maine Highway 6 (formerly Maine Highway 16) to the United States-Canada boundary line; except points in York, Cumberland, Hancock Counties and those points in Penobscot and Washington Counties on and south of Maine Highway 6, with restriction. Vendee is authorized to operate as a *common carrier* in Vermont, New Hampshire, Maine, Massachusetts, New York, New Jersey, Connecticut, Pennsylvania, Rhode Island, Delaware, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11014. Authority sought for control by CAMPBELL SIXTY-SIX EXPRESS, INC., 2333 East Trafficway, Post Office Box 807, Springfield, Mo. 65801, of REPUBLIC TRUCK LINES, INC., 207 West Avery Street, Dallas, Tex. 75208, and for acquisition by FRANK G. CAMPBELL, also of Springfield, Mo. 65801, of control of REPUBLIC TRUCK LINES, INC., through the acquisition by CAMPBELL SIXTY-SIX EXPRESS, INC. Applicants' attorneys: Phineas Stevens, Post Office Box 22567, Jackson, Miss. 39205 and Phillip Robinson, 904 The Lavaca Building, Austin, Tex. 78701. Operating rights sought to be controlled: *General commodities*, excepting among others classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Dallas, Tex., and Fort Worth, Tex., serving no intermediate points, between Wichita Falls, Tex., and Stephenville, Tex., serving the intermediate points south of Jacksboro, Tex., and the off-route points of Lipan and Lone Camp, Tex.; *general commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, over regular and irregular routes, from Houston, Tex., to points in Texas, serving no intermediate points; *cotton*, from points in Texas to Galveston, Tex., serving the intermediate point of Houston, Tex., with restriction; and under a certificate of registration, in Docket No. MC–48963 Sub-5, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Texas. CAMPBELL SIXTY-SIX EXPRESS, INC., is authorized to operate as a *common carrier* in Missouri, Kansas, Illinois, Oklahoma, Arkansas, Georgia, Mississippi, Alabama, Louisiana, Tennessee, and Texas. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11016. Authority sought for purchase by LAIDLAW TRANSPORT LIMITED, 65 Guise Street, Hamilton, Ontario, Canada, of the operating rights and certain property of PETTAPIECE CARTAGE LIMITED, No. 3 Highway W, Box 160, Leamington, Ontario, Canada, and for acquisition by LAIDLAW MOTORWAYS LIMITED, also of Hamilton, Ontario, Canada, of control of such rights and certain property through the purchase. Applicants' attorney: David A. Sutherland, 1140 Connecticut Avenue NW., Washington, D.C. 20036. Operating rights sought to be transferred: *General commodities* except those of unusual value, classes A and B explosives, and household goods as defined by the Commission, as a *common carrier* over irregular routes, between points within 8 miles of Detroit, Mich., including Detroit; *lime*, in bags, from Woodville, Ohio, to ports of entry on the United States-Canada boundary line at or near Detroit, Mich.; *sand*, from points in the Lower Peninsula of Michigan, to the United States-Canada boundary line between Detroit, Mich., and Windsor, Ontario, Canada, with restriction; *silica sand and foundry sand*, in bulk, from points in the Lower Peninsula of Michigan, to the port of entry on the United States-Canada boundary line at Port Huron, Mich.; *agricultural fertilizer ingredients and animal and poultry feed ingredients*, dry, in bulk, from certain specified points in Michigan, to ports of entry on the United States-Canada boundary line at Detroit and Port Huron, Mich.; *soda ash*, in bulk, from Detroit, Mich., to the United States-Canada boundary line at Port Huron, Mich.; *fly ash*, in bulk, from Detroit and Belle River, Mich., to ports of entry on the United States-Canada boundary line at Detroit and Port Huron, Mich.; and *edible salt*, dry, in bulk, in pressure tank vehicles, from St. Clair, Mich., to the United States-Canada boundary line at Port Huron, Mich. Vendee is authorized to operate as a *common carrier* in New York, Illinois, Indiana, Ohio, Pennsylvania, Michigan, New Jersey, Maryland, and Delaware. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-15502; Filed, Nov. 17, 1970; 8:50 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

NOVEMBER 13, 1970.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. MC-5487, filed October 27, 1970. Applicant: WARREN COUNTY FREIGHT LINE, INC., 1327 Sparta Street, McMinnville, Tenn. 37110. Applicant's representative: Val Sanford, 23d Floor, Life and Casualty Tower, Nashville, Tenn. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment and injurious or contaminating to other lading), between Nashville, Tenn., over the following routes: (1) Over U.S. Highway 70S, serving no intermediate points; and (2) over Tennessee Highway 55 at the Warren-Coffee County line thence to Manchester, Tenn.; thence over U.S. Highway 41 or Interstate Highway 24 or either of them, to Nashville and return over the same route, serving no intermediate points. Both intrastate and interstate authority sought.

HEARING: December 16, 1970, 9:30 a.m., C-1-110 Cordell Hull Building, Nashville, Tenn. 37219. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 27289 Sub-1, filed October 28, 1970. Applicant: JAMES SWINDLE, doing business as WESTERN MOTOR FREIGHT, 1430 West Sheridan, Oklahoma City, Okla. 73106. Applicant's representative: Rufus H. Lawson, 106 Bixler Building, 2400 Northwest 23d Street, Oklahoma City, Okla. 73107. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, between Oklahoma City and Mangum, Okla., from Oklahoma City, Okla., over U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence over U.S. Highway 183 to Hobart, Okla., thence over Oklahoma Highway 9 to Mangum, Okla., and return over the same route, serving the intermediate points of Cordell, Rocky, Hobart, Lone Wolf, and Granite, Okla.; (2) between Oklahoma City and Altus, Okla., from Oklahoma City, Okla., over U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence over U.S. Highway 183 to Hobart, Okla., thence over Oklahoma Highway 9 to Lone Wolf, Okla., thence over Oklahoma Highway 44 to Altus, Okla., and return over the same route, serving the intermediate points of Lugert and Blair, Okla.; (3) between Oklahoma City, Okla., and intersection of Oklahoma Highways 44 and 9 near Lone Wolf, Okla., from Oklahoma City, Okla., over U.S. Highway 66 and Interstate Highway 40 to Foss, Okla., thence over Oklahoma Highway 44 to intersection with Oklahoma Highway 9 near Lone Wolf, Okla., and return over the same route, serving the intermediate points of Burns Flat, Clinton-Sherman Air Force Base as an off-route point, and Sentinel, Okla.; (4) between Oklahoma City and Snyder, Okla., from Oklahoma City, Okla., over U.S. Highway 66 and Interstate Highway 40 to Clinton, Okla., thence over U.S. Highway 183 to Snyder, Okla., and return over the same route, serving all intermediate points between Snyder and Hobart, Okla.;

(5) Between Oklahoma City and Cordell, Okla., from Oklahoma City, Okla., over H. E. Bailey Turnpike to Lawton, Okla., thence over U.S. Highway 62 to Snyder, Okla., thence over U.S. Highway 183 to Cordell, Okla., and return over the same route, serving all intermediate points between Snyder and Cordell, Okla.; (6) between Oklahoma City and Mangum, Okla., from Oklahoma City, Okla., over H. E. Bailey Turnpike to Lawton, Okla., thence over U.S. Highway 62 to Altus, Okla., thence over U.S. Highway 283 to Mangum, Okla., and return over the same route, serving all intermediate points between Snyder and Mangum, Okla.; and (7) between Oklahoma City and Hobart, Okla., from Oklahoma City, Okla., over H. E. Bailey Turnpike to its intersection with Oklahoma Highway 9, thence over Oklahoma Highway 9 to Hobart, Okla., and return over the same route, as an alternate route only serving no intermediate points. Both intrastate and interstate authority sought.

HEARING: December 21, 1970, at 1:30 p.m. at Corporation Commission of Oklahoma, 340 Jim Thorpe Building, Oklahoma City, Okla. 73105. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Corporation Commission of Oklahoma, 340 Jim Thorpe Building, Oklahoma City, Okla. 73105, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-15501; Filed, Nov. 17, 1970; 8:50 a.m.]

[Notice 192]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 13, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 56679 (Sub-No. 45 TA) (Correction), filed October 27, 1970, published FEDERAL REGISTER, November 4, 1970, and republished as corrected this issue. Applicant: BROWN TRANSPORT CORP., 125 Milton Avenue SE., Atlanta, Ga. 30315. Applicant's representative: B. K. McClain (same address as above). NOTE: The purpose of this partial republication is (1) to reflect the proposed operations over *regular routes* in lieu of irregular routes, erroneously shown on original application and (2) to include the tacking information below. Applicant proposes to tack the above routes with its present authority held in Docket MC-56679 and effective subs thereunder, using Athens, Ga., as a joinder. Applicant also proposed to combine and tack all of the above routes in order to provide through service to, from, and between the above named points on the one hand, and, on the other, Atlanta, Ga., and Greenville, S.C., for the purposes of interchanging with its connecting carriers at Atlanta, Ga., and Greenville, S.C. The rest of the application remains as previously published.

No. MC 76025 (Sub-No. 26 TA), filed November 6, 1970. Applicant: OVERLAND EXPRESS, INC., 651 First Street SW., Post Office Box 2667, New Brighton, Minn. 55112. Applicant's representative: James F. Sexton (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix 1 to the report in *Description in Motor Carrier Certificates*, 61

M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), for the account of Needham Packing Co., Inc., from the plants and warehouse facilities of Needham Packing Co., Inc., located at West Fargo and Fargo, N. Dak., and Sioux City, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. Supporting shipper: Needham Packing Co., Inc., Sioux City, Iowa. Send protests to: District Supervisor A. E. Rathert, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 107295 (Sub-No. 468 TA), filed November 6, 1970. Applicant: PRE-FAB TRANSIT CO. (a corporation), 100 South Main Street, Post Office Box 146, Farmer City, Ill. 61842. Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Doors, partitions, shutters, screens, windows, sash, frames* (window or door) *and accessories used in the installation thereof*, from Pella, Iowa, to points in New York, Pennsylvania, Connecticut, Massachusetts, New Hampshire, Maine, Rhode Island, Maryland, New Jersey, Ohio, Virginia, West Virginia, and Michigan, for 180 days. Supporting shipper: Rolscreen Co., Pella, Iowa 50219. Send protests to: Harold Joliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 107295 (Sub-No. 469 TA), filed November 6, 1970. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Post Office Box 146, Farmer City, Ill. 61842 (Illinois-corporation). Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Racks, pallet, storage or warehouse; and accessories used in the installation thereof*, from Quincy and Rock Island, Ill., to all points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Speedrack, Inc., Skokie, Ill. 60076. Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 114533 (Sub-No. 221 TA), filed November 6, 1970. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, Ill. 60632. Applicant's representative: Stanley Komosa (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Human blood and blood products*, between Wichita, Kans., on the one hand, and, on the other, Kankakee, Ill., for 180 days. Supporting shipper: Wichita Regional Red Cross Blood Center, 321 North Topeka, Wichita, Kans. 67202. Send protests to: Robert G. Anderson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 133026 (Sub-No. 3 TA), filed November 6, 1970. Applicant: W. T. MARSHALL TRUCKING, INC., Rural Route No. 5, Box 161-D, Springfield, Ill. 62707. Applicant's representative: W. T. Marshall (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed*, in bags from Chicago, Ill., to points in Kansas on and east of U.S. Highway 183, for 120 days. Supporting shipper: Charles Kunkler, Distributor for Falstaff Feed Products, Halpin Sales Co., Topeka, Kans. Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, Ill. 62704.

No. MC 134445 (Sub-No. 1 TA), filed November 6, 1970. Applicant: WILLIAM H. DEES, doing business as DEES TRANSPORTATION, Post Office Box 446, Worland, Wyo. 82401. Applicant's representative: Robert S. Stauffer, 3539 Boston Road, Cheyenne, Wyo. 82001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Nonalcoholic beverages*, from Worland, Wyo., to points in Montana and South Dakota, for 180 days. Supporting shipper: Admiral Beverage Corp., 821 Pulliam Avenue, Post Office Box 726, Worland, Wyo. 82401. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 304 Lierd Building, 259 South Center Street, Casper, Wyo. 82601.

No. MC 135051 (Sub-No. 1 TA), filed November 9, 1970. Applicant: AUSTIN TRUCKING CORPORATION, 17 Park Avenue, Rutherford, N.J. 07070. Applicant's representative: Robert B. Pepper, 174 Brower Avenue, Edison, N.J. 08817. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Printed advertising matter*, from Bloomfield, East Rutherford, Fairlawn, Kearny, and Moonachie, N.J., and New York, N.Y., to Hartford, Conn., New York, N.Y., and points in Nassau and Suffolk Counties, N.Y., (2) *Unfinished printed advertising matter*, from New York, N.Y., to Bloomfield, East Rutherford, Fairlawn, Kearny, and Moonachie, N.J., under a continuing contract with City News Printing Corp., East Rutherford, N.J., for 150 days. Supporting shipper: City News Printing Corp., a division of John Blair & Co., 55 Madison Circle Drive, East Rutherford, N.J. 07073. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 135062 TA, filed November 9, 1970. Applicant: MIKE MERCURE TRUCKING, INC., Rural Delivery No. 1, New Waterford, Ohio 44445. Applicant's representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Clay*, in bulk, in dump vehicles, from Middleton Township, Columbiana County, Ohio, to points in Beaver, Allegheny, and Westmoreland Counties, Pa., and Weirton, W. Va., under continuing contract with Metropolitan Industries, Inc.; (2) *coal*, in bulk, in dump vehicles, from Elkrun and Middleton Township, Columbiana County, Ohio, to points in Beaver County, Pa., under continuing contract with Ferris Coal Co., Inc., for 180 days. Supporting shippers: Metropolitan Industries, Inc., 306 Market Avenue North, Canton, Ohio 44702; Ferris Coal Co., Inc., 371 South Street, East Palestine, Ohio 44413. Send protests to: Joseph A. Niggemyer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 531 Hawley Building, Wheeling, W. Va. 26003.

MOTOR CARRIER OF PASSENGERS

No. MC 50655 (Sub-No. 26 TA) (Correction), filed October 8, 1970, published in the FEDERAL REGISTER, October 17, 1970, and republished in part, as corrected this issue. Applicant: GULF TRANSPORT COMPANY, a corporation, 505 South Conception Street, Mobile, Ala. 36603. Applicant's representative: J. H. Bachar (same address as above). NOTE: The sole purpose of this partial republication is to reflect that applicant does intend to interline with other carriers at Memphis, Bolivar, Selmar, Lawrenceburg, Pulaski, Fayetteville, and Chattanooga, Tenn. The rest of the application remains as previously published.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-15497; Filed, Nov. 17, 1970; 8:50 a.m.]

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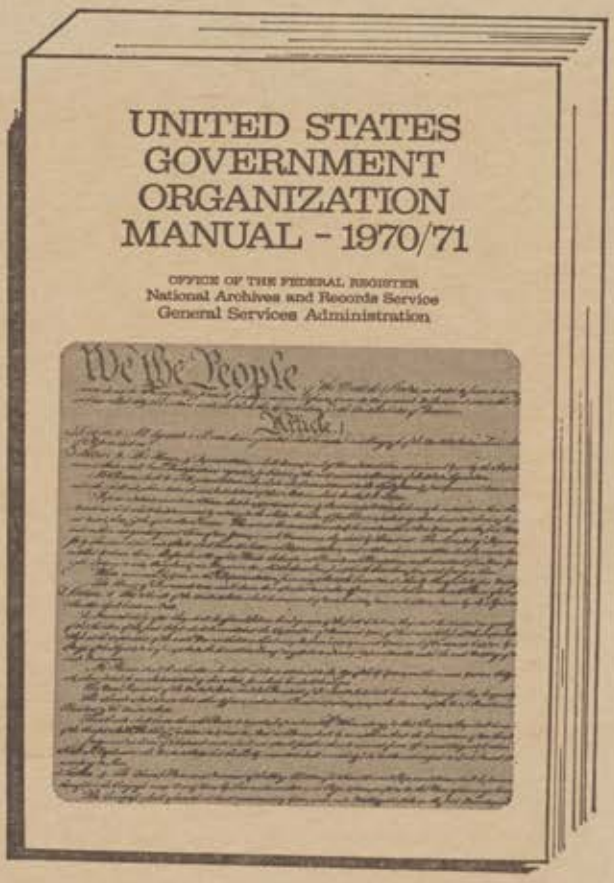

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