30

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(Part II begins on page 7183)

Agencies in this issue—

Detailed list of Contents appears inside.

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Contents

(Continued on next page)

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 following the Notices section 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, 1971, and specifies how they are affected.

7 CFR

907 7123
908 7123
947 7124
1133 7124

9 CFR

76 7124
331 7125

12 CFR

524 7125
545 7126
561 7126
563 7127

14 CFR

37 7127
PROPOSED RULES:
71 (2 documents) 7143, 7144

15 CFR

615 7127

18 CFR

PROPOSED RULES:
154 7150

19 CFR

301 7132

21 CFR

2 7128
135c 7128
141 7129
148w 7129
148z 7129

25 CFR

15 7184
221 7131

26 CFR

PROPOSED RULES:
1 7143

30 CFR

300 7184
301 7184
302 7184

33 CFR

117 (6 documents) 7132, 7133
PROPOSED RULES:
117 7143

36 CFR

6 7134
8 7184
20 7184
PROPOSED RULES:
7 7143

42 CFR

PROPOSED RULES:
459 7145
460 7145
461 7145
462 7145
463 7145
464 7145

43 CFR

4 7185
13 7185
21 7185
23 7185
230 7207
1840 7207
1850 7207
4120 7207
4130 7207
5490 7207
5510 7207

46 CFR

PROPOSED RULES:
543 7150

49 CFR

1100 7134
1104 7134
PROPOSED RULES:
391 7144
392 7144

Rules and Regulations

Title 7—AGRICULTURE

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

[Navel Orange Reg. 234]

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

Limitation of Handling

§ 907.534 Navel Orange Regulation 234.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 13, 1971.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period April 16, 1971, through April 22, 1971, are hereby fixed as follows:

(i) District 1: 770,000 cartons;

(ii) District 2: 230,000 cartons;

(iii) District 3: Unlimited.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: April 14, 1971.

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

[FR Doc.71–5375 Filed 4–14–71;11:20 am]

[Valencia Orange Reg. 343]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 908.643 Valencia Orange Regulation 343.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908, 35 F.R. 16625), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Valencia oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Valencia oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on April 13, 1971.

(b) *Order.* (1) The respective quantities of Valencia oranges grown in Arizona and designated part of California which may be handled during the period April 16, 1971, through April 22, 1971, are hereby fixed as follows:

(i) District 1: 66,335 cartons;

(ii) District 2: Unlimited;

(iii) District 3: 144,667 cartons.

(2) As used in this section, "handler", "District 1", "District 2", "District 3", and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: April 14, 1971:

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

[FR Doc.71–5376 Filed 4–14–71;11:20 am]

[947.329, Amdt. 2]

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Limitation of Shipments

Findings. (a) Pursuant to Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR Part 947), regulating the handling of Irish potatoes grown in the production area defined therein, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of recommendations and information submitted by the Oregon-California Potato Committee, established pursuant to the said marketing agreement and order, it is hereby found that the amendment to the limitation of shipments hereinafter set forth, will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of 1970 crop potatoes grown in the production area are now being made, (2) to maximize benefits to producers, this amendment should apply to as many shipments as possible during the effective period, (3) compliance with this amendment will not require any special preparation by handlers which cannot be completed by the effective date, (4) information regarding the committee's recommendation has been made available to producers and handlers in the production area who will be affected by the amendment, and (5) this amendment relieves restrictions.

Regulation, as amended. In § 947.329 (35 F.R. 11013, 15205, 15631) paragraphs (c)(4) and (d)(2)(ii) are hereby amended to read as follows:

§ 947.329 Limitation of shipments.

* * * * *

(c) *Special purpose shipments.* * * *

(4) Grading or storing: Potatoes may be shipped:

(i) Within the production area for grading or storing if such shipments meet the safeguard requirements of paragraph (d) of this section;

(ii) Potatoes grown in District No. 2 or District No. 4 may be shipped for grading or storing within or to such districts without regard to the safeguard requirements;

(iii) Potatoes grown in District 5 may be shipped for grading or storing to any specified locations in the adjoining States of Idaho and Washington and Malheur County in the State of Oregon for such purposes; and

(iv) Potatoes grown in any one district may be shipped to a receiver in any other district within the production area for grading if such receiver is determined by the committee to be a processor of canned, frozen, dehydrated, prepeeled products, potato chips or potato sticks.

* * * * *

(d) *Safeguards.* * * *

(2) Each handler making shipments of potatoes pursuant to subparagraphs (2), (4)(i), (6), and (7) of paragraph (c) of this section and each receiver of potatoes pursuant to subparagraph (4) (i) and (iv) of paragraph (c) of this section, shall:

* * * * *

(ii) Prepare, on forms furnished by the committee, a report in quadruplicate on such shipments as may be requested by the committee.

* * * * *

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

Dated April 12, 1971, to become effective upon signature.

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

[FR Doc.71-5260 Filed 4-14-71;8:49 am]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order No. 133]

PART 1133—MILK IN THE INLAND EMPIRE MARKETING AREA

Order Terminating Certain Provisions

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Inland Empire marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (36 F.R. 5618) concerning a proposed termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. In § 1133.71(f), ", except for the months specified below, shall be".

2. Paragraphs (g) through (k) of § 1133.71 in their entirety.

Statement of consideration. This action will terminate the takeout-payback provisions in the order. Discontinuance of these provisions was requested by Spokane Milk Producers Association and Inland Empire Dairy Association, representing a majority of Inland Empire order producers.

Because production throughout the year is now substantially in excess of the market's needs, the plan no longer serves a useful purpose and its continuance would impede the orderly marketing of the increased production for the market in the months of seasonally high production.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(b) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opporunity to file written data, views or arguments concerning this termination. None were filed in opposition to the proposed termination.

Therefore, good cause exists for making this order effective upon publication in the FEDERAL REGISTER.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

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

Effective date: Upon publication in the FEDERAL REGISTER (4–15–71).

Signed at Washington, D.C., on April 9, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-5226 Filed 4-14-71;8:47 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 71-541]

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 State of Minnesota in the introductory portion of paragraph (e) and paragraph (e)(4) relating to the State of Minnesota are deleted, and paragraph (f) is amended by adding thereto the name of the State of Minnesota.

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

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

The amendment excludes portions of Nicolett and Sibley Counties in Minnesota 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. No areas in Minnesota remain under the quarantine.

The amendment adds Minnesota to the list of hog cholera eradication States in § 76.2(f), and the special provisions pertaining to the interstate movement of swine and swine products from or to such eradication States are applicable to Minnesota.

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

Done at Washington, D.C., this 9th day of April 1971.

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

[FR Doc.71-5225 Filed 4-14-71;8:47 am]

Chapter III—Consumer and Marketing Service (Meat Inspection), Department of Agriculture

SUBCHAPTER A—MEAT INSPECTION REGULATIONS

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

Designation of Minnesota

Statement of considerations. Paragraph 301(c) of the Federal Meat Inspection Act (21 U.S.C. 661(c)) required the Secretary of Agriculture to designate promptly after December 15, 1969, any State as one in which the requirements of Titles I and IV of said Act shall apply to intrastate operations and transactions, and to persons, firms and corporations engaged therein, with respect to meat products and other articles and animals subject to the Act, if he determined after consultation with the Governor of the State, or his representative, that the State involved had not developed and activated requirements, at least equal to those under Titles I and IV, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered, or their carcasses, or parts or products thereof, are prepared for use as human food, solely for distribution within such State. However, if the Secretary had reason to believe that the State would activate the necessary requirements within an additional year, he could allow the State 1 additional year in which to activate such requirements.

The Secretary had reason to believe, after consultation with the Governor of the State of Minnesota that the State would develop and activate the prescribed requirements by December 15, 1970, and accordingly allowed the State the additional period of time for this purpose. However, the Secretary has now determined that Minnesota has not developed and activated the prescribed requirements. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under paragraph 301(c) of the Act. Upon the expiration of 30 days after publication of this notice in the FEDERAL REGISTER, the provisions of Titles I and IV of said Act shall apply to intrastate operations and transactions in said State and persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce" within the meaning of the Act, and any establishment in Minnesota which conducts any slaughtering or preparation of carcasses or parts or products thereof as described above must have Federal inspection or cease its operations, unless it qualifies for an exemption under paragraph 23(a) or 301(c) of the Act. The exemption provisions of the Act are very limited.

Therefore, the operator of each such establishment who desires to continue such operations after designation of the State becomes effective should immediately communicate with the Regional Director for Meat and Poultry Inspection, as listed below, for information concerning the requirements and exemptions under the Act and application for inspection and survey of the establishment: Dr. L. H. Burkert, Director, 316 Robert Street, Room 638, St. Paul, MN 55101, Telephone: Area Code 612–725–7835. Accordingly, § 331.2 of the regulations under the Federal Meat Inspection Act is amended pursuant to said Act by adding the following State name (in alphabetical order) and effective date of designation to the list set forth in said section:

State	*Effective date of designation*
Minnesota	May 16, 1971

This amendment of the regulations is necessary to reflect the determination of the Secretary of Agriculture under paragraph 301(c) of the Federal Meat Inspection Act. It does not appear that public participation in this rulemaking proceeding would make additional information available to the Secretary. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary and good cause is found for making this amendment effective less than 30 days after publication in the FEDERAL REGISTER.

This amendment and the notice given hereby, shall become effective upon publication hereof in the FEDERAL REGISTER (4–15–71).

Done at Washington, D.C., on April 12, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-5296 Filed 4-14-71;8:50 am]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

[No. 71-346]

PART 524—OPERATIONS OF THE BANKS

Loans and Investments Guaranteed Under Foreign Assistance Act of 1961

APRIL 9, 1971.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 524.2–1 of the regulations for

the Federal Home Loan Bank System (12 CFR 524.2–1) for the purpose of implementing certain technical changes made in section 12(b) of the Federal Home Loan Bank Act by section 907(a) of Public Law 91–609. Accordingly, on the basis of such consideration and for such purpose, the Federal Home Loan Bank Board hereby amends said § 524.2–1 by revising it to read as follows, effective April 15, 1971:

§ 524.2–1 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) *General.* Upon authorization by its board of directors, but subject to the requirement of paragraph (b) of this section, a Bank may acquire, hold, or dispose of any of the following loans, or any interest therein, for the primary purpose of facilitating acquisition of participation interests in such loans by members legally authorized to make such investment:

(1) Housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969;

(2) Loans having the benefit of any guaranty under section 224 of such Act, as in effect prior to December 30, 1969; or

(3) Loans having the benefit of any guaranty under section 221 or 222 of such Act, as in effect on December 30, 1969, and thereafter.

(b) *Requirement for Board approval.* No Bank may acquire any loan, or interest therein, pursuant to paragraph (a) of this section (except to repurchase a participation interest previously sold to a member) without the prior approval of the Board.

(Secs. 12, 17, 47 Stat. 735, 736, as amended; 12 U.S.C. 1432, 1437. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

Resolved further that, since the above amendment effects certain technical changes which relieve restriction, the Board hereby finds that notice and public procedure on said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and the Board also finds, for the same reason, that publication for the 30-day period in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of the amendment is unnecessary; and the Board hereby provides that the amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.71–5255 Filed 4–14–71;8:49 am]

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 71–347]

PART 545—OPERATIONS

Loans and Investments Guaranteed Under Foreign Assistance Act of 1961

APRIL 9, 1971.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 545.6–20 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.6–20) for the purposes of (1) conforming said § 545.6–20 to certain technical changes made in section 5(c) of the Home Owners' Loan Act of 1933 by section 907(b) of Public Law 91–609, and (2) making technical changes in the requirements relating to loan agreements and contracts of guaranty for loans made under said section. Accordingly, the Federal Home Loan Bank Board hereby amends said § 545.6–20 by revising it to read as follows, effective April 15, 1971:

§ 545.6–20 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) *General.* Without regard to the provisions of any other section of this part except § 545.6–8, a Federal association which has a charter in the form of Charter K (rev.) or Charter N may invest in any of the following loans, or any interest therein:

(1) Housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969;

(2) Loans having the benefit of any guaranty under section 224 of such Act, as in effect prior to December 30, 1969; or

(3) Loans having the benefit of any guaranty under sections 221 or 222 of such Act, as in effect on December 30, 1969, and thereafter.

(b) *Requirements as to loan agreement and contract of guaranty.* No Federal association may invest in any loan, or interest therein, pursuant to paragraph (a) of this section unless—

(1) The loan agreement (i) specifies what constitutes an event of default, and (ii) provides that, upon default in the payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the option of the lender; and

(2) The contract of guaranty with respect to such loans (i) covers 100 percent of any loss of investment thereunder, except for any portion of such loss arising out of fraud or misrepresentation for which the party seeking payment is responsible, and (ii) provides that the payment for any such loss shall be made by the guarantor in U.S. dollars within a specified reasonable time after the date of application for such payment.

(c) *Percentage-of-assets limitation.* No Federal association may invest in any loan, or interest therein, pursuant to paragraph (a) of this section if, as a result of such investment, its aggregate outstanding principal amount of investment in such loans, or interests therein, would exceed an amount equal to 1 percent of its assets.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

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

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.71–5256 Filed 4–14–71;8:49 am]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 71–343]

PART 561—DEFINITIONS

Guaranteed Loans

APRIL 9, 1971.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 561.21 of the Rules and Regulations for Insurance of Accounts (12 CFR 561.21) for the purpose of broadening the definition of guaranteed loans to include all loans guaranteed under the Foreign Assistance Act of 1961 in which Federal associations may invest. Accordingly, the Federal Home Loan Bank Board hereby amends said § 561.21 by revising it to read as follows, effective April 15, 1971:

§ 561.21 Guaranteed loan.

The term "guaranteed loan" means a loan that is guaranteed, including a guarantee to repurchase, in whole or in part, or as to which a commitment to guarantee has been made, under the provisions of any of the following:

(a) The Servicemen's Readjustment Act of 1944 or Chapter 37 of title 38, United States Code;

(b) The New Communities Act of 1968;

(c) Section 221 or section 224 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969; or

(d) Section 221 or section 222 of the Foreign Assistance Act of 1961, as in effect on December 30, 1969, and thereafter.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48, Comp., p. 1071)

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

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.71–5257 Filed 4–14–71;8:49 am]

[No. 71-341]

PART 563—OPERATIONS

Advertisement of Branch Offices

APRIL 9, 1971.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend § 563.27 of the Rules and Regulations for Insurance of Accounts (12 CFR 563.27) for the purpose of removing a requirement that the location of an institution's principal office be stated in certain branch office advertising. Accordingly the Federal Home Loan Bank Board hereby amends said section by revising it to read as follows, effective April 15, 1971:

§ 563.27 Advertising must be accurate.

No insured institution shall use advertising (whether printed, radio, display, or of any other nature) or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

Resolved further that, since the above amendment relieves restriction, the Board hereby finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and since publication of said amendment for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendment would be unnecessary for the same reason, the Board hereby provides that said amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.71-5254 Filed 4-14-71;8:49 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10656; Amdt. 37-30]

PART 37—TECHNICAL STANDARD ORDER AUTHORIZATIONS

Airborne Radio Marker Receiving Equipment

The purpose of this amendment to Part 37 is to update the standards for airborne radio marker receiving equipment operating on 75 Mc.

This amendment was proposed in Notice 70-42, issued October 22, 1970 (35 F.R. 16685). All of the comments received in response to the notice were favorable.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all matter presented.

In consideration of the foregoing, § 37.137 of Part 37 of the Federal Aviation Regulations is amended effective May 15, 1971, to read as follows:

§ 37.137 Airborne Radio Marker Receiving Equipment, TSO-C35d.

(a) Applicability: This technical standard order prescribes the minimum performance standards that airborne radio marker receiving equipment must meet in order to be identified with the applicable TSO marking. New models of equipment that are to be so identified, and that are manufactured on or after May 15, 1971, must meet the requirements of Radio Technical Commission for Aeronautics Document No. DO-143 entitled "Minimum Performance Standards—Airborne Radio Marker Receiving Equipment Operating on 75 Megahertz" dated January 8, 1970, and Radio Technical Commission for Aeronautics Document No. DO-138 entitled "Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments" dated June 27, 1968. RTCA Documents Nos. DO-143 and DO-138 are incorporated herein in accordance with 5 U.S.C. 552(a)(1) and § 37.23, and are available as indicated in § 37.23. Additionally, RTCA Documents Nos. DO-143 and DO-138 may be examined at any FAA regional office of the Chief of Engineering and Manufacturing Branch (or in the case of the Western Region, the Chief, Aircraft Engineering Division), and may be obtained from the RTCA Secretariat, Suite 655, 1717 H Street NW., Washington, DC 20006, at a cost of $6 per copy for Document No. DO-143 and $8 per copy for Document No. DO-138.

(b) Marking: In addition to the markings specified in § 37.7 the equipment must be permanently and legibly marked with the following information:

(1) The environmental categories over which the article has been designed to operate must be marked in accordance with RTCA Document DO-138, Appendix B.

(2) The equipment must be marked to indicate the class declared by the manufacturer as follows:

Class A. Equipment designed for use where marker beacon signals are required for both en route and approach operations.

Class B. Equipment designed for use where marker beacon signals are required only for approach operations.

Equipment which complies with both Class A and Class B requirements need only be marked as Class A equipment.

(3) Each separate component of equipment (antenna, receiver, indicator, etc.) must be identified with at least the name of the manufacturer, the TSO number, and the environmental categories over which the component is designed to operate. Where an environmental test procedure is not applicable to that component and the test is not conducted, an X should be placed in the space assigned for that category.

(c) Data requirements: In accordance with § 37.5, the manufacturer must furnish to the Chief, Engineering and Manufacturing Branch, Flight Standards Division (or in the case of the Western Region, the Chief, Aircraft Engineering Division), Federal Aviation Administration, in the region in which the manufacturer is located, the following technical data:

(1) One copy of the operating instructions and equipment limitations of the manufacturer.

(2) One copy of the installation procedures with applicable schematic drawings, wiring diagrams, and specifications, and a list of components (by part number) or possible combination thereof, which make up a system complying with this TSO. The procedures must show all limitations, restrictions, or other conditions pertinent to the installation.

(3) One copy of the manufacturer's test report.

(d) One copy of the installation procedures with the data identified in paragraph (c)(2) of this section, including limitations, restrictions, or other conditions pertinent to the installation must be furnished with each article manufactured under this TSO.

(e) Previously approved equipment: Airborne radio marker receiving equipment approved prior to May 15, 1971, may continue to be manufactured under the provisions of its original approval.

(Secs. 313(a), 601, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on April 9, 1971.

JAMES F. RUDOLPH,
Director,
Flight Standards Service.

[FR Doc.71-5239 Filed 4-14-71;8:47 am]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter VI—Bureau of Domestic Commerce, Department of Commerce

PART 615—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Part 615 is hereby added to Chapter VI of Title 15 of the Code of Federal Regulations to provide for carrying out the functions and responsibilities of the Deputy Assistant Secretary and Director, Bureau of Domestic Commerce, relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers. Instructions formerly found in Part 301 of Chapter III of Title 19 of the Code of Federal Regulations are revised as set forth below and redesignated as Part 615 of Chapter VI of Title 15.

The notice, public rule making procedure and effective date requirements contained in 5 U.S.C. sec. 553 are omitted as unnecessary because the changes are procedural and editorial in nature. Accordingly, this revision shall become effective on the date of its publication in the FEDERAL REGISTER (4-15-71).

Sec.
615.1 Scope and purpose.
615.2 Definitions.
615.3 Application.
615.4 Determination by the Director.
615.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

AUTHORITY: The provisions of this Part 615 issued under headnote 2, subpart B, part 6, schedule 6 of the Tariff Schedules of the United States (19 U.S.C. sec. 1202) relating to the development, maintenance, and publication of a list of bona fide motor-vehicle manufacturers, and authority to promulgate rules and regulations pertaining thereto under section 501(2) of Title V of the Automotive Products Trade Act of 1965 (19 U.S.C. sec. 2031); and Department of Commerce Organization Order 40–1A of Feb. 11, 1971 (36 F.R. 4553).

§ 615.1 Scope and purpose.

The purpose of this part is to set forth regulations implementing headnote 2 to subpart B, part 6, schedule 6 of the Tariff Schedules of the United States as proclaimed by Proclamation No. 3682 of October 21, 1965 (3 CFR 140 (1964–65 Comp.)), issued pursuant to the Automotive Products Trade Act of 1965 (19 U.S.C. sec. 2031), by establishing a procedure under which a person may apply to be determined a bona fide motor-vehicle manufacturer. Under headnote 2 to Subpart B, part 6, schedule 6 of the Tariff Schedules of the United States, whenever the Secretary of Commerce has determined a person to be a bona fide motor-vehicle manufacturers, may obtain duty-free treatment for such Canadian articles. The responsibilities of the Secretary of Commerce relating to the development, maintenance and publication of a list of bona fide motor-vehicle manufacturers and the authority to promulgate rules and regulations pertaining thereto, have been delegated to the Deputy Assistant Secretary and Director, Bureau of Domestic Commerce, Department of Commerce, with power of redelegation, by Department of Commerce Organization Order 40–1A of February 11, 1971.

§ 615.2 Definitions.

For the purposes of the regulations in this part and the forms issued to implement it:

(a) "Act" means the Automotive Products Trade Act of 1965 (79 Stat. 1016, 19 U.S.C. secs. 2001–2033).

(b) "Director" means the Deputy Assistant Secretary and Director, Bureau of Domestic Commerce, of the Department of Commerce, or such official as may be designated by him to act in his behalf.

(c) "Motor vehicle" means a motor vehicle of a kind described in item 692.05 or 692.10 of subpart B, part 6, schedule 6, of the Tariff Schedules of the United States(excluding an electric trolley bus and a three-wheeled vehicle) or an automobile truck tractor.

(d) "Bona fide motor-vehicle manufacturer" means a person who, upon application to the Director under this part, is determined by the Director to have produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application, and to have had as of such date installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. A person shall only be regarded as having had the capacity to produce a complete motor vehicle if his operations included the assembly of two or more major components (e.g., the attachment of a body to a chassis) to create a new motor vehicle ready for use.

(e) "Person" includes any individual, corporation, partnership, association, company, or any other kind of organization.

(f) "United States" includes only the States, the District of Columbia, and Peurto Rico.

§ 615.3 Application.

Any person in the United States desiring to be determined a bona fide motor-vehicle manufacturer shall apply to the Director by filing two copies of Form BDCF–725 in accordance with the instructions set forth on the form and in this part. Application forms may be obtained from the Director, field offices of the U.S. Department of Commerce, or from U.S. Collectors of Customs, and should be mailed or delivered to the:

Bureau of Domestic Commerce (Mail Code 631), U.S. Department of Commerce, Washington, D.C. 20230.

§ 615.4 Determination by the Director.

(a) As soon as practicable after receipt of the application, the Director shall determine whether an applicant has produced no fewer than 15 complete motor vehicles in the United States during the 12-month period preceding the date certified in the application and as of such date, had installed capacity in the United States to produce 10 or more complete motor vehicles per 40-hour week. The Director may request such additional data from an applicant as he may deem appropriate to establish whether the applicant has satisfied the requirements of this part.

(b) A determination by the Director under this part shall be effective for a 12-month period to begin on the date as of which the Director determines that the applicant qualified under this part. Within 60 days prior to the termination of such period, a bona fide motor-vehicle manufacturer may apply for another determination under this part.

(c) The Director will promptly notify each applicant in writing of the final action taken on his application.

§ 615.5 Maintenance and publication of a list of bona fide motor-vehicle manufacturers.

The Director shall maintain, and publish from time to time in the FEDERAL REGISTER, a list of the names and addresses of bona fide motor-vehicle manufacturers, and the effective dates for each determination.

Dated: March 22, 1971.

WILLIAM D. LEE,
Deputy Assistant Secretary and Director, Bureau of Domestic Commerce.

[FR Doc.71–5204 Filed 4–14–71;8:45 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart H—Delegations of Authority

CERTIFICATION OF COLOR ADDITIVES

Under authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), § 2.121(f) is revised to read as follows to update the subject delegation of authority:

§ 2.121 Redelegation of authority from the Commissioner to other officers of the Administration.

* * * * *

(f) *Delegations regarding certification of color additives.* The Director and Deputy Director of the Bureau of Foods, the Director and Deputy Director of the Office of Product Technology of that Bureau, and the Director and Deputy Director of the Division of Colors and Cosmetics Technology of that Office and Bureau are authorized to certify batches of color additives for use in foods, drugs, or cosmetics, pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act.

* * * * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (4–15–71).

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

Dated: April 5, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–5210 Filed 4–14–71;8:45 am]

SUBCHAPTER C—DRUGS

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Combination Drug

The Commissioner of Food and Drugs has evaluated new animal drug applications (42–548V, 42–841V) filed by Bristol Laboratories, Division of Bristol-Myers Co., proposing the safe and effective use of a combination drug containing kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, and activated attapulgite for oral treatment of dogs. The applications are 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), the following new section is added to Part 135c:

§ 135c.33 Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite oral veterinary.

(a) *Specifications.* Each tablet or each five milliliters of suspension of the drug contains: 100 milligrams of kanamycin as the sulfate (the kanamycin used conforms to the standards of identity, strength, quality, and purity prescribed by § 148h.1 of this chapter), 0.033 milligram of aminopentamide hydrogen sulfate, 25 milligrams of pectin, 250 milligrams of bismuth subcarbonate, and 500 milligrams of activated attapulgite.

(b) *Sponsor.* Bristol Laboratories, Division of Bristol-Myers Co., Post Office Box 657, Syracuse, NY 13201.

(c) *Conditions of use.* (1) It is administered orally to dogs for the symptomatic relief of acute bacterial diarrhea caused by kanamycin-susceptible organisms.

(2) The drug is recommended for use at the rate of one tablet or one teaspoonful (5 milliliters) of suspension per 20 pounds of body weight every 8 hours. Animals weighing under 10 pounds should be given one-half the above amount every 8 hours. The initial dose should be twice the amount of a single dose. Maximum dosage should not exceed three times the recommended dose.

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

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (4–15–71).

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

Dated: April 6, 1971.

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

[FR Doc.71–5211 Filed 4–14–71;8:45 am]

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Paromomycin; Correction

In F.R. Doc. 71–935 appearing at page 1136 in the FEDERAL REGISTER of January 23, 1971, amendment B is corrected by changing "by deleting the item 'Paromomycin' " to read "by deleting the second item 'Paromomycin' ".

Dated: March 15, 1971.

MARION J. FINKEL,
Acting Director,
Bureau of Drugs.

[FR Doc.71–5214 Filed 4–14–71;8:46 am]

PART 148w—CEPHALOSPORIN

Cephaloglycin Dihydrate for Oral Suspension

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), the following new section is added to Part 148w to provide for certification of the subject antibiotic:

§ 148w.5 Cephaloglycin dihydrate for oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strengths, quality, and purity.* Cephaloglycin dihydrate for oral suspension is cephaloglycin dihydrate with one or more suitable diluents, buffer substances, colorings, and flavorings. When reconstituted as directed in the labeling, each milliliter contains cephaloglycin dihydrate equivalent to 50 milligrams of cephaloglycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cephaloglycin that it is represented to contain. Its moisture content is not more than 2 percent. When reconstituted as directed in the labeling, its pH is not less than 3.0 and not more than 5.0. It passes the identity test for the presence of the cephaloglycin moiety. The cephaloglycin dihydrate used conforms to the standards prescribed by § 148w.3(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The cephaloglycin dihydrate used in making the batch for potency, safety, moisture, pH, cephaloglycin content, identity, and crystallinity.

(*b*) The batch for potency, moisture, pH, and identity.

(ii) Samples required:

(*a*) The cephaloglycin dihydrate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Place an accurately measured representative portion of the suspension into an appropriate-sized volumetric flask and dilute to volume with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4). Further dilute an aliquot of the stock solution with solution 4 to the reference concentration of 10 micrograms of cephaloglycin per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(3) *pH.* Proceed as directed in § 141.503 of this chapter, using the drug reconstituted as directed in the labeling.

(4) *Identity.* Dilute a representative portion of the sample with sufficient distilled water to give a concentration of 2.5 milligrams of cephaloglycin per milliliter (estimated). Shake vigorously on a mechanical shaker for 30 minutes. Filter through Whatman No. 1 filter paper discarding the first few milliliters of filtrate. Further dilute an aliquot of the filtrate with sufficient distilled water to give a concentration of 0.05 milligram of cephaloglycin per milliliter (estimated). Using a suitable spectrophotometer, record the ultraviolet absorption spectrum of this solution from 230 to 320 nanometers. The spectrum compares qualitatively to that of the cephaloglycin working standard similarly treated.

Data supplied by the manufacturer concerning the subject antibiotic have been evaluated. Since the conditions prerequisite to providing for its certification have been complied with and since it is in the public interest not to delay in so providing, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (4–15–71).

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: March 15, 1971.

MARION J. FINKEL,
Acting Director, Bureau of Drugs.

[FR Doc.71–5215 Filed 4–14–71;8:46 am]

PART 148z—DOXYCYCLINE

Effective on publication in the FEDERAL REGISTER (4–15–71), Part 148z is republished as follows to incorporate editorial and nonrestrictive technical changes. This order revokes all prior publications.

Sec.
148z.1 Doxycycline hyclate.
148z.2 Doxycycline monohydrate.
148z.3 Doxycycline hyclate capsules.
148z.4 Doxycycline monohydrate for oral suspension.

AUTHORITY: The provisions of this Part 148z issued under sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.

§ 148z.1 Doxycycline hyclate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Doxycycline hyclate is a hydrochloride hemiethanolate hemihydrate salt of 6-deoxy-oxytetracycline. It is so purified and dried that:

(i) Its potency is not less than 800 nor more than 920 micrograms of doxycycline per milligram on an "as is" basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 1.4 nor more than 2.75 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.0 nor more than 3.0.

(v) It contains not less than 82 nor more than 90 percent doxycycline on an "as is" basis.

(vi) It gives a positive identity test for doxycycline hyclate.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH,

doxycycline content, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of doxycycline per milliliter (estimated). Further dilute with 0.1*M* potassium phosphate buffer pH 4.5 (solution 4), to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 141.5 of this chapter.

(3) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(4) *pH.* Proceed as directed in § 141.503 of this chapter, using an aqueous solution containing the equivalent of 10 milligrams of doxycycline per milliliter.

(5) *Doxycycline content*—(i) *Equipment*—(a) *Sheet (chromatographic).* Whatman No. 4 filter paper for chromatography, 15 x 57 centimeters.

(b) *Chamber (chromatographic).* Square glass chromatography jar, 30 x 30 x 60 centimeters, equipped with 25-centimeter troughs for descending chromatography.

(ii) *Preparation of solutions*—(a) *0.05N Methanolic hydrochloric acid.* Dilute 4.2 milliliters of concentrated hydrochloric acid to 1 liter with methanol.

(b) *pH 4.2 buffer.* Mix 5.86 volumes of 0.1*M* citric acid with 4.14 volumes of 0.2*M* disodium phosphate.

(c) *Chromatographic system.* Mix toluene, pyridine, and pH 4.2 buffer in volumetric proportions of 20:3:10, respectively. Allow the phases to separate. Place the upper phase in the troughs near the top of the chamber. Place the lower phase in the bottom of the chamber. Saturate the atmosphere of the tightly sealed chamber for 24 hours before use by placing white blotters on two opposite sides of the chamber so that their ends are immersed in the lower phase in the bottom of the chamber. Replace the solvent in troughs before the chromatograms are to be developed.

(iii) *Preparation of the doxycycline standard solution.* Accurately weigh about 50 milligrams of the doxycycline working standard into a 5-milliliter volumetric flask and bring to volume with 0.05*N* methanolic hydrochloric acid. Store in the refrigerator and use within 7 days.

(iv) *Preparation of sample.* Accurately weigh about 50 milligrams of the sample into a 5-milliliter volumetric flask and bring to volume with 0.05*N* methanolic hydrochloric acid.

(v) *Preparation of the chromatogram.* Dip the chromatographic sheets into pH 4.2 buffer and lightly blot each sheet between clean nonfluorescing, white blotters. Use separate sheets for the doxycycline standard solution, for each doxycycline sample solution, and for blanks without standard or sample application. Care must be taken so that the moist sheets do not become too dry; a period of 5 to 10 minutes between impregnating the paper and placing it in the chromatographic chamber is usually satisfactory. Evenly apply a 0.100-milliliter aliquot of a doxycycline solution to the origin line of a sheet as a 14-centimeter-long streak. Place the sheets in the chamber and develop them in a descending manner for 2 hours. The doxycycline band should move approximately 12.5 centimeters from the origin line. Remove the sheets from the chamber and air-dry for about 10 minutes.

(vi) *Processing the chromatogram.* Examine each sheet under 366-nanometer ultraviolet light. Outline the fluorescent bands with a pencil. The main marked area should be approximately 10 x 15 centimeters in size. Outline areas on the blank sheet approximately equal in size and in the same locations as those outlined on the standard sheet. Exposure of the sheets to ammonia or other alkaline vapors must be avoided. Cut the marked areas from the sheets and then cut them into approximately 2-centimeter squares. For each sheet, place the squares from each of the following areas into separate 125-milliliter Erlenmeyer flasks: The main doxycycline band of the sample, the main doxycycline band of the standard, all the other bands of the standard, the area of the blank sheet corresponding to the main band of the standard, the other area of the blank sheet corresponding to the other bands of the standard. The time between removing the sheets from the chamber and placing the squares into the Erlenmeyer flasks should be minimal, since excessive drying of the paper can lead to erratic elutions.

(vii) *Elution.* To each flask add 50 milliliters of 0.05*N* methanolic hydrochloric acid and agitate on a reciprocating shaker for 1 hour. Decant the contents of each flask into another flask by pouring through a small funnel fitted with a glass wool plug.

(viii) *Doxycycline standard solution for direct measurement of absorbance.* Pipette a 0.100-milliliter aliquot of the doxycycline standard solution into each of three 125-milliliter Erlenmeyer flasks. Add 50 milliliters of 0.05*N* methanolic hydrochloric acid to each of these flasks.

(ix) *Absorbance measurement.* Using a suitable spectrophotometer and 0.05*N* methanolic hydrochloric acid as the reference solvent, determine the absorbance of each eluate and of each doxycycline standard solution at the absorption maximum at about 349 nanometers.

(x) *Calculation of percent doxycycline in samples.* Calculate as follows:

$$\text{Percent doxycycline} = \frac{(A_u - A_b)(W_s)}{(A_s - A_b)(W_u)} \times \text{Doxycycline content of the working standard, where:}$$

A_u = Absorbance of the eluate from the main doxycycline band of the sample sheet.
A_s = Absorbance of the eluate from the main doxycycline band on the standard sheet.
A_b = Absorbance of the eluate from the area of the blank sheet corresponding to the area of the doxycycline band of the standard sheet.
W_u = Weight in milligrams of sample.
W_s = Weight in milligrams of doxycycline working standard.

(xi) *Recovery of the doxycycline standard from the chromatogram.* As follows:

$$\text{Percent recovery} = \frac{As - Ab}{A_D} \times \frac{100}{F},$$

where:

A_D = Absorbance of the doxycycline standard solution described in subdivision (viii) of this subparagraph.
F = The fractional purity of doxycycline standard solution described in subdivision (xii) of this subparagraph.

If the recovery of the doxycycline standard from the chromatogram is less than 95 percent, repeat the chromatogram.

(xii) *Determination of the fractional purity of the doxycycline working standard.* Determine F by means of the following equation:

$$F = 1 - \frac{(Ac - Acb)}{(Ac - Acb + As - Ab)},$$

where:

A_c = Absorbance of the eluate from sections of the standard chromatogram containing nondoxycycline 349 nanometers-absorbing contaminants.
A_{cb} = Absorbance of the eluates from the sections of the blank sheets corresponding to those sections of the nondoxycycline-absorbing contaminants of the standard sheets.

(6) *Identity.* Proceed as directed in § 141.521 of this chapter, using the 0.25 potassium bromide mixture described in paragraph (b)(1) of that section.

(7) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 148z.2 Doxycycline monohydrate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxycycline monohydrate is a hydrated compound of doxycycline. It is so purified and dried that:

(i) Its potency is not less than 880 micrograms nor more than 980 micrograms of doxycycline per milligram on an "as is" basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 3.6 percent nor more than 4.6 percent.

(iv) Its pH in an aqueous suspension containing the equivalent of 10 milligrams of doxycycline per milliliter is not less than 5.0 nor more than 6.5.

(v) It contains not less than 90 percent nor more than 98 percent doxycycline on an "as is" basis.

(vi) It gives a positive identity test for doxycycline monohydrate.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, doxycycline content, identity, and crystallinity.

(ii) Samples of the batch: 10 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1*N* hydrochloric acid to obtain a concentration of 1,000 micrograms of doxycycline per milliliter (estimated). Further dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 141.5 of this chapter, except evaluate the results after observing the mice for 5 days and prepare the sample as follows: Transfer 1 to 2 grams of the sample, accurately weighed, to a mortar. Add 1 drop of polysorbate 80 and while grinding with a pestle, slowly add sufficient sterile, distilled water to make a suspension containing 100 milligrams of doxycycline per milliliter.

(3) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(4) *pH.* Proceed as directed in § 141.503 of this chapter, using an aqueous suspension containing the equivalent of 10 milligrams of doxycycline per milliliter.

(5) *Doxycycline content.* Proceed as directed in § 148z.1(b)(5).

(6) *Identity.* Proceed as directed in § 141.521 of this chapter, using the 0.25 potassium bromide mixture described in paragraph (b)(1) of that section.

(7) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 148z.3 Doxycycline hyclate capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxycycline hyclate capsules are composed of doxycycline hyclate and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains doxycycline hyclate equivalent to either 50 or 100 milligrams of doxycycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of doxycycline that it is represented to contain. The moisture content is not more than 5.0 percent. It passes the identity test for the presence of the doxycycline moiety. The doxycycline hyclate used conforms to the standards prescribed by § 148z.1.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The doxycycline hyclate used in making the batch for potency, safety, moisture, pH, doxycycline content, identity, and crystallinity.

(*b*) The batch for potency, moisture, and identify.

(ii) Samples required:

(*a*) The doxycycline hyclate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Blend a representative number of capsules in a high-speed glass blender with O.1*N* hydrochloric acid and further dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(3) *Identity.* Proceed as directed in § 141.550 of this chapter, except prepare the standard and sample solutions as follows: Dissolve precise amounts of the doxycycline capsule contents and of the doxycycline working standard in methanol and further dilute each solution to a concentration of 1 milligram of doxycycline per milliliter. Prepare the sample-standard mixed solution by mixing equal volumes of the final standard and sample solutions. The standard and sample must each produce a major, yellow fluorescent spot with the same *Rf* value, and the standard-sample mixed solution must show no separation of major spots.

§ 148z.4 Doxycycline monohydrate for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Doxycycline monohydrate for oral suspension is doxycycline monohydrate with one or more suitable and harmless buffer substances, preservatives, diluents, colorings, and flavorings. Its moisture content is not more than 3 percent. It passes the identity test for the presence of the doxycycline moiety. When prepared as directed in the labeling, each milliliter contains the equivalent of 5 milligrams of doxycycline and its pH is not less than 5.0 and not more than 6.5. Its potency is satisfacotry if it is not less than 90 percent and not more than 125 percent of the number of milligrams of doxycycline that it is represented to contain. The doxycycline monohydrate used conforms to the standards prescribed by § 148z.2.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter,

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The doxycycline monohydrate used in making the batch for potency, safety, moisture, pH, doxycycline content, identify, and crystallinity.

(*b*) The batch for potency, moisture, pH, and identity.

(ii) Samples required:

(*a*) The doxycycline monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Reconstitute the sample as directed in the labeling. Using a suitable syringe, transfer an appropriate aliquot of the suspension to a volumetric flask and dissolve with 0.1*N* hydrochloric acid. Further dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 0.100 microgram of doxycycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(3) *pH.* Reconstitute as directed in the labeling and proceed as directed in § 141.503 of this chapter, using the undiluted sample.

(4) *Identity.* Proceed as directed in § 141.550 of this chapter, except prepare the standard and sample solutions as follows: Dissolve precise amounts of the doxycycline monohydrate for oral suspension and of the doxycycline working standard in methanol and further dilute each solution to a concentration of 1 milligram of doxycycline per milliliter. Prepare the sample-standard mixed solution by mixing equal volumes of the final concentration of the sample and standard solutions. The sample and standard must each produce a major, yellow fluorescent spot with the same R_f value and the sample-standard mixed solution must show no separation of major spots.

Dated: March 15, 1971.

MARION J. FINKEL,
Acting Director,
Bureau of Drugs.

[FR Doc.71-5213 Filed 4-14-71;8:45 am]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER T—OPERATION AND MAINTENANCE

PART 221—OPERATION AND MAINTENANCE CHARGES

Wapato Indian Irrigation Project, Wash.

These final regulations are issued under the authority delegated to the Commissioner of Indian Affairs by the Secretary of the Interior in section 15(a) of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the Area Directors in 10 BIAM 3. The authority to issue regulations is vested in the Secretary of the Interior by sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9).

Beginning on page 3199 of the FEDERAL REGISTER of February 19, 1971 (36 F.R. 3199), there was published a notice of

intention to amend § 221.86 of Title 25 of the Code of Federal Regulations relating to the Operation and Maintenance charges on assessable lands under the Wapato Indian Irrigation Project. The regulations were proposed pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238 U.S.C. 1001) and pursuant to the Acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387).

Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulations.

During this period no comments, suggestions, and objections were submitted. It has been determined that sufficient justification exists for establishing the rate for Additional Works lands as proposed below.

Since the irrigation season for the Wapato Indian Irrigation Project has begun, additional delay has been deemed contrary to the public interest. Therefore, the 30-day deferred effective date is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (Supp. V, 1965–1969). Accordingly the amended § 221.86 shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

ELMO MILLER,
Acting Area Director.

APRIL 7, 1971.

§ 221.86 Charges.

The operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Yakima Indian Reservation, Wash., are hereby fixed as follows:

(a) Pursuant to the provisions of the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), the basic operation and maintenance assessment rates for the calendar year 1971 and subsequent years until further notice are:

(1) Minimum charges for all tracts in noncontiguous single ownership	$9.80
(2) Flat rate upon all farm units or tracts for each assessable acre except Additional Works lands	$9.80
(3) Storage operation and maintenance. For all lands with a storage water right, known as "B" lands, in addition to other charges per acre	$0.50
(4) Flat rate upon all farm units or tracts for each assessable acre of Additional Works lands	$10.25

(b) Pursuant to the provisions of the Act of September 26, 1961 (75 Stat. 680), there shall be assessed and collected from all lands except Additional Works lands, beginning with the calendar year 1967 and until further notice but not to exceed a period of 10 years, an annual per acre charge of $0.20 to defray the cost of replacing a wooden pipeline.

[FR Doc.71–5217 Filed 4–14–71;8:46 am]

Title 19—CUSTOMS DUTIES

Chapter III—Bureau of Domestic Commerce, Department of Commerce

PART 301—DETERMINATION OF BONA FIDE MOTOR-VEHICLE MANUFACTURER

Regulations formerly appearing in Part 301 of Chapter III of Title 19 of the Code of Federal Regulations are transferred to Chapter VI of Title 15 of the Code of Federal Regulations and redesignated as Part 615 of that chapter.[1] Accordingly, Chapter III of Title 19 is hereby vacated.

This redesignation shall become effective on the date of its publication in the FEDERAL REGISTER (4–15–71).

Dated: March 22, 1971.

WILLIAM D. LEE,
Deputy Assistant Secretary and Director, Bureau of Domestic Commerce.

[FR Doc.71–5203 Filed 4–14–71;8:45 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 70–141]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Harlem River, N.Y., and Roanoke River, N.C.

1. Line 4 of § 117.160(b) printed in the FEDERAL REGISTER on December 12, 1967, at 32 F.R. 17790 is corrected to read, "tween 10 a.m. and 5 p.m., the".

2. Line 2 of § 117.245(g)(2–a) printed in the FEDERAL REGISTER on September 30, 1970, at 35 F.R. 15212 is corrected to read, "bridge across the Roanoke River near Palmyra, N.C. The draw".

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05–1(c)(4) (35 F.R. 15922))

Effective date. These corrections are effective upon publication in the FEDERAL REGISTER (4–15–71).

Dated: April 12, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard, Chief, Office of Operations.

[FR Doc.71–5249 Filed 4–14–71;8:48 am]

[1] See F.R. Doc. 71–5204, Title 15, *supra.*

[CGFR 70–79a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Elizabeth River, N.J.

This amendment revises the regulations for the South Front Street bridge across the Elizabeth River at Elizabeth, N.J., to require that the bridge open upon 3 hours' advance notice between the hours of 12 midnight and 7 a.m. The present regulations require that the draw open promptly on signal for the passage of vessels. This change is made because of the infrequent openings from midnight to 7 a.m.

This amendment was circulated as a public notice dated October 9, 1970, issued by the Commander, Third Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70–79) on September 29, 1970 (35 F.R. 15159). Interested persons have had an opportunity to participate in the making of this rule through the submission of comments. This amendment is changed from the proposal in response to the comments. Under the proposal the bridge would have been closed to marine traffic from 12 midnight to 7 a.m. However, this amendment requires that the bridge open if three hours' advance notice is given from 12 midnight to 7 a.m. At all other times, the draw must open on signal. This amendment requires the same advance notice that is required for the South Fort Street bridge, which is 0.4 mile upstream.

Accordingly, § 117.225(f) is amended by deleting subparagraph (4) and revising subparagraph (3) to read as follows:

§ 117.225 **Navigable waters in the State of New Jersey; bridges where constant attendance of drawtenders is not required.**

* * * * *

(b) * * *

(3) *Elizabeth River.* (i) Central Railroad Company of New Jersey bridge and Union County bridges at Baltic Street, Summer Street, South Street, and Bridge Street in the city of Elizabeth. The draws need not open for the passage of vessels and paragraphs (b) through (e) of this section do not apply to these bridges.

(ii) Union County bridge at South First Street, city of Elizabeth. The draws shall open on signal if at least 3 hours' advance notice has been given.

(iii) Union County bridge at South Front Street, city of Elizabeth. From 7 a.m. to 12 midnight, the draw shall open on signal. From 12 midnight to 7 a.m., the draw shall open on signal if at least 3 hours' advance notice has been given.

(4) [Deleted]

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05–1(c)(4) (35 F.R. 15922)

Effective date. This revision becomes effective on May 17, 1971.

Dated: April 12, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5246 Filed 4-14-71;8:48 am]

[CGFR 70-136a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Hudson Bayou, Sarasota, Fla.

This amendment revises the regulations for the Orange Avenue bridge across Hudson Bayou at Sarasota, Fla., to allow the draw to remain closed. The present regulations require that the draw open on signal. This change is made because this waterway is currently used only by pleasure craft that can pass under the closed draw and the bridge has not been opened for the passage of a vessel since 1963.

This amendment was circulated as a public notice dated November 17, 1970, by the Commander, Seventh Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-136) on November 13, 1970 (35 F.R. 17425). No comments were received.

Accordingly, § 117.245(i) is amended by adding subparagraph (3-b) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

* * * * *

(i) * * *

(3-b) *Hudson Bayou, Sarasota, Fla.* The draw of the Orange Avenue bridge across Hudson Bayou may remain closed and paragraphs (a) through (e) of this section do not apply to this bridge.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05-1(c)(4) (35 F.R. 15922))

Effective date. This revision shall become effective on May 17, 1971.

Dated: April 12, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5248 Filed 4-14-71;8:48 am]

[CGFR 70-89a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Matanzas River, Fla.

This amendment revises the regulations for the Bridge of Lions (State Road No. A1A) across the Matanzas River at St. Augustine, Fla., to add an additional closed period, 11:50 a.m. to 12:20 p.m., Monday through Friday. This closed period is added because of the heavy vehicular traffic during this period.

This amendment was circulated as a public notice dated August 7, 1970, by the Commander, Seventh Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-89) on August 6, 1970 (35 F.R. 12554). No comments were received.

Accordingly, § 117.432 is amended by revising paragraph (a) to read as follows:

§ 117.432 Matanzas River (Intracoastal Waterway), Fla.; Bridge of Lions (State Road No. A1A) in St. Augustine.

(a) Except as provided in paragraph (b) of this section, the owner or agency controlling this bridge need not open the draw for the passage of vessels Monday through Friday from 7:30 a.m. to 8:15 a.m., 11:50 a.m. to 12:20 p.m., and 5 p.m. to 5:45 p.m.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4559), 33 CFR 1.05-1(c)(4) (35 F.R. 15922))

Effective date. This revision shall become effective on May 17, 1971.

Dated: April 12, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5251 Filed 4-14-71;8:48 am]

[CGFR 70-93a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Indian River (Atlantic Intracoastal Waterway), Fla.

This amendment revises the regulations for the John F. Kennedy Space Center's (NASA) bridge across the Indian River between Addison Point and Merrit Island to extend by 15 minutes the period of time that the bridge may remain closed to vessels on Monday through Friday mornings. This revision is made to facilitate the morning rush hour traffic at the Space Center.

This amendment was circulated as a public notice dated August 19, 1970, by the Commander, Seventh Coast Guard District and the proposal was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-93) on August 11, 1970 (35 F.R. 12727). No comments were received.

Accordingly, §117.436 is revised to read as follows:

§ 117.436 Indian River, Fla.; Florida State Road Department bridges at Titusville, Eau Gallie, Melbourne, and the National Aeronautics and Space Administration bridge at Addison Point.

(a) The draws of the bridge at Titusville, Eau Gallie, and Melbourne shall be opened promptly on signal except on Monday through Friday from 6:45 a.m. to 7:45 a.m. and from 4.15 p.m. to 5:45 p.m. the draws may remain closed.

(b) The draw of the John F. Kennedy Space Center (NASA) bridge at Addison Point shall be opened promptly on signal except on Monday through Friday from 6:45 a.m. to 8 a.m. and from 4:15 p.m. to 5:45 p.m. the draw may remain closed.

(c) The draws shall open at any time for public vessels of the United States, tow boats with tows, and vessels in an emergency situation upon four blasts of a whistle, horn, or similar device.

(d) The owner of or agency controlling each bridge shall post a copy of this section in such a manner that it can be read from an approaching vessel, on both the upstream and downstream sides of the bridge.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05-1(c)(4) (35 F.R. 15922))

Effective date. This revision is effective on May 17, 1971.

Dated: April 9, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5247 Filed 4-14-71;8:48 am]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Middle River, Calif.

This amendment revises the regulations for the State of California highway bridge across the Middle River at mile 11.8 between Victoria Island and Drexler Tract and the San Joaquin County bridge across the Middle River at mile 14 between Union Island and Drexler Tract at Fish Camp Landing to allow the draw to remain closed. The present regulations require that the State bridge open on 12 hours' advance notice and the county bridge on 24 hours' advance notice.

This amendment was proposed as a public notice dated October 9, 1970, by the Commander, Twelfth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-106) on September 29, 1970 (35 F.R. 15139). Interested persons were afforded an opportunity to participate in this rule making through the submission of written comments. Two comments objected to the closing of the bridges because it would limit cruising throughout the delta. This change is made because of infrequent requests for openings by vessels. If the needs of navigation require, the regulations for these bridges may be amended later to require that these bridges open for the passage of vessels.

Accordingly, § 117.714(c) is amended by revising subparagraphs (2) and (3) as follows:

§ 117.714 San Joaquin River and its tributaries, California.

* * * * *

(c) * * *

(2) *California State Highway Route 4 bridge between Victoria Island and Drexler Tract.* The draw may remain closed.

(3) *San Joaquin County highway bridge between Union Island and Drexler Tract at Fish Camp Landing.* The draw may remain closed.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655 (g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05-1(c)(4) (35 F.R. 15922))

Effective date. This amendment is effective on May 17, 1971.

Dated: April 12, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5250 Filed 4-14-71;8:48 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 6—MISCELLANEOUS FEES

Isle Royale National Park; Motor Vessel Transportation Rates

A proposal was published on page 1062 of the FEDERAL REGISTER of January 22, 1971, to amend § 6.5 of Title 36 of the Code of Federal Regulations. The purpose of the amendment is to increase rates for transportation on Government-owned vessels operated by Isle Royale National Park between Houghton, Mich., and the park.

Interested persons were given 30 days for submitting written comments, suggestions, or objections with respect to the proposed amendment. No comments were received. Therefore, the proposal is hereby adopted without change and is set forth below. Due to the urgency of making the changes before the visitor season, the amendment shall become effective upon publication in the FEDERAL REGISTER (4-15-71).

(5 U.S.C. 553)

Subparagraphs (1) and (2) of paragraph (a) of § 6.5 are amended to read as follows:

§ 6.5 Motor vessel transportation.

(a) *Isle Royale National Park.* (1) Transportation services between Houghton, Mich., and Isle Royale National Park, Mich., rendered aboard Government-owned vessels, shall be charged for at the following rates:

Personal transportation—one way: $10; round trip: $20.

Transportation of boats up to 14 feet in length—one way: $7; round trip: $14.

Transportation of boats over 14 feet but not exceeding 17 feet in length—one way: $13; round trip: $26.

Transportation of boats over 17 feet but limited to 20 feet in length—one way: $20; round trip: $40.

Canoes—one way: $5; round trip: $10.

Outboard motors not attached to boat—one way: $3; round trip: $6.

(2) Personal transportation for children between the ages of 5 through 15, inclusive, will be one-half of the rates mentioned in subparagraph (1) of this paragraph for comparable service. No charge will be made for children under the age of 5. Family groups consisting of parents (or a parent) and dependent children shall be entitled to a special group rate not to exceed $50 round trip or $25 one way.

* * * * *

Dated: April 7, 1971.

RAYMOND L. FREEMAN,
Acting Director,
National Park Service.

[FR Doc.71-5219 Filed 4-14-71;8:46 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER B—PRACTICE AND PROCEDURE

PART 1100—GENERAL RULES OF PRACTICE

Petitions for Suspension of Tariffs or Schedules

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 7th day of April 1971.

It appearing, that on the date hereof the Commission entered its report and order in Ex Parte No. MC-82. New Procedures in Motor Carrier Revenue Proceedings, prescribing procedures to be followed in certain such proceedings (including rate restructuring proceedings, as therein described), 49 CFR 1104;

It further appearing, that, among other things, it was provided therein that schedules containing certain proposals of such a nature should be filed at least 45 days prior to the published effective date, that simultaneously therewith the carriers should file their entire evidentiary case, and that protests to the schedules would be received on or before 20 days prior to the said effective date;

It further appearing, that rule 42 of the Commission's general rules of practice, 49 CFR 1100.42, entitled "Petitions for suspension of tariffs or schedules," provides that protests must be received at least 12 days prior to the published effective date of the protested schedules;

And it further appearing, that, because of the complex nature of the proceedings considered in Ex Parte No. MC-82, interested parties require additional time to analyze the carriers' presentation and prepare any protests; therefore,

It is ordered, That, effective as hereinafter provided, the said § 1100.42 be amended as follows:

1. The second sentence of paragraph (b) thereof, is amended to read as follows: "Such protests and requests for suspension shall reach the Commission at least 12 days (except as proved in paragraph (c) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer,".

2. Change the designations of present paragraphs (c) and (d) to (d) and (e), respectively, and add the following as paragraph (c):

(c) When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of a proposed rate restructuring, which proposals are subject to the special procedures prescribed in Ex Parte No. MC-82, "New Procedures in Motor Carrier Rev. Proc.," 339 I.C.C. 324, and set forth in Part 1104 of this subchapter, protests thereto shall reach the Commission at least 20 days before the published effective dates of those schedules. To assure consideration, replies to protests should reach the Commission not later than the seventh workday prior to the effective date of the protested schedules.

It is further ordered, That the above amendments will become effective 30 days after publication hereof in the FEDERAL REGISTER.

And it is further ordered, That a copy of this order be deposited in the office of the secretary of the Commission for public inspection, and that a copy thereof be filed with the Director, Office of the Federal Register, for publication therein simultaneously with the procedures prescribed in Ex Parte No. MC-82, 49 CFR 1104.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-5315 Filed 4-13-71;2:15 pm]

[Ex Parte No. MC-82]

PART 1104—PROCEDURES TO BE FOLLOWED IN MOTOR CARRIER REVENUE PROCEEDINGS

Report and order of the Commission. Pursuant to authority vested in this Commission by 49 U.S.C. sec. 316, we instituted the instant proceeding by notice served on August 31, 1970, which was published in the FEDERAL REGISTER. We solicited public comments on proposed new procedures governing the data and information to be submitted by motor common carriers in proceedings involving general rate increases. Our purpose was not to limit the type of evidence which motor carriers might introduce in such proceedings, but to reduce the time required for ultimate disposition, achieve greater uniformity in data submitted, avoid service of detailed orders in individual proceedings, and provide adequate notice to carriers and the public

of the minimum evidence we deem necessary to render a decision in furtherance of the public interest. We do not view the new procedures as being inconsistent with our decision in "Rules to Govern Assembling & Presenting Cost Evidence," 337 I.C.C. 298 (1970), which related to cost evidence in general. And, in addition to the stated objectives, these new procedures are intended to supersede rules for submission of evidence in general revenue proceedings set forth in the past in special orders in individual cases.

Our evaluation of the type of evidence which would best serve as a basis for decision in general revenue proceedings has been evolving and undergoing various refinements since entry of the initial so-called "big order" in 1964. The first of such orders was entered in "LTL COR Rates—Between East and Territories West," 326 I.C.C. 174. That order, in essence, provided for traffic and cost studies to be based on the same group of representative carriers in a given territory. In 1967, we issued a Statement of Policy which was published in the FEDERAL REGISTER (32 F.R. 7002–7004) in connection with a revised form of order in docket No. 34816, "Increased Minimum Charges Between Points in Central States" (not printed), decided April 16, 1969, eliminating the requirement that cost and traffic studies must be based on the same group of carriers. The traffic study was required to be representative of the traffic covered by the rate proposal. The cost study, on the other hand, was required to be developed for the Instruction 27 and 9002 carrier (hereinafter referred to as Instruction 27 carriers),[1] whose ton-miles in the affected territory comprised 50 percent or more of their total operations. Later, as exemplified by the "big order" entered in "Increased Rates & Charges, C. & S. Territories," 335 I.C.C. 676 (1969), the basis for selecting the cost study group was changed from ton-miles operated to revenues earned in the involved territory.

Based on our experience with those proceedings and others similar in nature, we believe that the quality of the evidence can be improved, and the disposition of general revenue proceedings can be expedited by establishing improved procedures. The data and information originally proposed concern five primary subjects, namely, application of the procedures, traffic study, cost study, revenue need, and the effect of affiliate transactions, as set forth in sections 1–5 of the notice (35 F.R. 13911).

In response to our notice, comments and replies were received from rate publishing bureaus, shipper associations, individual shippers, Government agencies, a traffic consultant, an accounting firm, and one interested individual. The representations expressed a wide diversity of views on all aspects of the proposal. We obviously cannot treat in this report each and every point presented. However, we have studied all of the comments and replies submitted by the parties, and as a consequence, we have modified some of the procedures originally proposed. The procedures herein prescribed are set forth below. The discussion hereinafter follows the arrangement of the procedures set forth in the notice.

1. *Application*—(a) *The $1 million and 200-member requirements.* We originally proposed that the procedures would apply upon the filing of agency tariff schedules containing proposed increased rates and charges on behalf of member carriers when the general increases would result in additional annual operating revenues of $1 million or more, and where the membership of a rate bureau exceeded 200 carriers. Those proponents would have been required to file all evidence in support of their proposal concurrently with the schedules. Carriers represented by other bureaus (of less than 200 members) would have been required to file such evidence only if a formal investigation were instituted. The 10 principal bureaus[2] object to the requirement concerning the size of the bureaus in membership and emphasize that for various reasons there is no necessary correlation between the size of bureaus and the revenues derived from general increase tariffs; small agencies with limited membership may, nevertheless, obtain rate increases exceeding $1 million. On the other hand, $1 million might be a relatively insignificant portion of the increased revenues obtained by the larger rate bureaus, which could total as much as $1 billion. To avoid compliance with the proposed new procedures, particularly the size of membership requirement, it is foreseen by the parties objecting that carriers could withdraw into smaller bureaus or publish individual tariffs.

We conclude that a more practical solution is to limit application to member carriers of general commodities in certain specifically named bureaus as listed below. These 10 bureaus[3] have been selected because their respective carrier memberships include a relatively large number of Instruction 27 carriers which is necessary for valid cost and traffic samples. Thus, carriers of the named bureaus would be required to comply with the procedures when the proposed general increases are expected to produce added annual operating revenues of $1 million or more. The latter continues, in our judgment, to represent a valid minimum requirement for submission of the evidentiary data at the time the schedules proposing the increases are filed. For the present, we will not adopt the suggestions of the Rocky Mountain Motor Tariff Bureau (Rocky Mountain) and the National Industrial Traffic League (NITL) that the procedures should be required also of bureaus composed of specialized carriers of particular commodities, such as iron and steel articles, since such carriers are not required to allocate their expenses between line-haul and other services.

Our original notice did not specifically include reference to so-called rate "restructuring" situations, where numerous decreases accompany numerous increases in rates, as in "Small Shipment Rate Revision—Eastern Central," 335 I.C.C. 547. Nevertheless, we believe that the provisions of the notice were sufficiently broad to embrace those situations. Therefore, where such an adjustment results in an increase in annual net operating revenue (proposed versus present revenues) of $1 million or more, the procedures herein prescribed should be followed, and we shall so require. Where such restructuring results in additional annual net operating revenues of less than $1 million, in any formal proceeding the carriers would not be required to submit the evidence required by sections 4 and 5 and appendixes A and B, regarding revenue need and affiliate data. It will be understood that reference hereinafter to general revenue proceedings will include such restructuring situations.

(b) *Submitting entire evidence at time tariffs are filed.* We proposed that the carriers submit their entire evidential case at the same time they file their tariffs for general revenue increases. Rocky Mountain and the 10 principal bureaus oppose that proposal and urge that it should be modified to permit the filing only of evidence which in their opinion would justify the proposal and to allow for later submission of certain types of evidence, namely, evidence which became subsequently available and supplemental evidence concerning operating practices, cost control measures, and general traffic considerations. On the other hand, the Drug and Toilet Preparation Traffic Conference (D&TC) favors the proposal because it would eliminate the time lag in filing statements by carriers under present procedures and would make available to the Board of Suspension a more comprehensive record upon which to base a decision as to whether suspension of the schedules is warranted. As a result, it contends, if the carriers are entitled to an increase, that fact will be developed sooner than heretofore; if a rate increase is found not justified, shippers will not be burdened with paying unreasonable freight charges pending a decision; and the Commission will no longer need to establish disputed "refund" procedures in connection with cases which involve lengthy litigation.

[1] Instruction 27 and 9002 carriers, pursuant to the Uniform System of Accounts (49 CFR Part 1207), are required to separate their expenses between those incurred in line-haul and pickup and delivery services.

[2] Central and Southern Motor Tariff Association, Inc., Central States Motor Freight Bureau, Inc., Eastern Central Motor Carriers Inc., Southern Motor Carriers Rate Conference-Middlewest Motor Freight Bureau, New England Motor Rate Bureau, Inc., Pacific Inland Tariff Bureau, Niagara Frontier Tariff Bureau, Inc., Southern Motor Carriers Rate Conference, and Southwestern Motor Freight Bureau, Inc.

[3] The 10 specified bureaus are the same as the 10 principal bureaus who jointly participated herein, except Niagara Frontier Tariff Bureau, Inc., has been excluded and Rocky Mountain Motor Tariff Bureau has been included.

In our opinion, except for the addition of restructuring situations, no change in the original proposal is justified. Normally, general rate increases are sought because carriers have experienced an increase in underlying costs. Therefore, evidence substantiating those costs should be at hand, as well as the related data and information, and there should be no need to delay the presentation. Furthermore, the purpose of these prescribed procedures is to elicit minimal data and information which we deem necessary to make an adequate record. On the other hand, we have no intention, if a formal proceeding is instituted, of precluding the parties from updating the evidence submitted at the time of filing in order to show the contemporary situation.

(c) *The 45-day provision.* We proposed that the schedules and the data required must be concurrently filed at least 45 days prior to the published effective date of the schedules. D&TC and Manufacturers Association of Connecticut object that the 45-day period is too short. It is pointed out that carriers have as long as they need to accumulate their evidence since they control the time when tariffs are filed, but that protestants, on the other hand, under the new rule would be limited to 33 days from the date of filing, in view of the fact that their protests must be registered with the Commission 12 days prior to the effective date, in accordance with present rule 42 of the general rules of practice. They, thus, seek an extension of the filing period to 60 days prior to the effective date to permit protestants 48 days under the present rule in which to analyze the carriers' evidence and file their protests. Kraft Food Division of Kraftco Corp. (Kraft) believes that unusual circumstances present in a particular case would represent a justifiable exception and warrant extension of the proposed 45-day period. Rocky Mountain opposes any extension of time beyond the 45 days. It argues that lengthening the period between the filing and the effective date of schedules would impose a lag of months between cost increases experienced by carriers and any revenue relief obtained by virtue of Commission approval of rate increases.

Despite the arguments that more time is needed for protests, we are adhering to the requirement as proposed. In our judgment a balancing of the interests of shippers and carriers would not warrant extending the period beyond 45 days, principally because of the need for expedition. In this connection we are contemporaneously amending rule 42 of the general rules of practice to provide that in motor carrier general revenue proceedings the protests must be filed with the Commission on or before 20 days prior to the published effective date. This will allow 25 days for protests in lieu of the minimum of 18 days allowed under the present rule. To assure consideration of replies to protests, such replies should reach the Commission not later than 7 working days prior to the published effective date of the protested matter. We realize that the maximum effort of all participants will be necessary to meet these deadlines, but the Commission will need the additional time to properly evaluate the protests.

(d) *Uniformity of application of the new procedures.* The 10 principal bureaus do not believe that the new procedures can be applied uniformly from the standpoint of either territory, type of carrier, or type of evidence required.

As an example of the alleged impractically of requiring uniform compliance from all major bureaus regardless of the territory involved, they refer to the situation in New England. In the proposal, we provided that the aggregate revenue of those Instruction 27 carriers to be included in the cost study should represent 75 percent of the total revenues from the issue traffic. However, in New England, it is claimed, out of a total membership of some 1,200 carriers, the 154 Instruction 27 carriers do not derive 75 percent of their general freight revenues from rates in the New England Bureau tariffs. Thus, the results of applying the proposed procedures would not be meaningful.

In selecting the traffic study carriers, we proposed that, in addition to Instruction 27 carriers, all carriers obtaining 50 percent or more of their revenue from the issue traffic should be included. The 10 principal bureaus urge that the new procedures should not be applied to small classes II and III bureau members. They contend that those carriers do not maintain the records or have the facilities to submit the required data, and that the only manner in which this information could be obtained is for the bureaus at great burden and expense to send personnel into the field to take such samples.

Finally, as concerns the type of evidence to be submitted, the 10 principal bureaus contend that cost-revenue comparisons, although generally pertinent, should not be required in those instances where they seek amounts merely equivalent to increased expenses due primarily to wage increases.

On the other hand, certain parties contend that these procedures should be applied uniformly. D&TC urges that uniformity must be required, because, in the past, the carriers have not used any consistent basis for justifying general rate increases. As to evidentiary data to be required, NITL contends that cost-revenue comparisons are necessary because it would be improper to apply an increase across the board based solely on wage increases which do not necessarily have the same effect on all sizes of shipments.

For the reason given by NITL, we conclude that cost-revenue comparisons should be submitted in all general rate increase proceedings, including those instances where the carriers are merely attempting to recover wage and price increases, and our prescribed procedures cover those situations.

We agree with the 10 principal bureaus that compliance with the proposed procedures should not be required of all types of carriers. Small class II and class III carriers, as well as specialized carriers of particular commodities, do not ordinarily provide the necessary data and information to comply with the requirement for separation of certain of their expenses between line-haul and pickup and delivery services, and as a result meaningful cost studies cannot readily be developed for those carriers. Therefore, we cannot agree that the prescribed procedures should apply at this time to those carriers.

Finally, we believe that territorial uniformity in application of these procedures can be achieved. The 10 principal bureaus appear to have misconstrued our proposal to the extent that it provided for the selection of cost study carriers based on percentage of revenue derived from the issue traffic (rather than revenues from all New England tariffs). Under our prescribed procedures, we are designating as the cost study carriers those Instruction 27 carriers participating in the continuing traffic studies. Thus, the apparent obstacle foreseen by the bureaus as preventing uniform application of the cost method to all major territorial bureaus will no longer have any effect under the prescribed procedures.

2. *Traffic study*—(a) *Sampling frame.* The modification sought by the parties and accepted by us in the prescribed procedures which is most basic from a substantive standpoint involves the determination of the frame of carriers for the prescribed traffic study. We proposed that the traffic study be based on a group of carriers in a particular bureau, consisting of the Instruction 27 carriers and any other carrier whose revenues from general commodity traffic amounted to 50 percent or more of that carrier's system revenues. The 10 principal bureaus objected to inclusion in the frame of any carriers except Instruction 27 carriers. After consideration of this objection we are prescribing a different frame. The frame will be restricted to those Instruction 27 carriers which derive 5 percent or more of their total system revenues from the issue traffic. In our opinion, these carriers will provide an adequate frame at this time since nationwide they transport the preponderance of the general freight traffic, and it will eliminate those carriers which cannot readily supply the proper related cost data at this time.

Such of those Instruction 27 carriers presently participating in the continuing traffic studies will constitute the frame. Consistent with our objective of continuing improvement in procedures, we shall expect the 10 named bureaus to make every effort to enlarge the number of carriers participating in their traffic studies, toward the goal of including all Instruction 27 carriers by 1973, and thereby achieving the maximum in reliability of the data submitted. The prescribed procedures will require the furnishing of a list of the carriers, and the appropriate revenue data, to corroborate the sampling frame.

(b) *"Carried" versus "through"—traffic sample.* In our proposal we did not specify whether the "carried" or

"through" basis of sampling the issue traffic should be used. "Carried" traffic means traffic handled solely by the frame carriers, either single-line or inter-line. "Through" traffic, on the other hand, includes carried traffic, plus that portion of any interline sample movement handled by a nonframe carrier. The 10 principal bureaus support the through basis because it reflects actual handling of through movements from origins to destination. D&TC urges use of the carried basis primarily because the through basis results in a sampling bias due to the fact that it includes only the interline traffic of the nonframe carriers.

We shall require submission of cost-revenue comparisons on a "carried" basis. See National Small Shipments Traffic Conference, Inc. v. United States, F. Supp. (S.D.M.Y. 1970). The carriers are not precluded from submitting additional data on a "through" basis, but they should be prepared to demonstrate that use of this basis does not result in a substantial sampling bias.

(c) *Revenues.* The continuing traffic studies, in addition to developing the applicable number of traffic service units, also involve development of total revenues on both issue and nonissue traffic for the purpose of securing divisors to obtain so-called operating ratios. Concerning these divisors, our proposal, first, did not provide that "current" revenues must be updated to any particular time, nor, second, did it provide that revenues must be adjusted to reflect the revenues from accessorial services. Parties have raised issues concerning each of these matters.

The need to update revenues is stressed by D&TC. It points out that in 1970, some bureaus filed for rate increases based on traffic-revenue studies for the year 1968. To avoid an understatement of revenues, D&TC suggests that they should be updated to within 45 days of the time the involved schedules are filed.

The 10 principal bureaus state that two methods are used in accounting for revenues derived from accessorial services. If the service is for the completion of normal transportation, such as rendering regular pickup or delivery, revenues therefrom are allocated on the basis of the size of shipment involved. There is no dispute regarding this treatment of these revenues. If, on the other hand, the accessorial service is not of the ordinary type, such as pickup and delivery in connection with stopping in transit, the revenue is treated as a reduction in terminal costs, because such revenues are not susceptible of assignment to specific weight groups. Consequently, they urge that their revenue need showing is not distorted by the manner in which they account for these accessorial services. On the other hand, American Home Products Corporation and D&TC urge that all revenues, regardless of amount, should be included in cost-revenue comparisons. Rocky Mountain contends, in essence, that revenues from accessorial services are de minimus.

We adopt the suggestion of D&TC, and for the same reasons, and prescribe that revenues should reflect all rates and charges in effect no later than 45 days prior to the date the tariffs are filed. On the other point, we generally agree that there is a need to relate the revenues and expenses associated with accessorial services to the shipment that caused these services. Some of these accessorial services are performed for the traffic study carriers by other individuals, such as warehousemen and local cartage men, and the traffic study does not include the traffic service units applicable to these accessorial services which, in turn, could be costed to provide a proper cost-revenue comparison. For this reason, as urged by the 10 principal bureaus, we agree that the revenues received from these accessorial services should be deducted from the operating expenses rather than included as revenues only.

(d) *Characteristics of the traffic sample.* We originally proposed to adopt the probability sampling techniques which are now being used by the carriers in making their continuous traffic studies for the most current 12 months available. D&TC points out that such a sample could not be verified by data in the latest annual report. Therefore, they suggest that the sample be taken from the latest 12-month calendar year. The 10 principal bureaus favor permitting optional use of either judgment or probability sampling, depending on the circumstances. Rocky Mountain apparently supports the latter view. It advises that continuing traffic studies, employing probability sampling techniques, corroborate the accuracy of their prior judgment sampling. Probability sampling provides more reliable results and measurements of precision, and, therefore, we prescribe its use in the new procedures. We are persuaded, for the reason advanced by D&TC, that the traffic sample should be obtained from operations conducted during the most current 12-month calendar year available. That revision is, therefore, prescribed in the new procedures.

With respect to our original proposal that the traffic sample be taken from Instruction 27 carriers, plus any other carriers whose revenues from the issue traffic amount to 50 percent or more of their system revenues, NITL suggests, for the purpose of identifying future carriers in the latter group, that annual reports include an additional reporting requirement that carriers show the amount and percent of total revenues earned under the tariffs of the bureaus of which they are members. Such an additional annual reporting requirement is not necessary to determine what carriers should be included in any expanded traffic sample, for the reason that under the new procedures the study sample will be confined to Instruction 27 carriers, which are readily identifiable.

D&TC contends that we have not established a specific level for the limits of sampling errors. The new procedures, however, require a showing of the sampling errors. Although we have not established a specific level, we believe that the responent carriers, having the burden of proof, should use a level of sampling errors which support the conclusions and inferences they have drawn from the data.

3. *Cost study*—(a) *Each-to-each cost method.* We originally proposed that the cost study carriers would be selected from a list of Instruction 27 carriers arrayed in descending order by the percentage that each carrier's revenue from the issue traffic bore to its total system revenues. Those carriers whose aggregated revenues comprised the top 75 percent of the issue traffic in a particular bureau were to constitute the cost study group. The weighted composite service unit-costs were to be obtained by multiplying each carrier's total system expenses and statistics by a percentage reflecting the relationship of its revenues from the issue traffic to its total system revenues.

This method of developing service unit-costs is opposed by rate bureaus and shippers principally on the ground that revenue is used as a factor to weight expenses and statistics. The 10 principal bureaus point out that under our original proposal the applied costs and the actual costs of the study carriers could not be reconciled. Rocky Mountain stresses that such a method fails to recognize that the assignment of expenses and statistics by type of service for each carrier cannot be made on a revenue basis, but depends on consideration of such specific shipment characteristics as weight, size, length of haul, and type of traffic. DOT questions the selection of cost study carriers from a list depending on revenue relationships. Such method could conceivably exclude a large carrier whose issue traffic revenues, while great in amount, might represent a relatively small proportion of its total system revenues. NITL also opposes our proposed method and suggests as a substitute the application of the service unit-costs of each carrier to its own traffic service units to obtain cost-revenue comparisons, the so-called "each-to-each" method.

Upon reevaluation, we are convinced that costs are not caused by nor are necessarily associated with revenues, and that the premise for our original proposal was inappropriate. In recognition of the close interaction between the traffic handled by an individual carrier and the costs incurred by that carrier in performing service, we are now prescribing use of the "each-to-each" method which should be used only when a carrier is both a traffic and a cost study carrier. Furthermore, the method is presently used by most of the rate publishing bureaus in preparing their cost studies; DOT and other parties support it.

H. W. Williams & Associates urge that non-Instruction 27 carriers should be included in the cost study, contrary to our original proposal. In support, they urge that they have developed a method for costing the services of such carriers. That method is not substantiated on this record. Furthermore, even at this time all Instruction 27 carriers are not participating in the traffic studies and their participation seems desirable before appropriate consideration can be given to

developing costs for non-Instruction 27 carriers.

(b) *Costing methods.* In costing out the traffic on a "carried" basis, where only the frame carriers' traffic service units are involved, there is no problem in applying the each-to-each method. Should the "through" method also be used, the question is how to compute the cost of the service performed by the nonframe carrier. In addition to the each-to-each method, there are two possible alternatives: (1) To use the regional average costs published by our Section of Cost Finding for the territory in which the nonframe carrier transported the shipment, or (2) to use the frame carrier's composite cost. We proposed originally that the appropriate regional average costs be applied to that portion of an interline shipment handled by a nonframe connecting carrier. This choice was dictated in part by the consideration that the nonframe connecting carrier might be a small non-Instruction 27 general freight hauler and that the only available costs which may be reasonably representative of such operations would be the regional average costs. Rocky Mountain urges the application of the frame carriers' costs to the service units of the nonframe connecting carrier. It admits, however, that there is not much difference in the results between using regional averages or frame carriers' costs, but that application of regional averages is more burdensome because the latest published regional studies might require updating. After further consideration, we now believe that any of the three costing methods may be used, depending on the circumstances, should the "through" basis be used.

(c) *Effect of productivity on costs.* DOT takes the position that the original proposal fails to deal in detail with anticipated productivity changes. It realizes that productivity in various phases of transportation will not always improve because, for example, greater traffic congestion could conceivably reduce productivity related to linehaul operations. On the other hand, it foresees that the general trend will probably be toward increased productivity, based on overall improvements in motor carrier operations, including more modern terminal facilities, employment of better management techniques, and computerization. Finally, throughout the Nation as a whole, an improved highway system is being constructed and maintained. Rocky Mountain disagrees with DOT's position that the general trend in motor carrier operations is toward increased productivity. Based on its carrier members' experience, an overall decline in productivity has occurred among its frame study carriers. For example, average tons handled annually per employee has declined over the last 5 years from more than 500 to slightly over 450. The 10 principal bureaus contend that carriers now show the future cost of handling traffic which includes anticipated changes in productivity and that no further refinements can reasonably be made.

Our original proposal and our prescribed procedures require an explanation of the basis of cost projections, including specific reference to the element of productivity. We have not required detailed evidence, as in other respects, for the reason that we have not been shown how productivity can so be treated. However, we are receptive to revising the procedures to include any reliable method of describing changes in productivity.

4. *Revenue need;* and

5. *Affiliate data*—(a) *Allocation of constant and sum of money costs.* In determining revenue need as prescribed in the order hereto, our procedures require the allocation of constant and the sum of money costs on two bases, namely, the ton and ton-mile basis and the dollar (expense) basis, as we originally proposed. The submission of data on both bases is opposed by the 10 principal bureaus, Rocky Mountain and Kraft. They would prefer the apportionment of constant costs solely on the dollar (expense) basis, referring to our past acceptance of that basis, especially in Small Shipment Rate Revision—Eastern Central, 335 I.C.C. 547. Nevertheless, we are convinced that proponents of general rate increases should apportion constant costs on both bases. As was found by us in "Rules to Govern Assembling & Presenting Cost Evidence," supra:

> (4) The allocation of constant costs to particular services, for ratemaking purposes, should result in the assignment of an equitable portion of such expenses to the particular services, and no single method can be considered as universally applicable to all transportation services.

For the same reasons, we conclude that the allocation of sum of money costs, representing the carriers' need of revenue over and above operating expenses, should likewise be apportioned on both bases.

(b) *Consolidated reporting of parent and affiliate data.* In determining revenue needs of the parent carriers, we originally proposed to reduce the carriers' revenue need by a computed amount of the affiliates' profits: We were then of the view that, although these organizations may be separate legal entities, they are in reality a single economic entity. The 10 principal bureaus and Rocky Mountain urge that compliance with such a requirement would underestimate their revenue need. In lieu thereof, they favor consolidated reporting, that is combined reporting of parent and affiliate financial data. They contend that only such reporting adequately reflects certain aspects of the relationship. For example, it is stated that the widespread use of operating property leased from affiliates results in an understatement of the parent's revenue need, because such property is not capitalized. NITL does not oppose consolidated reporting per se, but points out that the result thereof would be to include the value of nontransportation property of the affiliate, which the user of the transportation service should not be obligated to support.

We believe that it is possible to assess the financial stability of motor carriers by using current accounting and reporting procedures without additional reporting requirements at this time, which would be necessary if consolidated reporting were adopted. Our purpose here is not a comparison with other industries, but, on the contrary, we are attempting to obtain a historical comparison over a period of years within the motor carrier industry. We will not require consolidated reporting at this time. Furthermore, in recognition of the objections to our proposal in this respect, we shall not prescribe here a mandatory deduction of affiliates' profits from the parent carriers' revenue need. However, each individual traffic and cost study carrier having transactions with affiliates shall submit appropriate data and analyses reflecting the effect on the carrier's profits of such transactions. Such data and analyses shall be adequately supported, and underlying data shall be submitted to permit reconciliation with each carrier's annual report.

(c) *Financial ratios.* In our original proposal, we required a showing of rate of return on investment, rate of return on shareholders' equity less intangibles, operating ratio, and turnover ratio. The operating ratio, according to the 10 principal bureaus, fails to take into account long-term debt or other fixed obligations. The National Association of Electrical Distributors attacks the arbitrary application of 93 percent as an acceptable motor carrier operating ratio. It urges that this does not accord any consideration to the amount of debt or equity financing required to meet broader financial obligations. Arthur Anderson & Co. (Anderson) argues that the rates of return are distorted because the industry as a whole is undercapitalized. Consequently, by applying the proposed financial ratios, the apparent rate of return will be higher and, correspondingly, the revenue need seemingly less than if carriers had adequate working capital and equity. To overcome this distortion to some extent, Anderson urges that the rate of return requirements should be examined on a long-term basis, at least for 3 years.

Without the operating and other financial ratios required in our original proposal, we would be limited to conventional revenue-cost comparisons in analyzing the financial position of the carriers. As suggested by DOT and Central & Southern Motor Freight Tariff Association, to obtain a broader base by which to measure the financial condition of the carriers, we shall require additional ratios, namely, capital structure ratio, throwoff to debt ratio, and ratio of long-term debt to shareholders' equity, less intangibles. These revisions in our prescribed requirements appear to meet most of the above objections.

(d) *Deductions from the investment base.* Certain objections are raised to the composition of the rate bases originally proposed. In determining the rate of

return on shareholders' equity, we originally proposed that intangibles be deducted. Since operating rights are financed, in effect, with debt or working capital, Anderson does not believe that the value of such an intangible asset should be deducted. DOT, on the other hand, argues that unless deducted, the fluctuating value of intangibles under the guise of legitimate operating expenses are improperly borne by the user of the transportation service. In addition NITL opposes including in the property investment base any nontransportation properties. DOT concurs in NITL's position and also urges that the investment base should not include the value of property leased by the carriers to others, because such property is not being used by the carriers for transportation purposes.

In our view, the value of intangibles should be excluded in computing the rate of return on shareholders' equity and thereby avoid any speculative inflation of the rate base. We agree with NITL and DOT that property and facilities not devoted to transportation should not be included in the investment bases upon which revenue need is calculated. However, transportation property leased to others should be included, because net carrier operating income is based, among other things, on both the cost of and income from such properties.

(e) *Income taxes.* In determining revenue need, our original proposal permitted the carriers to treat actual income taxes incurred on ordinary income as a factor. Anderson urges that the carriers be permitted to apply the deferred method of income tax accounting. We have rejected this method of accounting for income taxes in Accounting for Federal Income Taxes, 318 I.C.C. 803. Reversal of that position is not warranted by this record, and we adhere thereto.

(f) *Recognition of the effect of inflation on investment base.* Anderson and Arthur Todd urge that the investment in motor carrier property based on original cost, as proposed, should be restated to reflect current market values, to give effect to inflation. DOT, on the other hand, argues that under such a valuation the owners would not only enjoy the return on account of the appreciated value of the property over the years, but also would benefit from an increased investment base equal to the difference between original cost and current market value. We agree with the latter position; the users of transportation services should not be required to pay rates premised on a base other than the depreciated investment.

(g) *Funds flow.* DOT suggests there is a need for a so-called funds flow analysis [4] as a means of analyzing the capital requirements of the motor carrier industry by obtaining an impression of the efficiency with which carriers are using their capital goods. Allegedly, such an analysis would also aid the Commission in its efforts to determine the revenue needs of the industry. We are in agreement that such an analysis would provide some measure of efficiency and would supplement the other analytical tools prescribed in the appendixes to our order. The suggested funds flow analysis would require the establishment of uniform data reporting, interpretations, and procedures. It should be noted that in No. 35344, Annual Reports of Class I Railroad Companies Notice of Proposed Rulemaking (35 F.R. 19125), we are proposing to obtain from the railroads a new Schedule 397, entitled "Statement of Sources and Application of Funds During the Year," that would provide data from which, among other things, a funds flow analysis could be made. In our opinion, it would be premature without further investigation and consideration, to consider in this proceeding the requirement of a similar statement for the motor carrier industry. However, at some later date we may, if the circumstances so warrant, require the submission of this type of evidence by the carriers or take appropriate steps on our own to develop a funds flow analysis in a particular proceeding.

[4] Briefly, a study of the movement of funds through an organization, which may provide an insight into the manner in which operations are financed and funds are used.

FINDINGS AND CONCLUSIONS

Upon consideration of all comments and replies received in response to the original notice, we find that the new procedures in appendix II hereto should be, and they are, prescribed for application in the indicated circumstances.

We cannot emphasize too strongly that it is obviously in the best interests of any respondent, or group of respondents, to accompany all general increase proposals, as well as any other significant proposal, with an advanced justification. Most do so at the present time and we would expect this practice to continue whenever the procedures prescribed here do not apply to their particular proposals.

The new procedures should be of considerable aid in achieving our objectives of reducing the time for disposition of revenue proceedings, achieving greater uniformity in the data submitted, avoiding the issuance of orders in individual proceedings, and providing adequate notice to the carriers and the public of the minimum evidence we deem necessary to render a decision in furtherance of the public interest. They are not, however, regarded as immutable. We are constantly reevaluating our procedures. We will attempt to keep abreast of technological innovations which could improve the collection and application of basic data, to the end of our obtaining even more accurate data in shorter time to serve as the basis for rendering decisions in general revenue proceedings having a wide and significant impact on public interest.

Order. Investigation of the matters and things involved in this proceeding having been made, and the Commission, on April 7, 1971, having made the findings of fact and reached the conclusions stated above,

It is ordered, That Chapter X of Title 49 of the Code of Federal Regulations be, and it is hereby, amended by adding a new Part 1104, Procedures to be Followed in Motor Carrier Revenue Proceedings, reading as set forth below.

It is further ordered, That the said prescribed procedures shall be published in the FEDERAL REGISTER.

It is further ordered, That the prescribed procedures shall take effect 30 days after the date of publication in the FEDERAL REGISTER.

And it is further ordered, That this order shall continue in full force and effect until the further order of the Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

Sec.

AUTHORITY: The provisions of this Part 1104 issued under 49 U.S.C. 305(h), 316(g), 316(i); 5 U.S.C. 553(b).

§ 1104.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1104.2–1104.5 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which

are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association.
Central States Motor Freight Bureau.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference.
Middlewest Motor Freight Bureau, Inc.
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference.
Southwestern Motor Freight Bureau, Inc.

(c) Upon the filing of tariff schedules other than those described hereinabove, the tariff publishing agencies or the parties thereto shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted in any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than $1 million the carriers will be required to submit only the data sought in §§ 1104.2 and 1104.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1104.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available. The study shall include a probability sampling of the actual traffic carried during identical time frames for each study carrier. The "frame of carriers" shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter, Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive 5 percent or more of their system annual operating revenues from the traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the sampling frame.

(b) Respondents shall take the sample of traffic from the frame of carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data, and any statistical analysis performed on the sampled data. "Issue traffic" consists of those shipments carried by the frame carriers on which the freight rates or charges would be affected by the rate proposal. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of the tariff filing.

§ 1104.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual frame carrier, adjusted by size of shipment and length of haul, and shall be applied to the respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic carried by the frame of carriers by individual weight brackets included within the rate proposal, for: (1) The annual reporting period preceding the filing date of the tariffs in issue, and (2) the projected annual reporting period concurrent with the filing date of said tariffs. Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in subparagraph (1) of this paragraph. In addition to the operating ratios, the cost study shall show for each traffic and cost study carrier and for all such carriers combined, as provided in appendix A hereto, the sample values for expenses and revenues expanded to full year values. Operating ratios, and the revenue-to-cost comparisons (in appendix A), shall be derived directly from the sample data without adjustment to known annual report figures of any carrier.

(b) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (frame carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipment shall also be submitted. These sample shipments should be on the carried basis.

§ 1104.4 Revenue need.

Traffic and cost study carriers, i.e., the frame carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service. This evidence shall include (a) for each individual traffic and cost study carrier the data required by appendix A, parts I and II, and appendix B, and (b) for all such traffic and cost study carriers combined the data required by these appendixes.

§ 1104.5 Affiliate data.

Each individual traffic and cost study carrier (frame carrier) having transactions with affiliates, subject to the reporting requirements of Schedules 9009–A and 9009–B in the annual report for class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying data as will permit a reconciliation of these data to the data supplied in the appropriate schedules of each carrier's annual report.

§ 1104.6 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1104.7 Copies and service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. One copy of each statement shall be sent by first-class mail to each of the Regional Offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory, and that fact shall be evidenced by a certificate of service filed with the schedules or petitions. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. Where service is made by mail, the statements shall be mailed in time to be received on the date the original is filed with the Commission. A copy of each statement shall be furnished to any interested person on request.

§ 1104.8 Underlying data.

All underlying data used in preparation of the material outlined above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination.

Traffic and Cost Study Carrier: _____

Cost Allocation—
See Part II Line 12
☐Method A, ☐Method B
Check one; provide both

APPENDIX A—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE

(Complete Appendix A for Each Traffic and Cost Study Carrier and for All Such Carriers Combined)

Line No.	Item	Source for columns 3 and 4 [1]	Second preceding calendar year (actual)	First preceding calendar year (actual)	Projected or constructed year [2]
	(1)	(2)	(3)	(4)	(5)
	Part I Revenue Need				
1	Operating revenues	A.R. Sch. 2998 L.3	$	$	$
2	Operating expenses	A.R. Sch. 2998 L.10			
3	Lease of distinct operating unit (net)	A.R. Sch. 2998 Net of Ls.12 & 13.			
4	Miscellaneous deductions less other income.	A.R. Sch. 2998 (L.27 minus L.20).			
5	Interest included in miscellaneous deductions.	A.R. Sch. 2998 L.23			
6	Income taxes on ordinary income [3]	A.R. Sch. 2998 L.29			
7	Extraordinary and prior period items	A.R. Sch. 2998 L.34			
8	Net income or loss [4]	A.R. Sch. 2998 L.35			
9	Sum of money above operating expenses	Sum on Ls.4, 6, and 8			
10	Sum of money related to transportation	(L.9 × % in App.B L.13) plus L.3.			
11	System revenue need items and projected revenue need.	L.2 plus L.10			
	Part II Allocation to Traffic at Issue				
12	Constant costs and sum of money allocated to issue traffic.	See Method A ( ) and Method B ( ) Check one; Provide both.	xxx		
13	Variable expenses from traffic at issue (90% variable excluding return on investment). [5]	From traffic and cost study	xxx	$	
14	Operating revenues from traffic at issue. [5]	From traffic study	xxx	$	
15	Constant costs and sum of money allocated to issue traffic plus variable expenses.	L.12 plus L.13	xxx	$	
16	Revenue to cost comparison (1 decimal) [6]	L.14÷L.15	xxx	%	

[1] Annual report sources apply to Class I motor carriers for Class II carriers use comparable source.

[2] Data in this column must be appropriately explained and supported. Each of the projected dollar figures called for in column 5 shall be accompanied by an explanation of the bases or methods of projection, including explicit identification of all projected or assumed changes in revenues, in wage rates, in price levels of other expenses and property items, and in productivity, as compared with the preceding (actual) year results.

[3] In column 5 show income taxes based on estimated taxable income reduced by the taxes applicable to other income such as for example capital gains transactions.

[4] In column 5 estimate the net income needed and support this estimate by evidence that it is a just and reasonable amount.

[5] Show expenses and revenues allocated to the total issue traffic based on an expansion of a sample to a full year. The amount shown on line 13 for variable expenses should agree with that shown on Appendix B line (d).

[6] Not to be shown by individual carrier.

METHOD A—CONSTANT COSTS AND SUM OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON TON AND TON-MILE METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Second preceding calendar year (actual)	First preceding calendar year (actual)	Projected or constructed year
	(1)	(2)	(3)	(4)	(5)
(a)	System constant costs excluding unrelated.	L. (b)+L. (c)	$	$	$
(b)	Not related to distance	(See Note B)			
(c)	Related to distance	(See Note B)	$	$	$
(d)	Percent not related to distance (3 decimals).	L. (b)+L. (a)	%	%	%
(e)	Percent related to distance (3 decimals).	L. (c)+L. (a)	%	%	%
(f)	System sum of money	L. 10, Part I	$	$	$
(g)	Not related to distance	L. (f)×L. (d)			
(h)	Related to distance	L. (f)×L. (e)			
(i)	Total system constant costs plus sum of money.	L. (a)+L. (f)			
(j)	Not related to distance	L. (b)+L. (g)	$	$	$
(k)	Related to distance	L. (c)+L. (h)			
(l)	Tons carried on issue and non-issue traffic combined.	From traffic study			
(m)	Ton-miles	From traffic study			
(n)	Issue traffic tons carried	From traffic study			
(o)	Issue traffic ton-miles	Fron traffic study			
(p)	Percent of issue traffic tons to system tons (3 decimals).	L. (n)+L. (l)	%	%	%
(q)	Percent of issue traffic ton miles to system ton-miles (3 decimals).	L. (o)+L. (m)	%	%	%
	Constant costs and sum of money allocated to issue traffic:				
(r)	Not related to distance	L. (p)×L. (j)	$	$	$
(s)	Related to distance	L. (q)×L. (k)			
(t)	Total (enter amount on line 12, Part 1)	L. (r)+L. (s)	$	$	$

NOTE A: This procedure allocates constant costs and the sum of money based on the ton and ton-mile method and should be submitted for the information of the Commission. How much of the constant and sum of money comes may or should be recovered by any specific segment of traffic rest on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

NOTE B: Separate the amount of constant costs, excluding unrelated, but using Statements No. 6-68, Highway Form B, Schedule A, Line 111. Assign the dollars in columns 6, 7, 8 and 9 times 10 percent to line (b), and the dollars in columns 4 and 5 times 10 percent to line (c).

NOTE C: Show tons and ton-miles on issue and nonissue traffic based on an expansion of the sample to a full year.

METHOD B—CONSTANT COSTS AND SUM OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON DOLLAR (EXPENSE) METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Second preceding calendar year (actual)	First preceding calendar year (actual)	Projected or constructed year
	(1)	(2)	(3)	(4)	(5)
(a)	System Constant Costs (Excluding Unrelated).	Note B	$	$	$
(b)	System Sum Money	Part I, Line 10			
(c)	Total System Constant Cost Plus Sum of Money.	Line (a) Plus Line (b)			
(d)	Variable Expenses on Issue Traffic	From Traffic & Cost Study; Note C.			
(e)	Variable Expenses on Issue and Non-Issue Traffic Combined.	From Traffic & Cost Study; Note D.			
(f)	Percent Relationship (3 decimals)	Line (d) ÷ Line (e)	%	%	
(g)	Constant Costs and Sum of Money Allocated To Issue Traffic (Enter amount on line 12 Part I).	Line (c) × Line (f)			

NOTE A: This procedure allocates variable costs and the sum of money based on the dollar (expense) method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rests on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

NOTE B: Determine the amount of variable costs, excluding unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line 111, column (3) multiplied by 10 percent; insert this amount on line (a).

NOTE C: Determine the amount of variable costs, excluding unrelated, by using Statement 6-68, Highway Form B, Schedule A, line 111, column 3 multiplied by 90 percent to obtain the variable portion.

NOTE D: Show variable expenses and revenues allocated to the issue traffic based on an expansion of a sample to a full year.

Traffic and Cost Study Carrier _____

APPENDIX B—FINANCIAL RATIOS

(Complete Appendix B for Each Traffic and Cost Study Carrier and for All Such Carriers Combined)

Line No.	Item	Source for columns 3 and 4 [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual)
	(1)	(2)	(3)	(4)	(5)
1	Current Assets [2]	A.R. Sch 100 L.18	$	$	$
2	Net Carrier Operating Property (owned). [2]	A.R. Sch 100 L.21			
3	Net Carrier Operating Property (owned plus leased to others). [2]	A.R. Sch 100 L.21+L.23			
4	Net Tangible Property [2]	A.R. Sch 100 L.26			
5	Intangibles [2]	A.R. Sch 100 L.32			
6	Current Liabilities [2]	A.R. Sch 101 L.14			
7	Long Term Debt [2]	A.R. Sch 101 L.16+L.26			
8	Shareholders Equity [2]	A.R. Sch 101 L.56			
9	Depreciation Plus or Minus Depreciation Adjustment.	A.R. Sch 2998 L.6 + or − L.7			
10	Net Carrier Operating Income	A.R. Sch 2998 L.14			
11	Ordinary Income Before Income Taxes	A.R. Sch 2998 L.28			
12	Net Income or Loss Plus or Minus Depreciation. [3]	Appendix A.L.8. + or − L.9 hereto. [4]			
13	Percent Owned and Leased Property to Net Tangible Property (3 decimals).	L.3+L.4	%	%	
14	Investment in Owned and Leased Operating Property Plus Working Capital.	(4)			
15	Shareholders Equity Less Intangibles	L.8−L.5			
16	Long Term Debt Plus Shareholders Equity Less Intangibles.	L.7+L.15			
17	Operating Ratio (2 decimals)	Appendix A.L.2 + Appendix A.L.1.	%	%	
18	Current Ratio (2 decimals)	L.1+L.6			
19	Ratio Net Income or Loss to Operating Revenue (2 decimals).	Appendix A.L.8+L.1			
20	Rate of Return on Owned and Leased Operating Property Plus Working Capital.	L.10+L.14			
21	Rate of Return on Shareholders Equity Less Intangibles (2 dec.).	Appendix A.L.8+L.15 hereto	%	%	
22	Capital Structure Ratio (2 decimals)	L.7+L.16			
23	Throw off to Debt Ratio (2 decimals)	L.12+L.7			
24	Ratio Long Term Debt to Shareholders Equity Less Intangibles (2 decimals).	L.7+L.15			

[1] Annual Report sources apply to Class I motor carriers. For Class II carriers use the comparable source.
[2] Show average of beginning and end of year figures.
[3] If carrier shows a net income the amount shown for depreciation should be added to it; if a net loss then the net loss and the amount for depreciation should be netted and the appropriate figure shown.
[4] Multiply the percent on line 13 by the difference between line 1 and line 6. Add the resulting amount to line 3.

[FR Doc.71-5316 Filed 4-13-71;2:15 pm]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Special Rules for Section 1250 Property; Notice of Hearing

Proposed regulations under section 167(j) of the Internal Revenue Code of 1954, relating to special rules for section 1250 property, appear in the FEDERAL REGISTER for January 5, 1971 (36 F.R. 99).

A public hearing on the provisions of these proposed regulations will be held on Monday, May 24, 1971, at 10 a.m., e.d.s.t., in Room 3313, Internal Revenue Service Building, 12th and Constitution Avenue NW., Washington, DC.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules will be furnished on request. Under such § 601.601(a)(3), persons who have submitted written comments or suggestions within the time prescribed in the notice of proposed rule making and who desire to present oral comments should by May 10, 1971, submit an outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who desire a copy (furnished only at the above address) of such written comments or suggestions or outlines should notify the Commissioner at the above address or telephone (Washington, D.C.) 202—964-3935 by May 17, 1971.

K. MARTIN WORTHY,
Chief Counsel.

[FR Doc.71-5311 Filed 4-14-71;8:50 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

WHISKEYTOWN-SHASTA-TRINITY NATIONAL RECREATION AREA, CALIF.

Water Sanitation

Notice is hereby given that pursuant to the authority contained in section 4 of the Act of November 8, 1965 (79 Stat. 1298, 16 U.S.C. 460q-3), section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3), 245 DM1 (34 F.R. 13879), as amended, and National Park Service Order No. 21 (27 F.R. 7903) as amended, it is proposed to amend Part 7 to add § 7.91 as set forth below.

The purpose of the amendment is to insure the availability of water of quality, adequate for resource management and domestic use, and to insure its return at the same level of quality for other users of the Central Valley Project.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Superintendent, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Post Office Box 188, Whiskeytown, CA 96095, within 30 days of the publication of this notice in the FEDERAL REGISTER.

Section 7.91 is added as follows:

§ 7.91 Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.

(a) *Water sanitation.* (1) Vessels with marine toilets so constructed as to permit wastes to be discharged directly into the water shall have such facilities sealed to prevent discharge.

(2) Chemical or other type marine toilets with approved holding tanks or storage containers will be permitted, but will be discharged or emptied only at designated sanitary pumping stations.

EDWARD A. HUMMEL,
Assistant Director,
National Park Service.

[FR Doc.71-5218 Filed 4-14-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGFR 71-DB1]

GRANT LINE CANAL, CALIF.

Drawbridge Operation

The Coast Guard is considering revising the regulations for the San Joaquin County Highway bridge across the Grant Line Canal at mile 5.5 near Tracy, Calif., to require 12 hours' advance notice at all times. The present regulations require that the draw open on signal during certain periods and on 12 hours' advance notice at other times. The reason for this revision is reduced use of the waterway.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Twelfth Coast Guard District, 630 Sansome Street, San Francisco, CA 94126. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Twelfth Coast Guard District.

The Commander, Twelfth Coast Guard District, will forward any comments received before May 17, 1971, with his recommendations to the Chief, Office of Operations, who will take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that § 117.714(j) be revised to read as follows:

§ 117.714 San Joaquin River and its tributaries, California.

* * * * *

(j) Grant Line Canal, San Joaquin County Highway bridge, mile 5.5. The draw shall open on signal if at least 12 hours' advance notice has been given.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 46 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05-1(c)(4) (35 F.R. 15922))

Dated: April 9, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-5252 Filed 4-14-71;8:49 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-WE-16]

FEDERAL AIRWAY SEGMENT

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a south alternate to VOR Federal airway No. 230 between Salinas, Calif., and Los Banos, Calif.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Western Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the

Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The airspace action proposed in this docket would designate a south alternate to V-230 from the Salinas, Calif., VORTAC to the Los Banos, Calif., VORTAC via the intersection of the Salinas 100° T (083° M) and Los Banos 245° T (228° M) radials.

The proposed route would provide an alternate route with a lower MEA and would benefit air traffic arriving and departing the Monterey/Salinas area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on April 8, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-5221 Filed 4-14-71;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 71-CE-41]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Vichy, Mo.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

The Kansas City Air Route Traffic Control Center needs additional controlled airspace south of Vichy,, Mo., from 3,000 feet MSL and above in order to more effectively control aircraft arriving and departing Forney Army Airfield, Fort Leonard Wood, Mo., via random routes. Accordingly, it is necessary to alter the Vichy, Mo., transition area to provide this additional airspace.

In § 71.181 (36 F.R. 2140), the follow- Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (36 F.R. 2140), the following transition area is amended to read:

VICHY, Mo.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of Rolla National Airport (latitude 38°07'40" N., longitude 91°46'10" W.); and within 3 miles each side of the Vichy, Mo., VORTAC 067° radial, extending from the 6½-mile-radius area to 8 miles northeast of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 4½ miles southeast and 9½ miles northwest of the Vichy VORTAC 067° and 247° radials, extending from 4 miles southwest to 18½ miles northeast of the VORTAC; within 8 miles southeast and 6½ miles northwest of the Vichy VORTAC 067° and 239° radials, extending from 7 miles northeast to 24 miles southwest of the VORTAC; and within the arc of a 22½-mile-radius circle centered on the Vichy VORTAC, extending from the Vichy VORTAC 239° radial clockwise to the Vichy VORTAC 321° radial; and that airspace extending upward from 3,000 feet MSL south of Vichy bounded on the northeast by V175, on the southeast by V238, on the south by V132, and on the northwest by 5 miles southeast of a direct radial from Vichy VORTAC to Forney AAF RBN.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 12, 1971.

EDWARD C. MARSH,
Director, Central Region.

[FR Doc.71-5222 Filed 4-14-71;8:46 am]

Federal Highway Administration

[49 CFR Parts 391, 392]

[Docket No. MC-26; Notice 71-6]

HEARING AIDS

Notice of Proposed Rule Making

The Director of the Bureau of Motor Carrier Safety has received petitions for rule making, seeking an amendment to § 391.41 of the Motor Carrier Safety Regulations to permit persons who wear hearing aids to meet the minimum physical qualifications set forth in that section for drivers of commercial motor vehicles in interstate or foreign commerce.

The regulations now specify that a person must be capable of meeting the minimum standard for hearing by passing a test without use of a hearing aid (49 CFR 391.41(b)(11)). Petitioners argue that, since 1952, when the regulations first specifically precluded use of a hearing aid to meet the minimum standards, hearing aid technology has accelerated appreciably. The introduction of transistors and capacitors has improved the efficiency, reliability, and effectiveness of hearing aids and has reduced their bulk and size. Furthermore, the size, dependability, and longevity of hearing aid power sources has been substantially improved in recent years. Thus, the petitioners say, the considerations that prompted the bar to the use of hearing aids are no longer applicable. It is also argued that the Bureau should follow the lead of other licensing agencies, such as the Federal Aviation Administration, and permit persons who can meet the minimum hearing level requirements only with the use of a hearing aid to qualify as commercial vehicle drivers.

Pursuant to § 389.33(b) of the procedural regulations, 49 CFR 389.33(b), the Director has determined that the petitions for rule making contain adequate justification to warrant formal rule making proceedings upon a proposal to permit persons wearing hearing aids to qualify as drivers, if they are otherwise qualified. He is, therefore, instituting this proceeding to secure comments from interested persons upon the proposal.

Under the proposal, the change in § 391.41(b)(11) would be coupled with a parallel amendment to the driving rules in Part 392 of the Motor Carrier Safety Regulations. The objective of the proposed new § 392.9b would be to reduce some of the operational risks associated with a driver whose hearing is insufficient to permit him to drive safely unless he is wearing a hearing aid. The proposal includes a prohibition against removing the hearing aid or turning it of, a requirement that a spare power cell be on the driver's person, and a requirement that the hearing aid worn by the driver must be the same hearing aid that enabled the driver to meet the minimum physical requirements. The Director's tentative view is that, in the event the relief sought by the petitioners is granted, these are precautions that would be necessary to safeguard the public against highway accidents resulting from a driver's inability to perceive such warning signals as motor vehicle horns and railroad grade crossing warning signals.

Interested persons are invited to submit written data, views, and arguments upon the proposed new rules. Comments must identify the docket and notice numbers set forth above and must be submitted in three copies to the director, Bureau of Motor Carrier Safety, Washington, D.C. 20591. All comments received before the close of business on June 1, 1971, will be considered before further action is taken on the proposal. All comments will be available for examination in the docket in the Office of the Chief, Regulations Division, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, DC, before and after the closing date of comments. In consideration of the foregoing, the Director of the Bureau of Motor Carrier Safety proposes to amend §§ 391.41 and

391.43 of the Motor Carrier Safety Regulations and to add a new § 392.9b to the Motor Carrier Safety Regulations. The proposals are set forth below.

This notice of proposed rule making is issued under the authority of section 204 of the Interstate Commerce Act, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, the delegation of authority by the Secretary of Transportation in 49 CFR 1.48, and the delegation of authority by the Federal Highway Administrator in 49 CFR 389.4.

Issued on April 7, 1971.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

1. Section 391.41(b)(11) would be revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) A person is physically qualified to drive a motor vehicle if he—

* * * * *

(11) First perceives a forced whisper at not less than 5 feet in the better ear with or without use of a hearing aid, or, if tested by use of an audiometric device, does not have a loss greater than 25–30 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz in the better ear with or without a hearing aid.

* * * * *

2. Section 391.43(e) would be amended by adding the following sentences after the form of medical examiner's certificate in that paragraph:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) * * *

If the driver is qualified only when wearing a hearing aid, the brand name, model number, and serial number of the hearing aid he wore when he qualified must be noted on the reverse side of the medical examiner's certificate. For example: "qualified only when wearing ---------- hearing aid,
(Brand name)
Model No. ------, Serial No. ------."

3. Part 392 would be amended by adding the following new § 392.9b:

§ 392.9b Hearing aid to be worn.

A driver whose hearing meets the minimum requirements of § 391.41(b)(11) of this subchapter only when he wears a hearing aid shall, at all times while driving, wear the hearing aid he wore when he was examined in accordance with § 391.43 of this subchapter. The brand name, model number, and serial number of that hearing aid must appear on the reverse side of his medical examiner's certificate. The hearing aid must be fully operative when it is worn. The driver must have on his person a spare battery or other power cell for use in the hearing aid.

[FR Doc.71-5223 Filed 4-14-71;8:46 am]

ENVIRONMENTAL PROTECTION AGENCY

[42 CFR Parts 459, 460, 461, 462, 463, 464]

SOLID WASTE DISPOSAL GRANTS

Notice of Proposed Rule Making

Notice is hereby given of a proposal to promulgate regulations applicable to grant applications and awards under sections 204, 205, 207, and 210 of the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.), as amended by the "Resource Recovery Act of 1970" (Public Law 91–512). It is proposed to publish the new regulations as Parts 460–464 of Chapter IV of Title 42 and to revoke existing Part 459 of such title.

On October 26, 1970, the "Resource Recovery Act of 1970" (Public Law 91–512) was enacted. This Act amended the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.). The functions vested by law in the Secretary under the Act, as amended, were transferred to the Administrator, Environmental Protection Agency, by Reorganization Plan No. 3 of 1970.

The regulations of this part establish definitions, procedures, standards, conditions, requirements, and limitations generally applicable to grant applications and awards under sections 204, 205, 207, and 210 of the Act. The regulations of Parts 461–464 establish additional criteria, conditions, and limitations applicable to grant applications and awards for demonstrations under sections 204 and 205, for research under sections 204 and 205, for planning under section 207, and for training under sections 204 and 210, respectively.

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, submit in triplicate comments, views, data, or arguments concerning the proposal to the Solid Waste Management Office, Environmental Protection Agency, 5600 Fishers Lane, Rockville, MD 20852. The regulations will become effective on the date of republication in the FEDERAL REGISTER.

In Chapter IV the following new parts are proposed to be added:

PART 460—GENERAL PROVISIONS APPLICABLE TO GRANTS UNDER SECTIONS 204, 205, 207, AND 210 OF THE SOLID WASTE DISPOSAL ACT

A new Part 460 would be added as follows:

Sec.

AUTHORITY: The provisions of this Part 460 issued under sec. 204, 205, 207, and 210, 79 Stat. 998–9, as amended by 84 Stat. 1230; Public Law 89–272, as amended by Public Law 91–512.

§ 460.1 Applicability.

The provisions of this part apply to grants authorized by sections 204, 205, 207, and 210 of the Act.

§ 460.2 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act.

(a) "Act" means the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) as amended by the Resource Recovery Act of 1970 (Public Law 91–512).

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Adopted interstate plan" means a comprehensive solid waste management plan that has been accepted by the Administrator for an interstate area, published, approved by the participating States, and made available to the constituent political subdivisions and to the heads of the appropriate State agencies in the affected States together with a letter from the head of the interstate agency notifying the Governors of the participating States of the existence of the plan and accepting responsibility for the plan.

(d) "Adopted State plan" means a comprehensive statewide plan for solid waste management that has been accepted by the Administrator and recognized by the Governor, in writing, as the official solid waste management plan for the State and has been published and made available to all political subdivisions of the State.

(e) "Grant period" means the period during which the grantee is authorized to obligate granted Federal funds for the purposes specified in the approved grant application.

(f) "Grant related receipts" means receipts derived by the grantee from operations conducted under the auspices of the grant supported activity.

(g) "Project period" means the period of time which the Administrator finds is reasonably required to carry out a project meriting support under the Act.

(h) "Solid waste management" means the developing, planning, financing, organizing, coordinating, directing, controlling, enforcing, and supervising of activities associated with, but not limited to, the generation, storage, collection, transport, processing, treatment, recycling, resource recovery, reduction, or final disposal of solid waste, and the design, construction, operation, and maintenance of component facilities and equipment.

§ 460.3 Funds available for grants.

The Administrator may, from time to time and for such periods as he may deem appropriate, reserve a portion or portions of the available grant funds for categories of projects.

§ 460.4 Application for grants.

(a) An application for a grant shall be submitted on such forms and in such manner as the Administrator prescribes.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume for the applicant the obligations imposed by the regulations of this part and any additional conditions of the grant.

(c) In addition to any other pertinent information which the Administrator may require, each applicant shall submit as part of the application a full and adequate description of the proposed project in sufficient detail to indicate the nature, costs, schedule, objectives, justification, and proposed method of conducting and evaluating the project. The description shall, as applicable, indicate the possession of, or set forth a schedule for acquiring, qualified personnel, contractors, consultants, equipment, facilities, and other resources (including non-Federal funds) necessary for the conduct of the project, and any plans to contract with relevant solid waste industry contractors for participation in the project.

(d) Applications may be submitted at any time. The Administrator will establish at least two deadline dates for each fiscal year, and any application received prior to any deadline date and deemed by the Administrator to be complete, will be considered and acted upon no later than 90 days following such date.

§ 460.5 Grant limitations; general.

(a) No grant shall be made:

(1) With respect to any costs that are not incurred within the grant period.

(2) Unless the application sets forth plans for the expenditure of such grant, which assure, to the satisfaction of the Administrator, that the project as planned will carry out the purposes of the Act.

(3) Until the applicant has given assurance satisfactory to the Administrator that funds are available from non-Federal sources to pay the non-Federal share of the cost of the project, as applicable.

(4) For any project that includes the construction of any facility, unless the applicant has made financial and technical provisions that are acceptable to the Administrator regarding the operation and maintenance of the facility for a reasonable period of time after it is built.

(b) Any receipts the grantee derives in connection with any aspect of the project during the project period, must be accounted for by the grantee. The Administrator may among other alternatives, (1) reduce the grant award by an amount equal to the Federal share of actual or estimated grant-related receipts; (2) require the grantee to reduce the level of expenditures from grant funds by such an amount; and (3) require the grantee to repay part or all of such amount. For purposes of this section, the Federal share of grant-related receipts is the amount of such receipts which bears the same relation to total project receipts as the Federal share bears to total project costs.

§ 460.6 Grant conditions; general.

(a) In addition to any other requirements imposed by or established pursuant to the regulations in this part, each grant awarded in accordance with this part shall be subject to the following conditions:

(1) Any funds granted shall be expended solely to carry out the approved project.

(2) The grantee shall submit to the Administrator for review and prior approval changes in the project that substantially alter its scope, purpose, or costs.

(3) The grantee must meet the schedule set forth in the approved grant application.

(4) All grant awards shall be subject to any regulations of the Administrator relating to inventions and patents and shall comply with the requirements of section 204(c) of the Act. Such requirements shall apply to any activity for which grant funds are in fact used. Appropriate measures shall be taken by the grantee and by the Administrator to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are entered into and that all personnel involved in the supported activity are aware of and comply with such obligation. Laboratory notes, related technical data, and information pertaining to inventions or discoveries shall be maintained for such periods and filed with or otherwise made available to the Administrator or to those he may designate at such times and in such manner as he may determine are necessary to carry out such requirements.

(5) The grantee shall provide for and maintain such accounting, budgetary, and other fiscal records and procedures as the Administrator determines are necessary for the proper and efficient administration of the approved project. The fiscal records shall provide an up-to-date statement of the amount and disposition of Federal funds received, the total cost of the project in connection with which the funds were provided, the amount of the cost supplied by non-Federal sources, the expenditures for the grantee's solid waste management program not included in the project, and such other information as will facilitate an effective audit. These records and any other of the grantee's books, documents, or papers pertinent to the grant shall be accessible for audit by representatives of the Administrator and of the Comptroller General of the United States and shall be maintained until the grantee is notified in writing that the final audit has been completed.

(6) Publications, films and reports:

(i) Grantees shall submit quarterly reports of progress and any special or interim reports the Administrator requests. In addition, when the grant is terminated or the project is completed the grantee shall prepare a final report in a style and format prescribed by the Administrator; it shall set forth the grantee's findings, conclusions, and results. At a minimum, the report shall cover the engineering effectiveness and economic feasibility of the method investigated or demonstrated and shall contain sufficient scientific and engineering detail to permit an evaluation of the method's applicability to similar problems elsewhere. In all reports, supplemental information and data suitable for documenting the project shall be included. The number of copies of these reports will be specified by the Administrator. The final project report shall be furnished to the Administrator in draft form for review and approval prior to publication.

(ii) If the Administrator does not impose a specific prohibition, the United States may authorize others or may without additional compensation to the grantee, duplicate, use, and disclose in any manner and for any purpose whatsoever, all information derived from the project and all technical data and reports acquired under the grant.

(iii) The dissemination of any publication or film produced by the grantee regarding the project in general and the findings, conclusions, or results in particular must be approved by the Administrator. (This includes performance and cost data but not contracts for procurement of supplies or equipment.) Research grant recipients and graduate students supported by training grants are exempt from this condition, except that such recipients and students remain subject to the prior clearance requirement relating to the dissemination of films. Any publication resulting from work performed under a grant shall state: "This project has been supported by grant #_____ from the Environmental Protection Agency, pursuant to the Solid Waste Disposal Act as amended."

(iv) Any copyrighted publication resulting from work performed under a grant shall be subject to a royalty-free, nonexclusive, and irrevocable license throughout the world, to the United States and to its officers, agents, and employees acting within the scope of their official duties. These parties are authorized to reproduce, translate, publish, use, and dispose of such publication and to permit others to do likewise.

(7) Any grant awarded pursuant to this part shall be subject to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252; Public Law 88–352), which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance

(section 601) and any additional implementing regulations issued by the Administrator.

(8) The applicant shall follow procurement practices aproved by the Administrator in carrying out contracting activities for the project, including competitive bidding procedures, when appropriate.

(9) If a grant for a project involves a Federally assisted construction contract, as defined in Executive Order 11246, September 24, 1965 (30 F.R. 12319), with regard to equal employment opportunities, the grantee shall comply with the requirements of said Executive order and with applicable rules, regulations, and procedures prescribed pursuant thereto.

(10) If a grant for a project involves construction, the application shall contain or be supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a–5), will be paid at rates not less than those prevailing on similar work in the locality, as determined by the Secretary of Labor in accordance with that Act.

(11) Any grant awarded pursuant to this part shall be subject to:

(i) Public Law 89–487, 80 Stat. 250, effective July 4, 1967, relating to the right of the public to certain information.

(ii) The Anti-Kickback Act of June 13, 1934, as amended (40 U.S.C. 276c), relating to provisions to be inserted in contracts and subcontracts to ensure that all contractors and subcontractors comply with that Act and submit the required statements. The Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

(iii) The Fair Labor Standards Act of June 25, 1938, as amended (29 U.S.C. 201–219), relating to minimum wages, maximum hours, and the use of child labor.

(iv) The Convict Labor Act of February 23, 1887, as amended (18 U.S.C. 436), prohibiting the use of convict labor on public works projects.

(v) The National Landmark Act of 1908, as amended (16 U.S.C. 470 et seq.) relating to the preservation of historic landmarks.

(12) The submission of an application for a grant shall constitute the consent of the applicant for persons designated by the Administrator to conduct fiscal audits and examine all fiscal records, to make inspections of the facilities, equipment, and such other aspects of the project, including any related information which the Administrator deems necessary to inspect, at reasonable times, and to conduct interviews with project employees and staff members. The grantee shall also permit the Administrator or his authorized agents and appropriate interested parties to have access to any facility constructed as part of a project and to records pertaining to the operation of the facility at any reasonable time after such facility is constructed

(b) The Administrator may impose additional conditions or requirements prior to or at the time of the grant award if he deems such requirements necessary to carry out the purposes of the Act.

§ 460.7 Supplemental, continuation, and renewal grants.

The Administrator may, within the project period on the basis of an application therefor, make additional grant awards with respect to any approved project if he finds that:

(a) The amount of any prior award was less than the amount necessary to carry out the approved project within the period with respect to which the prior award was made. This constitutes a supplemental grant.

(b) The progress made within the period with respect to which any prior award was made justifies support for an additional specified portion of the project period. This is a continuation grant.

(c) The progress made during the project period warrants continued support beyond the last continuation year. This is a renewal grant.

§ 460.8 Criteria for approval of projects.

(a) In determining the desirability, extent of funding, and priority of a project, the Administrator will, among other factors, take into consideration:

(1) The extent to which the project furthers the purposes of the Act.

(2) The extent to which the project will preserve and enhance the environment.

(3) The competence of the proposed staff including general and solid waste contractors and consultants in relation to the type and scope of the project, the length of the proposed project period, the adequacy of the applicant's facilities and available resources and the total amount of grant funds necessary for project completion.

(4) The feasibility of the project and the value of the expected results of the project.

(5) The relation of estimated costs to the public benefits to be derived.

§ 460.9 Grant awards.

(a) Within the limits of funds available for such purposes, the Administrator may make grant awards to applicants whose projects have been approved.

(b) Neither the approval of any project, nor the award of any grant shall commit or obligate the United States in any way to make any supplemental, continuation, or renewal grant with respect to any approved project or portion thereof.

(c) With respect to any project approved for Federal financial support, the Administrator shall determine the amount of support to be awarded and the period for which the project will be supported.

§ 460.10 Payments.

(a) Payments with respect to an approved project shall be made periodically, in advance or by way of reimbursement, as the Administrator may determine, based on estimated requirements or actual expenditures, respectively, for such period. Such payments shall be increased or decreased by the amount that prior payments are less than or exceed the Federal share of the costs of the approved project.

(b) Federal support for the project, not to exceed 10 percent, may be withheld until the Administrator notifies the grantee in writing that all grant conditions and requirements have been met.

(c) Payment shall be suspended for any period during which, in the judgment of the Administrator, the applicant fails to comply substantially with any conditions or any other requirement imposed by or established pursuant to the regulations in this part.

§ 460.11 Termination of grant award.

(a) The Administrator may terminate any grant award in whole or in part if he finds that the grantee has failed in a substantial respect to comply with the conditions of the grant or the requirements and conditions of this part, or both. Termination of a grant under the preceding sentence may be ordered by the Administrator only if he has afforded the grantee reasonable notice and opportunity to present views and evidence.

(1) The views and evidence of the grantee shall be presented in writing unless the Administrator determines that an oral presentation is desirable.

(2) Such views and evidence shall be confined to matters relevant to whether the grantee has failed in a substantial respect to comply with the conditions of the grant or the requirements and conditions of this part, or both.

(b) Upon termination pursuant to paragraph (a) of this section the grantee shall render an accounting and final statement as provided in this part. The Administrator may allow credit for the amount required to settle at minimum costs any noncancellable obligations the grantee properly incurred before receiving the notice of termination.

§ 460.12 Termination date; final accounting.

In addition to such other accounting as the Administrator may require, the grantee shall render a full account as provided herein with respect to each approved project. The accounting must be submitted no later than 120 days following the end of the project period or the date of any termination of grant support, pursuant to § 460.11, whichever occurs first.

§ 460.13 Accounting for grant payments.

With respect to each approved project, the grantee shall account for the total amounts paid him by presenting, or otherwise making available to the Administrator, vouchers and fiscal records or other evidence of actual expenditures.

§ 460.14 Equipment, materials, or supplies.

Expenditures of grant funds for movable or fixed equipment, materials or supplies, termed in this section "materials," may be charged to grant funds only to

the extent they are required for the conduct of the approved project during the period for which Federal financial support is provided. The Administrator reserves the right to transfer title to the "materials" on an equitable basis to the Environmental Protection Agency upon termination of the project. Any materials (excluding expendable supplies within such limitations as the Administrator may prescribe) shall be accounted for by one of the following methods:

(a) At the discretion of the Administrator, materials may be used by the grantee, without adjustment of accounts, for purposes within the grantee's solid waste management program, or for such other purposes as the Administrator may approve, and no other accounting for such materials shall be required provided that:

(1) During such period of use no charge for depreciation, amortization, or other purpose shall be made against any existing or future Federal grant or contract.

(2) If within the period of their useful life the materials are used outside the scope of the solid waste management program without the approval of the Administrator, the proportionate fair market value at the time of transfer shall be payable to the United States.

(b) If the materials are sold by the grantee, the portion of the proceeds of the sale which bears the same relation to the total proceeds as the Federal share bears to the total project costs shall be paid to the United States. The materials may be used or disposed of in any manner by the grantee, upon payment to the United States of such proportion of their fair market value as the materials had on the termination date. To the extent materials purchased from grant funds were used for credit or as a "trade-in" on the purchase of new materials, the accounting obligation shall apply to the same extent to such new materials.

§ 460.15 Final settlement.

There shall be payable to the United States as final settlement with respect to each approved project the total sum of any amount not accounted for pursuant to § 460.13 and of any amounts payable to the United States as provided in § 460.14. Such total sum shall constitute a debt owed by the grantee to the United States and if not paid shall be recovered from the grantee or its successors by setoff or other action as provided by law.

PART 461—GRANTS FOR STUDIES, INVESTIGATIONS, SURVEYS, AND DEMONSTRATIONS UNDER SECTIONS 204 AND 205 OF THE SOLID WASTE DISPOSAL ACT

A new Part 461 would be added as follows:

Sec.
461.1 Applicability.
461.2 Definitions.
461.3 Grant limitations.
461.4 Grant conditions.
461.5 Criteria for approval of projects.
461.6 Accounting for grant payments.

AUTHORITY: The provisions of this Part 461 issued under secs. 204, 205, 207, and 210, 79 Stat. 998–9, as amended by 84 Stat. 1230; Public Law 89–272, as amended by Public Law 91–512.

§ 461.1 Applicability.

The provisions of this part apply to grants for the conduct of studies, investigations, surveys, and demonstrations authorized by sections 204 and 205 of the Act.

§ 461.2 Definitions.

(a) "Applicant" means any appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, nonprofit agencies and institutions, and individuals that file an application for a demonstration grant under section 204 or 205 of the Act.

(b) "Demonstration" means a pilot or full-scale activity conducted as a solid waste management system or a component thereof in a municipality or municipalities designed to show the technical and economic feasibility of a new or improved technique, process, or system.

(c) "Project" means those activities specified in the applicant's proposal which relate to demonstration of solid waste management procedures, processes, or systems. Such activities may include, but are not limited to surveys, feasibility studies, design, construction, operation, and maintenance of demonstration facilities, evaluations of and reports on demonstration activities, and plans and specifications in connection therewith.

(d) "Study and investigation" means a technical, economic and/or social analysis concerning the feasibility of a solid waste management technique, system or subsystem having potential for demonstration.

(e) "Survey" means a comprehensive examination of the present condition of a solid waste management technique, process, or system that has potential for demonstration.

§ 461.3 Grant limitations.

(a) No grant shall be made unless the applicant gives assurance satisfactory to the Administrator that (1) open-dumping and open-burning of solid waste are prohibited by a regulation, ordinance, statute, or other legal authority enforced within the jurisdiction in which the applicant proposes to conduct the project or that (2) such practices will be eliminated as a result of actions taken under the objectives of the project.

(b) The Federal share shall not exceed 75 percent of the estimated necessary cost or actual acceptable cost of the project as determined by the Administrator; this limitation applies to each grant period.

(c) The Federal share of any project for which an initial grant was awarded prior to promulgation of the regulations in this part shall not exceed the permissible Federal share in effect at that time; this limitation applies to supplemental, continuation or renewal grants.

§ 461.4 Grant conditions.

For a project involving construction the applicant shall:

(a) Establish a plan acceptable to the Administrator for periodically giving appropriate interested parties, on-site briefings on the project, including tours of facilities and systems constructed.

(b) Provide competent and adequate technical supervision at the project to assure that the project and construction related thereto conform to the approved plans and specifications and that the project meets the objectives for which the grant is made.

(c) Have such legal or equitable interest in the site of the project that will permit it to be operated and maintained properly and efficiently either through direct work force or by contract, for a reasonable period following the completion of the construction project.

§ 461.5 Criteria for approval of projects.

In determining the desirability, extent of funding and priority of a project the Administrator will, among other factors, take into consideration:

(a) Whether the project is consistent with State, regional, and local solid waste management planning.

(b) The degree to which the project can be expected to demonstrate results that will have general application to solid waste management problems.

(c) Where applicable, the existence of plans to continue the project as an ongoing service after grant termination.

(d) The degree to which project objectives are clearly established, attainable, and measurable.

(e) For those projects involving construction of a facility the expected effectiveness of the facility in meeting the objectives of the project.

(f) The extent of support for, and participation by, community organizations in the applicant's solid waste management program.

§ 461.6 Accounting for grant payments.

The final accounting must show that grant expenditures did not exceed 75 percent of the actual acceptable costs of the approved project. In the event the final accounting reveals that grant expenditures did exceed 75 percent of the actual acceptable cost of the approved project, such excess amount shall be payable to the United States.

PART 462—GRANTS FOR RESEARCH, INVESTIGATIONS, EXPERIMENTS, SURVEYS, AND STUDIES UNDER SECTIONS 204 AND 205 OF THE SOLID WASTE DISPOSAL ACT

A new Part 462 would be added as follows:

Sec.
462.1 Applicability.
462.2 Definitions.

AUTHORITY: The provisions of this Part 462 issued under secs. 204, 205, 207, and 210, 79 Stat. 998–9, as amended by 84 Stat. 1230; Public Law 89–272, as amended by Public Law 91–512.

§ 462.1 Applicability.

The provisions of this part apply to grants for the conduct of research, investigations, experiments, surveys, and

studies for the purposes authorized by sections 204 and 205 of the Act.

§ 462.2 Definitions.

(a) "Applicant" means any appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, non-profit agencies and institutions, and individuals that file an application for a research grant under section 204 or 205 of the Act.

(b) "Project" means those activities specified in the applicant's proposal, which relate to research on solid waste management procedures, processes, or systems. Such activities may include, but are not limited to surveys, feasibility studies, investigations, experiments, design, evaluations, and reports.

PART 463—GRANTS FOR PLANNING UNDER SECTION 207 OF THE SOLID WASTE DISPOSAL ACT

A new Part 463 would be added as follows:

Sec.
463.1 Applicability.
463.2 Definitions.
463.3 Grant limitations.
463.4 Criteria for approval of projects.
463.5 Accounting for grant payments.

AUTHORITY: The provisions of this Part 463 issued under secs. 204, 205, 207, and 210, 79 Stat. 998–9, as amended by 84 Stat. 1230; Public Law 89–272, as amended by Public Law 91–512.

§ 463.1 Applicability.

The provisions of this part apply to grants for making surveys, developing and revising plans, conducting studies, and developing proposals for projects to be carried out under section 208, as authorized under section 207 of the Act.

§ 463.2 Definitions.

(a) "Applicant" means any State, interstate, municipal, and intermunicipal agency, and organization composed of public officials which is eligible for assistance under section 701(g) of the Housing Act of 1954, and has been designated as the sole agency for carrying out the purposes of section 207 of the Act for the area involved.

(b) "Areawide" means an economically, socially, and environmentally related geographical region, which in the opinion of the Administrator takes into consideration such factors as population trends, patterns of urban growth, location of transportation facilities and systems, distribution of municipal, industrial, commercial, residential, governmental, agricultural, institutional, and other activities, and is appropriate for purposes of the grant.

(c) "Project" means those activities specified in the applicant's proposal, which relate to State, interstate, regional, or local solid waste management planning. Such activities may include, but are not limited to, surveys and studies of practices, systems, and problems within the jurisdictional area of the applicant; development of comprehensive plans for the conduct and operation of systems; revision and updating of existing plans; preliminary design of subsystems necessary to implement a comprehensive plan; financial planning; reports; data development and review of existing solid waste management practices; developing proposals for projects to be carried out pursuant to section 208 of the Act and planning programs for the removal and processing of abandoned motor vehicle hulks.

§ 463.3 Grant limitations.

(a) No grant shall be made:

(1) Unless a single agency (which may be an interdepartmental agency) has been designated or established as the sole agency for carrying out the purposes of section 207 of the Act for the area involved.

(2) Unless the applicant (i) gives assurance satisfactory to the Administrator that the planning of solid waste management will be coordinated, so far as practicable, with and not duplicate other related State, interstate, regional, and local planning activities, including those financed in part with funds received pursuant to section 701 of the Housing Act of 1954; and (ii) presents adequate evidence that the plan will be implemented.

(3) Unless the applicant satisfies the Administrator that any survey, planning study, or special study will be directed toward the formulation and development of a comprehensive solid waste management plan.

(4) In an amount exceeding 66⅔ percent of the estimated necessary cost or actual acceptable cost of the project as determined by the Administrator in the case of an application with respect to an area including only one municipality; the sum shall not exceed 75 percent of the estimated necessary cost or actual acceptable cost of the project as determined by the Administrator in any other case; this limitation applies to each grant period.

(5) Unless the applicant gives assurance satisfactory to the Administrator that (i) open-dumping and open-burning of solid waste are prohibited by a regulation, ordinance, statute, or other legal authority enforced within the jurisdiction in which the applicant proposes to conduct the project, or that (ii) such practices will be eliminated as a result of actions taken under the objectives of the project.

(6) Unless the applicant complies with the review requirements established pursuant to Office of Management and Budget Circular No. A–95.

§ 463.4 Criteria for approval of projects.

(a) In determining the desirability, extent of funding and priority of an application the Administrator will, among other factors, take into consideration:

(1) The extent to which provision has been made to assure full consideration of all the aspects essential to area wide planning consistent with the protection of the public health and welfare.

(2) The extent to which the applicant intends to take into consideration such factors as population growth, urban and metropolitan development, land use planning, the feasibility of regional disposal and resource recovery programs, and the impact of the project upon the overall environment.

(b) In determining the desirability, extent of funding and priority of an application for municipal or intermunicipal agencies and organizations composed of public officials which are eligible for assistance under section 701(g) of the Housing Act of 1954, the Administrator will, among other factors, take into consideration:

(1) Whether the applicant's agency or organization is located in a State or States which have adopted or are developing a State plan.

(2) Whether the applicant's agency or organization is located in an area to which an adopted interstate plan applies or for which such a plan is being developed.

(c) In determining the desirability, extent of funding and priority of an application for funds to develop proposals for projects authorized by section 208 of the Act the Administrator will, among other factors, take into consideration:

(1) The extent to which any planning efforts have taken into consideration paragraph (a) (1) and (2) of this section. In the case of 208(c) proposals, the project must be a logical outgrowth of a completed comprehensive plan for the jurisdictional area of the applicant and should be the next logical step in implementing that plan.

(2) The public benefits to be derived from any future construction that may be planned in the proposal.

(3) The potential of the proposal for general application to community solid waste management problems.

(4) The extent to which the proposal's concepts would not duplicate a resource recovery system which has already been developed and is operating in an effective manner within the jurisdictional area of the applicant.

(5) In the case of concepts for resource recovery systems, the quantity and quality of materials or energy that may be recovered from solid wastes entering the proposed system.

§ 463.5 Accounting for grant payments.

The final accounting must show that grant expenditures did not exceed the percentages specified in or pursuant to § 463.3, of the actual acceptable costs of the approved project. In the event the final accounting reveals that grant expenditures did exceed the percentages specified in or pursuant to § 463.3 of the actual acceptable cost of the approved project, such excess amount shall be payable to the United States.

PART 464—GRANTS FOR TRAINING UNDER SECTIONS 204 AND 210 OF THE SOLID WASTE DISPOSAL ACT

A new Part 464 would be added as follows:

Sec.
464.1 Applicability.
464.2 Definitions.
464.3 Grant limitations.
464.4 Criteria for approval of projects.
464.5 Accounting for grant payments.

AUTHORITY: The provisions of this Part 464 issued under secs. 204, 205, 207, and 210, 79 Stat. 998–9, as amended by 84 Stat. 1230; Public Law 89–272, as amended by Public Law 91–512.

§ 464.1 Applicability.

The provisions of this part apply to grants for the conduct of training projects authorized by sections 204 and 210 of the Act.

§ 464.2 Definitions.

(a) "Applicant" means any public (whether Federal, State, interstate, or local) or nonprofit private authority, agency, or institution including education institutions, or any individual, that files an application for a grant under section 204 or section 210 of the Act.

(b) "Project" means those activities specified in the applicant's proposal, which relate to training in solid waste management procedures, processes, or systems. Such activities may include, but are not limited to design and development of course curricula; presentation of courses; necessary laboratory and field efforts related to course conduct; support of students; personnel and equipment for the training project; reports; and evaluations in connection with training projects.

§ 464.3 Grant limitations.

(a) For State solid waste agencies: The Federal share shall not exceed 75 percent of the estimated necessary cost or actual acceptable cost of the project as determined by the Administrator; this limitation applies to each grant period.

(b) For all other eligible applicants: The administrator shall determine the Federal share in the case of training project grants awarded to applicants other than State solid waste agencies.

§ 464.4 Criteria for approval of projects.

In determining the desirability, extent of funding and the priority of a project the Administrator will, among other factors, take into consideration:

(a) The relative need in the jurisdiction in which the applicant proposes to conduct the project for personnel trained in solid waste management.

(b) The educational significance and potential of the project to increase the number of trained and qualified operating, professional, and management personnel available to meet manpower needs.

(c) The extent to which the project is innovative in curriculum objectives, content, and method.

§ 464.5 Accounting for grant payments.

The final accounting must show that grant expenditures did not exceed the percentages specified in or pursuant to § 464.3, of the actual acceptable costs of the approved project. In the event the final accounting reveals that grant expenditures did exceed the percentages specified in or pursuant to § 464.3 of the actual acceptable cost of the approved project, such excess amount shall be payable to the United States.

Dated: April 12, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc.71-5224 Filed 4-14-71;8:46 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 543]

[Docket No. 71-22]

SCHEDULE OF FEES AND CHARGES

Enlargement of Time To Comment

Upon the request of interested persons, and good cause appearing, time within which views or comments may be submitted in response to the notice of proposed rulemaking in this proceeding (Mar. 20, 1971; 36 F.R. 5369) is enlarged to and including May 5, 1971.

Comments should be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573 and should be submitted in an original and 15 copies.

All suggestions for changes in text of the proposed rules should be accompanied by drafts of the language thought necessary to accomplish the desired change.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5265 Filed 4-14-71;8:50 am]

FEDERAL POWER COMMISSION

[18 CFR Part 154]

[Docket No. R-400]

LIMITATION ON PROVISIONS IN NATURAL GAS RATE SCHEDULES RELATING TO MINIMUM TAKE PROVISIONS

Order Terminating Proposed Rule Making

APRIL 9, 1971.

In our notice of proposed rule making, "Limitation On Provisions In Natural Gas Rates Schedules Relating To Minimum Take Provisions" issued in this docket on September 23, 1970 (35 F.R. 15163), we proposed to amend § 154.103 of the regulations under the Natural Gas Act to provide that producer contracts for the transportation or sale of natural gas, subject to the jurisdiction of the Commission, should contain no minimum take or pay volume requirement in excess of that based on a ratio of 1 to 5,000 Mcf of all dedicated reserves for the first 5 years of production, and 1 to 7,300 Mcf of all dedicated reserves for the remaining term of the contract. The notice also provided that in Texas Railroad Commission District No. 10 and the States of Kansas and Oklahoma no minimum take or pay volume requirement would exceed that based on a ratio of 1 to 3,650 Mcf of reserves per well for the first 2 years of production therefrom, and 1 to 7,300 Mcf for the remaining term of the contract.

In response to said notice, 20 interested parties submitted written comments.[1]

A majority of the parties responding to the notice opposed the adoption of the proposed rule. Three of the responses opposed adoption of the rule, but suggested modification if the rule were to be adopted.

At the request of one of the responding parties, a conference was held on January 21, 1971, between staff and all interested parties. The discussion at the conference was in accordance with an agenda which had been served on all parties by the Secretary of the Commission on December 30, 1970. A transcript of record of said conference was made and is a part of the record in this proceeding.

We have examined each of the responses made to the notice issued herein, and the transcript of the conference held on January 21, 1971, and have determined that although the intent of the proposed rule was to encourage producers to dedicate more gas to the interstate market than they do at present, its adoption at this time would not serve such purpose. In fact, our examination of the record has convinced us that the limitations proposed in the rule might reduce the flexibility of negotiations between producers and pipelines and could, thereby, reduce gas supplies to the interstate market.

On the basis of the foregoing considerations, there appears to be no reason to continue this rulemaking and it will, therefore, be terminated.

Prior to and since the initiation of the proposed rule in Docket No. R-400, the Commission in a number of orders issuing permanent or temporary certificates of public convenience and necessity for the sale of natural gas has expressly made each of them subject to minimum take or pay volume requirements similar to those proposed herein, or subject to the final outcome of Docket No. R-400. Each of those conditions contained in such permanent or temporary certificates will be terminated by this order.

The Commission finds:

(1) It is appropriate and necessary for carrying out the provisions of the Natural Gas Act that the proposed rule making in Docket No. R-400 be terminated.

[1] Data, views and comments were submitted by the following on the dates indicated:
Oct. 6, 1970, George H. Edgerton; Oct. 19, James M. Forgotson, Sr.; Nov. 2, Humble Oil & Refining Co., Gulf Oil Corp.; Nov. 3, Southern California Edison Co.; Nov. 5, Hunt Oil Co., et al., Northern Natural Gas Co., Shell Oil Co.; Nov. 9, Mobil Oil Corp., Colorado Interstate Gas Co., Pan American Petroleum Corp., El Paso Natural Gas Co., Glover Hefner Kennedy Oil Co., Columbia Gas System Companies, Austral Oil Co., Inc.; Nov. 16, Texaco, Inc., New York Public Service Commission, Independent Natural Gas Association of America; Nov. 17, Continental Oil Co.

(2) Compliance with the effective date provisions of section 553 of title 5 of the United States Code is unnecessary.

The Commission, acting pursuant to its authority under the Natural Gas Act, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 824, 825, 830; 56 Stat. 83, 84, 61 Stat. 459; 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, and 717o) orders:

(A) Effective upon issuance of this order, the proposed rule making in Docket No. R–400 is terminated.

(B) Each order issuing a permanent or temporary certificate of public convenience and necessity for the sale of natural gas conditioned to expressly limit the take or pay volume requirement contained in the applicable FPC Gas Rate Schedule under which said sale of natural gas is made hereby amended to delete said condition, and any condition contained in an order issuing such permanent or temporary authority making it subject to the final outcome of Docket No. R–400 is terminated by this order.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–5231 Filed 4–14–71;8:47 am]

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Order No. 11 (Rev. 5)]

DISTRICT DIRECTORS ET AL.

Delegation of Authority to Accept or Reject Offers in Compromise

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150–25 dated June 1, 1953, as amended by Order No. 180 dated November 17, 1953, and Order No. 150–36 dated August 17, 1954, 26 CFR 301.7122–1, and 26 CFR 301.7701–9, it is hereby ordered:

1. District Directors, Assistant District Directors, the Director of International Operations, and the Assistant Director of International Operations are delegated authority, under section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $100,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated herein may not be redelegated.

2. Service Center Directors and Assistant Service Center Directors are delegated authority, under section 7122 of the Internal Revenue Code, to accept or reject offers in compromise limited to specific penalties (except those arising under laws relating to alcohol, tobacco, and firearms taxes); ad valorem delinquency penalties relating to employment taxes under Subtitle C of the Internal Revenue Code and ad valorem delinquency penalties relating to excise taxes under Subtitle D of the Internal Revenue Code (except those arising under laws relating to alcohol, tobacco, and firearms taxes). This authority may be redelegated but not lower than to Division Chief.

3. This Order supersedes Delegation Order No. 11 (Rev. 4) issued March 28, 1968.

Date of issue: April 8, 1971.

Effective date: April 8, 1971.

[SEAL] RANDOLPH W. THOWER,
Commissioner.

[FR Doc.71–5253 Filed 4–14–71;8:49 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[New Mexico 12995]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

APRIL 8, 1971.

The Bureau of Land Management has filed an application, Serial No. New Mexico 12995, for the withdrawal of lands described below from all forms of prospecting, location, entry and purchase under the general mining laws, including the mineral leasing laws except as to oil and gas leases. The applicant desires to withdraw the lands to protect the extensive investment and the aesthetic values of the Carlsbad Zoological—Botanical Park.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Land Office Manager, Post Office Box 1449, Santa Fe, NM 87501.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, to eliminate land needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

NEW MEXICO PRINCIPAL MERIDIAN

T. 21 S., R. 26 E.,
Sec. 21, SE¼;
Sec. 22, W½SW¼;
Sec. 26, SW¼SW¼;
Sec. 27, NE¼NW¼, W½NW¼, and S½;
Sec. 28, E½;
Sec. 34, NE¼ and E½NW¼.

The areas described aggregate 1280 acres state-owned lands in Eddy County.

MICHAEL T. SOLAN,
Land Office Manager.

[FR Doc.71–5216 Filed 4–14–71;8:46 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

MEAT INSPECTION

Notice of Determination Not To Designate Indiana

On February 5, 1971, there was published in the FEDERAL REGISTER (36 F.R. 2524) a Notice of Intended Designation of the State of Indiana under section 301(c)(1) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(1)). This notice was based on information that Indiana had not developed and activated State meat inspection requirements, with respect to operations and transactions wholly within the State, at least equal to those imposed under Titles I and IV of the Act. The Secretary had determined that the State of Indiana was not in a position at that time to enforce such requirements. Upon a subsequent review by this Department of the meat inspection program of the State of Indiana, it has been determined that the State has now developed and will enforce the prescribed State meat inspection requirements.

Accordingly, it has been determined that there is not now a basis for designation of the State of Indiana under section 301(c)(1) of the Act.

Done at Washington, D.C., on April 9, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71–5227 Filed 4–14–71;8:47 am]

Office of the Secretary

AGRICULTURAL RESEARCH SERVICE

Delegation of Functions

The functions and authorities delegated to the Agricultural Research Service in 30 F.R. 5801, as amended in 31

F.R. 4975 and 32 F.R. 7875, are further amended by amending subparagraph (8) of paragraph b of section 115, and by adding a new subparagraph (9) to paragraph b of section 115 to read as follows:

(8) Administration of the Act of August 24, 1966, Public Law 89–544, as amended by the Act of December 24, 1970, Public Law 91–579, relating to the care of certain animals used for purposes of research, experimentation, exhibition, or held for sale as pets, 7 U.S.C. 2131–2154.

(9) Administration of the Act of December 9, 1970, relating to prohibiting the movement in interstate commerce of horses that are sored, Public Law 91–540.

These amendments shall become effective upon publication in the FEDERAL REGISTER (4–15–71).

Done at Washington, D.C., this 9th day of April 1971.

CLIFFORD M. HARDIN,
Secretary.

[FR Doc.71–5228 Filed 4–14–71;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC–D–160; NADA No. 8–593V]

DR. STEPHEN JACKSON AND BENGEN & CO.

Coecolysin Bengen; Notice of Withdrawal of Approval of New Animal Drug Application

Correction

In F.R. Doc. 71–4685 appearing at page 6533 in the issue for Tuesday, April 6, 1971, the first sentence in the second complete paragraph in the middle column on page 6534 should be deleted and the following inserted in place thereof: "The NAS–NRC evaluation for this product was published in January of 1969, informing the sponsor that the product was evaluated 'probably not effective'."

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 10358]

LIMITATION ON USE BY CERTAIN CERTIFICATE HOLDERS OF PILOTS THAT HAVE REACHED THEIR 60TH BIRTHDAY

Notice of Public Hearing

The Federal Aviation Administration will hold a public hearing at 9:30 a.m., June 15, 1971, at Federal Building 10A, 800 Independence Avenue SW., Washington, DC, to receive the views of all interested persons concerning proposals to amend Part 121 of the Federal Aviation Regulations by amending or revoking § 121.383(c), the "age 60 rule."

After evaluating the comments received at the hearing and other available data, the FAA will determine whether or not further rulemaking action is warranted. If it is determined that such action is warranted, a subsequent notice of proposed rule making will be issued containing the specific terms of proposed amendments to Part 121.

Subpart M of Part 121 prescribes airman and crewmember requirements for all Part 121 certificate holders. Section 121.383(c) of that subpart reads as follows:

Section 121.383 *Airman: limitations on use of services.* * * *

(c) No certificate holder may use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday. No person may serve as a pilot on an airplane engaged in operations under this part if that person has reached his 60th birthday.

Because of wide interest in this matter, the FAA has decided that it would be in the public interest to give all interested parties an opportunity to comment on the need for change. The hearing will be an informal hearing conducted by a designated representative of the Administrator under 14 CFR 11.33. It will not be a judicial or evidentiary type hearing, so there will be no cross-examination of persons presenting statements (5 U.S.C. sec. 553).

An FAA spokesman will make an opening statement presenting, in brief, the history of § 121.383(c). Interested persons will then have an opportunity to present their initial oral statements. These statements should focus on the need to retain or to amend § 121.383(c).

After all initial statements have been completed, those persons who wish to make rebuttal statements will be given an opportunity to do so in the same order in which they made their initial statements.

Interested persons are invited to attend the hearing and present oral or written statements on the matters set forth herein that will be made a part of the record of the hearing. Any person who wishes to make an oral statement at the hearing should notify the FAA by June 1, 1971, stating the amount of time requested for his initial statement. In addition, any person who is unable to attend the hearing may submit relevant written comments. These comments must also be received by the FAA by June 1, 1971, to be made a part of the hearing record. All communications concerning this hearing should be addressed to the Office of the General Counsel, Rules Docket, GC–24, Federal Aviation Administration, Department of Transportation, Washington, D.C. 20590, marked "Attention: Presiding Officer, Public Hearing on Age 60 Rule."

A transcript of the hearing will be made; anyone may buy a copy of the transcript from the reporter.

This notice is issued under the authority of sections 313 (a) and (c), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354 (a) and (c), 1421, 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on April 9, 1971.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[FR Doc.71–5238 Filed 4–14–71;8:47 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18888; FCC 71R–115]

CENTREVILLE BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In regard application of Centreville Broadcasting Co., Centreville, Va., Docket No. 18888, File No. BP–17564; for construction permit.

1. The application of Centreville Broadcasting Co. (Centreville) for a construction permit to build a daytime-only Class II standard broadcast station (1,000 kHz, 1 kw, DA) in Centreville, Va., was designated for hearing under various issues by Commission memorandum opinion and order, FCC 70–656, 23 FCC 2d 845, released June 30, 1970. Now before the Review Board is a second motion to enlarge issues, filed December 11, 1970, by O.K. Broadcasting Corp., (WEEL), licensee of Station WEEL, Fairfax, Va.,[1] a party respondent in this proceeding, seeking an issue to determine whether the applicant's proposal will receive prohibited overlap from the existing cochannel operation of Station WRAR, Tappahannock, Va. (WRAR).

2. In support of the requested issue, WEEL alleges that the authorized 500-watt nondirectional operation of WRAR results in a prohibited overlap of approximately 10 miles between WRAR's 0.05 mv/m contour and Centreville's proposed 1.0 mv/m contour, in contravention of § 73.37 of the Commission's rules.[2] WEEL notes that WRAR's application was filed on April 25, 1966; that Centreville's mutually exclusive cochannel application

[1] Also before the Board for consideration are: (a) Opposition, filed Dec. 18, 1970, by Centreville; (b) comments, filed Jan. 5, 1971, by the Bureau; (c) reply, filed Jan. 19, 1971, by WEEL; (d) request to file additional pleading and further comments, filed Jan. 29, 1971, by the Bureau; (e) request to file additional pleading and further comments, filed Feb. 5, 1971, by Centreville; (f) comments to (e), filed Feb. 24, 1971, by the Bureau; (g) supplement to (c), filed Mar. 2, 1971, by WEEL.

[2] Issue 1 in this proceeding already seeks a determination of whether there is prohibited overlap of Centreville's proposed 1.0 mv/m contour and the 0.05 mv/m contour of existing standard broadcast Station WIOO, 1,000 kHz, Carlisle, Pa.

was filed on the cutoff date on December 19, 1966; and that, on December 4, 1967, Centreville amended its application to specify a directional antenna system which allegedly resulted in eliminating the mutually exclusivity between the Centreville and WRAR proposals. However, WEEL relates, it consistently charged in several pleadings, filed prior to the designation of Centreville's application for hearing, that a further overlap problem existed with WRAR.[3] Nevertheless, the Commission, on the basis of the data available, concluded that prohibited overlap was not to be expected, and the WRAR application was granted on August 13, 1969, while Centreville's application was retained on the processing line.[4] Now, based on measurements gathered after WRAR commenced operations, WEEL again asserts that prohibited overlap exists. WEEL bases this assertion on measurements made by its consulting engineer on November 16, 17, 18, 19, 22, and 30, 1970, utilizing two complete radials (335° and 341°) and two stub radials (329° and 347°) to define the WRAR 0.05 mv/m contour.[5]

3. Centreville prefaces its opposition with the charge that WEEL's motion is nothing more than a "grossly untimely petition for reconsideration" of the Commission's grant to WRAR that seeks only to delay a competitive service in the Centreville area, and should be summarily denied. Centreville notes that on three different occasions WRAR filed engineering data to establish that no overlap existed. Moreover, Centreville, in August 1968, constructed a test transmitter 0.32 miles northeast of WRAR's then proposed site and on the basis of these measurements established clearance. Centreville alleges that WEEL declined to participate in the test transmitter survey and, as a result, should not now be allowed to raise an overlap issue.[6] Finally, Centreville contends that, if there is overlap, its application is entitled to Ashbacker consideration with WRAR, and that WRAR's grant must be set aside and a consolidated hearing must be held to resolve the interference problem.

4. Although the Broadcast Bureau, in its comments, sympathizes with Centreville's "unusual situation", it asserts that in the absence of a detailed study depicting the nature and extent of all objectionable interference (from all sources),[7] no enlightened decision can be made to determine whether a grant to Centreville would be in the public interest. With regard to the public interest determination, the Bureau notes that in addition to the question of prohibited overlap involving the 0.05 mv/m contour of WRAR and the proposed 1.0 mv/m contour of Centreville's proposal (§ 73.37 (b)(2)), the problem of objectionable interference caused by the 0.025 mv/m contour of WRAR must be considered (§§ 73.37(a) and 73.182). Although the latter interference is permissible in the absence of prohibited overlap, since the Centreville proposal represents a first local outlet, the Bureau speculates that this interference may be of such magnitude as to be detrimental to the public interest under efficiency aspects of Rule 73.24 and section 307(b) of the Communications Act.[8]

5. In reply, WEEL first responds to the Bureau's efficiency request, by submitting a study which allegedly establishes that Centreville's proposed operation would be inefficient,[9] resulting in overlap to 38.8 percent of the area and 17.6 percent of the population within its proposed 0.5 mv/m normally protected daytime contour.[10] For this reason, WEEL claims that even under the less-stringent interference standards of the long-departed "Ten Percent Rule", Centreville's application should be denied. In an additional pleading, the Bureau comments on this study, stating that further consideration should be given to the total interference analysis, because the extent of the WIOO contour shown in the WEEL interference exhibit may not be accurate since the information filed with the Commission evidently discloses that the WIOO ground system was virtually nonexistent when part of the measurement data was taken. With regard to this matter, Centreville in an additional pleading relates that if the efficiency question is considered, then consideration must be given to its alleged Ashbacker protection; and the efficiency question must be considered in the context of WRAR and itself as mutually exclusive applicants.

6. WEEL next cites several cases that allegedly support the proposition that "the Commission's overlap allocation standards must be met no matter how far along the Commission has proceeded before it discovers that an overlap problem exists, and no matter how innocent Centreville may be." See e.g., Sunbury Broadcasting Corp., 23 FCC 2d 598, 19 RR 2d 338 (1970); TV Cable of Waynesboro, Inc., 18 FCC 2d 1055, 16 RR 2d 1093 (1969); Southwest Broadcasting Co., 18 FCC 2d 858, 16 RR 2d 963 (1969); Effingham Broadcasting Co., FCC 65-81, 4 RR 2d 494; and Drexel Hill Associates, Inc., FCC 63-986, 1 RR 2d 563. Thus, WEEL asserts that the Commission is required by section 309 of the Act to add the requested issue, because the overlap has been found at a much earlier stage than in any of the above-cited cases.[11] Lastly, with regard to the Bureau's query concerning WEEL's off-radial close in measurements, WEEL via its engineer responds (1) that the off-radial points were selected because the locations were easily identifiable so that exact distances could be determined; and (2) that these points were equal or superior to the measurements made on Centreville's test transmitter.[12]

7. The Bureau in its further comments to Centreville's additional pleading attempts to refute Centreville's claim of Ashbacker protection. It is the Bureau's position that Centreville has waived any Ashbacker rights that may have accrued to its benefit, because Centreville (1) elected to support rather than object to grant of WRAR's application; (2) submitted joint measurements with WRAR to establish that the proposals did not involve prohibited overlap; (3) did not petition to deny a grant of WRAR's application for a construction permit; and (4) did not protest the grant of WRAR's station license or petition for reconsideration. In addition, the Bureau notes that the Commission conditioned WRAR's grant to accept any interference that may result from a grant to Centreville. Therefore, the Bureau is of the view that Centreville, by supporting rather than opposing WRAR's application, and by being guilty of laches has forfeited its

[3] See, e.g., WEEL's "Supplement to Petition for Reconsideration or to Deny", filed May 29, 1968; its "Second Supplement to Petition for Reconsideration or to Deny", filed Nov. 18, 1968; and its "Third Supplement to Petition for Reconsideration or to Deny", filed Jan. 21, 1969.

[4] WRAR's station was subsequently constructed and authority to commence operation was granted on Oct. 23, 1970.

[5] The WEEL engineering study further indicates that points measured within the first 1.65 miles of the WRAR site were taken off-radial for convenience of locating "identifiable" landmarks. The same points were used for the 335° and 341° radials. The engineer notes that 80 percent of these points are within a "ten-degree spread".

[6] WEEL disputes this matter in its reply.

[7] The Bureau remarks that the measurements out to 1.65 miles on radials 335° and 341° should have been made on the radials, and that WEEL has failed to demonstrate sufficiently that locations on the radials were inaccessible.

[8] In addition, the Bureau states that with prohibited overlap, objectionable interference will occur in rural areas in the eastern portions of the primary service areas within the 0.5 mv/m contour of Centreville's proposal.

[9] WEEL's interference study submitted with its reply allegedly indicates that Centreville's proposed operation would receive interference from Station WIOO, Carlisle, Pa., involving 20,547 persons in an area of 470 square miles or 14 percent of the population and 33.1 percent of the area within the proposed 0.5 mv/m service area. Additional interference is allegedly caused by WRAR to Centreville's proposed operation involving 5,397 persons (3.6 percent) within 81 square miles (5.7 percent). This results in a total loss through interference of 25,944 persons (17.6 percent) within 551 square miles (38.8 percent).

[10] In a supplement to its reply, WEEL submits that it and Centreville, on Sept. 1, 1970, and on Feb. 16, 1971, made joint measurements on radio Station WIOO, Carlisle, Pa.; this data coupled with independent WEEL measurement data discloses that Centreville would suffer an interference loss of 15.5 percent of the population and 31.1 percent of the area within its proposed 0.5 mv/m contour.

[11] The hearing commenced on Mar. 22, 1971, resumes on May 24, 1971.

[12] In this regard, WEEL's engineer states that the test transmitter employed lower power (resulting in poorer signal-to-noise ratio) a shorter, less efficient antenna, and an inefficient ground system, at a site almost one-half mile from the location ultimately used by WRAR.

right to Ashbacker protection. Under the circumstances, the Bureau asserts that the Commission is not required to overturn the grant to WRAR which is now an existing operation.

8. Notwithstanding the fact that the Commission previously issued a grant to WRAR after finding that no overlap would result from the WRAR and Centreville proposed operations, the Review Board is of the view that WEEL has presented in its engineering exhibits, attached to its pleadings, sufficient data to raise a substantial question of objectionable interference. The data before the Commission at the time of the WRAR grant was based, in part, on measurements taken on Station WNNT, Warsaw, Va., located slightly over 3.5 miles from the WRAR site, and on measurements taken on a test transmitter located approximately one-half mile from the WRAR site. However, neither the WNNT measurements nor the test measurements traverse essentially the same path as that covered by the critical 341° path measured by WEEL for consideration herein. Thus, no real comparison can be made of the different data over this critical path. Furthermore, the prohibitive overlap shown by WEEL's measurements results in large part from the high conductivity of the water paths traversed by the measured radials. For example, the worst situation is depicted along the measured 341° radial which traverses more of the Potomac River than the other measured radials. As shown by WEEL, these higher conductivity paths result in the formation of a "bulge" in the depiction of the overlapping contour. In addition, WEEL stated in one of its engineering reports that fluctuations of the measured signal were noted in some points measured beyond 40 miles. Because of the extraneous signal indicated by these fluctuations, and the fact, also noted by the Bureau, that points measured by WEEL within the first 1.65 miles of the WRAR site were taken off-radial, the determination as to the amount of interference which might be caused to Centreville by WRAR may best be determined in an evidentiary hearing; therefore, an appropriate issue will be added.

9. The Board notes that WEEL, in response to the comments of the Bureau, has submitted an interference study which, WEEL asserts, shows the proposed Centreville operation to be inefficient. However, the adoption of the "go-no-go" rules as set forth in amended § 73.37 of the Commission's rules was designed to prohibit overlap of specified contours in order to preclude the allocation of an inefficient operation. To grant a waiver of § 73.37 would in effect result in a waiver of the "go-no-go" rules, and there has been no presentation warranting such action herein. Thus, Issue 1 was designated with the expectation that Centreville's application would not be granted if it is determined that the WIOO operation involves prohibitive overlap with Centreville's proposed operation. In the circumstances, addition of the requested § 73.24 efficiency issue is not warranted.

10. With regard to the Ashbacker rights asserted by Centreville, the Board is constrained to certify this matter to the Commission, since, if the applicant is entitled to those rights, their effective implementation is beyond the jurisdiction of the Review Board. Moreover, precedent regarding this situation is not entirely clear, and we are of the view that a novel question which should be considered by the Commission has been raised. See e.g., The Ceritos Broadcasting Co., FCC 57–144, 14 RR 1229; Southwest Broadcasting Co., supra; KPLT, Inc., supra; and Effingham Broadcasting Co., supra. Therefore, the Board will certify this matter to the Commission.

11. *Accordingly, it is ordered,* That the request to file additional pleadings and further comments, filed January 29, 1971, and February 5, 1971, by the Broadcast Bureau and Centreville Broadcasting Co., respectively, are granted; and

12. *It is further ordered,* That the second motion to enlarge issues, filed December 11, 1970, by O.K. Broadcasting Corp. (WEEL) is granted to the extent herein indicated, and Issue 1 of this proceeding is amended to read as follows:

To determine whether the existing 0.05 mv/m contour of either Station WIOO, Carlisle, Pa., or Station WRAR, Tappahannock, Virginia would overlap Centreville Broadcasting Corp.'s proposed 1.0 mv/m contour in contravention of § 73.37(b)(2) of the Commission's rules.

and;

13. *It is further ordered,* That the request by Centreville for Ashbacker protection is hereby certified to the Commission for its determination.

Adopted: April 7, 1971.

Released: April 9, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[13]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-5232 Filed 4-14-71;8:47 am]

[13] Review Board Member Berkemeyer not participating.

[Dockets Nos. 18901, 18902; FCC 71R-116]

JAY SADOW (WRIP) AND ROCK CITY BROADCASTING, INC.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Jay Sadow (WRIP), Chattanooga, Tenn., Docket No. 18901, File No. BP-17792; and Rock City Broadcasting, Inc., Chattanooga, Tenn., Docket No. 18902, File No. BP-17993; for construction permits.

1. This proceeding involves the mutually exclusive applications of Jay Sadow (WRIP)[1] and Rock City Broadcasting, Inc. for authorization to establish a standard broadcast station on 1190 kHz at Chattanooga, Tenn. By memorandum opinion and order, FCC 70-705, 35 FR 11310, published July 15, 1970, the Commission designated the applications for consolidated hearing on various issues. Presently before the Review Board is a petition to enlarge issues, filed November 4, 1970, by Sadow, seeking to expand the scope of already-specified Issue No. 3,[2] and to add an issue to this proceeding to determine whether Rock City's directional pattern will afford adequate protection from interference to other broadcast facilities as required by the Commission's rules.[3]

2. Initially, Sadow concedes that the instant petition was submitted more than 15 days after publication of the designation order in the FEDERAL REGISTER, but he argues that good cause exists for the late filing. In explanation, petitioner points out that deficiencies allegedly inherent in Rock City's engineering proposal were not evident from the information supplied in the Rock City application and that it was not until Sadow's own consulting engineer visited Chattanooga on October 3, 1970, to ascertain demographic data concerning another aspect of this proceeding, that a potential reradiation problem came to light. More specifically, Sadow notes that his consulting engineer discovered that three water towers, ranging in height from 100 to 230 feet and within one-half mile of Rock City's proposed site, were located within the directional pattern of that applicant's proposed array; that, on the basis of his site inspection and review of Rock City's application, Sadow's engineer uncovered inconsistent site locations; [4] and that, employing the allegedly correct site, the engineer found that the three water towers are not in the null areas of the critical hours and daytime radiation patterns of Rock City's proposal, but are within an area of intense radiation. According to an attached affidavit of Sadow's engineer, a study of the impact of the water towers on Rock City's proposal indicates that each tower

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[1] Sadow, the licensee of Station WRIP, Rossville, Ga., seeks to relocate this daytime-only facility on 980 kHz to Chattanooga and to increase power to 50 kw.

[2] Issue No. 3 reads as follows:

To determine whether the proposed directional antenna parameters accurately depict the proposed radiation pattern of Rock City Broadcasting, Inc. during critical hours of operation.

[3] Also before the Board for consideration are: (a) Erratum, filed Nov. 19, 1970, by Sadow; (b) comments, filed Nov. 24, 1970, by the Broadcast Bureau; (c) opposition, filed Nov. 25, 1970, by Rock City; and (d) reply, filed Dec. 18, 1970, by Sadow. We note that Sadow's reply was filed late and with no explanation. However, since no objection has been raised and to the extent that the reply deals with matters raised in Rock City's opposition, the reply has been considered on its merits.

[4] Petitioner points out that Rock City's site is shown at three different locations: At one place on a sketch of the ground plat; at a second point on a quadrangular map; and at a third place on a site photograph where one water tower is visible, but is shown to be located within the null areas of the proposed patterns.

is a reradiation source and, as such, would affect the critical hours and daytime patterns and that the reradiation problem raises serious questions concerning the feasibility of adjusting the Rock City antenna system to provide the patterns proposed and whether adequate protection would be afforded other stations.[5] Based on this study, Sadow seeks to enlarge the scope of existing Issue No. 3 to permit inquiry into both the critical and noncritical hours patterns of the Rock City proposal and to add an issue to determine whether Rock City can provide adequate interference protection to established broadcast operations.[6]

3. In opposition, Rock City argues that the instant petition is extremely late and should be summarily dismissed since all of the information upon which Sadow relies has been available in the Rock City application, which was filed with the Commission in December of 1967. More specifically, Rock City maintains that neither the coordinates nor the description of its site have been changed since the application's filing in 1967 and that, therefore, Sadow has had several years within which to determine whether a potential reradiation problem exists in regard to the site. In responding to the substance of petitioner's request, Rock City claims that there are no discrepancies as to its site location in its application and points to a quadrangular map (Figure 8–A of its application), which allegedly depicts the proposed transmitter location and the presence of the water towers in question. Moreover, Rock City contends that Sadow's petition rests upon a faulty premise since it appears that the petitioner, in correlating the ground plat to a topographical map, has taken as a reference point from the plat an access road which Sadow has assumed to be the dirt road depicted on the map. In fact, Rock City alleges, the access road on the plat is not in existence and is labeled as a contemplated access road. The effect of this faulty charting, maintains Rock City, is to throw off all of Sadow's topographical references and to place Rock City's proposed site in an improper area, subject to the possible reradiation problem that Sadow suggests. In addition to including a revised site photograph to "more clearly show the location of the 1000 mv/m contours", Rock City, through an attached engineering statement, submits its own calculations of possible reradiation to indicate that Sadow's estimates are excessive and unrealistic. Finally, Rock City asserts that, even if Sadow's showing relative to possible distortion of its directional array is accepted, the distorted pattern extends beyond the MEOVs in only one instance during critical hours and one instance during daytime hours. Such a situation, Rock City points out, could easily be remedied by the detuning of one or more of the towers in question.

4. In reply, Sadow, through his consulting engineer, contends that Rock City's revision of the depiction of its 1000 mv/m contour, which includes one of the water towers in question, should act as a warning that further inquiry is warranted. In regard to site location, Sadow's engineer continues to maintain that inconsistencies exist; he explains that, utilizing the topographic map, the site photograph and identifiable landmarks common to both, the point where three lines intersect on the site photograph differs from the site shown on the map and locates the actual site in a position where the 1000 mv/m contour encompasses the water towers. Noting that Stations WAMB (Donaldson, Tenn.), WOWO (Fort Wayne, Ind.) and WGKA (Atlanta, Ga.) require protection from Rock City's proposed facility during either critical or daytime hours, Sadow's engineer concludes that distortion of Rock City's patterns as a result of reradiation could result in objectionable interference. Finally, while conceding the possibility that reradiation can be significantly reduced by detuning the towers, Sadow's engineer points out that Rock City has not demonstrated its authorization to detune the towers or shown that it has the estimated $3,000 (not including consultant fees) with which to effect the necessary detuning.

5. The Review Board is in essential agreement with the Broadcast Bureau's evaluation of the instant request. As to the procedural objection raised by Rock City, we think that good cause has been shown for the late filing of the petition to enlarge issues. Rock City's application is not entirely clear as to its site location, and we do not perceive how Sadow could have determined from the application alone that the water towers in question might be a source of reradiation. See Great River Broadcasting, Inc., 11 FCC 2d 885, 12 RR 2d 491 (1968). In any event, in light of the serious public interest questions raised by Sadow and our ultimate disposition of the petition to enlarge issues, we believe, that consideration of the merits of the instant request is warranted. The Edgefield-Saluda Radio Co., 5 FCC 2d 148, 8 RR 2d 611 (1966). First, we note that a factual dispute exists as to the exact location of Rock City's proposed site; in spite of the applicant's assertion that geographic coordinates have not been changed since the filing of the Rock City application, Sadow's consulting engineer demonstrates that an inconsistency in site location is apparent from the topographic map and site photograph. Accordingly, an issue is required to determine whether the information submitted by Rock City in support of its technical proposal (e.g., site photograph, ground plat, quadrangular map and geographic coordinates) accurately depicts the location of the proposed site.

6. Second, a serious question has also been raised concerning the suitability of the proposed site.[7] While section V–A of FCC Form 301 requires that an application include "* * * a sufficient number of aerial photographs taken in clear weather at appropriate altitudes and angles to permit identification of all structures in the vicinity [of the proposed site] * * * and locations of the proposed 1000 mv/m contour * * *" and exhibits which clearly show the heights and location of structures in the vicinity of the antenna,[8] Rock City's application leaves something to be desired in this regard. For example, the site photograph and topographic map do not clearly reveal or identify the locations or heights of the water towers. Contrary to Rock City's assertions, Sadow's showing does raise a substantial question as to whether the water towers present a reradiation problem that could result in the distortion of the antenna radiation patterns of the Rock City proposal, and we believe that an issue is warranted to determine whether the site is suitable in light of conditions in the vicinity thereof.[9] See Albert L. Crain, FCC 71–321, —— FCC 2d ——, released March 31, 1971; and Kittyhawk Broadcasting Corp., 13 FCC 2d 928, 13 RR 2d 1058 (1968). While both Rock City and Sadow apparently agree that interference could occur as a result of reradiation and that methods are known which could be used to detune the water towers and to reduce any reradiation to an acceptable level, Rock City has not shown that it has the necessary permission to detune the towers or the funds to accomplish the detuning. Media, Inc., 23 FCC 2d 729, 18 RR 2d 268 (1970); compare Louis Vander Plate, 16 FCC 2d 770, 15 RR 2d 859 (1968). However, we note that, under the site suitability issue being added herein,[10] Rock City will be permitted to

[5] Sadow's engineer claims that a combination of reradiation components could produce a resultant field in any given direction that is greater than that calculated for the critical hours and daytime patterns.

[6] In its comments on the instant request, the Broadcast Bureau explains that it has made an independent study of Rock City's engineering statements and that it has determined that serious questions have been raised regarding Rock City's proposal. The Bureau, therefore, would support the addition of an issue to investigate the effect of the water towers on Rock City's proposed contours and would also advocate an issue to determine the location of Rock City's site in light of the inconsistencies in that applicant's proposal. However, the Bureau would not support Sadow's request for an interference issue since the petitioner has failed to demonstrate any specific instance of interference and since Rock City is restricted to its MEOVs, which provide adequate protection to existing stations.

[7] Any examination of the suitability of Rock City's proposed site must necessarily follow a determination as to the exact location of the site.

[8] See paragraphs 11 and 14(c) of section V–A, respectively.

[9] Sadow's request for modification of Issue No. 3 to permit inquiry into the effect of the water towers on Rock City's proposed parameters is inappropriate. Issue No. 3 was specified because the radiation values shown on the applicant's theoretical critical hours pattern did not completely agree with the values derived from the proposed directional antenna parameters. The effects of extraneous objects, such as water towers, are not normally used in the check of theoretical pattern calculations under Issue No. 3.

[10] Consistent with prior precedent, both the burden of proceeding with the introduction of evidence and the burden of proof under the issues to be specified by the Board will be imposed upon Rock City. Media, Inc., supra; Kittyhawk Broadcasting Corp., supra.

demonstrate that it can, if necessary, detune the water towers."[11] If it is determined that a reradiation problem exists and that detuning cannot be accomplished, then the proposed site for the directional operation would not be suitable and a grant of the Rock City application could not be made. On the other hand, if Rock City shows that required detuning can be accomplished successfully, further interference studies would not be needed. In any event, we note that the standard conditions which are attached to the grant of a directional operation, provide that program test authority will not be approved until the permittee has submitted a proof-of-performance which verifies that the radiation patterns have been adjusted within the specified maximum expected operating values as required by §§ 73.96 and 73.151 of the rules. See Media, Inc., 22 FCC 2d 875, 18 RR 2d 1175 (1970); Circle L, Inc., 2 FCC 2d 338, 6 RR 2d 795 (1966). In these circumstances, we do not believe that a separate interference issue is required.

7. *Accordingly, it is ordered,* That the petition to enlarge issues, filed by Jay Sadow (WRIP), on November 4, 1970, is granted to the extent indicated below, and is denied in all other respects; and

8. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issues:

To determine whether the aerial photographs, the ground plat, the quadrangular map and the geographical coordinates contained in the Rock City Broadcasting, Inc., application accurately depict the location of its proposed antenna site; and

To determine whether the transmitter site proposed by Rock City Broadcasting, Inc., is satisfactory with particular regard to any conditions that may exist in the vicinity of the antenna system which would distort the proposed antenna radiation patterns; and

9. *It is further ordered,* That the burden of proceeding with the introduction of evidenee and the burden of proof under the above issues shall be on Rock City Broadcasting, Inc.

Adopted: April 7, 1971.

Released: April 9, 1971.

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

[FR Doc.71-5233 Filed 4-14-71;8:47 am]

FEDERAL MARITIME COMMISSION

AMERICAN WEST AFRICAN FREIGHT CONFERENCE

Notice of Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street NW., Washington, DC 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the petition, (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of a petition to extend the termination date of a dual rate contract system filed by:

John K. Cunningham, Chairman, American West African Freight Conference, 67 Broad Street, New York, NY 10004.

Notice is hereby given that the member lines of the American West African Freight Conference, Agreement No. 7680, as amended, have filed with the Commission, pursuant to section 14b of the Shipping Act, 1916, a petition to extend the dual rate contract system of the parties covering the transportation of coffee, cocoa, and bulk vegetable oils in less than full shipload lots, in the westbound trade of the conference. The petition requests an extension of the dual rate contract system, now scheduled to terminate on May 8, 1971, for 3 years, i.e., until May 8, 1974.

The westbound trade covers the movement of cargoes from West African ports (south of Rio de Oro, Spanish Sahara, and north of South-West Africa), including the Atlantic Islands of the Azores, Madeira, Canary, and Cape Verdes, also the Islands of Fernando Po, Principe and Sao Tome in the Gulf of Guinea to Canadian Atlantic and St. Lawrence River ports not west of Montreal and U.S. Atlantic and Gulf ports.

Dated: April 12, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5261 Filed 4-14-71;8:49 am]

COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO AND COMPANHIA DE NAVEGACAO MARITIMA NETUMAR

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Renato C. Giallorenzi, Esquire, 52 Wall Street, New York, NY 10005.

Agreement No. 9938, between Companhia de Navegacao Lloyd Brasileiro and Companhia de Navegacao Maratima Netumar, proposes a service covering the transportation of cargo between all Brazilian ports, from Porto Alegre to Belem, including the ports of Manaus and Iquitos in the Amazon Basin, and optionally ports of the Rio da Prata, on the one hand, and ports on the East Coast of the United States and Canada, and optionally at Great Lakes ports, on the other. The parties shall have an equal share in the existing pools, or those which may be established in the future, in the aforementioned trade, being representatives of the Brazilian flag in such agreements. The parties may by mutual agreement establish navigation routes common to both of them with schedules, tonnages, and ports of call necessary to handle cargo obtained. The loading and unloading, soliciting and agency services of the two parties may be handled jointly or separately by each party's own agents.

From the U.S. East Coast to Brazilian ports between Fortaleza and Paranagua, both inclusive, but excluding the port of Recife, each party will share 50 percent

[11] Since the Commission has already specified a general financial issue against Rock City, it will not be necessary to enlarge the issues to permit an inquiry into the effect of any necessary detuning on the applicant's financial qualifications.

of the revenue produced by the joint operation. From Brazilian ports between Paranagua and Salvador, both inclusive, to the ports on the U.S. East Coast, each party will share 50 percent of the revenue produced by the joint operation. In areas not covered by this paragraph traffic will be rationalized by mutual agreement of the parties.

Dry or liquid cargo carried in bulk, refrigerated cargo, cargo declared by the conference to be open, and containerized cargo are excepted from the pool. The parties may include containerized cargo in the pool by mutual consent.

Each party shall maintain a minimum of 22 departures during each prorating period (calendar year) for both northbound and southbound traffic. The accounting for each prorating period (calendar year) shall be completed and terminated within 30 days after the final date of each prorating period. Payment shall be made 30 days thereafter.

Agreement No. 9938 cancels and supercedes Agreement No. 9651 between the parties.

Dated: April 12, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-5262 Filed 4-14-71;8:49 am]

[Docket No. 71-36]

PACIFIC COAST AUSTRALASIAN TARIFF BUREAU

Order To Show Cause

The Pacific Coast Australasian Tariff Bureau (PCATB) is a conference of common carriers by water engaged in the southbound United States and Canadian Pacific Coast/Australasian trades pursuant to the terms and conditions of Agreement No. 50, previously approved under section 15 of the Shipping Act, 1916. On June 24, 1970, the PCATB filed the following modification (Agreement No. 50-20) to its agreement:

(Article) "VI. Absorption: The absorption of wharfage, storage, or other charges against cargo and the absorption of the expenses of transshipment between ports via any means are prohibited except as may be agreed between the parties hereto and shown in the Conference tariffs."

By its letter dated December 8, 1970, the PCATB advised the Commission's staff "* * * that our request to amend Agreement No. 50 * * * is withdrawn." The reason for this action was explained:

Subsequent to our filing of Agreement No. 50-20 our attorneys have advised us that the present language contained in Articles II and VI already enables the Member Lines to amend their tariffs * * * to provide that tariff rates would apply whether the steamer called direct or by transshipment and to permit absorptions of the cost thereof without further amendment to the Conference's basic agreement.

On January 14, 1971, the PCATB filed Corrections Nos. 712 and 713 to its Local Tariff No. 15—FMC No. 4 (Local Tariff) and Corrections Nos. 382 and 383 to its Overland Freight Tariff No. 16—FMC No. 6 (OL Tariff). These filings modified Rule 1 (C) of Local Tariff and Rule 1 (D) of the OL Tariff by (1) listing for the first time specifically, those American and Canadian ports from which the tariffs' rates apply; (2) permitting the "absorption of expenses of transshipment"; (3) declaring its absorption policy (i.e., "no interzone absorption, only intra-zone") in the United States and British Columbia; and (4) listing the zones within which absorptions would be permitted. These filings became effective February 1, 1971.

In addition to establishing its absorption practice, the PCATB has by these filings attempted to limit the service of its lines to particular ports along the Pacific Coast of the United States through the device of making its tariffs' rates applicable to specific ports. Since the PCATB's basic agreement, No. 50, authorizes the establishment of rates with respect to cargoes moving "from United States ports" (Article II), it would appear that the proposed changes to Rules 1(C) and 1(D) exceed the PCATB's approved authority since Agreement No. 50 does not authorize PCATB action limiting ports of call along the Pacific Coast.

Insofar as the absorption practice is concerned, the PCATB is acting in reliance of language presently contained in Articles II and VI of its basic agreement. Thus, the PCATB does not contest the fact that section 15 approval of its absorption practice is required. The question here, then, is one of construction.

Now therefore, it is ordered, Pursuant to sections 15 and 22 of the Shipping Act, 1916, that the PCATB and its member lines listed in Appendix A below, be named respondents in this proceeding and be directed to show cause why Corrections Nos. 712 and 713 of its Local Tariff, and Corrections Nos. 382 and 383 of its OL Tariff should not be rejected by the Commission because of the absence of authorizing language in Articles II and VI of Agreement No. 50 with respect to the absorption practice; and the absence of any language anywhere in Agreement No. 50 permitting the limitation of Pacific Coast ports served.

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memoranda of law, replies, and oral argument. Should any party feel than an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before April 30, 1971. Affidavits of fact and memoranda of law shall be filed by respondent and served upon all parties no later than the close of business April 30, 1971. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business May 14, 1971. Oral argument will be scheduled at a later date if requested and/or deemed necessary by the Commission.

It is further ordered, That a notice of order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rule of practice and procedure (46 CFR 502.72) no later than close of business April 16, 1971.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

APPENDIX A

Pacific Coast Australasian Tariff Bureau, 635 Sacramento Street, Room 330, San Francisco, CA 94111.
Crusader Shipping Co., Ltd., c/o Furness, Withy & Co., Ltd., General Agents, 2 Pine Street, San Francisco, CA 94111.
Columbus Line, c/o Bakke Steamship Corp., Agents, 650 California Street, San Francisco, CA 94108.
Orient Overseas Line, c/o Orient Maritime Agencies, Agents, 311 California Street, San Francisco, CA 94104.
Pacific Far East Line, Inc., 141 Battery Street, San Francisco, CA 94111.
Peninsular & Oriental Steam Navigation Co., c/o Williams, Diamond & Co., Agents, 215 Market Street, San Francisco, CA 94105.
Karlander Kangaroo Line, c/o Transpacific Transportation Co., Agents, 650 California Street, San Francisco, CA 94108.
Pacific Australia Direct Line, c/o General Steamship Corp., Ltd., Agents, 400 California Street, San Francisco, CA 94104.

[FR Doc.71-5264 Filed 4-14-71;8:50 am]

PACIFIC COAST COMMITTEE OF INWARD TRANS-PACIFIC STEAMSHIP LINES

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing

on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. W. C. Galloway, Chairman, Pacific Coast Committee of Inward Trans-Pacific Steamship Lines, 635 Sacramento Street, San Francisco, CA 94111.

Agreement No. 7970–4 clarifies the geographical applicability of the Pacific Coast Committee of Inward Trans-Pacific Steamship Lines' basic agreement by adding restrictive language limiting its scope to the discussion of "mutual problems affecting Pacific Coast ports of the United States."

Dated: April 12, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71–5263 Filed 4–14–71;8:50 am]

FEDERAL POWER COMMISSION

[Docket No. RI71–808]

MOUNTAIN STATES PETROLEUM CORP.

Order Amending Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

APRIL 8, 1971.

Respondent has filed a proposed change in rate and charge for the jurisdictional sale of natural gas, as set forth in Appendix A below.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, a public hearing shall be held concerning the lawfulness of the proposed change.

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column. This supplement shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71–808	Mountain States Petroleum Corp.	(1)	.....	Transwestern Pipeline Co. (Atoka Penn Field, Eddy County N. Mex., Permian Basin).	$111,131	3–10–71	.....	[3] Accepted	16.5831	[2] 28.9374	

*The pressure base is 14.65 p.s.i.a.
[1] No rate schedule on file—pertains to contract dated Dec. 16, 1970. Applicant issued a small producer certificate.
[2] Previously reported as 28.7942 cents per Mcf which is suspended in Docket No. RI71–808 until Apr. 6, 1971.
[3] Accepted, subject to the existing suspension proceeding in Docket No. RI71–808

The producer's proposed increased rate and charge exceed the applicable area price level for increased rates as set forth in the Commission's statement of general policy No. 61–1, as amended (18 CFR 2.56).

[FR Doc.71–5229 Filed 4–14–71;8:47 am]

[Docket No. RP71–98]

PACIFIC GAS TRANSMISSION CO.

Notice of Proposed Changes in Rates and Charges

APRIL 9, 1971.

Take notice that on April 1, 1971, Pacific Gas Transmission Co. (PGT) tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1,[1] to become effective May 1, 1971. The proposed rate change would increase jurisdictional revenues by approximately $2,997,748 annually, based on sales for the 12 months ended December 31, 1970, as adjusted.

The proposed rate changes result from a requested 8.125 percent rate of return and a change in the method of computing depreciation expense. PGT claims that the need for an 8.125 percent rate of return arises from changes in its capital structure and embedded cost of debt and that the change in computing depreciation expense is necessary in order to relate more closely the annual depreciation expense to the actual use of the plant.

Copies of the filing were served on PGT's customers and interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 23, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–5230 Filed 4–14–71;8:47 am]

[1] 1st Revised Sheet No. 5, 2nd Revised Sheet No. 12, and 4th Revised Sheets Nos. 6 and 13.

[Docket No. E–7615]

JERSEY CENTRAL POWER & LIGHT CO.

Notice of Proposed Rate Schedule Changes

APRIL 9, 1971.

Take notice that on March 8, 1971, Jersey Central Power & Light Co. filed rate schedule changes which amend Schedule 4.01 to the Power Pooling Agreement (the "GPU System Power Pooling Agreement") between Pennsylvania Electric Co., Metropolitan Edison Co., New Jersey Power & Light Co., and Jersey Central Power & Light Co.

In accordance with the GPU System Power Pooling Agreement, this filing is tendered by applicant on behalf of all parties to the agreement.

The tendered Schedule 4.01, Revision 1, proposes to effect an increase in the charge for capacity deficiencies per kilowatt per week.

According to the applicant the purpose of the change is to preserve the relationship of the GPU System charge with the charge under the Pennsylvania-New Jersey-Maryland Interconnection Agreement. The applicant also states that the increase is reasonable in relation to the increased cost of providing peaking capacity, as affected both by plant costs and applicable fixed charge rates.

The applicant proposes the revised schedule become effective on April 15, 1971, or upon later acceptance by the Commission of the December 9, 1970, filing by PJM.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-5320 Filed 4-14-71;8:50 am]

FEDERAL RESERVE SYSTEM

CENTRAL BANCORPORATION, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by The Central Bancorporation, Inc., which is a bank holding company located in Cincinnati, Ohio, for prior approval by the Board of Governors of the acquisition by applicant of 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to The First Trust and Savings Bank, Zanesville, Ohio.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Cleveland.

By order of the Board of Governors, April 9, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-5206 Filed 4-14-71;8:45 am]

COLORADO CNB BANKSHARES, INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Colorado CNB Bankshares, Inc., Denver, Colo., for approval of acquisition of at least 80 percent of the voting shares of First National Bank of Sterling, Sterling, Colo.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), the application of Colorado CNB Bankshares, Inc., Denver, Colo., a registered bank holding company, for the Board's prior approval of the acquisition of at least 80 percent of the voting shares of First National Bank of Sterling, Sterling, Colo. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller recommended approval.

Notice of receipt of the application was published in the FEDERAL REGISTER on February 9, 1971 (36 F.R. 2643), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant is the third largest banking organization in Colorado by virtue of control of six banks with aggregate deposits of approximately $282 million, representing 7.4 percent of all deposits of commercial banks in the State. (All banking data are as of June 30, 1970, adjusted to reflect holding company acquisitions approved by the Board through February 28, 1971.) Upon acquisition of Bank ($6.6 million of deposits), applicant would increase its share of State-wide deposits to 7.6 percent, and applicant would retain its relative position among banking organizations in the State.

On the basis of deposits, Bank is the smallest of the three banks in Sterling and, with about 16.5 percent of market deposits, Bank ranks third in size among the four banks located in the relevant market, defined as approximately Logan County. The largest bank in the market holds 52.8 percent of deposits in the area.

Applicant's subsidiary that is closest to Bank is separated from it by 115 miles. The record indicates that there is no significant competition between Bank and any of applicant's subsidiary banks, and none is likely to develop in the future. Apparently, there is little likelihood that applicant would establish a de novo office in the area served by Bank. Thus, it appears that consummation of applicant's proposal would not eliminate significant existing competition nor foreclose potential competition. Rather, affiliation with applicant should enable Bank to compete more aggressively with the two larger banks in Sterling.

On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant area. The financial and managerial resources and prospects of Applicant, and its subsidiaries, are regarded as consistent with approval of the application. Bank's prospects for growth, continuity of management and the recruiting and training of management personnel should be enhanced by consummation of the proposed affiliation. Also, applicant proposes to assist in providing customers of Bank with a number of expanded and improved services with respect to loans and fiduciary services. Considerations relating to the convenience and needs of the communities involved lend some support to approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, For the reasons set forth in 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 time is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] April 8, 1971.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[FR Doc. 71-5207 Filed 4-14-71;8:45 am]

MANAPORT BANK

Order Approving Merger of Banks

In the matter of the application of Manaport Bank, for approval of merger with First Manassas Bank and Trust Co.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Manaport Bank, Manassas, Va., a proposed State member bank of the Federal Reserve System, for the Board's prior approval, of the merger of that bank and First Manassas Bank and Trust Co., Manassas, Va., under the charter of the former and the name of the latter. Notice of the proposed merger, 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 merger, 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[2] of this date concerning the application of Northern Virginia Bankshares Inc., Bailey's Crossroads, Va., to become a holding company that said merger application be and hereby is approved: *Provided,* That said merger 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 Richmond pursuant to delegated authority.

By order of the Board of Governors,[3] April 8, 1971.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[FR Doc.71-5208 Filed 4-14-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, and Sherrill. Absent and not voting: Governors Mitchell and Maisel.

[2] 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 Richmond.

[3] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, and Sherrill. Absent and not voting: Governors Mitchell and Maisel.

NORTHERN VIRGINIA BANKSHARES, INC.

Order Approving Action To Become Bank Holding Company

In the matter of the application of Northern Virginia Bankshares, Inc., Bailey's Crossroads, Va., for approval of action to become a bank holding company through the acquisition of 100 percent of the voting shares of (1) Hamilton Bank and Trust Co., Bailey's Crossroads, Va., and (2) First Manassas Bank and Trust Co., Manassas, Va., by merger into two nonoperating banks.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Northern Virginia Bankshares, Inc., Bailey's Crossroads, Va., for the Board's approval of action whereby applicant would become a bank holding company through the acquisition of 100 percent of the voting shares of (1) Hamilton Bank and Trust Co., Bailey's Crossroads, Va., and (2) First Manassas Bank and Trust Co., Manassas, Va., by merger into two nonoperating banks.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Virginia Commissioner of Banking and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on February 4, 1971 (36 F.R. 2430), which provided an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. The time for filing comments and views has expired and all those received have been considered by the Board.

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 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 Richmond pursuant to delegated authority.

By order of the Board of Governors,[2] April 8, 1971.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[FR Doc.71-5209 Filed 4-14-71;8:45 am]

[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 Richmond.

[2] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, and Sherrill. Absent and not voting: Governors Mitchell and Maisel.

SECURITIES AND EXCHANGE COMMISSION

[812-2838]

CHILE EXPLORATION CO. AND CHILE COPPER CO.

Notice of Application for Order of Temporary Exemption

APRIL 8, 1971.

Notice is hereby given that Chile Exploration Co. (Chilex), and Chile Copper Co. (Chilco) 25 Broadway, New York, NY 10004 (hereafter referred to as "Applicants"), have applied pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order of the Commission temporarily exempting Applicants from the provisions of section 7 of the Act. All interested persons are referred to the application which is on file with the Commission for a statement of the representations which are summarized below.

The Anaconda Co. (Anaconda) owns 99.81 percent of the outstanding shares of Chilco and approximately 160 persons, most of whom are residents of the United States, own the remaining outstanding shares. Chilco owns all of the outstanding stock of Chilex with the exception of 10 shares of capital stock owned by Anaconda. Chilex owns 49 percent of Compania de Cobre Chuquicamata S.A. (Chuquicamata) a Chilian corporation, with the remaining capital stock owned by an agency of the Republic of Chile.

Chilex has filed an application pursuant to section 3(b)(2) of the Act for an order of the Commission declaring that it is not an investment company. Section 3(b)(2) of the Act provides that the filing of an application thereunder shall exempt an applicant for a period of 60 days from all provisions of the Act applicable to investment companies as such. The 60-day period expired on December 6, 1970, Chilex, which has not registered under the Act, and Chilco request exemption from section 7 from that date until the Commission acts on the exemption from 3(b)(2) of the Act.

Applicants, in requesting such temporary exemption, have agreed that they shall be subject to all provisions of the Act and the rules and regulations thereunder as though they were registered investment companies other than the following:

Section 7;
Section 10(a);
Section 13(a)(2);

Section 17 (f) and (g) provided, however, that Anaconda may continue to act in the regular course of business as purchasing agent for Chilex and Chilco and for Chilex's copper mining subsidiary Chuquicamata; a wholly owned subsidiary of Anaconda may continue to act as Chuquicamata's sales agent; Anaconda may continue to charge Chilex and Chilco (as well as its other subsidiaries) for office space and overhead service provided them at Anaconda's New York Office; and Chilex and Andes Copper Mining Co., another Anaconda subsidiary, may continue to share joint office space in Santiago,

Chile, on a basis no less favorable to Chilex and Chilco than the present basis; [1]

Section 18 (except for subsection (d));
Section 30; and
Section 31.

Notice is further given that any interested person may, not later than April 28, 1971, 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 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 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] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5241 Filed 4-14-71;8:48 am]

[70-5012]

CONSOLIDATED NATURAL GAS CO.

Notice of Proposed Issue and Sale of Debentures

APRIL 8, 1971.

Notice is hereby given that Consolidated Natural Gas Co. (Consolidated), 30 Rockefeller Plaza, New York, NY 10020, 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 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Consolidated proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, $40 million principal amount of _____ percent Debentures due May 1, 1996. The interest rate (which will be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest (which will be not less than 99 percent nor more than 102 percent of the principal amount thereof), will be determined by the competitive bidding. The debentures will be issued as a new series under an indenture dated as of May 1, 1971, between Consolidated and Manufacturers Hanover Trust Co., New York, N.Y., as trustee. The indenture includes a prohibition until May 1, 1976, against refunding the issue with the proceeds of funds borrowed at a lower annual cost of money. The proceeds of the sale of the debentures will be used to finance, in part, the 1971 plant construction expenditures of Consolidated's subsidiary companies, presently estimated at $97,600,000.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at $112,000, including service charges of Consolidated Natural Gas Service Co., Inc., an associate company, at cost, of $28,000, accountants' fees and expenses of $5,000, and consulting geologists' fees and expenses of $5,000. The fees and expenses of counsel for the underwriters, to be paid by the successful bidders, will be supplied by amendment.

It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 3, 1971, 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 the 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] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5242 Filed 4-14-71;8:48 am]

[812-2878]

COWLES COMMUNICATIONS, INC.

Notice of Application for Order Extending Period Until Registration Is Required

APRIL 8, 1971.

Notice is hereby given that Cowles Communications, Inc. (Applicant), 488 Madison Avenue, New York, NY, an Iowa Corp., has filed an application pursuant to section 3(b)(2) of the Investment Company Act of 1940 (Act) for an order of the Commission extending the period during which Applicant is exempt from all provisions of the Act from March 1, 1971, when this application was filed, until such time as the Commission has acted upon Applicant's request for an order pursuant to section 3(b)(2) 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 states that it filed an application with the Commission on December 30, 1970, for an order pursuant to section 3(b)(2) of the Act, finding and declaring that Applicant is primarily engaged (directly and through majority-owned subsidiaries) in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities. Presently, Applicant's subsidiaries are all wholly owned. The 60-day exemption period provided in section 3(b)(2) of the Act expired on March 1, 1971.

Applicant states that it has not consummated the acquisition of 2,600,000 shares of Class A Common Stock of The New York Times Co. ("Times Class A Common") which transaction would result in more than 40 percent of its total assets (exclusive of U.S. Government securities and cash items) consisting of investment securities, and it will not acquire any portion of such securities prior to April 1, 1971. Applicant states that it filed its pending application only because when it executed the agreement pursuant to which it may acquire shares of Times Class A Common, it could be said to be proposing to engage in the business of an investment company and proposing to acquire the requisite investment securities so as to be deemed an investment company within the meaning of section 3(b)(2) of the Act. Because there are various conditions precedent to the consummation of the agreement, Applicant states that it may never acquire the full 2,600,000 shares, or possible any share, of Times Class A Common, in which case Applicant would

[1] On Apr. 5, the Commission issued an identical notice with respect to Andes Copper Mining Co. (Andes) (File No. 812-2837), a subsidiary of Anaconda Co. Andes has consented to jurisdiction under section 17 as stated above.

not be an investment company within any interpretation of section 3(b)(2).

Applicant states its belief that it would be inequitable and, if some or all of the transactions contemplated are not consummated, superfluous to require it to comply with some or all of the provisions of the Act at this time.

Section 3(a)(3) of the Act defines as an investment company any issuer which is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Section 3(b)(2) of the Act, which excepts from the definition of an investment company in section 3(a)(3) any issuer which the Commission finds and by order declares to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of business, provides that the filing of an application under section 3(b)(2) exempts the Applicant from the Act for 60 days but that the Commission for cause shown may extend the period of exemption.

Notice is further given that any interested person may, not later than April 30, 1971, 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 shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 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 set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time thereafter, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued upon the basis of the information stated in the application, 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) any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5243 Filed 4-14-71;8:48 am]

[812-2691]

NEW YORK LIFE FUND, INC.

Notice of Application for Exemption

APRIL 8, 1971.

Notice is hereby given that New York Life Fund, Inc. (the "Fund"), a diversified open-end management investment company registered under the Investment Company Act of 1940 (the "Act") (herein sometimes called the "Applicant"), has filed an application pursuant to section 6(c) of the Act for an order of exemption from the provisions of sections 15(a), 15(b), 16(a), 17(f), and 32(a) of 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.

The Fund was incorporated in the State of New York on December 24, 1969. Shares of Fund will be sold at net asset value to separate accounts established by New York Life Insurance Co. (New York Life) for individual variable annuity contracts sold by New York Life. In addition, shares of the Fund may be sold to other separate accounts of New York Life as well as to New York Life itself and organizations approved by New York Life. New York Life is the investment adviser to the Fund.

Applicant requests exemption from the following provisions of the Act to the extent stated below:

Sections 15(a), 16(a), and 32(a) of the Act, in substance, require any investment advisory agreement to be initially approved by a vote of a majority of the outstanding voting securities of a fund, shareholder election of the directors of a fund, and shareholder ratification of the selection of an independent public accountant for the fund.

The separate accounts of New York Life which will be registered under the Act as unit investment trusts will vote their shares in the Fund in accordance with the instructions of the holders of the variable annuity contracts issued in respect to such separate accounts. Prior to the effective date of a registration statement with respect to shares of the Fund, New York Life through two of its separate accounts, will purchase 20,000 shares of the Fund for $200,000 in order to facilitate the organization of the Fund. There will, therefore, be no public holders of such variable annuity contracts until after such securities and shares of the Fund have been registered under the Securities Act of 1933.

Accordingly, the Fund requests that it be exempted from sections 15(a), 16(a), and 32(a) of the Act so as to permit the investment adviser, the directors, and the independent public accountant of the Fund to act as such until the first meeting of the shareholders of Fund following the effective date of a registration statement provided, however, that such meeting shall take place within 1 year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request showing good cause.

Section 15(b) provides, in pertinent part, that no principal underwriter for a registered open-end investment company may offer for sale or sell any security of which such investment company is the issuer except pursuant to a written contract meeting the requirements of such section. As stated above, shares of the Fund will be sold only to separate accounts established by New York Life, New York Life itself, and organizations approved by it, and the Applicant has no present intention of offering such shares directly to the public. Sales of shares of the Fund will be made directly at their net asset value without any sales load. Applicant believes that New York Life will not be an underwriter of the shares of the Fund and even if it were, under the circumstances described above, there would be no function to be served by an underwriting contract. Accordingly, Applicant requests an exemption from the provisions of section 15(b) to the extent necessary to permit sales of the stock of the Fund as described above without a written underwriting contract complying with section 15(b) so long as the shares of the Fund are not offered directly to the public.

Section 17(f) provides, in pertinent part, that a registered management company may maintain its securities and investments in its own custody in accordance with the rules, regulations, and orders adopted by the Commission in the interest of investors. Rule 17f–2 permits such assets to be placed in a bank, but only upon compliance with the requirements of the rule which includes a limitation upon the persons who shall have access to such assets. Applicant requests an exemption to permit New York Life to be the custodian of the securities and other similar investments of the Fund and, to the extent necessary, to permit authorized representatives of the Superintendent of Insurance of the State of New York, of other state insurance authorities and of the National Association of Insurance Commissioners to have access to the securities and similar investments of the Fund maintained in the custody of New York Life.

New York Life is an insurance company subject to extensive and detailed supervision and regulation by the Superintendent of Insurance of the State of New York as well as the insurance authorities of other States. The application states that the vault maintained by New York Life is comparable to vaults maintained in most banks, and that New York Life keeps therein securities and other investments with a value in excess of $5½ billion. Access to these securities and similar investments may be had only by two or more officers or responsible employees of New York Life or the Fund, acting jointly, at least one of whom would be an officer from a group of 10 officers and employees of New York Life or the Fund designated by a resolution of the Board of Directors of the Fund. The affairs of the Fund are audited annually by independent certified public accountants who make, on a surprise basis, such checks and verifications of securities held in the vaults as they deem necessary. If

New York Life acts as custodian for the securities and similar investments of the Fund, New York Life would segregate such securities and similar investments at all times from those of any other person, including New York Life. Access to such securities by the Superintendent of Insurance of the State of New York and authorized representatives of other State insurance authorities and of the National Association of Insurance Commissioners will facilitate the regulatory function of such authorities and will provide an additional protection for variable annuity contract owners.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 28, 1971, 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 shall 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 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.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-5245 Filed 4-14-71;8:48 am]

[812-2713]

NEW YORK LIFE INSURANCE CO. ET AL.

Notice of Application for Exemptions

APRIL 8, 1971.

Notice is hereby given that New York Life Insurance Co. (New York Life), 51 Madison Avenue, New York NY 10010, a mutual life insurance company organized under the laws of the State of New York, and New York Life Separate Account N (Separate Account N), and New York Life Separate Account Q (Separate Account Q), unit investment trusts registered under the Investment Company Act of 1940, as amended (Act), (hereinafter collectively called the Applicants), have filed an application pursuant to section 6(c) of the Act for an order of exemption to the extent noted below from the provisions of sections 22(d), 26(a), and 27(c)(2) of 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.

Separate Account N and Separate Account Q (herein sometimes collectively referred to as the "Accounts") were established, by a resolution of the Board of Directors of New York Life pursuant to the Insurance Law of the State of New York, for use in connection with variable annuity contracts. Separate Account Q was established for use in connection with individual variable annuity contracts designed to qualify for favorable tax treatment under the Internal Revenue Code. Such contracts will be sold and issued to (1) persons and organizations entitled to the benefits of the Self Employed Individuals Retirement Act of 1962, as amended; (2) tax-qualified corporate retirement plans and trusts under sections 401(a) and 403(a) of the Internal Revenue Code; and (3) employees of organizations entitled to tax deferred treatment under section 403(b) of the Code. Separate Account N was established for use in connection with individual variable annuity contracts not designed to qualify for favored tax treatment under the Internal Revenue Code. The net purchase payments received under such contracts (each herein called a "Contract", and collectively the "Contracts") which are allocated to either of the Accounts will be invested in shares of New York Life Fund, Inc. (Fund), an open-end investment company incorporated under the laws of New York and registered under the Act.

Under the Insurance Law, the assets and liabilities of the Accounts are included as part of the assets and liabilities of New York Life. However, the portion of the assets of the Accounts equal to the reserves and liabilities of New York Life applicable to the Contracts will not be chargeable with liabilities arising out of any other business of New York Life.

Section 22(d) provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus. Applicants accordingly request the following exemptions from section 22(d):

(1) To permit, without additional sales load, the transfer of funds not more than twice a year from an annuitant's fixed accumulation account to Account N or Q and the application of fixed accumulation cash values to obtain variable annuity payments.

The Contracts provide for accumulation of values and payment of annuity benefits on either a variable basis or on a fixed and variable basis. The same deductions for sales load and administrative expenses are made from each purchase payment without regard to whether the net proceeds are applied to provide variable benefits or a combination of variable and fixed dollar benefits. Applicants assert, therefore, no unfair discrimination between the owners of the Contracts or other persons having a beneficial interest in the Accounts would result from such transfers.

(2) To permit a Contract beneficiary to apply a death benefit under such Contract to provide for a variable annuity, without the imposition of a sales charge.

In all cases a sales load will have been paid on the Contract and no additional compensation to agents or significant selling expenses will be involved.

(3) To permit amounts payable under certain insurance policies and fixed dollar annuity contracts issued by New York Life to be applied to the purchase of single purchase payment variable life annuity Contracts with the then applicable sales load and administrative expense reduced by approximately 2 percent. Applicants assert that in such cases the reduced sales load is justified because a charge for sales expenses will have been previously paid on the policies and no significant selling expenses are anticipated.

(4) To permit New York Life to pay dividends of sums (resulting from an excess of charges over costs) to Contract owners on a nondiscriminatory basis according to each class of Contracts; and further, to permit Contract owners to apply any such dividends received under the Contracts during any accumulation period to the purchase of additional variable accumulation units in Accounts N and Q without a deduction for sales expenses.

Sections 26(a) and 27(c)(2), as here pertinent, provide in substance that a registered unit investment trust, and

any depositor or underwriter for such trust, is prohibited from selling periodic payment plan certificates unless the proceeds of all payments, other than sales load, are deposited with a qualified bank as custodian and held under an indenture or agreement containing, in substance, the provisions required by sections 26(a) (2) and (3) for a unit investment trust. Section 26(a)(2) requires that the trustee or custodian segregate and hold in trust all securities and cash of the trust, and places certain restrictions on charges which may be made against the trust income and corpus, and excludes from expenses which the trustee or custodian may charge against the trust any payment to the depositor or principal underwriter, other than a fee not exceeding such reasonable amount as the Commission may prescribe for performing bookkeeping and other administrative services delegated to them by the trustee or custodian. Section 26(a)(3) governs the circumstances under which the trustee or custodian may resign. Applicants request exemptions from sections 26(a) and 27(c)(2) to permit the net purchase payments under the Contracts allocated to the Accounts to be held by New York Life rather than providing for the deposit of such payments with a bank as custodian or trustee for holding under an agreement or indenture containing, in substance, the provisions required by sections 26(a) (2) and (3) of the Act.

In support of these requested exemptions, Applicants state that New York Life is subject to extensive detailed supervision and inspection by the Insurance Commissioner of the State of New York, that the officers and employees of New York Life are covered by a fidelity bond, and that in compliance with the New York Insurance Law the portion of the assets of the Accounts equal to the reserves and liabilities of New York Life applicable to the Contracts will not be chargeable with liabilities arising out of any other business of New York Life. Applicants also assert that the charges that will be made under the Contracts are all expressly stated therein and in the prospectuses of the Accounts, and that these charges and certain deductions for sales load, administrative expenses, and assumption of expense and mortality risks, cannot be increased during the life of the Contracts as they are part of the contractual promises made to the Contract Owner. Applicants contend that such control and regulation provides ample assurance against misfeasance and affords the essential protection which the trusteeship or custodianship under sections 26(a) and 27 (c)(2) is designed to provide.

Applicants have consented that the requested exemptions from sections 26 (a) and 27(c)(2) be subject to the following conditions: (1) That the charges to Contract Owners for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, and that the Commission shall reserve jurisdiction for such purposes; (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order: *Provided*, That the consent of Applicants to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in any court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is hereby given that any interested person may, not later than April 28, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing in the matter accompanied by a statement as to the nature of his interest, the reason for such request and that he be notified if the Commission shall 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 Applicants 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 application herein may be issued by the Commission, upon the basis of the information stated in said application, unless an order for a 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.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–5244 Filed 4–14–71;8:48 am]

INTERSTATE COMMERCE COMMISSION

[Notice 28]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

APRIL 9, 1971.

The following applications are governed by Special Rule 1000.247[1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

other procedures) will be determined generally in accordance with the Commission's General Policy Statement Concerning Motor Carrier Licensing Procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record.

The publications hereinafter set forth reflect the scope of the applications as filed by applicants, 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.

No. MC 2202 (Sub-No. 392), filed March 16, 1971. Applicant. ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309. Applicant's representatives: William O. Turney, 2001 Massachusetts Avenue NW., Washington, DC 20036, and Douglas W. Farris, Post Office Box 471, Akron, OH 44309. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving points in Murray County, Ga., as off-route points in connection with applicant's regular route authority to serve Dalton, Ga., and Chattanooga, Tenn. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 27817 (Sub-No. 91), filed March 15, 1971. Applicant: H. C. GABLER, INC., Rural Delivery No. 3, Chambersburg, PA 17201. Applicant's representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except cold-pack and frozen) *and pet food*, between the plantsites of Dauphin Distribution Services Co., and Dauphin Terminals, Inc., located in the Borough of Camp Hill and the township of Hampden, Cumberland County, Pa., on the one hand, and, on the other, points in Pennsylvania, restricted to traffic having a prior or subsequent movement by rail or water. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa., or Washington, D.C.

No. MC 30605 (Sub-No. 146) (Clarification), filed December 21, 1970, published in the FEDERAL REGISTER issue of February 4, 1971, and republished as clarified this issue. Applicant: THE SANTA FE TRAIL TRANSPORTATION COMPANY, a corporation, 433 East Waterman, Wichita, KS 67202. Applicant's representative: F. J. Steinbrecher, 80 East Jackson Boulevard, Chicago, IL 60604. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other ladings); (1) between Phoenix, Ariz., and Grand Canyon, Ariz.; From Phoenix, Ariz., over U.S. Highway 89 to the junction of Interstate Highway 40, thence over Interstate Highway 40 to its intersection with Arizona State Highway 64, thence over State Highway 64 to Grand Canyon, Ariz., and return over the same route, serving intermediate point of Wickenburg, Ariz., and the off-route point of Hillside, Ariz.; (2) between Flagstaff, Ariz., and Grand Canyon, Ariz.: From Flagstaff, Ariz., over Interstate Highway 40 to its intersection with Arizona State Highway 64, thence over State Highway 64 to Grand Canyon, Ariz., and return over the same route, serving no intermediate points. Proposed amendment: Amend certificate MC 30605, Sub 91 and Sub 111, by removal of Winslow, Ariz., as a key point. MC 30605, Sub 91, presently reads:

Regular routes: General commodities, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Los Angeles, Calif., and Clarkdale, Ariz., serving the intermediate points of Blythe, Calif., and Salome, Aguila, Wickenburg, and Prescott, Ariz., and the off-route points of Iron Springs, Camp Verde, Hillside, and Skull Valley, Ariz., and Watson, Wilmington, Huntington Park, San Pedro, Los Angeles Harbor, Long Beach, Arlington, and points in the Los Angeles, Calif., commercial zone: From Los Angeles over U.S. Highway 99 to Indio, Calif. (also from Los Angeles over U.S. Highway 60 to Indio), thence over U.S. Highway 60 to Wickenburg, Ariz., thence over U.S. Highway 89 to junction Alternate U.S. Highway 89, thence over Alternate U.S. Highway 89 to Clarkdale, and return over the same route. Between Los Angeles, Calif., and Holbrook, Ariz., serving the intermediate points of Victorville, Ludlow, and Needles, Calif., and Yucca, Kingman, Peach Springs, Nelson, Seligman, Ash Fork, Williams, Parks, Bellemont, Flagstaff, and Winslow, Ariz.: From Los Angeles over U.S. Highway 66 to Holbrook, and return over the same route. Between junction of U.S. Highway 89 and Alternate U.S. Highway 89, and Ash Fork, Ariz., serving the intermediate point of Drake, Ariz.: From the junction of U.S. Highway 89 and Alternate U.S. Highway 89 over U.S. Highway 89 to Ash Fork, and return over the same route. Between Williams, Ariz., and Grand Canyon, Ariz., serving all intermediate points:

From Williams over Arizona Highway 64 to Grand Canyon, and return over the same route. Between Aguila, Ariz., and Congress Junction, Ariz., as an alternate route for operating convenience only, serving no intermediate points, and the point of Congress Junction for joinder only: From Aguila over Arizona Highway 71 to Congress Junction and return over the same route. Restriction: The service authorized herein is subject to the following conditions: The motor-carrier service to be performed by The Santa Fe Trail Transportation Co., herein called the motor carrier, shall be limited to service which is auxiliary to, or supplemental of, the rail service of The Atchison, Topeka and Santa Fe Railway Co., hereinafter called the railroad. The motor carrier shall not render any service to, or from, to interchange traffic at, any point not a station on the rail lines of the railroad, except at Camp Verde, Ariz., and the off-route points within the Los Angeles, Calif., commercial zone, as defined by the Commission. No shipments shall be transported by the motor carrier between any of the following key points, or through, or to or from more than one of said points: *Winslow and* Ash Fork, Ariz., and Los Angeles, Calif., the key points indicated shall be deemed to include all points in the commercial zones thereof as defined by the Commission. All contractual arrangements between the motor carrier and the railroad shall be reported to the Commission and shall be subject to the revision, if the Commission finds it to be necessary, in order that such arrangements shall be fair and equitable to the parties.

Such further conditions as the Commission, in the future, may find it necessary to impose, in order to restrict the motor carrier's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the railroad. The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right. Applicant proposes to change restriction to eliminate, "Winslow and." See portion underlined. MC 30605, Sub 111, presently reads: Regular routes: General Commodities, except those of unusual value, household goods as defined by the Commission, liquid nitroglycerine, commodities in bulk, and those requiring special equipment, between Fort Sumner, N. Mex., and Willard, N. Mex., serving all intermediate points: From Fort Sumner over U.S. Highway 60 to Willard, and return over the same route. Between Albuquerque, N. Mex., and Holbrook, Ariz., serving all intermediate points: From Albuquerque over U.S. Highway 66 to Holbrook, and return over the same route. Restriction: The service authorized herein is subject to the following conditions: The service to be performed by carrier shall be limited to service that is auxiliary to, or supplemental of, the rail service of The Atchison, Topeka and Santa Fe Railway Co.

All contractual arrangements between carrier and The Atchison, Topeka and Santa Fe Railway Co. shall be reported to the Commission and shall be subject to such revision as may be found necessary to keep the arrangements fair and equitable to the parties. Carrier shall not serve any point not a station on the rail lines of The Atchison, Topeka and Santa Fe Railway Co. No shipments shall be transported by carrier between any of the following points, or through, or to or from more than one of said points: Albuquerque and Willard, N. Mex. (considered as one), *Winslow, Ariz.*, Lubbock, Tex., and Pueblo, Colo. Such further conditions as the Commission, in the future, may find necessary to impose in order to restrict carrier's operations to service which is auxiliary to or supplemental of the rail service of The Atchison, Topeka and Santa Fe Railway Co. The authority granted herein, to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time to a period expiring May 8, 1972. Applicant proposes to change restriction to eliminate, "Winslow, Ariz.,". See portion underlined. NOTE: The purpose of this republication is to more clearly set forth the authority in which the key point "Winslow, Ariz.," is to be eliminated. If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz., or Los Angeles, Calif.

No. MC 30844 (Sub-No. 350), filed March 12, 1971. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Waterloo, IA 50704. Applicant's representatives: Paul Rhodes (same address as above), and Truman A. Stockton, Jr., 1650 Grant Street Building, Denver, CO. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soft drinks*, in containers, glass or canned, from the plantsites and facilities of C–B Foods, Inc., at Oakfield, N.Y., to Chicago, Ill. NOTE: Applicant states that the requested authority can be tacked with its existing authority in its lead certificate, but does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 30844 (Sub-No. 352), filed March 17, 1971. Applicant: KROBLIN REFRIGERATED EXPRESS, INC., 2125 Commercial Street, Waterloo, IA 50704. Applicant's representatives: Paul Rhodes (same address as applicant), and Truman A. Stockton, Jr., 1650 Grant Street Building, Denver, CO. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such articles and supplies* as are dealt in by retail and discount department stores, from New York City and commercial zone to points in Indiana, Illinois (except Chicago and its commercial zone), Iowa, Nebraska, Minnesota, Missouri, Kansas, and Colorado. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 35807 (Sub-No. 17), filed March 22, 1971. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, 210 Baker Street NW., Atlanta, GA 30313. Applicant's representative: Melvin E. Bailet (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, and related money transfers*, between New Orleans, La., on the one hand, and, on the other, points in Concordia, Madison, and Tensas Parishes, La., under contract with Federal Reserve Bank of Atlanta. NOTE: If a hearing is deemed necessary, applicant requests it be held at New Orleans, La.

No. MC 42000 (Sub-No. 4), filed March 4, 1971. Applicant: BATES TRUCK LINE, INC., 802 North Nagle Street, Post Office Box 2161, Houston, TX 77001. Applicant's representative: Floyd A. Hawkins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum wax*, from Kilgore, Tex., to points in the Houston, Tex., commercial zone on traffic having a subsequent out of state movement. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Houston or Dallas, Tex.

No. MC 42487 (Sub-No. 771), filed March 19, 1971. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, a corporation, 175 Linfield Drive, Menlo Park, CA 94025. Applicant's representative: Robert M. Bowden, Post Office Box 3062, Portland, OR 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Benzaldehyde*, in bulk, in tank vehicles, from Kalama, Wash., to points in Alabama, Ohio, Michigan, and New Jersey. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Portland, Oreg.

No. MC 51146 (Sub-No. 203), filed March 17, 1971. Applicant: SCHNEIDER TRANSPORT & STORAGE, INC., 817 McDonald Street, Green Bay, WI 54306. Applicant's representatives: D. F. Martin (same address as applicant), and Charles Singer, 33 North Dearborn Street, Chicago, IL. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, and products* manufactured or distributed by manufacturers or distributors of paper and paper products, from Glen Falls, N.Y., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. NOTE: Applicant states that the requested authority could be tacked with various subs of MC 51146 and applicant will tack with its MC 51146 where feasible. It further states no duplicate authority is being sought. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 52704 (Sub-No. 83) (Amendment), filed February 8, 1971, published in the FEDERAL REGISTER issue of March 11, 1971, and republished as amended this issue. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., Post Office Drawer H, LaFayette, AL 36862. Applicant's representative: Archie B. Culbreth, Suite 417, 1252 West Peachtree Street NW., Atlanta, GA 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar* (except in bulk), from Reserve, La., and the plantsite of J. Aron & Co., Inc., at Supreme, La., to points in Virginia and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to add Reserve, La., as an origin point. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or New Orleans, La.

No. MC 55898 (Sub-No. 45), filed March 23, 1971. Applicant: HARRY A. DECATO, doing business as DECATO BROS. TRUCKING CO., Heater Road, Lebanon, N.H. 03766. Applicant's representative: David M. Marshall, 135 State Street, Suite 200, Springfield, MA 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rags*, in bales and bundles, from points in the New York, N.Y., commercial zone, as defined by the Commission in *New York, N.Y., Commercial Zone*, 53 M.C.C. 451, Roselle Park, Passaic, and Jersey City, N.J.; Lawrence, Worchester, Boston, and Framingham, Mass.; Philadelphia, Pa.; and Baltimore, Md.; to the ports of entry on the United States-Canada boundary line located at or near Rouses Point, N.Y., and Morses Line and Highgate Springs, Vt., with no transportation for compensation on return, except as otherwise authorized. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Concord, N.H.; Montpelier, Vt.; Springfield or Boston, Mass.

No. MC 56640 (Sub-No. 27), filed March 22, 1971. Applicant: DELTA LINES, INC., 8201 Edgewater Drive, Oakland, CA 94621. Applicant's representative: Marshall G. Berol, 100 Bush Street, San Francisco, CA 94104. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, household

goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment. Regular routes: Between junction U.S. Highway 99 and California Highway 36 and Leavitt, Calif.: From junction U.S. Highway 99 and California Highway 36 over California Highway 36 to Johnstonville, thence over unnumbered highway to Leavitt, and return over the same route (also over California Highway 172 from junction California Highway 36, via Mill Creek to junction California Highway 36), serving all intermediate points. Between junction California Highway 36 and unnumbered highway and California State Highway 36: From junction California Highway 36 and unnumbered highway over unnumbered highway via Westwood to junction California Highway 36, and return over the same route, serving all intermediate points. *Alternate Routes for Operating Convenience Only:* Between junction U.S. Highway 99 and unnumbered highway and junction California Highway 70 and unnumbered highway. From junction U.S. Highway 99 and unnumbered highway over unnumbered via Pentz to junction California Highway 70 and unnumbered highway, and return over the same route. Between Pulga, Calif., and junction California Highways 89 and 36: From Pulga over California Highway 70 to junction California Highway 89, thence over California Highway 89 to junction California Highway 36, and return over the same route. Between junction California Highway 89 and California Highway 147, and junction unnumbered highway and California Highway 36: From junction California Highway 89 and California Highway 147, over California Highway 147 to junction unnumbered highway, thence over unnumbered highway to junction California Highway 36 (also over unnumbered highway to junction unnumbered highway approximately 2 miles west of Westwood), and return over the same routes. Between Chico, Calif., and junction California Highways 32 and 36. From Chico over California Highway 32 to junction California Highway 36, and return over the same routes. NOTE: If a hearing is deemed necessary, applicant requests it be held at Reno, Nev.

No. MC 56679 (Sub-No. 51), filed March 12, 1971. Applicant: BROWN TRANSPORT CORP., 125 Milton Avenue, Atlanta, GA 30315. Applicant's representative: B. K. McClain (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared animal feed* (except in bulk), from Warehouse facilities of Lipton Pet Foods, Inc., at or near New Orleans, La., to points in Alabama, Georgia, and Florida. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or New Orleans, La.

No. MC 59150 (Sub-No. 58), filed March 26, 1971. Applicant: PLOOF TRANSFER COMPANY, INC., 1900 Hill Street, Jacksonville, FL 32202. Applicant's representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fiberboard, wood fiberboard faced or finished with decorative and/or protective material and accessories and supplies* used in installation thereof (except commodities in bulk), from the plantsites of Evans Products Co. at or near Moncure, N.C., to points in Alabama, Florida, Georgia, South Carolina, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Atlanta, Ga.

No. MC 61396 (Sub-No. 227), filed March 15, 1971. Applicant: HERMAN BROS. INC., 2501 North 11 Street, Post Office Box 189, Omaha, NE 68101. Applicant's representative: Dale G. Herman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furfural and furfural alcohol*, in bulk, in tank trucks, from Omaha, Nebr., to Tuscaloosa, Ala.; Denver, Colo.; Wallingford, Conn.; Marshallton and Wilmington, Del.; Brunswick and Carrollton, Ga.; Calumit City, Chicago, and Decatur, Ill.; Bethesda, Md.; Andover, Pittsfield, Wolburn, and Worcester, Mass; Clemens, Mich.; Hattiesburg, Miss.; Carteret, Newark, Paulsboro, Westville, Whippany, and Woodbury, N.J.; Bainbridge, Niagara Falls, and Norwich, N.Y.; Charlotte and Hickory, N.C.; Akron, Ironton, McDermott, and Toledo, Ohio; Ponca City, Okla.; Erie, Mertztown, Muse, Pittsburgh, and Worcester, Pa.; Lawrenceburg, Tenn.; Alvin, Beaumont, Houston, and Port Arthur, Tex.; and Marshfield, Wis.; (2) *furfural*, in bulk, in tank trucks, from Omaha, Nebr., to Bensenville and Georgetown, Ill.; Detroit and Ferndale, Mich.; Cleveland, Ohio; and Milwaukee, Wis.; and (3) *furfural alcohol*, in bulk, in tank trucks, from Omaha, Nebr., to Sheboygan, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Omaha, Nebr.

No. MC 61592 (Sub-No. 208), filed March 22, 1971. Applicant: JENKINS TRUCK LINE INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, IN 46204. Authority sought to operate as a *common 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 I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides, commodities in bulk, in tank vehicles) and equipment, materials and supplies used in the conduct of meat packing business, between the plantsite and facilities of Illini-Beef Packers, Inc., at or near Joslin, Ill., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necesary, applicant requests it be held at Chicago, Ill.

No. MC 61592 (Sub-No. 209), filed March 29, 1971. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald W. Smith, 900 Circle Tower Building, Indianapolis, IN 46204. Authority sought to operate as a *common 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 I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides, commodities in bulk, in tank vehicles), and *materials, equipment, and supplies* used in the conduct of meat packing business, between the plantsite and facilities of Illini-Beef Packers, Inc., located at or near Joslin, Ill., to points in the United States (except Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Hawaii, and the District of Columbia). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 67450 (Sub-No. 37), filed March 12, 1971. Applicant: PETERLIN CARTAGE CO., a corporation, 9651 South Ewing Avenue, Chicago, IL 60617. Applicant's representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and blends*, in bulk, from Clinton, Iowa, to points in the United States except Alaska and Hawaii. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 69116 (Sub-No. 134), filed March 19, 1971. Applicant: SPECTOR FREIGHT SYSTEM, INC., 205 West Wacker Drive, Chicago, IL 60606. Applicant's representative: Jack Goodman, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except classes A and B explosives), household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving Spring Park, Minn., as an off-route point in connection with applicant's authorized routes. NOTE: If a

hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn., or Chicago, Ill.

No. MC 92983 (Sub-No. 543), filed March 22, 1971. Applicant: ELDON MILLER, INC., Post Office Box 2508, Kansas City, MO 64142. Applicant's representative: Eldon Miller (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from Springfield and Verona, Mo., to points in Arkansas, Kansas, Missouri (except the St. Louis, Mo.-East St. Louis, Ill., commercial zone as defined by the Commission), Oklahoma and Texas (except to Harris County, Tex.). NOTE: Common control may be involved. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 95540 (Sub-No. 801), filed April 1, 1971. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL 33801. Applicant's representative: Paul E. Weaver (same address as applicant). Authority sought to operate as a *common 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 I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Guymon, Okla., to points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Maryland. Restriction: Restricted to traffic originating at the plantsite of Swift & Co., at Guymon, Okla., and destined to the aboved-named States. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., Oklahoma City, Okla., or Washington, D.C.

No. MC 97357 (Sub-No. 38), filed April 1, 1971. Applicant: ALLYN TRANSPORTATION COMPANY, a corporation, 14011 South Central Avenue, Los Angeles, CA 90059. Applicant's representative: Carl H. Fritze, 1545 Wilshire Boulevard, Suite 606, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: (1) *Liquid asphalt, asphaltic emulsions, and road oils*, in tank vehicles; and (2) *petroleum fuel oil* when shipped in mixed shipments with *liquid asphalt, asphaltic emulsions or road oils*, in tank vehicles, from points in Sacramento, Solano, Contra Costa, Alameda, San Joaquin, Calaveras and Amador Counties, Calif., to points in Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif.

No. MC 99695 (Sub-No. 6), filed March 15, 1971. Applicant: ATLAS TRANSIT, INC., Post Office Box 707, Little Rock, AR 72203. Applicant's representative: James N. Clay III, 2700 Sterick Building, Memphis, TN 38103. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), over regular routes, as follows: (1) Between Texarkana, Ark., and Corning, Ark., from Texarkana over U.S. Highway 67 to Corning; (2) between Malvern, Ark., and Nashville, Ark., from Malvern over U.S. Highway 270 to junction of U.S. Highway 70, thence west over U.S. Highway 70 to Nashville; (3) between Texarkana, Ark., and El Dorado, Ark., from Texarkana over U.S. Highway 82 to El Dorado; (4) between Magnolia, Ark., and Marianna, Ark., from Magnolia over U.S. Highway 79 to Marianna; (5) between Fordyce, Ark., and junction of U.S. Highways 167 and 65; from Fordyce over U.S. Highway 167 to junction with U.S. Highway 65; (6) between Little Rock, Ark., and Eudora, Ark., from Little Rock over U.S. Highway 65 to Eudora; (7) between Wilmot, Ark., and junction of U.S. Highways 165 and 65; from Wilmot over U.S. Highway 165 to junction of U.S. Highway 65, (8) between junction U.S. Highway 65 and Arkansas Highway 81 and Crossett, Ark., from junction U.S. Highway 65 and Arkansas Highway 81 southeast of Pine Bluff over Arkansas Highway 81 to junction with U.S. Highway 82, thence west over U.S. Highway 82 to Crossett;

(9) Between Pine Bluff, Ark., and Warren, Ark., from Pine Bluff over Arkansas Highway 15 to Warren; (10) between junction of Arkansas Highway 11 and U.S. Highway 70 and De Witt, Ark., from junction of Arkansas Highway 11 and U.S. Highway 70 east of Hazen, Ark., south over Arkansas Highway 11 to junction of Arkansas Highway 152, thence east over Arkansas Highway 152 to De Witt; (11) between Wynne, Ark., and Helena, Ark., from Wynne over Arkansas Highway 1 to junction with U.S. Highway 49, thence east over U.S. Highway 49 to Helena; (12) between Little Rock, Ark., and West Memphis, Ark., from Little Rock over U.S. Highway 70 to West Memphis; (13) between West Memphis, Ark., and Paragould, Ark., from West Memphis north over U.S. Highway 63 to junction with Arkansas Highway 1 thence north over Arkansas Highway 1 to Paragould; (14) between junction of U.S. Highway 63 and Arkansas Highway 14, and Batesville, Ark., from junction of U.S. Highway 63 and Arkansas Highway 14 west of Marked Tree, Ark., west over Arkansas Highway 14 to Batesville; (15) between Bald Knob, Ark., and Batesville, Ark., from Bald Knob north over U.S. Highway 167 to Batesville; (16) between Little Rock, Ark., and Fort Smith, Ark., from Little Rock north over U.S. Highway 65 to junction with U.S. Highway 64, thence west over U.S. Highway 64 to Fort Smith; (17) between Alma, Ark., and Bentonville, Ark., from Alma north over U.S. Highway 71 to Bentonville;

(18) Between Little Rock, Ark., and Fort Smith, Ark., from Little Rock west over Arkansas Highway 10 to junction of U.S. Highway 71, thence west on U.S. Highway 71 to Fort Smith, and serving State Sanatorium near Booneville, Ark., as an off-route point; (19) between the junction of the Arkansas River and Arkansas Highway 60 and Danville, Ark., from the junction of the Arkansas River and Arkansas Highway 60 west over Arkansas Highway 60 to junction with Arkansas Highway 28, thence west over Arkansas Highway 28 to junction of Arkansas Highway 27, thence north over Arkansas Highway 27 to Danville; (20) between junction of Arkansas Highways 27 and 28 and Rover, Ark., from junction of Arkansas Highways 27 and 28 near Rover south over Arkansas Highway 27 to Rover; (21) between Plainview, Ark., and Ola, Ark., from Plainview over Arkansas Highway 28 to Ola; (22) between Ola, Ark., and Fourche Junction, Ark., from Ola over Arkansas Highway 7 to Fourche Junction; (23) between junction of Arkansas Highway 113 and Arkansas Highway 10 near Williams Junction, Ark., and junction Arkansas Highway 113 and Arkansas Highway 9; from junction of Arkansas Highway 113 and Arkansas Highway 10 near Williams Junction, Ark., north over Arkansas Highway 113 to junction with Arkansas Highway 9 near Opello, Ark.;

(24) Between Perry, Ark., and Morrilton, Ark., from Perry north over Arkansas Highway 9 to Morrilton; (25) between Magnolia, Ark., and Cullen, La., from Magnolia south over Arkansas Highway 132 to the Arkansas-Louisiana State line, thence south over Louisiana Highway 7 to Cullen, La.; (26) between El Dorado, Ark., and Smackover, Ark., from El Dorado over Arkansas Highway 7 to Smackover, and return over the same routes serving all intermediate points in connection with routes 1 through 26 above. Alternate route: (27) Between Camden, Ark., and Smackover, Ark., from Camden over Arkansas Highway 7 to Smackover, and return over the same route, serving no intermediate point as an alternate route for operating convenience only. NOTE: Applicant states it proposes to tack all routes shown above with each other at common points of joinder to render a through single-line service between points on all highways shown. Applicant further states the instant application seeks solely to convert the certificate of registration under MC 99695 Subs 1 and 2 into a certificate of public convenience and necessity. Common control may be involved. No duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 10066 (Sub-No. 184), filed March 17, 1971. Applicant: MELTON TRUCK LINE, INC., Post Office Box 7666, 1129 Grimmett Drive, Shreveport, LA 71107. Applicant's representatives: Wilburn L. Williamson, Suite 280, National Foundation Life Center, 3534 Northwest 58th, Oklahoma City, OK 73112, and Paul Caplinger, Post Office Box 7666, Shreveport, LA 71107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Seating and tables*, from the plant site of American Bleacher Corp. at or near Baton Rouge, La., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Baton Rouge, La.

No. MC 100666 (Sub-No. 185), filed March 22, 1971. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representatives: Wilburn L. Williamson, Suite 280, National Foundation Life Center, 3535 Northwest 58th, Oklahoma City, OK 73112, and Paul Caplinger (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tubing* (except oilfield tubing as described in Mercer Extension-Oilfield Commodities 74 M.C.C. 459), from the plantsite of Gay Products Co., located at or near Nacogadoches, Tex., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Shreveport, La.

No. MC 100666 (Sub-No. 186), filed March 24, 1971. Applicant: MELTON TRUCK LINES, INC., Post Office Box 7666, Shreveport, LA 71107. Applicant's representatives: Wilburn L. Williamson, Suite 280, National Foundation Life Center, 3535 Northwest 58th, Oklahoma City, OK 73112 and Paul Caplinger (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and composition board*, from points in Walker and Polk Counties, Tex., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. NOTE: Applicant states tacking possibilities technically exist at various points. None would be feasible however in that applicant is not aware of any territory which it could serve via the tacking possibilities which it cannot already serve under existing authority. No evidence will be presented to establish need for tacking. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Shreveport, La.

No. MC 103435 (Sub-No. 214), filed March 16, 1971. Applicant: UNITED-BUCKINGHAM FREIGHT LINES, INC., 5773 South Prince Street, Littleton, CO 80120. Applicant's representative: Robert P. Tyler, Post Office Box 192, Littleton, CO 80120. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between Lincoln, Nebr., and Prosser, Wash., serving the intermediate points of Cheyenne, Wyo., Boise, Idaho, Junction Interstate Highways 80 and 82, Umatilla, Oreg., Pasco, Wash., and Plymouth, Wash.: (a) From Lincoln, Nebr., over Interstate Highway 80N to junction Interstate Highway 82, thence over Interstate Highway 82 to Prosser, Wash., and return over the same routes, with service at Cheyenne, Wyo., Boise, Idaho, Junction Interstate Highways 80 and 82, Umatilla, Oreg., and Plymouth, Wash., for the purpose of joinder only, as an alternate route for operating convenience only; and (b) From Lincoln, Nebr., over Interstate Highway 80N to junction U.S. Highway 395 at or near Pendleton, Oreg., thence over U.S. Highway 395 to junction U.S. Highway 12 at or near Wallula, Wash., thence over U.S. Highway 12 to Prosser, Wash., and return over the same routes, with service at Cheyenne, Wyo., Boise, Idaho, and Pasco, Wash., for the purpose of joinder only, as an alternate route for operating convenience only. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 105566 (Sub-No. 30), filed March 15, 1971. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA 22202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter*, from Willard, Ohio, to points in Washington, Oregon, Idaho, Montana, Wyoming, Nevada, Utah, Colorado, Arizona, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., St. Louis, Mo., or Washington, D.C.

No. MC 105566 (Sub-No. 31), filed March 15, 1971. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA 22202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter*, from Warsaw, Ind., to points in Washington, Oregon, Idaho, Montana, Wyoming, Nevada, Utah, Colorado, Arizona, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., St. Louis, Mo., or Washington, D.C.

No. MC 105566 (Sub-No. 32), filed March 15, 1971. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA 22202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter*, from Crawfordsville, Ind., to points in Washington, Oregon, Idaho, Montana, Wyoming, Nevada, Utah, Colorado, Arizona, and New Mexico. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., St. Louis, Mo., or Washington, D.C.

No. MC 106688 (Sub-No. 16), filed March 12, 1971. Applicant: EDWARD M. RUDE CARRIER CORP., R.F.D. No. 1, Falling Waters, WV 25419. Applicant's representative: Francis J. Ortman, 1700 Pennsylvania Avenue NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *High explosives and nitro carbo nitrate*, from Falling Waters, W. Va., to Van Wyck, S.C., under contract with E. I. du Pont de Nemours & Co. NOTE: Applicant holds common carrier authority under MC 113499 therefore, common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Wilmington, Del., or Washington, D.C.

No. MC 107002 (Sub-No. 402), filed March 15, 1971. Applicant: MILLER TRANSPORTERS, INC., Post Office Box 1123, U.S. Highway 80 West, Jackson, MS 39205. Applicant's representatives: John J. Borth, Post Office Box 1123, Jackson, MS 39205, and H. D. Miller, Jr., Post Office Box 22567, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vegetable oil*, in bulk, in tank vehicles, from Dothan, Ala., to points in New York. NOTE: Applicant states that although tacking is not contemplated at this time, the authority sought could be joined with other authorities to perform service from Alabama and Florida. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham or Mobile, Ala.

No. MC 107012 (Sub-No. 113), filed March 8, 1971. Applicant: NORTH AMERICAN VAN LINES, INC., New Haven Avenue and Meyer Road, Fort Wayne, IN 46801. Applicant's representatives: Donald C. Lewis and Terry G. Fewell, Post Office Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft seating*, uncrated, between points in the United States (except Hawaii).

NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Indianapolis, Ind.

No. MC 107012 (Sub-No. 114), filed March 16, 1971. Applicant: NORTH AMERICAN VAN LINES, INC., 4820 New Haven Avenue, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representatives: Donald C. Lewis and Terry G. Fewell, Post Office Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pianos*, from De Kalb, Ill., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that tacking is possible at De Kalb, Ill., with presently held authority in its basic No. MC 107012. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 107295 (Sub-No. 497), filed March 22, 1971. Applicant: PRE-FAB TRANSIT CO., a corporation, 100 South Main Street, Farmer City, IL 61842. Applicant's representatives: Dale L. Cox and Mack Stephenson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dust collectors and air pollution control equipment and systems*, from Baldwinsville, N.Y., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that should possible duplication be discovered later, it will be disclosed at the hearing. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 107839 (Sub-No. 145), filed March 4, 1971. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 770 East 51st Avenue, Denver, CO 80216. Applicant's representative: Edward T. Lyons, 420 Denver Club Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from points in Florida, to points in the United States located in and west of Minnesota, Iowa, Missouri, Arkansas, and Louisiana (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant seeks no duplicating authority. If a hearing is deemed necessary, applicant requests it be held at Tampa or Miami, Fla.

No. MC 109994 (Sub-No. 42), filed March 23, 1971. Applicant: SIZER TRUCKING, INC., Box 97, Rochester, MN 55901. Applicant's representatives: K. O. Petrick (same address as applicant), and Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs*, from St. James, Madelia, and Butterfield, Minn., to points in Connecticut, Delaware, Indiana, Michigan, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; and (2) *foodstuffs, from* Estherville, Iowa, to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis or St. Paul, Minn.

No. MC 110420 (Sub-No. 634), filed March 29, 1971. Applicant: QUALITY CARRIERS, INC., Post Office Box 186, Pleasant Prairie, WI 53158. Applicant's representative: Allan B. Torhorst (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean products*, dry, in bulk, from Danville, Ill., to points in Indiana, Ohio, and Michigan. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Milwaukee, Wis.

No. MC 111045 (Sub-No. 76), filed April 1, 1971. Applicant: REDWING CARRIERS, INC., Post Office Box 426, Tampa, FL 33601. Applicant's representative: J. V. McCoy (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Phenolic and urea resins and chemicals*, in bulk, from River Falls, Ala., to points in Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or Tampa, Fla.

No. MC 111401 (Sub-No. 329), filed March 24, 1971. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Enid, OK 73701. Applicant's representative: Alvin L. Hamilton (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid animal feeds, liquid animal feed supplements, and liquid animal feed ingredients*, from Oklahoma City, Okla., to points in Kansas and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Amarillo, Tex., or Oklahoma City, Okla.

No. MC 111401 (Sub-No. 330), filed March 25, 1971. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Enid, OK 73701. Applicant's representative: Alvin L. Hamilton (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting, (1) *Dry Chemicals, including fertilizer and fertilizer materials*, in bulk in packages, from Military, Kans.; and Hallowell, Kans.; to points in Arkansas, Colorado, Iowa, Missouri, Nebraska, Oklahoma, and Texas, and (2) *fertilizer and fertilizer materials*, dry, in bulk, or in packages; *insecticides, fungicides, and herbicides*, except liquid in bulk, also in mixed shipments with manufactured fertilizer and fertilizer materials, from points on the Arkansas and Verdigris Rivers in Oklahoma, to points in Arkansas, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, South Dakota, Texas, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or St. Louis, Mo.

No. MC 111545 (Sub-No. 157), filed March 15, 1971. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road SE., Marietta, GA 30060. Applicant's representative: Robert E. Born, Post Office Box 6426, Station A, Marietta, GA 30060. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fire hydrants, parts, and accessories; valves, valve parts, and valve accessories; pipe, cast iron, pipe fittings and accessories; cast iron pipe and fittings, lined or coated with other materials; meter boxes, stop-cock boxes, valve boxes, cast iron and parts; culverts, cast iron; manhole covers or frames, catch basins, catch basin covers, or sewer inlets, cast iron; and cast iron unions*, from Clow Corp. plantsites and warehouse facilities at Oskaloosa, Iowa, to points in the United States east of the western boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant further states no duplicating authority is sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., Birmingham, Ala., or Atlanta, Ga.

No. MC 111729 (Sub-No. 313), filed March 22, 1971. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040. Applicant's representatives: John M. Delany (same address as applicant) and Russell Bernhard, 1625 K Street NW., Washington, DC. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, and audit and accounting media of all kinds*, (a) between Fries, Va., on the one hand, and, on the other, Mayodan and Winston-Salem, N.C.; (b) between Roanoke, Va., on the one hand, and, on the other, Asheville, Raleigh, and Winston-Salem, N.C.; (c) between Independence, Va., on the one hand, and, on the other, Gastonia, High Point, and Marion, N.C. (2) *Official government papers, records, and audit and accounting media of all kinds*, between the District of Columbia (Washington, D.C.), on the one hand, and, on the other, Boyers, Pa.; (3) *Proofs, cuts, copy, manuscripts, advertising poster material, and matter pertaining thereto*, (a) between Elkhart, Ind., on the one hand, and, on the other, Chicago, Ill., Cincinnati, Ohio, Benton Harbor, Detroit, Dowagiac, Kalamazoo, and St. Joseph, Mich.; and Louisville, Ky.; (b) between South Bend, Ind., on the one hand, and, on the other, points in Kalamazoo, Kent, Ottawa, and St. Joseph Counties, Mich., and Chicago, Ill.;

(4) *Thread, cloth, and cloth samples*, restricted against the transportation of packages or articles weighing in the aggregate more than 75 pounds from one consignor to one consignee, on any 1 day, between Independence, Va., on the one hand, and, on the other, Gastonia, High Point, and Marion, N.C.; (5) *Cut flowers and decorative greens*, having an immediately prior or subsequent movement by air or motor vehicle, (a) between points in North Dakota; (b) between points in South Dakota; (c) between points in West Virginia; (6) *Hospital and surgical supplies*, restricted against the transportation of packages or articles weighing in the aggregate more than 75 pounds from one consignor to one consignee, on any 1 day, between Bluefield, W. Va., on the one hand, and, on the other, points in Kentucky, North Carolina, Ohio, Tennessee, and Virginia and (7) *Business and social stationery*, between Charlotte, N.C., and Roanoke, Va. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories that can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Applicant holds contract carrier authority under MC 112750 and subs thereunder, therefore, dual operations and common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 112253 Sub-No. 5), filed March 22, 1971. Applicant: CARTER ENTERPRISES, INC., Post Office Box 294, Elizabethton, TN 37643. Applicant's representative: R. Cameron Rollins, 321 East Center Street, Kingsport, TN 37660. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, cinder blocks, concrete blocks, clay products, shale and shale products, concrete and concrete-products, and mortar mixes*, from Kingsport, Johnson City, and Elizabethton, Tenn., to points in North Carolina, Virginia, Kentucky, and West Virginia, under contract with General Shale Products Corp. NOTE: Duplicating authority may be involved. If the authority sought is granted, applicant requests that any existing duplicating authority be canceled, If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Nashville, Tenn.

No. MC 112304 (Sub-No. 46), filed March 18, 1971. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Applicant's representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fencing, gates, posts, pipe, fittings, and accessories* thereto, from Louisville, Ky.; Tulsa, Okla., and Houston, Tex., to points in Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia. NOTE: Applicant states that tacking possibilities exist with its Sub 1 "size and weight" authority although tacking operations are not planned at this time. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 112520 (Sub-No. 240), filed March 17, 1971. Applicant: McKENZIE TANK LINES, INC., Post Office Box 1200, New Quincy Road, Tallahassee, FL 32302. Applicant's representative: Sol H. Proctor, 2501 Gulf Life Tower, Jacksonville, FL 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic synthetic liquids*, in bulk, in tank vehicles, from Jacksonville, Fla., to points in Alabama, Georgia, North Carolina, and South Carolina. NOTE: Applicant states that it would be possible to tack, but this is not contemplated at the present. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla.

No. MC 114019 (Sub-No. 212), filed March 25, 1971. Applicant: MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, IL 60629. Applicant's representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grain products and blends*, in bulk, in tank vehicles, from Keokuk, Iowa, to all points in the United States (except Alaska and Hawaii); and (2) *corn products and blends thereof and vegetable oils*, in bulk, in tank vehicles, from Muscatine, Clinton, and Cedar Rapids, Iowa, to all points in the United States (except Alaska and Hawaii). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 114239 (Sub-No. 26), filed January 29, 1971. Applicant: FARRIS TRUCK LINE, a corporation, 3209 South Highway 169, St. Joseph, MO 64503, Faucett, MO. Applicant's representative: Tom B. Kretsinger, 450 Professional Bldg., 1103 Grand Avenue, Kansas City, MO 64106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Antifreeze*, in containers, between St. Joseph, Mo., on the one hand, and, on the other, points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming, under contract with Woodbury Chemical Co., Woodbury Industries, and Missouri Chemical Co. NOTE: Dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo.

No. MC 114492 (Sub-No. 12), filed March 29, 1971. Applicant: TRANSPORT TRUCKING COMPANY OF TEXAS, a corporation, 1400 Wheeler Avenue, Texico, NM 88135. Applicant's representative: Wilmer B. Hill, 705 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles* (except trailers designed to be drawn by passenger automobiles), in truckaway service, between points in New Mexico, on the one hand, and, on the other, points in Colorado. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Albuquerque or Santa Fe, N. Mex.

No. MC 115022 (Sub-No. 22), filed March 5, 1971. Applicant: CHAMBERLAIN MOBILEHOME TRANSPORT, INC., 64 East Main Street, Thomaston, CT 06787. Applicant's representative: Reubin Kaminsky, Post Office Box 17–067,342 North Street, West Hartford, CT 06117. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, in sections, mounted on wheeled undercarriages, with hitchball or pintle hook

connectors, from points in New Haven County, Conn., to points in the United States (except Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Alaska, and Hawaii) with the return of refused, damaged, and rejected shipments. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn., or New York, N.Y.

No. MC 115814 (Sub-No. 7) (Amendment), filed December 4, 1970, published in the FEDERAL REGISTER issue of January 7, 1971, and republished as amended, this issue. Applicant: MARK TRUCKING, INC., Trella Street, Belleville, PA 17004. Applicant's representative: R. Lee Ziegler, 5 North Main Street, Lewistown, PA 17044. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Paper dairy case product containers*, from Morristown, N.J., to Belleville, Pa., serving no intermediate points, from Morristown over Interstate Highway 287 to junction Interstate Highway 78, thence over Interstate Highway 78 to junction combined U.S. Highways 22 and 322, thence over combined U.S. Highways 22 and 322 to junction Pennsylvania Highway 655, and thence over Pennsylvania Highway 655 to Belleville, under contract with Abbott Dairies Division of Fairmont Foods Corp. NOTE: The purpose of this republication is to redescribed the authority sought. If a hearing is deemed necessary, applicant requests it be held at Lewistown, Harrisburg, or Altoona, Pa.

No. MC 115841 (Sub-No. 403), filed March 15, 1971. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 West Bankhead Highway (Post Office Box 10327), Birmingham, AL 35202. Applicant's representatives: C. E. Wesley (same address as applicant) and E. Stephen Heisley, 666 11th Street NW., Washington, DC 20423. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery products and advertising materials and supplies* when moving therewith, from Mansfield, Mass., and Saylesville, R.I., to New York City, N.Y.; Union City and Jersey City, N.J., and Philadelphia, Pa. Restriction: The above authority is restricted to the transportation of traffic destined to points in Tennessee, Alabama, Mississippi, Louisiana, Georgia, Arkansas, Oklahoma, Texas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin, West Virginia, California, and points in Pennsylvania on and west of U.S. Highway 15. NOTE: Applicant states that the sole purpose of this application is to allow it to serve those States or points which applicant can now serve from New York, N.Y.; Union City and Jersey City, N.J., and Philadelphia, Pa., using its authority in MC 115841 (Lead Certificate), and Subs 146, 159, 260, and 320. It has no intention of transporting any traffic which would be destined to New York, N.Y.; Union City and Jersey City, N.J., and Philadelphia, Pa. Applicant also states that the requested authority can (a) be tacked with Lead Certificate at New York, N.Y.; Union City and Jersey City, N.J., and Philadelphia, Pa., to points in Tennessee, Alabama, Mississippi, and Louisiana; and (b) with Subs 146, 159, and 260 over Chattanooga, Tenn., to points in Arkansas, Texas, and California. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 117304 (Sub-No. 19), filed March 12, 1971. Applicant: DONALD P. PAFFLE, doing business as PAFFLE TRUCK LINES, 2906 29th Street North, Lewiston, ID 83501. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, WA 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and wine beverages, containers, cartons, bottles and can openers and related advertising matter* when moving with malt beverages and wine beverages, from points in California; Portland, Oreg.; Milwaukee, Wis.; St. Paul, Minn.; Tacoma and Vancouver, Wash.; and from Golden, Colo., to points in Idaho, north of the southern boundary of Idaho and Lemhi Counties, Idaho. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Spokane, Wash.

No. MC 117883 (Sub-No. 153), filed March 29, 1971. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Versailles, OH 45380. Applicant's representative: Edward J. Subler, Post Office Box 62, Versailles, OH 45380. Authority sought to operate as a *common 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 I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Swift Processed Meats Co. at St. Charles, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. Restriction: Restricted to traffic originating at the above origins and destined to the named destinations. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 119777 (Sub-No. 207), filed March 19, 1971. Applicant: LIGON SPECIALIZED HAULERS, INC., Post Office Drawer L, Madisonville, KY 42431. Applicant's representative: Robert M. Pearce, Post Office Box E, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stair treads, risers, sills, moldings, pallets, skids, bases, crates, veneer, boxes, board, baskets, nails, cardboard cartons, lumber, wood, frames, wood products, wood chips, woodpulp and fiber pulp*, between points in Kentucky on the one hand, and, on the other, points in the United States. Restriction: Restricted from handling of traffic from points in Arkansas, Louisiana, and Texas, by joinder with the above authority. NOTE: Applicant holds contract authority under MC 129670, therefore dual operations and common control may be involved. Applicant states that it proposes to tack the above authority to existing authority in MC 119777 and subs except from the States of Arkansas, Louisiana, and Texas. If a hearing is deemed necessary, applicant requests it be held at Nashville, Tenn.

No. MC 120761 (Sub-No. 2), filed April 5, 1971. Applicant: NEWMAN BROS. TRUCKING COMPANY, a corporation, 6559 Midway Road, Post Office Box 13302, Fort Worth, TX 76118. Applicant's representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Antipollution systems, equipment, and parts; liquid cooling and vapor condensing systems, equipment and parts; environmental control and protective systems, equipment and parts*, and (2) *equipment materials and supplies* used in the construction installation or maintenance of antipollution, liquid cooling and vapor condensing and environmental control and protective systems, between points in Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fort Worth, Dallas, or Houston, Tex.

No. MC 123383 (Sub-No. 57), filed March 23, 1971. Applicant: BOYLE BROTHERS, INC., 941 South Second Street, Camden, NJ 08103. Applicant's representative: Thomas E. Kiley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fiberboard, wood fiberboard faced or finished with decorative and/or protective material and accessories and supplies used in installation thereof* (except commodities in bulk), from Moncure, N.C., to points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia. NOTE: Applicant states that the requested authority can be tacked with its existing authority from Camden, N.J., to Ohio, Michigan. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., Camden, N.J., or Philadelphia, Pa.

No. MC 124078 (Sub-No. 482), filed March 17, 1971. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over

irregular routes, transporting: *Plastic pellets*, from Atlanta, Ga., to Decatur, Tenn. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 124078 (Sub-No. 483), filed March 22, 1971. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53246. Applicant's representative: James R. Ziperski (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay and clay slurry*, in bulk, from points in Georgia, to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and, therefore, does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga.

No. MC 124813 (Sub-No. 81), filed March 12, 1971. Applicant: UMTHUN TRUCKING CO., a corporation, 910 South Jackson Street, Eagle Grove, IA 50533. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry feed and dry feed supplements, insecticides, animal and poultry medicines, animal and poultry feeding equipment and related advertising matter and premiums*, from the plantsites of Moorman Manufacturing Co., located at Quincy and Alpha, Ill., to points in Minnesota. NOTE: Applicant holds contract authority under MC 118468 and subs, therefore common control and dual operations may be involved. Furthermore, applicant's present authority provides service to Sleepy Eye and Zumbrota, Minn., on the involved commodities but no duplicating authority is sought. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Minneapolis, Minn.

No. MC 125210 (Sub-No. 1), filed March 15, 1971. Applicant: A. M. WILLIAMSON & SONS, INC., 1139 Stafford Street, Rochdale, MA 01803. Applicant's representative: Arthur A. Wentzell, Post Office Box 764, Worcester, MA 01613. Authority sought to operate as *a common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in dump vehicles, from Rochdale (a locality in the town of Leicester, Mass.), to points in New London, Tolland, and Windham Counties, Conn. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Boston or Worcester, Mass.

No. MC 127099 (Sub-No. 13), filed March 23, 1971. Applicant: ROBERT NEFF & SONS, INC., 132 Shawnee Avenue, Post Office Box 2015, Zanesville, OH 43701. Applicant's representatives: James R. Stiverson and Edwin H. van Deusen, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Air movement equipment and materials and supplies* used in the installation thereof, from Lebanon and Indianapolis, Ind., and Cleveland and Dayton, Ohio, to points in the United States on and east of U.S. Highway 85; and *materials and supplies* used in the manufacture of air movement equipment, from points in the United States on and east of U.S. Highway 85, to Lebanon and Indianapolis, Ind., and Cleveland and Dayton, Ohio, under contract with Lau Inc., restricted against the transportation of commodities in bulk. NOTE: If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Washington, D.C.

No. MC 127497 (Sub-No. 4), filed March 15, 1971. Applicant: J. E. DODSON, INC., 7624 Chardon Road, Kirtland, OH 44094. Applicant's representative: Richard H. Brandon, 79 East State Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hot top process products*, from Cleveland, Ohio, to Monessen, Pa., under contract with Ferro Engineering Division of Oglebay Norton Co., Cleveland, Ohio. NOTE: If a hearing is deemed necessary, applicant requests it be held at Cleveland or Columbus, Ohio.

No. MC 127777 (Sub-No. 12), filed April 5, 1971. Applicant: MOBILE HOME EXPRESS, INC., Post Office Box 547, Wausau, WI 54401. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers* designed to be drawn by passenger automobiles, in initial movements, from points in Columbia County, Wis., to points in the United States (including Alaska but excepting Hawaii); and (2) *trailers* designed to be drawn by passenger automobiles, in initial movements, and *buildings*, complete or in sections, mounted on wheeled undercarriages, from points in Waupaca and Crawford Counties, Wis., to points in the United States (including Alaska but excepting Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Madison, Wis.

No. MC 127812 (Sub-No. 11), filed March 17, 1971. Applicant: TYSON TRUCK LINES, INC., 185 Fifth Avenue SW., New Brighton, MN 55118. Applicant's representative: Richard L. Tyson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, dairy products and articles distributed by meat packinghouses* as described in sections A, B, and C of appendix I to the report in *Descriptions* in *Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Hopkins, Minn., to points in Clark, Price, and Taylor Counties, Wis. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 128831 (Sub-No. 2), filed February 25, 1971. Applicant: DIXON RAPID TRANSFER, INC., Box 35, Dixon, IL 61021. Applicant's representative: Robert R. Canfield, 1100 Rockford Trust Building, Rockford, IL 61101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and advertising matter and empty malt beverage containers*, from South Bend, Ind., to Sterling, Ill., and East Dubuque, Ill. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant did not specify a location.

No. MC 129107 (Sub-No. 5), filed March 22, 1971. Applicant: R. H. HARDING CO., INC., 100 Centre Drive, Rochester, NY 14623. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used automobiles*, in secondary movements, in truckaway service; (1) between Rochester, N.Y., on the one hand, and, on the other, Butler and Corry, Pa.; and (2) from Manheim, Pa., and Bordentown, N.J., to Rochester, N.Y., restricted against the handling of shipments (1) for automobile manufacturers; (2) having an immediately prior or subsequent movement by rail; or (3) moving on Government bills of lading, and further restricted against tacking with any other authority held by applicant, or interlining with any other carrier, for through movements to other destinations. NOTE: If a hearing is deemed necessary, applicant requests it be held at Rochester, N.Y.

No. MC 129427 (Sub-No. 3), filed March 29, 1971. Applicant: JOSEPH GEORGIANA, 26 Lafayette Street, Somerset, NJ 08823. Applicant's representative: William J. Augello, Jr., 103 Fort Salonga Road, Northport, NY 11768. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cigar boxes, books and book slipcases, records, record albums, corrugated containers, pulp board, and pulp board boxes*, between New Brunswick and Bloomfield, N.J., and Indianapolis, Ind.; Crawfordsville, Ind.;

Clermont, Ky.; Owensboro, Ky.; and Cincinnati, Ohio; under contract with Alexander Ungar, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J., or New York, N.Y.

No. MC 133333 (Sub-No. 5), filed March 15, 1971. Applicant: JACK A. HART (doing business as PARTS LOCATOR SERVICE, 5501 Northwest Walnut Street, Vancouver, WA 98663. Applicant's representative: Lawrence V. Smart, Jr., 419 Northwest 23d Avenue, Portland, OR 97210. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Used automobile and truck parts,* between points in California, on the one hand, and, on the other, points in Oregon, Washington, and Idaho. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant seeks no duplicating authority. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 134286 (Sub-No. 10), filed March 15, 1971. Applicant: ARCTIC TRANSPORT, INC., 1005 West South Omaha Bridge Road, Council Bluffs, IA 51501. Applicant's representative: Charles J. Kimball, 300 N.S.E.A. Building, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Emporia, Kans.; Dakota City and West Point, Nebr.; Luverne, Minn.; and Denison, Fort Dodge, LeMars, and Mason City, Iowa, to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, and the District of Columbia, restricted to traffic originating at the plantsites of Iowa Beef Processors, Inc. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Sioux City, Iowa.

No. MC 134599 (Sub-No. 15), filed March 22, 1971. Applicant: INTERSTATE CONTRACT CARRIER CORP., Post Office Box 16407, Stockyards Station, Denver, CO 80216. Applicant's representatives: Ackie and Peterson, 521 South 14th Street, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Rubber, rubber products, plastics, chemicals, shoes, furniture, wall and floor covering, related items, equipment, materials and supplies* used in the manufacturing and production thereof (except in bulk, in tank vehicles), between Hogansville, Ga.; Naugatuck, Conn.; Detroit, Mich.; Scottsville, Va.; Shelbyville, Tenn.; Winnsboro, S.C.; Thomson, Ga.; Passaic, N.J.; Mishawaka and Indianapolis, Ind.; Opelika, Ala.; Los Angeles, Calif.; Eau Claire, Wis.; Denver, Colo.; Chicoppee Falls, Mass.; and Ardmore, Okla., under continuing contract with Uniroyal, Inc., its divisions and its subsidiaries. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or Lincoln, Nebr.

No. MC 134926 (Sub-No. 2), filed March 22, 1971. Applicant: STUART F. JAQUAY, INC., 2332 South Peck Road, Whittier, CA 90601. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen fruits and frozen vegetables,* from the port of entry on the United States-Canada boundary line near Houlton, Maine, to points in the United States (except points in Alaska, Connecticut, Hawaii, Idaho, Maine, Massachusetts, Montana, New Hampshire, New York, Oregon, Rhode Island, Vermont, Washington, and Wyoming). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Los Angeles, Calif., or Boston, Mass.

No. MC 135004 (Sub-No. 1), filed March 29, 1971. Applicant: GRIFFIN MOBILE HOME TRANSPORTING CO., a corporation, 3002 South Douglas Boulevard, Oklahoma City, OK. Applicant's representative: David D. Brunson, 419 Northwest Sixth Street, Oklahoma City, OK 73102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Modular building units,* on flat bed trailers, from Guthrie, Okla., to points in Oklahoma, New Mexico, Texas, Kansas, Nebraska, Missouri, Arkansas, Louisiana, and Colorado. NOTE: Applicant also holds contract carrier authority under MC 124190, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla., Dallas, Tex., or Washington, D.C.

No. MC 135007 (Sub-No. 4), filed March 18, 1971. Applicant: AMERICAN TRANSPORT, INC., Millard, Nebr. 68137. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Floor covering and floor tile and materials, equipment and supplies* used in installing and maintaining such floor covering and floor tile from Lancaster, Pa., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, Texas, and Wyoming, (2) *Carpet lining,* from Torrington, Conn., to points specified in (1) above, and (3) *Carpet,* from Ware, Mass., to points specified in (1) above, under continuing contract with William P. Volker & Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 135046 (Sub-No. 1), filed March 18, 1971. Applicant: ARLINGTON J. WILLIAMS, INC., Rural Delivery No. 2, Smyrna, DE 19977. Applicant's representative: Samuel W. Earnshaw, 833 Washington Building, Washington, DC 20005. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Luggage, handbags, and hangers,* in cartons, from Clayton, Del., to points in Cook, Du Page, Lake, and Kane Counties, Ill., and Lake County, Ind. NOTE: Applicant holds contract carrier authority under MC 113024, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135094 (Sub-No. 1), filed March 1, 1971. Applicant: T. C. TRUCKING, INC., 75 Montclair Avenue, Newark, NJ 07104. Applicant's representative: Edward F. Bowes, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Printed advertising circulars,* from Belleville, N.J., to Bristol, Danbury, Hartford, and Waterbury, Conn.; Bloomsburg, Coatesville, Danville, Milton, Shamokin, and West Chester, Pa.; Amityville, Binghamton, Hempstead, Hicksville, Mount Vernon, Newburgh, New York, and Poughkeepsie, N.Y., and Philadelphia, Pa., under contract with Mattia Press, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Newark, N.J.

No. MC 135189 (Sub-No. 1), filed March 25, 1971. Applicant: G. WYLIE BLUM, Post Office Box 197, Richardson Avenue, Negley, OH 44441. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Clay and carbonaceous materials;* from Middleton Township, Columbiana County, Ohio, to points in Allegheny County, Pa., to points in the cities of Aliquippa, Butler, Farrell, Johnstown, and Midland, Pa., Weirton, W. Va., Chicago, Ill., Gary, Ind., River Rouge, Mich., and Buffalo, N.Y. and (2) *Limestone,* from Hillsville, Lawrence County, Pa., to Middletown Township, Columbiana County, Ohio. Restriction: The above authority is restricted to a transportation service to be provided under a continuing contract or contracts with Negley Refractories Division of Metropolitan Industries, Inc. and Stroh-Butler Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Pittsburgh, Pa.

No. MC 135338, filed February 12, 1971. Applicant: QUIK TRANSFER CORPORATION, 207 Eldora, Wichita, KS 67211. Applicant's representative: Patrick F. Kelly, 612 Union National Building, Wichita, KS 67202. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products,*

meat byproducts, dairy products and articles distributed by meat packinghouses, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *frozen foods*, in vehicles equipped with mechanical refrigeration, between points in Kansas. NOTE: Applicant states that the authority is restricted from providing any service originating with or destined to Basehor, Kans., and a 20-mile radius thereof. If a hearing is deemed necessary, applicant requests it be held at Wichita or Topeka, Kans.

No. MC 135375 (Sub-No. 1), filed March 5, 1971. Applicant: QUINCIE GIBSON, doing business as GIBSON TRANSFER CO., 404 East 21st Street, Wichita, KS 67214. Applicant's representative: Edward F. Arn, Suite 330, R. H. Garvey Building, 300 West Douglas, Wichita, KS 67202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Packinghouse products and supplies*—and with store-door deliveries in less than truck load lots, between Wichita, Kans., and points in Colorado, Nebraska, Missouri, Oklahoma, Iowa, Arkansas, Louisiana and Texas; and back-haul of packinghouse supplies from the aforesaid points to Wichita, Kans., under contract with Dold Packing Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Wichita, Kans., or Oklahoma City, Okla.

No. MC 135395 (Sub-No. 1), filed March 15, 1971. Applicant: WAREHOUSE & TERMINAL CARTAGE CO., a corporation, 7401 South Cicero Avenue, Chicago, IL 60629. Applicant's representative: J. Edward Clair, 135 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, bleaches, cleaners inks, colors, glues, starch, steel strapping, tape, scrap or waste paper, boxes, fiberboard, paper, paperboard, or pulp board*, not corrugated; *boxes, fiberboard, paper, paperboard*, not corrugated except commodities of an unusual or extraordinary value, between the shipping facilities of Consolidated Packaging Corp., in Chicago, Ill., and Forest View, Ill., on the one hand, and, on the other, points in Iowa, Michigan, Ohio, Tennessee, Mississippi, and West Virginia, under contract with Consolidated Packaging Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 135440, filed March 17, 1971. Applicant: WILLMER W. GERDIN, Princeton, Minn. 55371. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *James, jellies, honey, and edible flour*, from Onamia, Minn., to Sun Prairie, Wis. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 135445, filed March 8, 1971. Applicant: THOMAS E. ZABEL, Route 2, Box 7, Plainview, MN 55964. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Animal and poultry feed, feed ingredients, feed supplements and condimental or medicinal feeding compounds or preparations;* (1) from Eagle Grove, Iowa, to points in Dakota, Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Rice, Steele, Wabasha, and Winona Counties, Minn.; and (2) from Plainview, Minn., to points in Allamakee, Howard, Mitchell, and Winneshiek Counties, Iowa, and Buffalo, La Crosse, Vernon, Pepin, Pierce, and Trempealeau Counties, Wis., under contract with M & M Livestock Products Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at Minneapolis, Minn.

No. MC 135446, filed March 23, 1971. Applicant: LINCOLN LAND MOVING & STORAGE, INC., 1304 West Bradley, Champaign, IL 61820. Applicant's representative: Joseph W. Anderson, 307 West Green, Champaign, IL 61820. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, restricted to shipments having a prior or subsequent movement in containers beyond the points sought, limited to the performance of pickup and delivery service in connection with packing, crating, containerization or unpacking, uncrating or decontainerization of such traffic, between points in Champaign, Coles, De Witt, Douglas, Edgar, Ford, Iroquois, Livingston, Macon, McLean, Moultrie, Piatt, and Vermilion Counties, Ill. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 135449, filed March 24, 1971. Applicant: JACK R. FARRIS, doing business as FARRIS TRUCKING CO., 1432 Beaumont Avenue, Knoxville, TN 37921. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Envelopes and commodities* used or useful in the manufacturing and sale of envelopes, (1) between New York, N.Y., on the one hand, and, on the other, Knoxville, Tenn., Philadelphia, Pa., and New Brunswick, N.J.; and (2) between Knoxville, Tenn., on the one hand, and, on the other, Philadelphia, Pa., and New Brunswick, N.J., under contract with Business Envelope Manufacturers, Inc., Commercial Envelope Co. NOTE: If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

MOTOR CARRIERS OF PASSENGERS

No. MC 106207 (Sub-No. 11), filed March 11, 1971. Applicant: NEW YORK-KEANSBURG-LONG BRANCH BUS CO., INC., 602 Broadway, Bayonne, NJ 07002. Applicant's representative: Edward F. Bowes, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Newspapers and express in the same vehicle with passengers*, between all points on its existing passenger carrier, regular routes (1) between New York, N.Y., and Long Branch, N.J., as follows: Between New York, N.Y., and Long Branch, N.J., serving that portion of Raritan Township, N.J., east of and including the junction of Middle Road and New Jersey Highway 36 in Raritan Township, N.J., and all intermediate points on said route between such portion of Raritan Township, N.J., and Long Branch, N.J.: From New York, through the Lincoln Tunnel to Weehawken, N.J., thence over New Jersey Highway 3, limited to the use of the overhead ramp and the express highway, to North Bergen, N.J., thence over U.S. Highway 1 to Woodbridge, N.J., thence over New Jersey Highway 35 to junction New Jersey Highway 36 in Keyport, N.J., thence over New Jersey Highway 36 to junction Laurel Avenue in Raritan Township, thence over Laurel Avenue, Beachway, Raritan Avenue, Center Avenue, and Shore Boulevard, to Middletown Township, N.J., thence over Sea Breeze Avenue, Ocean Avenue, Port Monmouth Road, Main Street, and East Road, to junction New Jersey Highway 36, thence over New Jersey Highway 36 to junction North Avenue, thence over North Avenue, and Center Avenue to Atlantic Highlands, N.J., thence over Center Avenue, First Avenue, Bayview Avenue, and Ocean Boulevard to Highlands, N.J., thence over Ocean Boulevard, to junction New Jersey Highway 36, thence over New Jersey Highway 36 to junction Linden Avenue, thence over Linden Avenue, Water Witch Avenue, and Bay Avenue to junction New Jersey Highway 36, thence over New Jersey Highway 36 to junction Ocean Avenue near Highland Beach, thence over Ocean Avenue to Long Branch and return over the same route;

(2) between the junction of Laurel Avenue and New Jersey Highway 36 in Raritan Township, N.J., and the junction of New Jersey Highway 36 and East Road in Middletown Township, N.J., serving the junction of Palmer Avenue and New Jersey Highway 36 and all intermediate points between it and junction of East Road: From junction Laurel Avenue and New Jersey Highway 36 over New Jersey Highway 36 to junction East Road, and return over the same routes; (3) between the junction of North Avenue and New Jersey Highway 36 in Middletown Township to the junction of Bay Avenue and New Jersey Highway 36 in Highlands, N.J., serving all intermediate points: From junction North Avenue and New Jersey Highway 36 over New Jersey Highway 36 to junction Bay Avenue and return over the same route; (4) between the intersection of Center Avenue and Main Street in Keansburg, N.J. and junction of Palmer Avenue and New Jersey Highway 36, serving all intermediate points: From junction Center Avenue and Main Street in Keansburg, N.J., over Main Street to junction Palmer Avenue, thence over Palmer Avenue to junction New Jersey Highway 36 and return over the same route; (5) between junction New Jersey Highway 36 and

Monmouth County Highway 516 (Middle Road), in Raritan Township, N.J., and junction New Jersey Highway 36 and Main Street, in Middletown Township, N.J., serving all intermediate points: From junction New Jersey Highway 36 and Monmouth County Highway 516 over Monmouth County Highway 516 to junction Main Street, and thence over Main Street to junction New Jersey Highway 36 and return over the same route; (6) between junction Monmouth County Highway 516 and Laurel Avenue, in Holmdel Township, N.J., and junction New Jersey Highway 36 and Laurel Avenue, serving all intermediate points: From junction Monmouth County Highway 516 and Laurel Avenue, in Holmdel Township, over Laurel Avenue to junction New Jersey Highway 36, and return over the same route;

(7) between junction U.S. Highway 9 and New Jersey Highway 440, located in Woodbridge Township, N.J., and New York, N.Y., serving no intermediate points, and serving the junction of U.S. Highway 9 and New Jersey Highway 440 for purposes of joinder only: From junction U.S. Highway 9 and New Jersey Highway 440, over New Jersey Highway 440 to junction with access roads to the Outerbridge Crossing, thence over such access roads and the Outerbridge Crossing to New York and return over the same route; (8) between Elizabeth, N.J., and New York, N.Y., serving no intermediate points and serving the junction of New Jersey Turnpike and New Jersey Highway 439 for purposes of joinder only: From Elizabeth over New Jersey Highway 439 and Goethals Bridge to New York and return over the same route. Restriction: The authority granted above is restricted (a) against the transportation of passengers who originate at Keansburg, N.J., or at intermediate points on routes authorized herein between Keansburg, N.J., and Staten Island, N.Y., and are destined to Staten Island, N.Y., or who originated at Staten Island, N.Y., and are destined to Keansburg, N.J., or to intermediate points on routes authorized herein between Keansburg, N.J., and Staten Island, N.Y., and (b) against the transportation of passengers between Staten Island, N.Y., on the one hand, and, on the other, the Borough of Manhattan, New York, N.Y.; (9) between the junction of the New Jersey Turnpike and Newark Bay-Hudson County extension (Jersey City Expressway) and of the said Turnpike in Newark, N.J., and New York, N.Y., serving no intermediate points and serving the junction of the New Jersey Turnpike and the Newark Bay-Hudson County extension for purposes of joinder only: From the junction of the New Jersey Turnpike and the Newark Bay-Hudson County extension (Jersey City Expressway) over Newark Bay-Hudson County extension to junction U.S. Highway 1 in Jersey City, N.J., thence over U.S. Highway 1 to the Holland Tunnel, thence through the Holland Tunnel to New York, N.Y., and return over the same route;

(10) Between junction New Jersey Highway 36 and Ocean Avenue, near Highland Beach, N.J., and Sandy Hook, N.J., serving all intermediate points: From junction New Jersey Highway 36 and Ocean Avenue, near Highland Beach, over Ocean Avenue to Sandy Hook and return over the same route. Alternate routes for operating convenience only: (11) Between Woodbridge, N.J., and Keyport, N.J., in connection with carrier's regular-route operations authorized herein, serving no intermediate points: From junction U.S. Highway 9 and access roads in Woodbridge, over access roads to junction Garden State Parkway, thence over Garden State Parkway to junction access roads in Matawan Township, N.J., thence over access roads to junction New Jersey Highways 35 and 36 in Keyport, and return over the same route, and (12) between junction New Jersey Highway 3 and the Lincoln Tunnel Interchange of the New Jersey Turnpike, in North Bergen, N.J., and junction Woodbridge Interchange and U.S. Highway 9, in connection with carrier's regular-route operations authorized herein between New York, N.Y., and Long Branch, N.J., serving no intermediate points: From junction New Jersey Highway 3 and the Lincoln Tunnel Interchange of the New Jersey Turnpike, in North Bergen, over Lincoln Tunnel Interchange to the New Jersey Turnpike in Secaucus, N.J., thence over New Jersey Turnpike to the Woodbridge Interchange in Woodbridge, N.J., thence over the Woodbridge Interchange to junction Woodbridge Interchange and U.S. Highway 9 and return over the same route. NOTE: If a hearing is deemed necessary, applicant requests it be held at Rumson or Newark, N.J.

No. MC 135382, filed March 16, 1971. Applicant: S&S RENTAL, INC., 3947 Boarman Avenue, Baltimore, MD 21215. Applicant's representative: B. Baer, 2018 East Monument Street, Baltimore, MD 21205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers; (1) in special or in charter operations, from Baltimore, Md., and points in Baltimore, Anne Arundel, Harford, and Howard Counties, Md., to points in Virginia, West Virginia, North Carolina, Pennsylvania, New York, New Jersey, Delaware, South Carolina, Georgia, Florida, and the District of Columbia, and return; and (2) in special or charter operations, in round-trip tours, beginning and ending at Baltimore, Md., and points in Baltimore, Anne Arundel, Harford, and Howard Counties, Md., with no pickup or discharge of passengers or their baggage at any point, and extending to points in South Carolina, Georgia, Florida, Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, Vermont, Ohio, and Illinois. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Baltimore, Md.

APPLICATION IS WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN REQUESTED

No. MC 3581 (Sub-No. 15), filed March 22, 1971. Applicant: THE MOTOR CONVOY, INC., Post Office Box 82432, Hapeville, GA 30054. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New automobiles and pickup trucks* in secondary movement in truckaway service from Baton Rouge, La., to points in Arkansas, Louisiana, Mississippi, Alabama, Tennessee, and Missouri. Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc. 71-5184 Filed 4-14-71;8:45 am]

[Notice 680]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 12, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72713. By order of April 7, 1971, the Motor Carrier Board approved the transfer to Dumford Trucking, Inc., Yakima, Wash., of the operating rights in permit No. MC-115963 (Sub-No. 1) issued May 24, 1957, to Burton Dumford, Yakima, Wash., authorizing the transportation of box shooks, from Ellensburg, Naches, Yakima, and Goldendale, Wash., to points in Hood River County, Oreg. Terry C. Schmalz, Post Office Box 156, Selah, WA 98942, attorney for applicants.

No. MC-FC-72742. By order of April 8, 1971, the Motor Carrier Board approved the transfer to D. K. Conklin doing business as Tekamah Transfer, Tekamah, Nebr., of the operating rights in certificate No. MC-589 issued August 4, 1970, to Mary Marie Elliott doing business as

Bies Transfer, Tekamah, Nebr., authorizing the transportation of general commodities, with the usual exceptions, between Tekamah, Nebr., and Omaha, Nebr., serving all intermediate points and the off-route points of Council Bluffs, Iowa, and Decatur, Ill.; feed, farm machinery, farm machinery parts, draintile and building materials, from Sioux City, Iowa to Tekamah, Nebr., and points in Nebraska within 25 miles of Tekamah; and livestock and agricultural commodities between Tekamah, Nebr., and points in Nebraska within 25 miles thereof, on the one hand, and, on the other, points in Iowa. Ralph M. Anderson, 240 South 13th Street, Tekamah, NE 68061, attorney for applicants.

No. MC–FC–72791. By order of April 8, 1971, the Motor Carrier Board approved the transfer to Willie F. Waterer, doing business as Greenwood Storage & Trucking Co., Greenwood, Miss., of the operating rights in permit No. MC–124361 issued October 1, 1968, to Joe Feagin, doing business as Greenwood Storage & Trucking Co., Greenwood, Miss., authorizing the transportation of dry fertilizer, in bags, from El Dorado, Ark., Sheffield, Ala., and Sterlington and Avondale, La., to Greenwood, Miss., and from Greenwood, Miss., to points in Chicot, Ashley, Drew, Desha, Phillips, Lee, St. Francis, Crittenden, Cross, Mississippi, and Poinsett Counties, Ark., and Madison, Franklin, Tensas, East Carroll, West Carroll, Richland, and Morehouse Parishes, La. Harold D. Miller, Jr., 700 Petroleum Building, Post Office Box 22567, Jackson, MS 39205.

No. MC–FC–72795. By order of April 8, 1971, the Motor Carrier Board approved the transfer to Don Tenney, Fulton, Mo., of the operating rights in certificate No. MC–124262 issued February 21, 1963, to Don Tenney and Jack Tenney, a partnership, McCredie, Mo., authorizing the transportation of specified commodities between points in Callaway, Boone, Howard, and Saline Counties, Mo., on the one hand, and, on the other, points in Arkansas, Illinois, Indiana, Iowa, Kansas, Nebraska, and Oklahoma. W. C. Whitlow, 10 East Fourth Street, Fulton, MO 65251, attorney for applicants.

No. MC–FC–72796. By order of April 8, 1971, the Motor Carrier Board approved the transfer to Real Transportation Co., a corporation, Cudahy, Calif., of certificate of registration No. MC–110714 (Sub-No. 4) issued April 20, 1964, to Ralph S. Newcomer, doing business as Real Transportation Co., Los Angeles, Calif., evidencing a right to engage in transportation in interstate or foreign commerce corresponding in scope to the grant of authority in Decision No. 62973 dated December 27, 1961, issued by the public Utilities Commission of California. John U. Gall, 400 Oviatt Building, 617 South Olive Street, Los Angeles, CA 90014, attorney for applicants.

No. MC–FC–72798. By order of April 8, 1971, the Motor Carrier Board approved the transfer to Willis L. Meyer, doing business as Empire Line, Grand Rapids, Mich., of certificate No. MC–127079, issued August 24, 1966 to Edward Carl Breimayer, doing business as Silver Star Bus Lines, Belding, Mich., authorizing the transportation of: Passengers and their baggage, and express, between specified points in Michigan. Leonard M. Hoffius, Jr., attorney, 100 Commerce Building, Grand Rapids, MI 49502.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–5258 Filed 4–14–71;8:49 am]

CUMULATIVE LIST OF PARTS AFFECTED—APRIL

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during April.

3 CFR

Page

PROCLAMATIONS:

4031 (revoked by Proc. 4040) — 6335
4040 — 6335
4041 — 6337
4042 — 6475
4043 — 6709
4044 — 6683
4045 — 6885
4046 — 7047

EXECUTIVE ORDERS:

Mar. 27, 1913 (modified by PLO 5037) — 6893
April 17, 1926 (revoked in part by PLO 5034) — 6503
10952 (see EO 11589) — 6343
11588 — 6339
See Proc. 4040 — 6335
11589 — 6343

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:

Reorganization Plan No. 1 of 1958 (see EO 11589) — 6343

5 CFR

213 — 5961, 6071, 6487, 6488, 6573, 6732, 6733
307 — 6488
334 — 6488
890 — 6573
1001 — 6874

7 CFR

1 — 6071
7 — 6887
54 — 6071
210 — 7049
319 — 7001
354 — 6559
601 — 6559
722 — 6733
723 — 6733
724 — 6734
846 — 6821
855 — 5961
862 — 6734
877 — 6489, 7049
905 — 6493
906 — 5962, 7049
907 — 5963, 6494, 6734, 7123
908 — 5963, 6735, 7123
910 — 6412, 6887
911 — 6887
916 — 5964
944 — 5964, 7002
947 — 7124
959 — 6559
991 — 6888
999 — 6735
1133 — 7124
1468 — 6560
1472 — 6560, 6561
1809 — 6821

PROPOSED RULES:

51 — 6755
56 — 6592
908 — 6592, 6899
916 — 6432
928 — 5995
1007 — 6830
1036 — 7069

7 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued

1063 — 6593, 6833
1070 — 6593, 6833
1078 — 6593, 6833
1079 — 6593, 6833

8 CFR

PROPOSED RULES:

214 — 6755

9 CFR

76 — 5965, 5966, 6561–6563, 6736, 7002, 7124
97 — 6413
331 — 7125

10 CFR

PROPOSED RULES:

20 — 6521
30 — 6015, 6562
31 — 6015
32 — 6015
40 — 6521
50 — 6903
70 — 6521
71 — 6521

12 CFR

1 — 6494, 6736
5 — 6888
14 — 6738
20 — 6738
207 — 7003
213 — 6826
221 — 7003
222 — 6413
523 — 6890
524 — 7125
545 — 6739, 7126
561 — 7126
563 — 6739, 7127
564 — 6740
701 — 7004

PROPOSED RULES:

545 — 6839
556 — 6839
564 — 6764
582 — 6840
582b — 6840
741 — 7073

13 CFR

121 — 5967

14 CFR

37 — 7127
39 — 5967, 6072, 6413, 6470, 6826–6827
71 — 6413–6415, 6741, 7049
75 — 6415
77 — 5968, 6741
95 — 5971
97 — 6073, 6890
207 — 6574
208 — 6575
212 — 6576
214 — 6577
373 — 6577
378 — 6586
378a — 6415
389 — 6591

14 CFR—Continued

Page

PROPOSED RULES:

39 — 6836
71 — 6015, 6434, 6760, 6761, 6836, 7072, 7073, 7143, 7144
75 — 6837
Ch. II — 6761

15 CFR

373 — 5975
375 — 5976
376 — 5976
377 — 5976
386 — 5976
615 — 7127

16 CFR

13 — 6416, 6741–6744

PROPOSED RULES:

240 — 6524
433 — 6592

17 CFR

230 — 7050

PROPOSED RULES:

249 — 6440
270 — 6595
274 — 6595

18 CFR

35 — 6563
157 — 7051
260 — 7051

PROPOSED RULES:

3 — 7020
4 — 6596
101 — 6596
141 — 6596
154 — 6596, 7150
156 — 6596
157 — 6596
201 — 6596
260 — 6596
604 — 6762
622 — 6762

19 CFR

4 — 6420
301 — 7132

PROPOSED RULES:

153 — 7012

20 CFR

404 — 6420
405 — 6943, 7050

PROPOSED RULES:

404 — 6434
405 — 7018

21 CFR

1 — 6891
2 — 7128
8 — 6892
27 — 6074
130 — 6075
135c — 7128
135e — 5976
135g — 5976

LIST OF FEDERAL REGISTER PAGES AND DATES—APRIL

Pages	*Date*
5955–6066	April 1
6067–6328	2
6329–6469	3
6471–6552	6
6553–6701	7
6703–6816	8
6817–6878	9
6879–6937	10
6939–7042	13
7043–7117	14
7119–7208	15

FEDERAL REGISTER

VOLUME 36 • NUMBER 73

Thursday, April 15, 1971 • Washington, D.C.

PART II

DEPARTMENT OF THE INTERIOR

•

Hearings and Appeals Procedures

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER C—PROBATE

PART 15—DETERMINATION OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS

Hearings and Appeals Procedures

The purpose of these amendments is to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to proceedings in Indian probate.

1. The regulations formerly appearing in this part are deleted.

2. A new § 15.1, reading as follows, is added:

§ 15.1 Cross reference.

For special rules applicable to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except as to Members of the Five Civilized Tribes and Osage Indians), including hearings, and appeals relating to such matters within the jurisdiction of the Board of Indian Appeals, Office of Hearings and Appeals, see Subpart D of Part 4 of Subtitle A—Office of the Secretary of the Interior, of Title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart D of Part 4 are also applicable to such Indian probate proceedings.

(Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; 25 U.S.C. 372, 373, 374, 373a, 373b)

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C. sec. 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.71–5135 Filed 4–14–71;8:45 am]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 8—LABOR STANDARDS APPLICABLE TO EMPLOYEES OF NATIONAL PARK SERVICE CONCESSIONERS

PART 20—ISLE ROYALE NATIONAL PARK; COMMERCIAL FISHING

Hearings and Appeals Procedures

The purpose of these amendments is to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to appeals taken under these regulations.

1. The table of contents to Part 8 is amended by changing the heading to § 8.7 to read as follows:

Sec.
8.7 Complaints; appeal.

2. In § 8.7, the reference to the Secretary is changed to read Director, Office of Hearings and Appeals, and the heading and text of that regulation are changed to note the applicability of the Department Hearings and Appeals Procedures in Part 4, Title 43, Code of Federal Regulations, to appeals filed under that regulation. As amended, § 8.7 reads as follows:

§ 8.7 Complaints; appeal.

Any question pertaining to the interpretation or application of or compliance with this part which cannot be satisfactorily settled between a concessioner and his employee, employees, or employee representative may be referred for review by any of the parties concerned to the Director, National Park Service. Any person adversely affected by the decision of the Director, National Park Service, may appeal to the Director, Office of Hearings and Appeals, in accordance with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR Part 4, Subpart B, and the special procedural rules in Subpart G of 43 CFR Part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

3. In § 20.4, the reference to the Secretary is changed to read Director, Office of Hearings and Appeals, and the second sentence of the regulation is changed to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to appeals filed under that regulation. As amended, § 20.4 reads as follows:

§ 20.4 Revocation of permits; appeal.

The Director of the National Park Service may, by notification in writing, revoke the permit of any permittee found by him to have violated any Federal statute or the provisions of these or any other regulations of the Secretary, relating to the Park. A permittee, however, shall have the right to appeal to the Director, Office of Hearings and Appeals, from a decision of the Director of the National Park Service revoking his permit. Any such appeal shall comply with the general rules set forth in Department Hearings and Appeals Procedures, 43 CFR Part 4, Subpart B, and the special procedural rules in Subpart G of 43 CFR Part 4, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C. sec. 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.71–5137 Filed 4–14–71;8:45 am]

Title 30—MINERAL RESOURCES

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

PART 300—ORGANIZATION

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

PART 302—PROCEDURES UNDER FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT OF 1966

Hearings and Appeals Procedures

The purpose of these amendments is to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to proceedings under these regulations.

1. The table of contents and the regulations contained in 30 CFR Parts 300 and 302 are deleted and the following cross reference is provided to Subpart F of the revised Part 4 of Title 43 of the Code of Federal Regulations, which contains procedural regulations applicable to hearings, appeals and other review procedures in mine health and safety matters within the jurisdiction of the Board of Mine Operations Appeals. Therefore, the following is inserted immediately preceding the text of Part 301:

[CROSS REFERENCE: For special rules applicable to hearings, appeals and other review procedures relating to mine health and safety, within the jurisdiction of the Board of Mine Operations Appeals, Office of Hearings and Appeals, see Subpart F of Part 4 of Subtitle A—Office of the Secretary of the Interior, of Title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart F of Part 4 are also applicable to such hearings, appeals, and other review procedures.]

2. The table of contents to Part 301 is amended to delete §§ 301.3, 301.7, 301.70, 301.71, 301.82, and 301.83.

3. Sections 301.3, 301.7, 301.70, 301.71, 301.82, and 301.83 are deleted.

4. In § 301.4, paragraph (a) is deleted, the designation (b) and the heading to the remaining paragraph are deleted, and the address of the Board in that paragraph is changed to read Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. As amended, § 301.4 reads as follows:

§ 301.4 Documents.

Each application, petition, or other document to be filed with the Board shall be filed at its offices at the Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203.

5. In § 301.5, paragraphs (a) and (b) are deleted and the designation (c) and the heading to the remaining paragraph are deleted. As amended, § 301.5 reads as follows:

§ 301.5 Computation of time.

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.

6. In § 301.67, paragraph (b) is deleted, the designation (a) is deleted from the remaining paragraph, and the heading and text of that paragraph are revised to read as follows:

§ 301.67 Subpoenas.

On written application of a party or on his own motion, the Examiner may issue subpoenas requiring the attendance of witnesses and the production of relevant papers, books and documents in their possession and under their control.

7. The regulations formerly contained in Part 302 are deleted, and a new § 302.1 reading as follows, is added:

§ 302.1 Cross reference.

For special rules applicable to hearings, appeals and other review procedures relating to mine health and safety, within the jurisdiction of the Board of Mine Operations Appeals, Office of Hearings and Appeals, see Subpart F of Part 4 of Subtitle A—Office of the Secretary of the Interior, of title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart F of Part 4 are also applicable to such hearings, appeals, and other review procedures.

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C. sec. 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.71-5136 Filed 4-14-71;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

PART 13—VENDING FACILITIES OPERATED BY BLIND PERSONS

PART 21—OCCUPANCY OF CABIN SITES ON PUBLIC CONSERVATION AND RECREATION AREAS

PART 23—SURFACE EXPLORATION, MINING AND RECLAMATION OF LANDS

Hearings and Appeals Procedures

In the interest of establishing and maintaining uniformity to the extent feasible in Department hearings and appeals procedures, and for improved public service, the regulations of the Department of the Interior relating to all types of appeals and hearings proceedings before the Office of Hearings and Appeals, Office of the Secretary, are being rearranged, renumbered and amended to the extent indicated.

Amended is Subtitle A—Office of the Secretary of the Interior, of Title 43, Code of Federal Regulations, by revising Part 4—Board of Contract Appeals (34 F.R. 6924, April 25, 1969). The revision changes the heading of Part 4 to "Department Hearings and Appeals Procedures" and sets forth in Subpart A thereof the authority, organization, and functions of the Office of Hearings and Appeals. The revision designates a Subpart B for general rules of procedure applicable to all types of appeals and hearings proceedings before the Office of Hearings and Appeals, including its several established Appeals Boards, namely, the Board of Contract Appeals, the Board of Indian Appeals, the Board of Land Appeals, and the Board of Mine Operations Appeals.

The special rules applicable to Contract Appeals within the jurisdiction of the Board of Contract Appeals, previously contained in Part 4, are recodified in Subpart C of the revised Part 4. No substantive changes have been made in these regulations; however, deletions have been made to eliminate regulations now contained in Subparts A and B of the revised Part 4.

Subpart D sets forth the special procedural rules applicable to proceedings in Indian probate, including hearings, and appeals relating to such matters, within the jurisdiction of the Board of Indian Appeals. The Department's regulations on such matters were formerly codified in Subchapter C, Part 15, of Title 25 of the Code of Federal Regulations. However, the Department on December 3, 1970, published in the FEDERAL REGISTER (35 F.R. 18392–18399) a notice of proposed rule making relating to the revision of those regulations. The time for filing comments was extended to February 12, 1971 (36 F.R. 1204). In response to the notice comments were received, as a result of which modifications have been made in some of the regulations. Since these modifications are of a nonsubstantial nature and are consistent with the primary purpose of the rule making proposed, further notice thereof has been determined to be unnecessary, and the rules as modified and renumbered within Subpart D shall be effective upon this publication in the FEDERAL REGISTER. An appropriate cross reference has been provided in 25 CFR Part 15 to the applicable regulations in this part.

Subpart E contains the special procedural rules applicable to hearings, appeals and contests in public lands cases within the jurisdiction of the Board of Land Appeals. The Department's regulations in these matters were formerly codified in Parts 1840 and 1850 of Title 43 of the Code of Federal Regulations. Changes have been made simply to renumber, to correct any errors in numbering that exist in the present regulations, to provide appropriate cross references, to eliminate repetitious material, and to effect editorial corrections as necessary. No substantive changes have been made in these regulations. The special procedural rules applicable to hearings and appeals in grazing cases within grazing districts established under the act of June 28, 1934, as amended, 43 U.S.C. § 315 (1964), presently contained in 43 CFR Subpart 1853, have not been included in Subpart E of 43 CFR Part 4 at this time but will remain in effect as they now exist pending a determination with respect to proposed revisions of them published in the FEDERAL REGISTER on March 20, 1971 (36 F.R. 5367–5369). The regulations will be placed within Subpart E of 43 CFR Part 4, with appropriate renumbering, when they are published as final rule making.

Subpart F sets forth the special rules applicable to hearings, appeals and other review procedures relating to mine health and safety within the jurisdiction of the Board of Mine Operations Appeals. Included are the provisions of such regulations formerly codified in 30 CFR Parts 300 and 302. Renumbering and editorial changes have been made, but no substantive changes. Regulations pertaining to coal mine health and safety, contained within 30 CFR Part 301, have not been incorporated into Subpart F of 43 CFR Part 4 at this time, but are only cross-referenced therein, inasmuch as they are presently in process of revision, proposed rule making thereon have been published in the FEDERAL REGISTER on March 27, 1971 (36 F.R. 5795–5800). The regulations in the proposed rule making have been numbered to conform with the present numbering of the regulations in Subpart F and when published as final rule making will be placed within that subpart of 43 CFR Part 4. Minor editorial changes only have been made at this

time in the existing regulations in 30 CFR Part 301, and some repetitious material has been eliminated.

Subpart G set forth special procedural rules applicable to other appeals and hearings cases which do not lie within the appellate jurisdiction of the several established Appeals Boards of the Office of Hearings and Appeals but which are considered and ruled upon by the Director of the Office of Hearings and Appeals or by Ad Hoc Boards of Appeals appointed by the Director. These regulations represent essentially a restatement of existing, basic procedural regulations and practice in such cases; however they have been enlarged in detail to incorporate provisions which are applicable in other appeals procedures of the Office of Hearings and Appeals. Because they bring the procedures in these cases into line with other appeals procedures of the Department, it is not believed that proposed procedures are necessary. Changes are nonsubstantial and have been made primarily to reflect the reorganized appellate structure in the Department handling such appeals and hearings cases. Editorial changes have been made in the pertinent provisions of the Code of Federal Regulations in 43 CFR Parts 13, 21 and 230, and 36 CFR Parts 8 and 20, relating to procedures in such appeals and hearings cases, for the same reason.

Cross references have been provided, as appropriate, in these amendments.

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C. § 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

1. The heading and the text of Part 4 are hereby revised to read as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart A—General; Office of Hearings and Appeals

Subpart B—General Rules Relating to Procedures and Practice

Subpart C—Special Rules Applicable to Contract Appeals

Subpart D—Special Rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals

DETERMINATION OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS

SCOPE OF REGULATIONS; DEFINITIONS; GENERAL AUTHORITY OF EXAMINERS

COMMENCEMENT OF PROBATE PROCEEDINGS

DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

HEARINGS

DECISIONS

CLAIMS

WILLS

CUSTODY AND DISTRIBUTION OF ESTATES

MISCELLANEOUS

APPEALS TO THE BOARD OF INDIAN APPEALS

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

APPEALS PROCEDURES

APPEALS PROCEDURES; GENERAL

APPEALS TO THE BOARD OF LAND APPEALS

ACTIONS BY BOARD OF LAND APPEALS

HEARINGS PROCEDURES

HEARINGS PROCEDURES; GENERAL

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

CONTEST AND PROTEST PROCEEDINGS

GRAZING PROCEEDINGS (INSIDE GRAZING DISTRICTS)

Subpart F—Special Rules Applicable to Mine Health and Safety Hearings and Appeals

MINE HEALTH AND SAFETY HEARINGS AND APPEALS

PROCEDURES UNDER FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

PROCEDURES UNDER FEDERAL METAL AND NON-METALLIC MINE SAFETY ACT OF 1966

GENERAL

APPLICATION FOR REVIEW OF ORDERS

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: The provisions of this Part 4 issued under authority of R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart A—General; Office of Hearings and Appeals

§ 4.1 Scope of authority; applicable regulations.

The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary.[1] Principal components of the Office include (a) a Hearings Division comprised of hearing examiners who are authorized to conduct hearings in cases required by law to be conducted pursuant to 5 U.S.C. sec. 554, hearings in Indian probate matters, and hearings in other cases arising under statutes and regulations of the Department, including rule making hearings, and (b) Appeals Boards, shown below, with administrative jurisdiction and special procedural rules as indicated. General rules applicable to all types of proceedings are set forth in Subpart B of this part. Therefore, for information as to applicable rules, reference should be made to the special rules in the subpart relating to the particular type of proceeding, as indicated, and to the general rules in Subpart B of this part. Wherever there is any conflict between one of the general rules in Subpart B of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern. Reference should be made also to the governing laws, substantive regulations and policies of the Department relating to the proceeding. In addition, reference should be made to Part 1 of this subtitle which regulates practice before the Department of the Interior.

(1) *Board of Contract Appeals.* The Board considers and decides finally for the Department appeals to the head of the Department from findings of fact or decisions by contracting officers of any bureau or office of the Department, wherever situated, or any field installation thereof, and orders and conducts hearings as necessary. Special regulations applicable to proceedings before the Board are contained in Subpart C of this part.

[1] The organization of the Office of Hearings and Appeals and the authority delegated by the Secretary to the Director and other principal officials of the Office are set forth in Part 111, Chapter 13, of the Departmental Manual; in Release No. 1213 of July 17, 1970 (211 DM 13), and a notice published in the FEDERAL REGISTER on July 28, 1970, 35 F.R. 12081; and, with respect to the Board of Mine Operations Appeals, also in 30 CFR Part 300, as amended, 35 F.R. 12336, Aug. 1, 1970 (now 43 CFR 4.500).

(2) *Board of Indian Appeals.* The Board decides finally for the Department appeals to the head of the Department from orders and decisions of hearing examiners in Indian probate matters. Jurisdiction of the Board includes, but is not limited to, authority of the Secretary relating to Indian probate proceedings other than those involving estates of the Five Civilized Tribes and Osage Indians. Special regulations applicable to proceedings before the Board are contained in Subpart D of this part.

(3) *Board of Land Appeals.* The Board decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental officials relating to the use and disposition of public lands and their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf. Special procedures for hearings, appeals and contests in public lands cases are contained in Subpart E of this part.

(4) *Board of Mine Operations Appeals.* The Board performs finally for the Department the appellate and other review functions of the Secretary under the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91–173; 83 Stat. 742 et seq.), and the review authority of the Secretary under the Federal Metal and Nonmetallic Mine Safety Act (Public Law 89–577; 80 Stat. 772 et seq., 30 U.S.C. secs. 721–740). Special regulations applicable to proceedings before the Board are contained in Subpart F of this part.

(5) *Ad Hoc Boards of Appeals.* Appeals to the head of the Department which do not lie within the appellate review jurisdiction of an established Appeals Board and which are not specifically excepted in the general delegation of authority to the Director may be considered and ruled upon by the Director or by Ad Hoc Boards of Appeals appointed by the Director to consider the particular appeals and to issue decisions thereon, deciding finally for the Department all questions of fact and law necessary for the complete adjudication of the issues. Jurisdiction of the Boards would include, but not be limited to, the appellate and review authority of the Secretary referred to in Parts 13, 21, and 230 of this title, and in 36 CFR Parts 8 and 20. Special regulations applicable to proceedings in such cases are contained in Subpart G of this part.

§ 4.2 Membership of appeals boards; decisions; functions of chairmen.

(a) The Appeals Boards consist of regular members, one of whom is designated as Chairman, the Director as an ex officio member, and alternate members who may serve, when necessary, in place of or in addition to regular members. The Chairman of an Appeals Board may direct that an appeal may be decided by a panel of any two members of the Board, but if they are unable to agree upon a decision, the Chairman may assign one or more additional members of the Board to consider the appeal. The

concurrence of a majority of the Board members who consider an appeal shall be sufficient for a decision.

(b) Decisions of the Board must be in writing and signed by not less than a majority of the members who considered the appeal. The Director, being an ex officio member, may participate in the consideration of any appeal and sign the resulting decision.

(c) The Chairman of an Appeals Board shall be responsible for the internal management and administration of the Board, and the Chairman is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board.

§ 4.3 Representation before appeals boards.

(a) *Appearances generally.* Representation of parties in proceedings before Appeals Boards of the Office of Hearings and Appeals is governed by Part 1 of this subtitle, which regulates practice before the Department of the Interior.

(b) *Representation of the Government.* Department counsel designated by the Solicitor of the Department to represent agencies, bureaus, and offices of the Department of the Interior in proceedings before the Office of Hearings and Appeals, and Government counsel for other agencies, bureaus or offices of the Federal Government involved in any proceeding before the Office of Hearings and Appeals, shall represent the Government agency in the same manner as a private advocate represents a client.

(c) *Appearances as amicus curiae.* Any person desiring to appear as amicus curiae in any proceeding shall make timely request stating the grounds for such request. Permission to appear, if granted, will be for such purposes as established by the Director or the Appeals Board in the proceeding.

§ 4.4 Public records; locations of field offices.

Part 2 of this subtitle prescribes the rules governing availability of the public records of the Office of Hearings and Appeals. It includes a list of the field offices of the Office of Hearings and Appeals and their locations.

§ 4.5 Power of Secretary.

Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The Secretary reserves under his supervisory powers the right to take original jurisdiction of any case and render the final decision in the matter, after holding such hearing as may be required by law. The same authority, except with respect to the conduct of hearings pursuant to 5 U.S.C. sec. 554, may be exercised by the Director pursuant to his delegated supervisory authority from the Secretary.

Subpart B—General Rules Relating to Procedures and Practice

§ 4.20 Purpose.

In the interest of establishing and maintaining uniformity to the extent feasible, this subpart sets forth general rules applicable to all types of proceedings before the Hearings Division and the several Appeals Boards of the Office of Hearings and Appeals.

§ 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately.

(b) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. sec. 704, unless it has been made effective pending a decision on appeal in the manner provided in paragraph (a) of this section.

(c) *Finality of decision.* No further appeal will lie in the Department from a decision of the Director or an Appeals Board of the Office of Hearings and Appeals. Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding concerned, and must state with particularity the error claimed. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies.

§ 4.22 Documents.

(a) *Filing of documents.* A document is filed in the Office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by rule, order, or regulation of an Appeals Board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceeding. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an Appeals Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(d) *Record address.* Every person who files a document for the record in connection with any proceeding before the Office of Hearings and Appeals shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the matter is pending of any change in address, giving the docket or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required herein, he will not be entitled to notice in connection with the proceedings.

(e) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

§ 4.23 Transcript of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of

transcripts to be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Hearings and Appeals employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents. If the reporting is done pursuant to a contract between the reporter and the Department of the Interior agency or office which is involved in the proceeding, or the Office of Hearings and Appeals, fees for transcripts will be at rates established by the contract.

§ 4.24 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of an Appeals Board, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in other proceedings, the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision on appeal or after a hearing shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or hearing.

(b) *Official notice.* Official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.

§ 4.25 Oral argument.

The Director or an Appeals Board may, in their discretion, grant an opportunity for oral argument.

§ 4.26 Subpoena power and witness provisions generally.

(a) *Compulsory attendance of witnesses.* The examiner, on his own motion, or on written application of a party, is authorized to issue subpoenas requiring the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. Subpoenas will be issued on a form approved by the Director. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the examiner. A witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) *Application for subpoena.* Where the file has not yet been transmitted to the examiner, the application for a subpoena may be filed in the office of the officer who made the decision appealed from, or in the office of the Bureau of Land Management in which the complaint was filed, in which cases such offices will forward the application to the examiner.

(c) *Fees payable to witnesses.* (1) Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witness appears.

(2) Any witness who attends any hearing or the taking of any deposition at the request of any party to the controversy without having been subpoenaed to do so shall be entitled to the same mileage and attendance fees, to be paid by such party, to which he would have been entitled if he had been first duly subpoenaed as a witness on behalf of such party. This paragraph does not apply to Government employees who are called as witnesses by the Government.

§ 4.27 Standards of conduct.

(a) *Inquiries.* All inquiries with respect to any matter pending before the Office of Hearings and Appeals shall be directed to the Director, the Chief Hearing Examiner, or the Chairman of the appropriate Board.

(b) *Ex parte communications.* There shall be no communication between any party and a member of the Office of Hearings and Appeals concerning the merits of a proceeding, or an appeal, unless such communication (if written) is also furnished to the other party, or (if oral) is made in the presence of the other party. The Board shall refuse to receive, except as part of the appeals record, any information having a substantial bearing upon an appeal from persons who do not represent a party in the appeal but have an interest in the decision to be rendered.

(c) *Disqualification.* An examiner or Board member shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If, prior to a decision of an examiner or an Appeals Board, there is filed in good faith by a party an affidavit of personal bias or disqualification with substantiating facts, and the examiner or Board member concerned does not withdraw, the Board or the Director, as appropriate, shall determine the matter of disqualification.

§ 4.28 Interlocutory appeals.

There shall be no interlocutory appeal from a ruling of an examiner unless permission is first obtained from an Appeals Board and an examiner has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

§ 4.29 Remands from courts.

Whenever any matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate Appeals Board a report recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

§ 4.30 Information required by forms.

Whenever a regulation of the Office of Hearings and Appeals requires a form approved or prescribed by the Director, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

Subpart C—Special Rules Applicable to Contract Appeals

AUTHORITY: The provisions of this Subpart C also issued under authority of 5 U.S.C. sec. 301.

[Cross reference: See Subpart A for the authority, jurisdiction and membership of the Board of Contract Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Contract Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B.]

GUIDELINES

§ 4.100 Guidelines.

(a) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue.

(b) Emphasis is placed upon the sound administration of the rules in this subtitle in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay. Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where it has authority to extend time limitations, the Board may extend them in appropriate circumstances, on good cause shown. Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties as soon as appropriate notices of appearance have been filed with the Board.

RULES

PRELIMINARY PROCEDURES

§ 4.101 Who may appeal.

Any contractor may appeal to the Board of Contract Appeals, Office of Hearings and Appeals, from decisions

of contracting officers of any bureau or office of the Department of the Interior, or their authorized representatives or other authorities, on disputed questions, under contract provisions requiring the determination of such appeals by the head of the agency or his duly authorized representative or Board.

§ 4.102 Appeals; how taken.

(a) *Notice of appeal.* Notice of an appeal must be in writing (a suggested form of notice appears herein following § 4.128). The original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract.

(b) *Contents of notice of appeal.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the Department's bureau or office cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an authorized officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 4.107 may be filed with the notice of appeal, or the contractor may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 4.103 Action by the contracting officer.

(a) *Transmittal of appeal.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or the date of receipt, if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the Board by certified mail. At the same time, he shall notify the Department's Office of the Solicitor, in accordance with instructions of the Solicitor, that the appeal has been received in order that a Department counsel may be appointed.

(b) *Compilation and transmittal of appeal file.* Following receipt of a notice of appeal, or advice that an appeal has been filed, the contracting officer shall promptly, and in any event within 35 days, compile and transmit to the Board the appeal file (copies of all documents pertinent to the appeal). The contracting officer shall forward a duplicate copy of the appeal file to the Department Counsel.

(1) The appeal file shall include the following:

(i) The findings of fact and the decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits, or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(c) *Providing appellant opportunity to comment on appeal file.* At the time of transmittal of the appeal file to the Board, the contracting officer shall notify the appellant, provide him with a listing of its contents, and allow him to examine the file at the office of the contracting officer, at the office of the Board, or at a suitable alternative departmental office, for the opportunity of satisfying himself as to its contents, and furnishing any additional documentation he deems pertinent to the appeal. With his transmittal to the Board, the contracting officer shall certify that the appellant has been provided with the above-described listing.

§ 4.104 Board action upon receipt of appeal file.

Upon receipt by the Board of the notice of appeal (whether from the contracting officer or appellant), the Board will promptly advise the contractor of receipt and docketing of the notice of appeal and the Board will furnish the contractor a copy of the rules in this part. In the event the Board receives a notice of appeal which was not filed with the contracting officer, a copy shall be promptly transmitted to the latter by the Board.

§ 4.105 Dismissal for lack of jurisdiction.

Any motion challenging the jurisdiction of the Board shall be filed promptly. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board has authority to raise at any time and on its own motion the issue of its jurisdiction to conduct a proceeding and may afford the parties an opportunity to be heard thereon.

§ 4.106 Appearance by counsel for the Government.

Department counsel designated by the Solicitor of the Department to represent the agencies, bureaus, and offices cognizant of the disputes brought before the Board shall file notices of appearance with the Board and shall notify the appellant or his attorney that they represent the Government.

§ 4.107 Pleadings.

(a) Complaint: Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Letter size paper should be used for the complaint and for all other papers filed with the Board. A copy of the complaint will be served by the appellant upon the Department counsel, or if the latter's identity and address are not yet known, upon the Solicitor, U.S. Department of the Interior, C between 18th and 19th Streets NW., Washington, DC 20240, and service shall be in accordance with § 4.117. Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the Department counsel shall be so notified.

(b) Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims, as appropriate. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.117. Should the answer not be received within 30 days, the Board may, in its discretion enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 4.108 Amendments of pleadings or record.

(a) The Board may, in its discretion, upon its own initiative or upon application by a party, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file described in § 4.103 (b) (1) are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 4.109 Hearing—election.

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon

which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

§ 4.110 Prehearing briefs.

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 4.109. In the absence of a Board requirement therefor, either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party as previously arranged.

§ 4.111 Prehearing or presubmission conference.

Whether the case is to be submitted without a hearing, or heard pursuant to §§ 4.118 through 4.123, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or examiner of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute;

(e) Such other matters as may aid in the disposition of the appeal.

Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or the Board examiner. This writing shall thereafter constitute part of the record.

§ 4.112 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to § 4.114. Such wavier shall not affect the other party's rights under § 4.109. In the event of such election (see the time limitations for election in § 4.109), the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

§ 4.113 Accelerated procedure.

When a very strong showing is made that there is a reason (e.g., hardship to the contractor) for utilization of an accelerated procedure, the Board will undertake to issue an appeal decision on an expedited basis, without regard to the normal position of the appeal on the docket. Under this accelerated procedure, the case will be further expedited if the parties elect to waive pleadings and elect to waive a hearing, thus submitting the matter for decision on the record. In all other respects these rules will apply.

§ 4.114 Settling of the record.

(a) A case submitted on the record pursuant to § 4.112 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of transcript, or upon receipt of briefs when briefs are to be submitted. At any time prior to the date that a case is ready for decision, either party, upon notice to the other, may supplement the record with documents and exhibits deemed relevant and material by the Board. The Board upon its own initiative may call upon either party, with appropriate notice to the other, for evidence deemed by it to be relevant and material. The weight to be attached to any evidence of record will rest within the sound discretion of the Board. Either party may at any stage of the proceeding, on notice to the other party, raise objection to material in the record or offered into the record, on the grounds of relevancy and materiality.

(b) The Board record shall consist of the appeal file described in § 4.103(b)(1) and any additional material, pleadings, prehearing briefs, record of prehearing, or presubmission conferences, depositions, interrogatories, admissions, transcripts of hearing, hearing exhibits, and posthearing briefs, as may thereafter be developed pursuant to these rules. In deciding appeals the Board in addition to considering the Board record may take official notice of facts within general knowledge.

(c) This record will at all times be available for inspection by the parties at an appropriate time and place. In the interest of convenience, prior arrangements for inspection of the file should be made with the Recorder of the Board. Copies of material in the record may be furnished to appellant as provided in part 2 of this subtitle.

§ 4.115 Depositions.

(a) *When permitted.* After an appeal has been docketed, the Board may, for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for the purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(b) *Orders on depositions.* The time, place, and manner of taking depositions shall be governed by orders of the Board.

(c) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instance, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases otherwise heard on the record, the Board may, on motion of either party and in its discretion, receive depositions as evidence to supplement the record.

(d) *Expenses.* All expenses of taking the deposition of any person shall be borne by the party taking that deposition, except that the other party shall be entitled to copies of the transcript of the deposition only upon paying therefor.

§ 4.116 Interrogatories to parties; inspection of documents; admission of facts.

For good cause shown, the Board may permit a party to serve written interrogatories upon the opposing party, order a party to produce and permit inspection and copying or photographing of designated documents relevant to the appeal, or permit the serving on the opposing party of a request for admission of facts. Such permission will be granted and orders entered as are consistent with the objective of securing just and prompt determination of appeals.

§ 4.117 Service of papers.

A copy of all pleadings, briefs, or other papers addressed to the Board, except the appeal file, shall be served on the other party at the time of filing with the Board. Service of papers may be made personally or by mailing same in a sealed envelope addressed to the other party. When a party is represented by an attorney, certificates of mailing (or stating that personal service was made) should be provided to the Board.

HEARINGS

§ 4.118 Hearings; where and when held.

Hearings may be held in Arlington, Va., or upon timely request and for good cause shown, the Board may in its discretion set the hearing on an appeal at a location other than Arlington, Va. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and for good cause shown, the Board may in its discretion advance a hearing.

§ 4.119 Notice of hearings.

The parties shall be given at least 15 days' notice of the time and place set for hearings. In scheduling hearings, the

Board will give due regard to the desires of the parties, and to the requirement for just and prompt determination of appeals. Receipt of a notice of hearing shall be promptly acknowledged by the parties. A party failing to acknowledge a notice of hearing shall be deemed to have consented to the indicated time and place of hearing.

§ 4.120 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 4.112. The Board shall advise the absent party of the content of the proceedings had and that he has 5 days from the receipt of such notice within which to show cause why the appeals should not be decided on the record made.

§ 4.121 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate in the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 4.122 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath the presiding Board member or examiner shall call to the attention of the witness the provisions of title 18, United States Code, sections 287 and 1001, prescribing penalties for knowlingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 4.123 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Board member or examiner at the conclusion of the hearing.

DECISIONS

§ 4.124 Decisions.

Decisions of the Board will be made upon the record, as described in § 4.114. Copies thereof will be forwarded simultaneously to both parties by certified mail.

MOTIONS FOR RECONSIDERATION

§ 4.125 Motions for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon in support of the motion, and shall be filed within 30 days from the date of the receipt of a copy of the Board's decision by the party filing the motion. Reconsideration of a decision, which may include a hearing or rehearing, may be granted if, in the judgment of the Board, sufficient reason therefor appears.

DISMISSAL WITHOUT PREJUDICE

§ 4.126 Dismissal without prejudice.

In certain cases, appeals docketed before the Board reach a stage where the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the inability to take action upon the appeal has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeal from its docket without prejudice to its restoration when the cause of delay has been removed, and when the parties have complied with conditions specified by the Board in its dismissal order.

SANCTIONS

§ 4.127 Sanctions.

In the event of failure of a party to comply with a request of the Board for production of documents or other material, or to make available an officer, director, official, or employee of such party, or failure to answer written interrogatories or questions on oral examination without showing just cause or excuse for such failure to the Board, the Board may (a) decide the fact or issue relating to the material which the Board has requested to be produced, or relating to what might have been elicited from the person whose testimony was requested, in accordance with the claim of the other party or in accordance with other evidence available to the Board; (b) dismiss all or part of an appeal in appropriate circumstances; or (c) make such other ruling as the Board determines is just and proper.

REMANDS FROM COURTS

§ 4.128 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court. To the extent the court's directive and time limitations will permit, such orders will conform to the rules in this part.

APPENDIX I—NOTICE OF APPEAL

BOARD OF CONTRACT APPEALS,
Office of Hearings and Appeals,
U.S. Department of the Interior,
4015 Wilson Boulevard,
Arlington, VA 22203.

_____
(Date)

_____
(Name of Contractor)

_____
(Address)

Contract No._____
(Invitation No.)
Specifications No._____

_____
(Name and Location of Project)

_____
(Name of Bureau or Office)

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____, by

_____
(Name of Contracting Officer)

The decision or findings of fact is erroneous because:

(State specific facts and circumstances and the contractual provisions involved.)

_____
(Signature)

_____
(Title)

Subpart D—Special Rules Applicable to Proceedings in Indian Probate, Including Hearings and Appeals

AUTHORITY: The provisions of this Subpart D issued under secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1012, 1022; 25 U.S.C. 372, 373, 374, 373a, 373b.

[Cross reference: See Subpart A for the authority, jurisdiction and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Indian Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B]

SCOPE OF REGULATIONS; DEFINITIONS; GENERAL AUTHORITY OF EXAMINERS

§ 4.200 Scope of regulations.

The regulations in this subpart govern the procedures in settlement of trust estates of deceased Indians who die possessed of trust property, except deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and the members of any tribe organized under 25 U.S.C. sec. 476 (1964), to the extent that the constitution, bylaws, or charter of such tribe may be inconsistent with this subpart.

§ 4.201 Definitions.

As used in this subpart:

(a) The term "Secretary" means the Secretary of the Interior or his authorized representative;

(b) The term "Board" means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by Examiners on petitions for rehearing or reopening, and allowance of attorney fees;

(c) The term "Commissioner" means the Commissioner of Indian Affairs or his authorized representative;

(d) The term "Superintendent" means the Superintendent or other officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority;

(e) The terms "agency" and "Indian agency" mean the Indian agency or any other designated office in the Bureau of Indian Affairs having jurisdiction over trust property;

(f) "Hearing Examiner" (hereinafter called Examiner) means any employee of the Office of Hearings and Appeals upon whom authority has been conferred by the Secretary to conduct hearings in accordance with the regulations in this subpart;

(g) The term "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative;

(h) The term "Department" means the Department of the Interior;

(i) The term "parties in interest" means any presumptive or actual heir, any beneficiary under a will, and any party asserting a claim against a deceased Indian's estate;

(j) The term "minor" means an individual who has not reached his majority as defined by the laws of the State where the deceased's property is situated;

(k) The words "child" or "children" include adopted child or children;

(l) The words "will" and "last will and testament" include codicils thereto;

(m) The term "trust property" means real or personal property title to which is in the United States for the benefit of an Indian. In this subpart "restricted property" (real or personal property held by an Indian which he may not alienate without the consent of the Secretary or his authorized representative) is treated as if it were trust property, and conversely trust property is treated as restricted property.

§ 4.202 General authority of Examiners.

Examiners shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§ 4.205(b) and 4.271; approve or disapprove wills of deceased Indians disposing of trust property; and allow or disallow creditors' claims against estates of deceased Indians.

§ 4.203 Determinations as to nonexistent persons and other irregularities of allotments.

(a) Examiners shall hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an Examiner determines under paragraph (a) of this section that a trust patent did issue to an existing person or that separate persons did receive the allotments under consideration and any one of them is deceased, without having had his estate probated, he shall proceed as provided in § 4.202.

(c) If an Examiner determines under paragraph (a) of this section that a person did not exist or that there were more than one allotment issued to the same persons, by reason of unexplained abeffect, giving notice thereof to parties in interest as provided in § 4.240(b).

§ 4.204 Presumption of death.

(a) Examiners shall receive evidence on and determine the issue of whether persons, by reason of unexplained absence, are to be presumed dead.

(b) If an Examiner determines that an Indian person possessed of trust property is to be presumed dead, he shall proceed as provided in § 4.202.

§ 4.205 Escheat.

Examiners shall determine whether Indian holders of trust property have died intestate without heirs and—

(a) With respect to trust property other than on the public domain, shall order the escheat of such property in accordance with 25 U.S.C. sec. 373a (1964).

(b) With respect to trust property on the public domain, shall submit to the Board of Indian Appeals the records thereon, together with their recommendations as to the disposition of said property under 25 U.S.C. 373b (1964).

§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, Examiners shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of United States citizenship are of a class as to whose property the Government's suspervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

§ 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it shall develop that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the Examiner upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the Examiner may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers shall supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the Examiner shall issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order shall be construed as any other order of distribution establishing title in heirs and devisees and shall not be construed as a partition or sale transaction within the provisions of Part 121, Title 25, Code of Federal Regulations. If land titles are to be transferred, the necessary deeds shall be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the Examiner shall settle the issues and enter his order as if no agreement had been attempted.

(d) Examiners are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

COMMENCEMENT OF PROBATE PROCEEDINGS

§ 4.210 Commencement of probate.

(a) Within the first 7 days of each month, each Superintendent shall prepare and furnish to the Examiner of the appropriate district a list of the names of all Indians not previously reported by him who died leaving trust property under his jurisdiction.

(b) Within 90 days of receipt of notice of death of an Indian who died owning trust property, the Superintendent having jurisdiction thereof shall commence the probate of the trust estate by filing with the appropriate Examiner all data shown in the records relative to the family of the deceased and his property. The data shall include but is not limited to:

(1) A copy of the death certificate or its equivalent;

(2) Data for heirship findings and family history, certified by the Superintendent, on a form approved by the Director, Office of Hearings and Appeals, such data to contain:

(i) The facts and alleged facts of deceased's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs and other known parties in interest, including known creditors;

(iii) Information on whether the relationship of the probable heirs to the deceased arose by marriage, blood, or adoption;

(iv) The names, relationships to the deceased, and last known addresses of beneficiaries and attesting witnesses when a will or purported will is involved; and

(v) If will beneficiaries are not probable heirs of the deceased, the names of the tribes in which they are members;

(3) A certified inventory of the trust real and personal property wherever situated, in which the deceased had any right, title or interest at the time of his death (including all moneys and credits in a trust status whether in the form of bonds, undistributed judgment funds, or any other form and the source of each fund in the account), showing both the total estimated value of the real property and the estimated value of the deceased's interest therein, and the amount and names and addresses of parties having an approved incumbrance against the estate;

(4) The original and copies of all wills in the Superintendent's custody, if any; the original and copies of codicils to and revocations of wills, if any; and any paper, instrument, or document that purports to be a will;

(5) The Superintendent shall transmit to the Examiner all creditors' and other claims which have been filed and, thereafter, he shall transmit all additional claims immediately upon the filing thereof.

§ 4.211 Notice.

(a) An Examiner may receive and hear proofs at a hearing to determine the heirs of a deceased Indian or probate his will only after he has caused notice of the time and place of the hearing to be posted at least 20 days in five or more conspicuous places in the vicinity of the designated place of hearing, and he may cause postings in such other places and reservations as he deems appropriate. A certificate showing the date and place of posting shall be signed by the person or official who performs the act.

(b) The Examiner shall serve or cause to be served a copy of the notice on each party in interest reported to the Examiner and on each attesting witness if a will is offered:

(1) By personal service in sufficient time in advance of the date of the hearing to enable the person served to attend the hearing; or

(2) By mail, addressed to the person at his last known address, in sufficient time in advance of the date of the hearing to enable the addressee served to attend the hearing. The Examiner shall cause a certificate, as to the date and manner of such mailing, to be made on the record copy of the notice.

(c) All parties in interest, known and unknown, including creditors, shall be bound by the decision based on such hearing if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. As to those not within the vicinity of the place of posting, a rebuttable presumption of actual notice shall arise upon the mailing of such notice at a reasonable time prior to the hearing, unless the said notice is returned by the postal service to the Examiner's office unclaimed by the addressee.

§ 4.212 Contents of notice.

(a) In the notice of hearing, the Examiner shall specify that at the stated time and place he will take testimony to determine the heirs of the deceased person (naming him) and, if a will is offered for probate, testimony as to the validity of the will describing it by date. The notice shall name all known presumptive heirs of the decedent, and, if a will is offered for probate, the beneficiaries under such will and the attesting witnesses to the will. The notice shall cite this subpart as the authority and jurisdiction for holding the hearing, and shall inform all persons having an interest in the estate of the decedent, including persons having claims or accounts against the estate, to be present at the hearing or their rights may be lost by default.

(b) The notice shall state further that the hearing may be continued to another time and place. A continuance may be announced either at the original hearing by the Examiner or by an appropriate notice posted at the announced place of hearing on or prior to the announced hearing date and hour.

DEPOSITIONS, DISCOVERY, AND PREHEARING CONFERENCE

§ 4.220 Production of documents for inspection and copying.

(a) At any stage of the proceeding prior to the conclusion of the hearing, a party in interest may make a written demand, a copy to be filed with the Examiner, upon any other party to the proceeding or upon a custodian of records on Indians or their trust property, to produce for inspection and copying or photographing, any documents, papers, records, letters, photographs, or other tangible things not privileged, relevant to the issues which are in the other party's or custodian's possession, custody, or control. Upon failure of prompt compliance, the Examiner may issue an appropriate order upon a petition filed by the requesting party. At any time prior to closing the record, the Examiner upon his own motion, after notice to all parties, may issue an order to any party in interest or custodian of records for the production of material or information not privileged, and relevant to the issues.

(b) Custodians of official records shall furnish and reproduce documents, or permit their reproduction, in accordance with the rules governing the custody and control thereof.

§ 4.221 Depositions.

(a) *Stipulation.* Depositions may be taken upon stipulation of the parties. Failing an agreement therefor, depositions may be ordered under paragraphs (b) and (c) of this section.

(b) *Application for taking deposition.* When a party in interest files a written application, the Examiner may at any time thereafter order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a hearing. The application shall be in writing and shall set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of that person, qualified under paragraph (d) of this section to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which shall be at least 20 days after the date of the filing of the application; and

(4) The reasons why such deposition should be taken.

(c) *Order for taking deposition.* If after examination of the application the Examiner determines that the deposition should be taken, he shall order its taking. The order shall be served upon all parties in interest and shall state:

(1) The name of the deponent;

(2) The time and place of the examination which shall not be less than 15 days after the date of the order except as stipulated otherwise; and

(3) The name and address of the officer before whom the examination is to be made. The officer and the time and place need not be the same as those requested in the application.

(d) *Qualifications of officer.* The deponent shall appear before the Examiner or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(e) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or someone in his presence. An applicant who requests the taking of a person's deposition shall make his own arrangements for payment of any costs incurred.

(f) *Submission to witness; changes; signing.* When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and shall be read to or by him, unless such examination and reading are waived by the deponent or by all other parties in interest. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then

be signed by the deponent, unless the parties in interest by stipulation waive the signing, or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent, the officer shall sign it and state on the record the fact of the waiver, or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; the deposition may then be used as fully as though signed, unless the Examiner holds that the reason given for refusal to sign requires rejection of the deposition in whole or in part.

(g) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and shall personally deliver or mail the same by certified or registered mail to the Examiner.

(h) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section may be used in a hearing if the Examiner finds that the witness is absent and his presence cannot be readily obtained, that the evidence is otherwise admissible, and that circumstances exist that make it desirable in the interest of fairness to allow the deposition to be used. If a deposition has been taken, and the party in interest on whose application it was taken refuses to offer the deposition, or any part thereof, in evidence, any other party in interest or the Examiner may introduce the deposition or any portion thereof on which he wishes to rely.

§ 4.222 Written interrogatories; admission of facts and documents.

At any time prior to a hearing and in sufficient time to permit answers to be filed before the hearing, a party in interest may serve upon any other party in interest written interrogatories and requests for admission of facts and documents by filing such application and requests with the Examiner, who shall thereupon transmit a copy to the party in interest for whom they are intended. Such interrogatories and requests for admissions shall be drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing. Answers shall be served upon the Examiner within 15 days from the date of service of such interrogatories or within such other period of time as may be agreed upon by the parties or prescribed by the Examiner. A copy of the answers shall be transmitted by the Examiner to the party propounding the interrogatories. Within 10 days after service of written interrogatories are made upon him, a party in interest so served may serve cross-interrogatories for answer by the witness to be interrogated.

§ 4.223 Objections to and limitations on production of documents, depositions, and interrogatories.

The Examiner, upon motion timely made by any party in interest, proper notice, and good cause shown, may direct that proceedings under §§ 4.220, 4.221, and 4.222 shall be conducted only under, and in accordance with, such limitation as he deems necessary and appropriate as to documents, time, place, and scope. The Examiner may act on his own motion only if undue delay, dilatory tactics, and unreasonable demands are made so as to delay the orderly progress of the proceeding or cause unacceptable hardship upon a party or witness.

§ 4.224 Failure to comply with orders.

In the event of the failure of a party to comply with a request for the production of a document under § 4.220; or on the failure of a party to appear for examination under § 4.221 or on the failure of a party to respond to interrogatories or requests for admissions under § 4.222; or on the failure of a party to comply with an order of the Examiner issued under § 4.223 without, in any of such events, showing an excuse or explanation satisfactory to the Examiner for such failure, the Examiner may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the Examiner; or

(b) Make such other ruling as he determines just and proper.

§ 4.225 Prehearing conference.

The Examiner may, upon his own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

HEARINGS

§ 4.230 Examiner; authority and duties.

The authority of the Examiner in all hearings in estate proceedings includes, but is not limited to, authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas under the provisions of 25 U.S.C. 374 (1964) upon his own initiative or within his discretion upon the request of any party in interest, to any person whose testimony he believes to be material to a hearing. Upon the failure or refusal of any person upon whom a subpoena shall have been served to appear at a hearing or to testify, the Examiner may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness;

(c) To permit any party in interest to cross-examine any witness;

(d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;

(e) To rule upon offers of proof and receive evidence;

(f) To take and cause depositions to be taken and to determine their scope; and

(g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

§ 4.231 Hearings.

(a) All testimony in Indian probate hearings shall be under oath and shall be taken in public except in those circumstances which in the opinion of the Examiner justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings shall be recorded verbatim and transcribed and made a part of the record.

(c) The record shall include a showing of the names of all parties in interest and of attorneys who attended such hearing.

§ 4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the Examiner's supervision as to the extent and manner of presentation of such evidence.

(b) The Examiner may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any particular form being within the discretion of the Examiner, taking into consideration all the circumstances of the particular case.

§ 4.233 Proof of wills, codicils, and revocations.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The Examiner may in any case require evidence in addition to that offered by the parties in interest.

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of itsexecution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of _____ } ss.
County of _____ }

I, _____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____

----------; that on the ____ day of ----------, 19____, I requested ---------- ---------- to prepare a will for me; that the attached will was prepared and I requested ---------- and ---------- to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

Testator/Testatrix

We, ---------- and ---------- ----------, each being first duly sworn, on oath, depose and state: That on the ____ day of ----------, 19____, ---------- a member of the ---------- Tribe of Indians of the State of ----------, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to before me this ____ day of ----------, 19____, by ---------- ---------- testator/testatrix, and by ---------- and ---------- ---------- attesting witnesses.

(Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the Examiner may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the Examiner may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing shall make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The Examiner may call witnesses and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the Examiner may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he shall specify whether such costs shall be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of administration so allowed shall have a priority for payment greater than that for any creditor claims allowed, except the probate fee. Upon receipt of such order, the Superintendent shall pay said sums immediately from the estate account, if such funds are insufficient, then out of the funds as they accrue to such account with the proviso that such cost shall be paid in full with a later allocation against the interest of a party, if such was ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the Examiner has rendered his decision, the Examiner may upon his own motion or upon motion of any party in interest schedule a supplemental hearing if he deems it necessary. The notice shall set forth the purpose of the supplemental hearing and shall be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the Examiner may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event the records shall clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the hearing, the Examiner shall make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including a transcript of testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and appraisements of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship finding and family history;

(10) The decision and the Examiner's notice thereof; and

(11) Any other material or documents deemed material by the Examiner.

(b) The Examiner shall lodge the original record with the designated title plant in accordance with § 120.1 of Title 25 of the Code of Federal Regulations; a duplicate copy shall be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies.

DECISIONS

§ 4.240 Decision of Examiner and notice thereof.

(a) The Examiner shall decide the issues of fact and law involved in the proceedings and shall incorporate in his decision:

(1) In all cases, the names, birth dates, relationships to the decedent, and shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.

(2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.

(b) When the Examiner issues a decision, he shall issue a notice thereof to all parties who have on claim any interest in the estate and shall mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision shall not become final and no distribution shall be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in § 4.241. If a petition for rehearing is not filed or not timely filed within such time, the Examiner shall notify the Superintendent in writing to make distribution.

§ 4.241 Rehearing.

(a) Any person aggrieved by the decision of the Examiner may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the Superintendent a written petition for rehearing. Such a petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new testimony is to be. It shall also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The Superintendent, upon receiving a petition for rehearing, shall promptly forward it to the Examiner. The Superintendent shall not pay claims or distribute the estate while such petition is pending unless otherwise directed by the Examiner.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the Examiner shall issue an order denying the petition and shall set forth

therein his reasons therefor. He shall furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the Examiner shall cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. The Examiner shall allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition. The Examiner shall then reconsider, with or without hearing as he may determine, the issues raised in the petition; he may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(d) Upon entry of a final order the Examiner shall lodge the complete record relating to the petition with the title plant designated under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(e) Successive petitions for rehearing are not permitted, and, except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the Examiner's jurisdiction shall have terminated upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein shall be construed as a bar to the remand of a case by the Board for further hearing or rehearing after appeal.

(f) At the time the final decision is entered following the filing of a petition for rehearing, the Examiner shall direct a notice of such action with a copy of the decision to the Superintendent and to the parties in interest and shall mail the same by regular mail to the said parties at their addresses of record.

(g) No distribution shall be made under such order for a period of 60 days, or any extension thereof, following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as herein provided. If a notice of appeal is not filed, or not timely filed, the Examiner shall notify the Superintendent in writing to make distribution as ordered.

§ 4.242 Reopening.

(a) Within a period of 3 years from the date of a final decision issued by an Examiner or by the Board but not thereafter except as provided in §§ 4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition shall be addressed to the Examiner and filed at his headquarters. A copy of such petition shall be furnished also by the petitioner to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations shall be under oath and supported by affidavits.

(b) If the Examiner finds that proper grounds are not shown, he shall issue an order denying the petition and setting forth the reasons for such denial. Copies of the Examiner's decision shall be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(c) If the petition appears to show merit, the Examiner shall cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. Such persons may resist such petition by filing answers, cross-petitions, or briefs. Such filings shall be made within such reasonable time periods as the Examiner specifies. The Examiner shall then reconsider, with or without hearing as he may determine, prior actions taken in the case and may either adhere to, or modify, or vacate the original decision. Copies of the Examiner's decision shall be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(d) To prevent manifest error an Examiner may reopen a case within a period of 3 years from the date of the final decision, after due notice on his own motion, or on petition of an officer of the Bureau of Indian Affairs. Copies of the Examiner's decision shall be mailed to all parties in interest and to the Superintendent.

(e) The Examiner may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(f) The Examiner shall lodge the record made in disposing of a reopening petition with the title plant designated under § 4.236(b) and shall furnish a duplicate record thereof to the Superintendent.

(g) No distribution shall be made under a decision issued pursuant to paragraph (b), (c), or (d) of this section for a period of 60 days, or any extension thereof, following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party. If a notice of appeal is not filed, or not timely filed, the Examiner shall notify the Superintendent in writing to proceed as directed by the decision.

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, and if it shall appear to the Examiner that there exists a possibility for correction of a manifest injustice, he shall forward the petition to the Board of Indian Appeals with a showing as to all intervening rights and a recommendation as to the action to be taken. The Board may, in its discretion, exercise the power reserved to the Secretary in § 1.2 of Title 25 of the Code of Federal Regulations, and waive or make an exception to the 3-year limitation contained in this section. If the Board shall determine that a reopening appears proper, then the petition may be remanded to the Examiner with instructions for further proceedings.

CLAIMS

§ 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian shall be filed with either the Superintendent or the Examiner prior to the first hearing. If a claim is not filed prior to the conclusion of the first hearing, it shall be forever barred.

(b) The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(c) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an Examiner's interim order.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments shall not be allowed.

§ 4.251 Priority of claims.

After allowance of the costs of administration, including the probate fee, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as otherwise provided in paragraph (b) of this section:

(1) Claims for expenses for last illness not in excess of $500, and for funeral expenses not in excess of $500;

(2) Claims of unsecured indebtedness to the United States or any of its agencies;

(3) Claims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations;

(4) Claims of general creditors, including that portion of expenses of last

illness not previously authorized in excess of $500 and that portion of funeral charges not previously authorized in excess of $500.

(b) The preference of the probate fee and of other claims may be deferred, in the discretion of the Examiner, in making adjustments or compromises beneficial to the estate.

(c) No claims of general creditors shall be allowed if the value of the estate is $2,500 or less and the decedent is survived by a spouse or by one or more minor children. In no event shall claims be allowed in an aggregate amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to findings made under § 4.206, then the Examiner may in his discretion prorate all claims and reduce the allowance thereof on a ratio comparable with that existing between the total value of the estate and the value of that portion which is to lose its trust character.

§ 4.252 Property subject to claims.

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

WILLS

§ 4.260 Making of; approval of as to form; and revocation of.

(a) An Indian of the age of 21 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will at an Indian agency, the Superintendent shall forthwith transmit such will to the Secretary. The Secretary shall approve or disapprove the form of the will and then return it to the Superintendent with appropriate instructions and comments. A will shall be held in absolute confidence, and no person other than the testator shall admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart shall be deemed to be revoked by operation of the law of any State.

§ 4.261 Anti-lapse provisions.

When an Indian testator devises or bequeaths trust property to any of his lineal descendants, mother or father, brothers or sisters, either of the whole or half-blood or their issue, and the devisee or legatee dies before the testator, leaving lineal descendants, such decendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood.

§ 4.262 Felonious taking of testator's life.

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, shall take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation shall vest and be determined as if the person convicted never existed, notwithstanding § 4.261.

CUSTODY AND DISTRIBUTION OF ESTATES

§ 4.270 Custody and control of trust estates.

The Superintendent may assume custody or control of all trust personal property of a deceased Indian and he may take such action, including sale thereof, as in his judgment is necessary for the benefit of the estate, the heirs, legatees, and devisees, pending entry of the decision provided for in § 4.240, § 4.241, or § 4.296 or decisions in the settlement of the estate as provided for in § 4.271. All expenses, including expenses of roundup, branding, care, and feeding of livestock, shall be a proper charge against the estate and may be paid by the Superintendent from those funds of the deceased that are under his control, or from the proceeds of a sale of the property or a part thereof.

§ 4.271 Summary distribution.

When an Indian dies intestate leaving only trust personal property or cash of a value of less than $1,000, the Superintendent shall assemble the apparent heirs and hold an informal hearing to determine the proper distribution thereof. In the absence of the Superintendent, the Examiner in his discretion may act. A memorandum covering the hearing shall be retained in the agency files showing the date of death of the decedent, the date of hearing, the persons notified and attending the amount on hand, and the disposition thereof. In the disposition of such funds, the Examiner or Superintendent shall dispose of creditors' claims as provided in § 4.251. The Superintendent shall credit the balance, if any, to the legal heirs.

§ 4.272 Omitted property.

(a) When, subsequent to the issue of a decision under § 4.240 or § 4.296, it is found that trust property or interest therein belonging to a decedent has not been included in the inventory, the inventory can be modified either administratively by the Commissioner of the Bureau of Indian Affairs or by a modification order prepared by him for the Examiner's approval and signature to include such omitted property for distribution pursuant to the original decision. Copies of such modifications shall be furnished to the Superintendent and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the Commissioner of the Bureau of Indian Affairs shall notify the Examiner who shall proceed to hold hearings if necessary and shall issue a decision under § 4.240. The record of any such proceeding shall be lodged with the title plant designated under § 4.236(b).

§ 4.273 Improperly included property.

When, subsequent to a decision under § 4.240 or § 4.296, it is found that property has been improperly included in the inventory of an estate, the inventory shall be modified to eliminate such property. Copies of such modification shall be furnished to the Examiner, the Superintendent, and all those persons who share in the estate. The record of any such proceeding shall be lodged with the title plant designated under § 4.236(b).

§ 4.274 Distribution of estates.

(a) Upon receipt of written authorization therefor from the Examiner, the Superintendent shall pay allowed claims and distribute the estate and take all necessary action directed in the decision.

(b) The Superintendent may not pay claims nor make distribution of an estate during the pendency of proceedings under § 4.241 or § 4.242 unless the Examiner orders otherwise in writing. The Board may, at any time, authorize the Examiner to issue interim orders for payment of claims or for partial distribution during the pendency of proceedings on appeal.

MISCELLANEOUS

§ 4.280 Probate fees.

Upon a determination of the heirs to any trust or restricted Indian property of the value of $250 or more or to any allotment, or after approval of any will disposing of such trust or restricted property, the following fees shall be paid (a) by the heirs, or (b) by the beneficiaries under the will, or (c) from the estate of the decedent, or (d) from the proceeds of the sale of the allotment, or (e) from any trust funds belonging to the estate of the decedent:

On estates appraised at:	
$250 and not exceeding $1,000	$20
Over $1,000 and less than $2,000	25
$2,000 and not exceeding $3,000	30
Over $3,000 and not exceeding $5,000	50
Over $5,000 and not exceeding $7,500	65
Over $7,500	[1] 75

[1] 45 Stat. 992; 25 U.S.C. sec. 377 (1964).

§ 4.281 Claims for attorney fees.

(a) Attorneys representing Indians in proceedings under these regulations may be allowed fees therefor by the Examiner.

At the Examiner's discretion such fees may be chargeable against the interests of the party thus represented, or where appropriate, they may be taxed as a cost of administration. Petitions for allowance of fees shall be filed prior to the close of the last hearing and shall be supported by such proof as is required by the Examiner. In determining attorney fees, consideration shall be given to the fact that the property of the decedent is restricted or held in trust and that it is the duty of the Department to protect the rights of all parties in interest.

(b) Nothing herein shall prevent an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing an attorney's fees is subject to a petition for rehearing and to an appeal.

§ 4.282 Guardians for incompetents.

Minors and other legal incompetents who are parties in interest shall be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the Examiner.

APPEALS TO THE BOARD OF INDIAN APPEALS

§ 4.290 Who may appeal.

Any party in interest aggrieved by the action taken by an examiner on a petition for rehearing or on a petition for reopening shall have a right of appeal to the Board of Indian Appeals. The scope of the review on appeal shall be limited to those issues which were before the Examiner when he ruled upon the petition for rehearing or reopening.

§ 4.291 Appeals; how taken.

(a) *Notice of appeal.* The applicant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the office of the Examiner who issued the decision being appealed, within 60 days (or any authorized extension of such period) after the date of the mailing of the notice of the decision being appealed. The notice of appeal shall indicate that an appeal is thereby intended and shall give a concise but complete statement of the legal grounds upon which the appeal is based. One amendment to the notice of appeal may be permitted if filed within 10 days of the original filing. Any amendment shall be signed also by the appellant or by his attorney or other qualified representative.

(b) *Service of copies of notice of appeal.* The appellant shall hand deliver, or forward by certified mail, to the Examiner, the original and one copy of the notice of appeal and any amendment thereto, and in a like manner, one copy of the notice and of any amendment to the Board. It is a jurisdictional requirement that, at the time of filing the original notice, he shall forward copies of the notice of appeal by regular mail or otherwise to all Superintendents named on the Examiner's notice of decision, to all parties who share in the estate under the decision being appealed, and to all other parties who have appeared of record. The notice of appeal shall have attached thereto a certificate if filed by an attorney of record, or an affidavit if filed by a non-attorney, setting forth the names of parties served and the last known address of each to whom the notice was mailed. Any amendments to the notice of appeal shall be served on the same parties in like manner, and similar evidence of service must be filed with regard thereto.

(c) *Action by Examiner.* The Examiner receiving the notice of appeal shall forthwith advise the Board if the notice was not timely filed, and he shall file the original as a part of the record. He shall instruct the Superintendent to forthwith return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f), to the title plant designated under § 4.236(b) where the same shall be compared with and made identical to the original within 5 days. Thereafter, the duplicate shall be made available for inspection of the parties either at the title plant or at the office of the Superintendent as they may request.

§ 4.292 Appeal file.

The appeal file shall include the full record unless, by stipulation filed with the notice, the parties shall specify only a part thereof.

§ 4.293 Notice of transmittal of appeal file.

The original appeal file shall be immediately forwarded to the Board by certified mail with a return card requested, with a letter of transmittal, a copy of which shall be addressed and mailed to the appellant or his attorney. The said copy shall constitute a notice of the transmittal of the said file. Thereafter, the file may be examined at the title plant or in the office of the Superintendent; any objection or request to supplement the file shall be filed with the Board within 15 days of the date of the transmittal letter. Upon failure to file such objection or a request to have the file supplemented, it will be conclusively presumed that the same is acceptable to the appellant. The appellee shall have an additional 15 days in which to file his objection to the file or to request that it be supplemented. On his failure to file such an objection or request, it will be conclusively presumed that the same is satisfactory to the appellee.

§ 4.294 Docketing.

Following receipt by the Board of the appeal file, it shall be promptly, and in any event within 10 days, docketed and all of the following parties advised of its docketing: The appellant, the Examiner whose decision is being appealed, and all interested parties as shown by the record on appeal. Said notice shall further advise the appellant and all other parties of the time limitations within which briefs may be filed as set forth herein.

§ 4.295 Pleadings.

(a) The appellant may file a brief or other written statement of his contentions and supporting authorities, all hereinafter called brief, within 30 days of the mailing of the notice of docketing. He shall serve a copy of said brief upon all other interested parties or their counsel and a certificate or an affidavit to that effect shall be filed with said brief. Opposing parties or their counsel shall have 30 days from the date of filing of appellant's brief with the Board in which to file any answer briefs, copies of which shall also be served upon the appellant or his counsel and all other parties in interest not joining in said answer brief, and a certificate or an affidavit to that effect shall be filed concurrently with the Board.

(b) Appellant shall have 15 days from the date of filing of answer briefs in which to reply to any new issues raised, but he shall not raise any new issues therein. A certificate or an affidavit showing service of said briefs upon all opposing parties or their counsel shall be filed concurrently therewith. Except by special permission of the Board, no other briefs will be allowed on appeal.

§ 4.296 Decisions.

Decisions of the Board will be made in writing. Copies thereof will be forwarded simultaneously to all parties concerned, to the Examiner, the Superintendent, the Commissioner, the title plant designated under § 4.236(b), and to such other persons as the Board in its discretion deems appropriate. The Examiner shall issue any implementing or supplemental order which may be necessary in accordance with the Board's decision and shall notify the same parties who received the decision of the Board and the title plant designated under § 4.236(b).

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

[Cross reference: See Subpart A for the authority, jurisdiction and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B.]

APPEALS PROCEDURES

APPEALS PROCEDURES; GENERAL

§ 4.400 Definitions.

As used in this subpart:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Bureau" means Bureau of Land Management.

(c) "Board" means the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The terms "office" or "officer" as used in this subpart include "Board" where the context requires.

(d) "Examiner" means a hearing examiner in the Office of Hearings and Appeals, Office of the Secretary, appointed under section 3105 of Title 5 of the United States Code.

§ 4.401 Documents.

(a) *Grace period for filing.* Whenever a document is required under this subpart to be filed within a certain time

and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 of Chapter II of this Title 43 of the Code of Federal Regulations except § 1853.7(c).

(b) *Transferees and encumbrancers.* Transferees and encumbrancers of land the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) Wherever the regulations in this subpart require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgment of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed except that proof of service of a notice of appeal should be filed in the office of the officer to whom the appeal is made, if the proof of service is filed later than the notice of appeal.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by post office of an undelivered registered or certified letter.

§ 4.402 Summary dismissal.

An appeal to the Board will be subject to summary dismissal by the Board for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

APPEALS TO THE BOARD OF LAND APPEALS

§ 4.410 Who may appeal.

Except as otherwise provided in Group 2400 of Chapter II of this Title 43 of the Code of Federal Regulations, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or of an examiner, except a decision which has been approved by the Secretary, shall have a right to appeal to the Board.

§ 4.411 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make. This paragraph does not apply to grazing appeals filed pursuant to § 1853.7(a) of Chapter II of this Title 43 of the Code of Federal Regulations.

(b) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

§ 4.412 Statement of reasons, written arguments, briefs.

If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203) within 30 days after the notice of appeal was filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in § 4.402, unless the delay in filing is waived as provided in § 4.401(a). In any case the appellant will be permitted to file with the Board additional statements of reasons and written arguments or briefs within the 30-day period after he filed the notice of appeal.

§ 4.413 Service of notice of appeal and of other documents.

The appellant must serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on each adverse party named in the decision appealed from, in the manner prescribed in § 4.401(c), not later than 15 days after filing the document. Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 4.402. Proof of such service as required by § 4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.

§ 4.414 Answers.

If any party served with a notice of appeal wishes to participate in the proceedings on appeal, he must file an answer within 30 days after service on him of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal. If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them. The answer must state the reasons why the answerer thinks the appeal should not be sustained. Answers must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203) and must be served on the appellant, in the manner prescribed in § 4.401(c), not later than 15 days thereafter. Proof of such service as required by § 4.401(c), must be filed with the Board (see address above) within 15 days after service. Failure to answer will not result in a default. If an answer is not filed and served within the time required, it may be disregarded in deciding the appeal, unless the delay in filing is waived as provided in § 4.401(a).

ACTIONS BY BOARD OF LAND APPEALS

§ 4.415 Request for hearings on appeals involving questions of fact.

Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to an examiner for such a hearing. Such a request must be made in writing and filed with the Board within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an examiner for a hearing on an issue of fact. If a hearing is ordered, the Board will specify the issues upon which the hearing is to be held and the hearing will be held in accordance with §§ 4.430 to 4.439, and the general rules in Subpart B of this part.

HEARINGS PROCEDURES

HEARINGS PROCEDURES; GENERAL

§ 4.420 Applicability of general rules.

To the extent they are not inconsistent with these special rules, the general rules of the Office of Hearings and Appeals in Subpart B of this part are also applicable to hearings procedures.

§ 4.421 Definitions.

As used in this subpart:

(a) "Secretary" means the Secretary of the Interior or his authorized representatives.

(b) "Director" means the Director of the Bureau of Land Management, the Associate Director or an Assistant Director.

(c) "Bureau" means Bureau of Land Management.

(d) "Board" means the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The terms "office" or "officer" as used in this subpart include "Board" where the context requires.

(e) "Examiner" means a hearing examiner in the Office of Hearings and Appeals, Office of the Secretary, appointed under section 3105 of title 5 of the United States Code.

§ 4.422 Documents.

(a) *Grace period for filing.* Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph has no application to Subpart 1853 of Chapter II of this Title 43 of the Code of Federal Regulations except § 1853.7(c) and does not apply to requests for postponement of hearings under §§ 4.452–1 and 4.452–2.

(b) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) Wherever the regulations in this subpart require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) In any case service may be proved by an acknowledgement of service signed by the person to be served. Personal service may be proved by a written statement of the person who made such service. Service by registered or certified mail may be proved by a post-office return receipt showing that the document was delivered at the person's record address or showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address or because delivery was refused at that address or because no such address exists. Proof of service of a copy of a document should be filed in the same office in which the document is filed.

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by the post office of an undelivered registered or certified letter.

(d) *Extensions of time.* The Manager or the Examiner, as the case may be, may extend the time for filing or serving any document in a contest.

§ 4.423 Subpoena power and witness provisions.

The examiner is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821.

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

§ 4.430 Prehearing conferences.

(a) The examiner may, in his discretion, on his own motion or motion of one of the parties or of the Bureau direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The examiner shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the examiner unless modified for good cause, by subsequent order.

§ 4.431 Fixing of place and date for hearing; notice.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau.

§ 4.432 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if times does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 4.433 Authority of the Examiner.

The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery in accordance with the act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102–106), to administer oaths, to call and question witnesses, to make proposed findings of fact and to take such other actions in connection with the hearing as may be prescribed by the Board in referring the case for hearing. The issuance of subpoenas, the attendance of witnesses, and the taking of depositions shall be governed by § 4.423, and § 4.26 of the general rules of Subpart B of this part.

§ 4.434 Conduct of hearing.

So far as not inconsistent with the prehearing order, the examiner may seek to obtain stipulations as to material facts. Unless the examiner directs otherwise,

the appellant will present his evidence on the facts at issue following which the other parties and the Bureau of Land Management will present their evidence on such issues.

§ 4.435 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The examiner may question any witnesses. Documentary evidence may be received if pertinent to any issue. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the examiner. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 4.436 Reporter's fees.

Reporter's fees shall be borne by the Bureau.

§ 4.437 Copies of transcript.

Each party shall pay for any copies of the transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

§ 4.438 Summary of evidence.

The parties and the Bureau may, with the consent of the examiner, agree that a summary of the evidence approved by the examiner may be filed in the case in lieu of a transcript. In such case the examiner will prepare the summary or have it prepared and upon agreement of the parties make it a part of the case record.

§ 4.439 Action by Examiner.

Upon completion of the hearing and the incorporation of the summary or transcript in the record, the examiner will send the record and proposed findings of fact on the issues presented at the hearing to the Board. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Board such briefs or statements as they may wish respecting the facts developed at the hearing.

CONTEST AND PROTEST PROCEEDINGS

§ 4.450 Private contests and protests.

§ 4.450–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the act of May 14, 1880, as amended (43 U.S.C. 185), or the act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

§ 4.450–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 4.450–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the proper land office (see § 1821.2–1 of Chapter II of this Title 43 of the Code of Federal Regulations). The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 4.422(c), in the office where the complaint was filed within 30 days after service.

§ 4.450–4 Complaints.

(a) *Contents of complaint.* The complaint shall contain the following information, under oath:

(1) The name and address of each party interested;

(2) A legal description of the land involved;

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest, in such land;

(4) A statement in clear and concise language of the facts constituting the grounds of contest;

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so;

(6) A statement that the proceeding is not collusive or speculative but is instituted and will be diligently pursued in good faith;

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated;

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant; and

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the Manager, Examiner, Director, Board or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the examiner permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

(e) *Waiver of issues.* Any issue not raised by a private contestant in accordance with the provisions of paragraph (b) of this section, which was known to him, or could have been known to him by the exercise of reasonable diligence, shall be deemed to have been waived by him, and he shall thereafter be forever barred from raising such issue.

§ 4.450–5 Service.

The complaint must be served upon every contestee. If the contestee is of record in the land office, service may be made and proved as provided in § 4.422 (c). If the person to be served is not of record in the land office, proof of service may be shown by a written statement of the person who made personal service, by post office return receipt showing personal delivery, or by an acknowledgment of service. In certain circumstances, service may be made by publication as provided in paragraph (b)(1) of this section. When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the legal guardian or committee, if there be one, of such infant or person of unsound mind; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of § 4.450–4 (a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived as to such answering contestee.

(b) *Service by publication*—(1) *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the Manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for 5 successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with paragraph (b)(3) of this section.

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the Manager or the Director of the Bureau of Land Management as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

§ 4.450–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450–5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 4.450–7 Action by Manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the Manager will decide the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the Manager will refer the case to an examiner upon determining that the elements of a private contest appear to have been established.

§ 4.450–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The examiner may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 4.451 Government contests.

§ 4.451–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 4.451–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) A Government contest complaint will not be insufficient and subject to dismissal for failure to name all parties interested, or for failure to serve every party who has been named.

(c) No filing fee or deposit toward reporter's fee shall be required of the Government.

(d) Any action required of the contestant may be taken by any authorized Government employee.

(e) The statements required by § 4.450–4(a) (5) and (6) need not be included in the complaint.

(f) No posting of notice of publication on the land in issue shall be required of the Government.

(g) Where service is by publication, the affidavits required by § 4.450–5(b)(1) need not be filed. The contestant shall file with the Manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to the filing of the statement.

(h) In lieu of the requirements of § 4.450–5(b)(3)(ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by certified mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(i) The affidavit required by § 4.450–5(c)(3) need not be filed.

(j) The provisions of paragraph (e) of § 4.450–4(e) shall be inapplicable.

§ 4.452 Proceedings before the examiner.

§ 4.452–1 Prehearing conferences.

(a) The Examiner may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The simplification of the issues, (2) the necessity of amendments to the pleadings, (3) the possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (4) the limitation of the number of expert witnesses, and (5) such other matters as may aid in the disposition of the proceedings.

(b) The Examiner shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the Examiner unless modified for good cause, by subsequent order.

§ 4.452–2 Notice of hearing.

The examiner shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted.

§ 4.452–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the Examiner at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a

postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the Examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 4.452–4 Authority of Examiner.

The Examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by §§ 4.423 and 4.26 of the general rules in Subpart B of this part.

§ 4.452–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the Examiner may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 4.452–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The Examiner may question any witness. Documentary evidence may be received if pertinent to any issue. The Examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the Examiner. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an Examiner sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 4.452–7 Reporter's fees.

(a) The Government agency initiating the proceedings will pay all reporting fees in hearings in Government contest proceedings, in hearings under the Surface Resources Act of 1955, as amended, in hearings under the Multiple Mineral Development Act of 1954, as amended, where the United States is a party, and in hearings under the Mining Claims Rights Restoration Act of 1955, regardless of which party is ultimately successful.

(b) In the case of a private contest, each party will be required to pay the reporter's fees covering the party's direct evidence and cross-examination of witnesses, except that if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(c) Each party to a private contest shall be required by the Examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits shall be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (b) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's fee. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

§ 4.452–8 Findings and conclusions; decision by examiner; submission to Board for decision.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the Examiner, considering the number and complexity of the issues and the amount of testimony, to submit to the Examiner proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the Examiner shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The Examiner may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The Examiner will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

(c) The Board may require, in any designated case, that the Examiner make only a recommended decision and that the decision and the record be submitted to the Board for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (b) of this section. The Board shall then make the initial decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the Examiner.

§ 4.452–9 Appeal to Board.

Any party, including the Government, adversely affected by the decision of the Examiner may appeal to the Board as provided in § 4.410, and the general rules in Subpart B of this part. No further hearing will be allowed in connection with the appeal to the Board but the Board, after considering the evidence, may remand any case for further hearing if it considers such action necessary to develop the facts.

GRAZING PROCEEDINGS (INSIDE GRAZING DISTRICTS)

§ 4.470 Cross reference.

For special procedural rules applicable to hearings, appeals and protests in Grazing Proceedings (Inside Grazing Districts), see Subpart 1853 of Chapter II of this Title 43 of the Code of Federal Regulations. Subpart A of this part and all of the general rules in Subpart B of this part not inconsistent with the special procedural rules in Subpart 1853 of Chapter II are also applicable to hearings, appeals and protests in Grazing Proceedings (Inside Grazing Districts).

Subpart F—Special Rules Applicable to Mine Health and Safety Hearings and Appeals

AUTHORITY: The provisions of this Subpart F issued pursuant to sec. 508, Public Law 91–173; 83 Stat. 803; and sec. 9, Public Law 89–577, 80 Stat. 777; 30 U.S.C. § 728.

[Cross reference: See Subpart A for the authority, jurisdiction and membership of the Board of Mine Operations Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Mine Operations Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see Subpart B.]

MINE HEALTH AND SAFETY HEARINGS AND APPEALS

§ 4.500 Jurisdiction.

(a) The Board of Mine Operations Appeals, under the direction of a Board Chairman, is authorized to exercise, pursuant to regulations published in the FEDERAL REGISTER, the authority of the Secretary under the Federal Coal Mine Health and Safety Act of 1969 pertaining to:

(1) Applications for review of withdrawal orders; notices fixing a time for abatement of violations of mandatory health or safety standards; discharge or acts of discrimination for invoking rights under the Act, and entitlement of miners to compensation;

(2) Assessment of civil penalties for violation of mandatory health or safety standards or other provisions of the Act;

(3) Applications for temporary relief in appropriate cases;

(4) Petitions for modification of mandatory safety standards;

(5) Appeals from orders and decisions of hearing examiners; and

(6) All other appeals and review procedures cognizable by the Secretary under the Act.

(b) The Board is authorized to exercise, pursuant to regulations published in the FEDERAL REGISTER, the authority of the Secretary under the Federal Metal and Nonmetallic Mine Safety Act of 1966 to review withdrawal orders.

(c) In the exercise of the foregoing functions the Board is authorized to cause investigations to be made, order hearings, and issue orders and notices as deemed appropriate to secure the just and prompt determination of all proceedings. Decisions of the Board on all matters within its jurisdiction shall be final for the Department.

PROCEDURES UNDER FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

§ 4.505 Cross reference.

For regulations applicable to procedures under the Federal Coal Mine Health and Safety Act of 1969, see Part 301 of Title 30 of the Code of Federal Regulations.

PROCEDURES UNDER FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT OF 1966

GENERAL

§ 4.650 Construction of rules.

These rules shall be construed to secure the just, prompt, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

§ 4.651 Definitions.

As used in these rules pertaining to Procedures under Federal Metal and Nonmetallic Mine Safety Act of 1966:

(a) The term "Act" means the Federal Metal and Nonmetallic Mine Safety Act, Public Law 89-577.

(b) The terms "Secretary," "operator," and "mine" have the meanings set forth in section 2 of the Act.

(c) The term "imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm before such condition can be abated.

(d) The term "mandatory safety standard" means the mandatory health and safety standards promulgated by the Secretary pursuant to section 6 of the Act.

(e) The term "issuing office" means that district or subdistrict office of the Bureau of Mines which has issued the order and the initial inspection report.

(f) The term "order" means an order issued under subsection (a) or (b) of section 8 which requires an operator of a mine or his agent to immediately cause all persons except those referred to in subsections 8(a) (1), (2), and (3) to be withdrawn and to be prohibited from entering the area of the mine through which an imminent danger or an unabated violation of a mandatory health or safety standard exists.

(g) The term "initial inspection report" means the report of a single inspector issued pursuant to section 8 of the Act.

(h) The term "review inspectors' report" means the report of a team of three (3) inspectors designated by the Secretary pursuant to section 9 of the Act.

(i) The term "Board" means the Board of Mine Operations Appeals within the Office of Hearings and Appeals, Department of the Interior.

§ 4.652 Public information.

As a matter of public information, a copy of the order, the initial inspection report, the application to review, and the reviewing inspectors' report shall be kept available at the issuing office of the Bureau of Mines for inspection by interested persons.

§ 4.653 Disqualification.

An inspector shall withdraw from a case if he deems himself disqualified because of conflict of interest. If prior to the review inspection there is filed in good faith an affidavit of personal bias or disqualification of an inspector with substantiating facts and the inspector does not withdraw, the Board shall determine the matter of disqualification.

APPLICATION FOR REVIEW OF ORDERS

§ 4.660 Who may file.

The mine operator of the affected mine shall have right to review and appeal an order issued pursuant to the Act.

§ 4.661 Filing.

The application for review with five (5) copies shall be filed at the issuing office of the Bureau of Mines.

§ 4.662 Form of application.

The application for review shall be in writing and shall contain a short and plain statement of the facts and grounds upon which it is based. The application may recite: That the imminent danger as set out in such order did not occur or does not exist at the time of the filing of such application; that violation of mandatory safety standard, as set out in such order, has not occurred; that such violation has been totally or partially abated; that the period of time within which the order was based was not reasonable or that the area of the mine described in such order is not so affected at the time of the filing of such application or such other grounds as the applicant deems to present.

§ 4.663 Reviewing inspectors' report.

(a) Upon receipt by the issuing office of the Bureau of Mines of an application to review an order, three (3) duly qualified inspectors, none of whom shall have made the order or initial inspection report, shall be appointed to make a special inspection of the affected mine and report to the Board thereon. Notification of appointment of reviewing inspectors is to be made to the Board and the operator of the affected mine.

(b) The reviewing inspectors may, in their discretion, hear and receive reports from the mine operator and the miners or their representatives, and include a summary and evaluation of these in the overall inspection report.

(c) As soon as practicable but no later than five (5) working days after the receipt of the application to review an order, the reviewing inspectors' report shall be completed and forwarded to the issuing office. Upon receipt of the reviewing inspectors' report the issuing office shall immediately forward to the Board the original and two (2) copies of: (1) The reviewing inspectors' report; (2) the application for review; (3) the order and the initial inspection report. A copy of the reviewing inspectors' report shall be served on the party seeking review.

§ 4.664 Contents of the reviewing inspectors' report.

(a) The reviewing inspectors' report shall review the findings of the initial inspection report and the objections raised in the application for review and present in detail the findings of the inspectors as to: (1) The existence of an imminent danger or of a violation of a mandatory safety standard at the time of the order; (2) the extent the imminent danger or violation of a safety standard continues unabated; (3) the exact area of the mine affected; (4) in the case of a violation of a mandatory safety standard the reasonableness of time given to abate the violation and a recommendation as to whether and for what period an extension of time should be granted and the reasons therefor.

§ 4.665 Brief or written argument.

(a) Within five (5) days after service of the reviewing inspectors' report, applicant may file a brief or written argument or a notice of intention to file brief or written argument and request for extension of time to file—not to exceed ten (10) days. When a party who filed a notice of intention to file a brief or written argument fails to file a timely brief or argument the Board may proceed to dispose of the appeal pursuant to § 4.666.

(b) Applicant's brief or written argument shall set forth in detail the objections presented in his application, the reasons therefor and the relief requested. The brief may contain tests, reports, evaluations and other matter which applicant deems pertinent.

(c) Three (3) copies of each brief shall be filed with the Board. Copies of briefs shall be legibly typewritten, printed or duplicated.

§ 4.666 Failure to present written argument.

If a brief or other written argument is not received within the prescribed period, or the expiration of any authorized extension, the Board shall decide the appeal on the basis of the record before it.

Subpart G—Special Rules Applicable to Other Appeals and Hearings

AUTHORITY: The provisions of this Subpart G issued also under 5 U.S.C. sec. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct this appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

§ 4.703 Pleadings.

If the parties wish to file briefs, they must comply with the following requirements: Appellant shall have 30 days from the date of filing of this notice of appeal within which to file an opening brief, and the opposing parties shall have 30 days from the date of receipt of appellant's brief in which to file an answering brief. Additional or rebuttal briefs may be filed upon permission first obtained from the Director or the Ad Hoc Appeals Board appointed by him to consider and decide the particular appeal. Copies of all briefs shall be served upon all other parties or their attorneys of record or other qualified representatives, and a certificate to that effect shall be filed with said brief.

§ 4.704 Decisions on appeals.

The Director, or an Ad Hoc Appeals Board appointed by the Director to consider and decide the particular appeal, will review the record and take such action as the circumstances call for. The Director or the Ad Hoc Appeals Board may direct a hearing on the entire matter or specified portions thereof, may decide the appeal forthwith upon the record already made, or may make other disposition of the case. Upon request and for good cause shown, the Director or an Ad Hoc Appeals Board may grant an opportunity for oral argument. Any hearing on such appeals shall be conducted before a hearing examiner of the Office of Hearings and Appeals and shall be governed insofar as practicable by the regulations applicable to other hearings before such examiners.

2. In § 13.6, the references to the Secretary of the Interior or his designee and to the Secretary of the Interior are changed to read Director, Office of Hearings and Appeals, and the regulation is otherwise amended to note the applicability of the general rules of the Office of Hearings and Appeals in Subpart B of Part 4 of this title, and of the special procedural regulations set forth in Subpart G of Part 4 of this title, to appeals filed under that regulation. As amended, § 13.6 reads as follows:

§ 13.6 Appeals.

When the head of an Interior bureau or office has designated a representative to act for him under these regulations, he shall provide for the review of any matter in dispute between such representatives and the State licensing agency. In the event that they fail to reach agreement concerning the granting of a permit for the vending stand, the modification or revocation of a permit, the suitability of the stand location, the assignment of vending proceeds, the methods of operation of the stand, or other terms of the permit (including articles which may be sold) the State licensing agency shall have the right of appeal to the Director, Office of Hearings and Appeals. Such appeals shall be made in writing and shall be filed in the Office of the Director (address: Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203) within 15 days from the date of notice of the decision from which the appeal is taken. Such appeals shall comply otherwise with the general rules of the Office of Hearings and Appeals in Subpart B of Part 4 of this title and with the special regulations set forth in Subpart G of Part 4 of this title applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals. Upon appeal, full investigation shall be undertaken. A full report shall be obtained from the Interior representative from whose decision the appeal is being taken. The State licensing agency shall be given opportunity to present information. The Department of Health, Education, and Welfare shall be available for general advice on program activities and objectives. A final decision of the Director, Office of Hearings and Appeals, or of an Ad Hoc Appeals Board appointed by him to consider the appeal and to issue decision thereon, shall be rendered within ninety days of the filing of the appeal. Notification of the decision on appeal and the action taken thereon shall be given to the State licensing agency and to the Department of Health, Education, and Welfare. The decision of the Director, Office of Hearings and Appeals, or of an Ad Hoc Appeals Board appointed by him, shall be final. At the end of each fiscal year the Office of the Secretary shall report to the Department of Health, Education, and Welfare the total number of applications for vending stand locations received from State licensing agencies, the number accepted, the number denied, and the number still pending.

3. Section 21.8 is amended to read as follows:

§ 21.8 Appeals.

Any determination made pursuant to any of the provisions of this part may be appealed to the Director, Office of Hearings and Appeals, in accordance with the general rules set forth in Subpart B of Part 4 of this title and the special procedural rules in Subpart G of Part 4 of this title, applicable to proceedings in appeals cases which do not lie within the appellate jurisdiction of an established Appeals Board of the Office of Hearings and Appeals.

4. In § 23.12, the reference in paragraph (a) to Office of the Secretary is changed to Office of Hearings and Appeals, the reference in paragraph (b) to Part 1840 is changed to Part 4, and the reference in paragraph (d) to § 1843.5 and Part 1850 is changed to Part 4. As amended, paragraphs (a), (b), and (d) of § 23.12 read as follows:

§ 23.12 Appeals.

(a) A person adversely affected by a decision or order of a district manager or of a mining supervisor made pursuant to the provisions of this part shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, whenever the decision appealed from was rendered by a district manager, or to the Director of the Geological Survey if the decision or order appealed from was rendered by a mining supervisor, and the further right to appeal to the Secretary of the Interior from an adverse decision of the Director of the Geological Survey un-

less such decision was approved by the Secretary prior to promulgation.

(b) Appeals to the Board of Land Appeals shall be made pursuant to Part 4 of this title. Appeals to the Director of the Geological Survey and appeals from his decisions to the Secretary of the Interior shall be made in the manner provided in 30 CFR 221.66.

* * * * *

(d) Hearings to present evidence on an issue of fact before a hearing examiner may be ordered by the Board of Land Appeals or the Director of the Geological Survey, as the case may be, in accordance with the procedure set forth in Part 4 of this title.

[FR Doc.71-5138 Filed 4-14-71;8:45 am]

Chapter I—Bureau of Reclamation, Department of the Interior

PART 230—RECLAMATION OF ARID LANDS BY THE UNITED STATES

Hearings and Appeals Procedures

The purpose of these amendments is to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to appeals taken under these regulations.

1. The table of contents to the regulations under the center heading Appeals from Actions of Project Officials in Charge is amended to read as follows:

Sec.
230.115 Applicable regulations.
230.116 Where appeals may be taken.
230.117 When appeals may be taken.
230.118 Facts to be shown in appeal; action by project official in charge.
230.119 Service of notice.

2. Of the regulations presently contained under the center heading Appeals from Actions of Project Official in Charge, §§ 230.115 through 230.119 are amended and § 230.120 is deleted, to conform with the revised appellate structure in the Department handling such appeals cases. As amended, §§ 230.115 through 230.119 read as follows:

§ 230.115 Applicable regulations.

The rules contained in §§ 230.116 through 230.119 govern the procedure with respect to appeals from actions of project officials in charge. To the extent they are not inconsistent with these special rules, the general rules of the Office of Hearings and Appeals in Subpart B of Part 4 of this title, and the special procedural regulations contained in Subpart G of Part 4 of this title, relating to other appeals and hearings, are also applicable to proceedings on such appeals.

§ 230.116 Where appeals may be taken.

Appeal may be taken from the action of the project official in charge to the Director, Office of Hearings and Appeals.

§ 230.117 When appeals may be taken.

All cases of error or applications for relief should be promptly called to the attention of the project official in charge by the party affected. If the said official in charge decides to deny the request or application, he will serve upon the party aggrieved, personally or by certified or registered mail, notice of his decision. The notice will state the facts, the reason for denying the relief asked, and also that the party aggrieved may appeal to the Director, Office of Hearings and Appeals, within 30 days after receipt of the notice by filing with the official in charge, addressed to the Director, Office of Hearings and Appeals, such appeal.

§ 230.118 Facts to be shown in appeal; action by project official in charge.

The appeal may consist of a written statement addressed to the Director, Office of Hearings and Appeals, setting out clearly and definitely the ground of complaint. The project official in charge will note thereon the date of its receipt in his office and promptly forward the same, with full report, to the Director, Office of Hearings and Appeals, through the appropriate regional director and the Commissioner, Bureau of Reclamation, who will attach any recommendations they care to make. A copy of any recommendations made by such officials must be served on the appellant or his duly authorized representative.

§ 230.119 Service of notice.

In case of service of notice of decision by certified or registered mail, such notice will be mailed to the last known post office address as shown in the record, and evidence of service will consist of the certified or registry return card on which such letter was delivered, or, in case of inability of postal authorities to make delivery, of the returned unclaimed letter. When service is personal, the party making the service will make written statement to that fact, stating time and place of service, or secure written acknowledgement of the person served, and file the same with the project official in charge.

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C. sec. 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4-15-71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

[FR Doc.71-5139 Filed 4-14-71;8:45 am]

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PART 1840—APPEALS PROCEDURES

PART 1850—HEARINGS PROCEDURES

SUBCHAPTER D—RANGE MANAGEMENT (4000)

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

PART 4130—GRAZING ADMINISTRATION (ALASKA)

PART 5490—ACTS SPECIFIC TO ALASKA

PART 5510—FREE USE OF TIMBER

Hearings and Appeals Procedures

The purpose of these amendments is to note the applicability of the Department Hearings and Appeals Procedures in 43 CFR Part 4 to appeals taken under these regulations.

1. The table of contents and the regulations contained in 43 CFR Part 1840 are deleted and the following cross reference is provided to Subpart E of the revised Part 4 of Title 43, Code of Federal Regulations, which contains regulations applicable to appeals procedures in public land matters:

§ 1840.1 Cross reference.

For special procedural rules applicable to appeals from decisions of Bureau of Land Management officers, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see Subpart E of Part 4 of Subtitle A—Office of the Secretary of the Interior, of this Title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart E of Part 4 are also applicable to such appeals procedures.

2. The table of contents and the regulations contained in 43 CFR Subparts 1850, 1851, and 1852 are deleted and the following cross reference is provided to Subpart E of the revised Part 4 of Title 43, Code of Federal Regulations, which contains regulations applicable to hearings procedures in public lands matters:

§ 1850.1 Cross reference.

For special procedural rules applicable to hearings in public lands cases, including both Government and private contest proceedings, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see Subpart E of Part 4 of Subtitle A—Office of the Secretary of the Interior, of this Title 43 of the Code of Federal Regulations. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 not inconsistent with the special rules in Subpart E of Part 4 are also applicable to such hearings, contest, and protest procedures.

3. In § 1853.3, the reference in the last sentence of paragraph (a) to § 1850.0–7 is changed to read § 4.423 in Subpart E of Part 4, this title, and § 4.26 of the general rules of the Office of Hearings and Appeals in Subpart B in Part 4 of this title. As amended, the last sentence of paragraph (a) reads as follows:

§ 1853.3 Authority of examiner.

(a) * * * Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 4.423 in Subpart E of Part 4 of this title, and § 4.26 of the general rules of the Office of Hearings and Appeals in Subpart B in Part 4 of this title, to the extent such regulations are applicable.

* * * * *

4. In the second sentence of paragraph (b) of § 1853.3, the reference to "§ 1852.3–3" is changed to read "§ 4.452–3 in Subpart E of Part 4 of this title".

§ 1853.4 [Amended]

5. In § 1853.4, the reference to "§ 1850.0–6(e)" is changed to read "§ 4.422(c) in Subpart E of Part 4 of this title."

§ 4121.3–3 [Amended]

6. In § 4121.3–3, the reference in the second sentence of paragraph (c) to "Part 1840 of this chapter" is changed to read "Part 4 of this title."

§ 4125.1–3 [Deleted]

7. Part 4120 is amended by deleting § 4125.1–3.

8. Part 4130 is amended by changing the headings to §§ 4131.5–2 and 4132.3 to read as follows:

§ 4131.5–2 Hearings.

* * * * *

§ 4132.3 Protests.

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§ 5490.1–6 [Deleted]

9. Part 5490 is amended by deleting § 5490.1–6.

§ 5511.2–6 [Deleted]

10. Part 5510 is amended by deleting § 5511.2–6.

Because these amendments involve rules of agency organization, procedure and practice, the prior notice, hearing, and effective date provisions of Chapter 5—Administrative Procedure, of title 5 of the United States Code (5 U.S.C sec. 553) are not applicable.

These amendments shall become effective upon the date of publication in the FEDERAL REGISTER (4–15–71).

Dated: April 7, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

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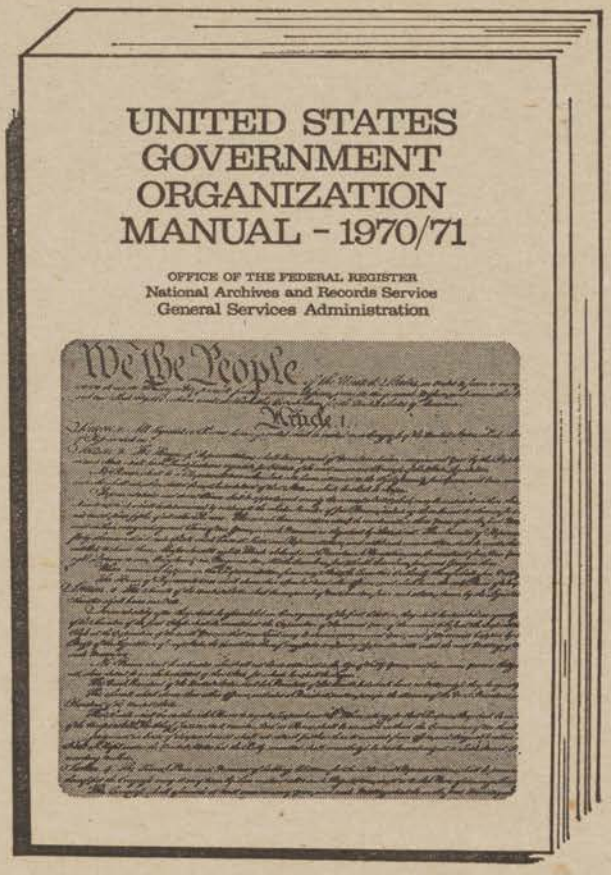

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