federal register

THURSDAY, OCTOBER 28, 1971

WASHINGTON, D.C.

Volume 36 ■ Number 208

Pages 20641–20733

PART I

(Part II begins on page 20729)

HIGHLIGHTS OF THIS ISSUE

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

(Continued inside)

No. 208—Pt. I——1

FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DRUG ABUSE CONTROL—Justice Dept. final order transferring phenmetrazine and its salts and methylphenidate to Schedule II; effective 10–28–71 20686

HERBICIDES—EPA establishment of tolerances (2 documents); effective 10–28–71 ..... 20687, 20688

EQUAL EMPLOYMENT—HUD regulations pertaining to construction contracts; effective 12–31–71 20688

PROCUREMENT—Army Dept. miscellaneous amendments 20677

TELECOMMUNICATIONS—
- FCC amendments relating to licensing of certain microwave radio stations; effective 11–30–71 20694
- FCC notice on requests for waiver of "prime time access rule" 20713

CARGO PERMITS—Customs Bur. proposal relating to special licenses for lading and unlading and for overtime services; comments within 30 days 20697

COAL MINE SAFETY—Interior Dept. proposals on qualification standards for persons performing electrical work in mines and on installation of warning and fire sensor devices (2 documents); comments within 45 days 20698, 20699

GUM NAVAL STORES—USDA proposal on 1972 price support program; comments within 30 days 20700

MOTOR VEHICLE SAFETY—
- DoT suspension of proposed rulemaking regarding standards for jacking systems 20705
- DoT notice of public meeting on 11–11–71 regarding tire identification and recordkeeping regulations 20709

MOTOR COMMON CARRIERS—ICC proposal on extension of credit to shippers; comments within 30 days 20706

ENVIRONMENT—Interior Dept. notice of draft statement relating to proposed Outer Continental Shelf Oil and Gas Lease Sale 20707

NEW DRUGS—FDA conclusions of efficacy of certain drugs used in the relief of nausea and treatment of skin conditions (2 documents) 20708

AIR SAFETY—FAA notice on termination of policy regarding reports of near midair collisions; comments by 12–3–71 20709

AVAILABILITY OF INFORMATION—Occupational Safety and Health Review Comm. notice 20716

WAGE RATES—Labor Dept. notice permitting employment of students at special minimum wages in certain establishments 20716

RELOCATION ASSISTANCE—HUD proposal; comments by 11–29–71 20700

HOSPITALS AND EXTENDED CARE FACILITIES—HEW regulations on fire and safety standards; effective 10–28–71 20675

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.

3 CFR

EXECUTIVE ORDER:
11629 20647

5 CFR

213 (3 documents) 20649
550 20649
733 20649

7 CFR

725 20649
726 20651
855 20666
908 20670
915 20670
PROPOSED RULES:
1438 20700

13 CFR

121 (3 documents) 20671
PROPOSED RULES:
121 20705

14 CFR

39 (3 documents) 20672
71 (6 documents) 20673, 20674
PROPOSED RULES:
71 (4 documents) 20703, 20704

19 CFR

PROPOSED RULES:
4 20697
6 20697

20 CFR

405 20675

21 CFR

121 20685
135 20686
135b 20686
135e 20685
141a 20686
141c 20686
141e 20686
146a 20686
146c 20686
146e 20686
148i 20686
148n 20686
148p 20686
148r 20686
301 20686
308 20686
420 (2 documents) 20687, 20688

24 CFR

8 20688
PROPOSED RULES:
610 20700

30 CFR

90 20696
400 20730
PROPOSED RULES:
75 (2 documents) 20698, 20699
77 20699

32 CFR

591 20677
593 20679
594 20679
595 20682
596 20682
597 20682
598 20683
600 20683
601 20683
602 20684
606 20684
612 20684

38 CFR

13 20676

41 CFR

50-201 20676
101-47 20676

47 CFR

2 20694
21 20694
74 20694
91 20694

49 CFR

PROPOSED RULES:
179 20705
571 (2 documents) 20705
1048 20705
1322 20706

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11629

Delegation of Authority to the Secretary of State to Perform the Function Vested in the President by Article IV of the Convention Between the United States of America and Mexico for the Protection of Migratory Birds and Game Mammals (50 Stat. 1311; TS 912)

By virtue of the authority vested in me by the Constitution and laws of the United States, including section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of State is hereby designated and empowered to perform, without the approval, ratification, or other action of the President, the function vested in the President by Article IV of the Convention between the United States of America and Mexico for the Protection of Migratory Birds and Game Mammals to determine, by common agreement with the President of Mexico, other species of birds which may be added to the list of migratory birds specified in and subject to the protection of the Convention.

SEC. 2. In carrying out his authority under this Order the Secretary of State shall consult with the Secretary of the Interior.

Richard Nixon

THE WHITE HOUSE,
October 26, 1971.

[FR Doc.71-15818 Filed 10-27-71;10:28 am]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that two positions of staff assistant to the Assistant Secretary for Program Policy are excepted under schedule C.

Effective on publication in the FEDERAL REGISTER (10–28–71), subparagraph (34) is added to paragraph (a) of § 213.3312 as set out below.

§ 213.3312 Department of the Interior.

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

(34) Two staff assistants to the Assistant Secretary for Program Policy.

* * * * *

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

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

[FR Doc.71–15656 Filed 10–27–71;8:49 am]

PART 213—EXCEPTED SERVICE

General Services Administration

Section 213.3337 is amended to show that the positions of six members of the Board of Contract Appeals are no longer excepted under schedule C.

Effective on publication in the FEDERAL REGISTER (10–28–71), subparagraph (1) of paragraph (a) of § 213.3337 is revoked.

§ 213.3337 General Services Administration.

(a) *Office of the Administrator.*

(1) [Revoked]

* * * * *

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

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

[FR Doc.71–15655 Filed 10–27–71;8:49 am]

PART 213—EXCEPTED SERVICE

Department of the Navy

Section 213.3108 is amended to show that marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes are excepted under Schedule A.

Effective on publication in the FEDERAL REGISTER (10–28–71), subparagraph (15) is added to paragraph (a) of § 213.3108 as set out below.

§ 213.3108 Department of the Navy.

(a) *General* * * *

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

* * * * *

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

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

[FR Doc.71–15774 Filed 10–27–71;8:52 am]

PART 550—PAY ADMINISTRATION (GENERAL)

Payment of Severance Pay

Section 550.704(a) is amended to provide, for wage employees who regularly alternate between day shifts and shifts paying night differential, that their severance pay shall be based on the tours of duty during the 26 pay periods immediately before separation.

§ 550.704 General provisions.

(a) *Payment of severance pay.* * * *

(3) For an employee who serves in a position in which he regularly alternates between (i) receiving additional annual pay under section 5545(c)(1) of title 5, United States Code, and not receiving such additional annual pay, (ii) receiving a night differential which is considered a part of basic pay and not receiving a night differential which is considered a part of basic pay, or (iii) full-time and part-time tours of duty, the basic pay for the pay period immediately before separation, as required by subparagraph (1) of this paragraph, is the average basic pay for the position for the 26 pay periods immediately before separation, computed on the basis of the basic rate of pay in effect at the time of separation.

* * * * *

(5 U.S.C. sec. 5595, E.O. 11257; 3 CFR 1964–1965 Comp., p. 357)

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

[FR Doc.71–15657 Filed 10–27–71;8:49 am]

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

Participation in Local Elections

The Commission has recently approved Centerville, Ga. and Loudoun County, Va., as areas in which it is in the domestic interest of employees to participate in local elections. Accordingly the list of municipalities in § 733.124 under "In Virginia" and "Other Municipalities" is amended to read as follows:

In Virginia:
Alexandria (Apr. 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1941).
Fairfax County (Nov. 10, 1949).
Town of Fairfax (Feb. 9, 1954).
Falls Church (June 6, 1941).
Herndon (Apr. 7, 1945).
Loudoun County (Oct. 1, 1971).
Portsmouth (Feb. 27, 1958).
Prince William County (Feb. 14, 1967).
Vienna (Mar. 18, 1946).

Other Municipalities:
Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Bremerton, Wash. (Feb. 27, 1946).
Centerville, Ga. (Sept. 16, 1971).
Crane, Ind. (Aug. 3, 1967).
Elmer City, Wash. (Oct. 28, 1947).
Huachuca City, Ariz. (Apr. 9, 1959).
New Johnsonville, Tenn. (Apr. 26, 1956).
Norris, Tenn. (May 6, 1959).
Port Orchard, Wash. (Feb. 27, 1946).
Shrewsbury, N.J. (July 2, 1968).
Sierra Vista, Ariz. (Oct. 5, 1955).
Warner Robins, Ga. (Mar. 19, 1948).

(5 U.S.C. sec. 1308, 3301, 3302, 7301, 7324, 7325, 7327, 42 U.S.C. sec. 2729, E.O. 10577; 3 CFR, 1954–58 Comp.)

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

[FR Doc.71–15658 Filed 10–27–71;8:49 am]

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 7]

PART 725—FLUE-CURED TOBACCO

Subpart—Flue-Cured Tobacco, 1970–71 and Subsequent Marketing Years

MISCELLANEOUS AMENDMENTS

On page 18,000 of the FEDERAL REGISTER of September 8, 1971, there was published a notice of proposed rule making to issue amendments to the regulations pertaining to the identification of marketings of tobacco and the records and reports incident thereto for flue-cured tobacco. Interested persons were given 10 days after publication of such notice in which to submit writen data, views, and recommendations with respect to the proposed regulations to be sure of consideration. No data, views, or recommendations

were submitted pursuant to said notice.

The proposed amendments to the regulations are adopted along with three additions.

The first addition is to amend § 715.95 (d) to eliminate the requirement for Deputy Administrator approval and to eliminate reference to size of error as conditions for not assessing penalty in any case where tobacco in excess of 110 percent of the farm quota was marketed due to an error made by an ASCS employee.

The second addition amends § 725.99 (a)(4) to require only that tobacco sale bills be checked to indicate the form in which tobacco is marketed when marketed in the tied form. This change in procedure is considered desirable since, for all practical purposes, flue-cured tobacco is currently marketed entirely in the untied form. This addition also eliminates the requirement for recording on sale bill the "balance after sale" based on a 110 percent of the farm marketing quota.

The third addition amends § 725.112 (b)(1) to clarify that the warehouseman will not be responsible where penalties are not assessed against the farm operator or other producer in any case involving an error made while the warehouseman was authorized to have possession of the marketing card.

The first amendment herein contains two changes in § 725.95(d). In making determinations of penalties not to be assessed in cases involving errors made on marketing cards by ASCS employees, the requirement has been eliminated for Deputy Administrator approval where the amount of penalty otherwise due exceeds $10 and the reference to size of error as a consideration for not assessing penalty has been withdrawn.

The second amendment provides two changes in § 725.99(a)(4). At auction sales, the requirements have been eliminated that each sale bill be checked to show untied tobacco when tobacco is marketed in the untied form and that the after sale balance be recorded on the sale bill to show the poundage balance based on a 110 percent of the farm marketing quota.

The third amendment provides that under § 725.99(g)(14) the actual weights of tobacco on hand by warehouseman at end of season so obtained through inspection and weighing by ASCS representatives shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if any penalty is due.

The fourth amendment is similar to the third amendment and provides under § 725.100(c)(4) for computation of any penalty due by dealers using actual weights determined by ASCS representatives.

The fifth amendment adds a new § 725.100a to require prior inspection by ASCS employees or other designated representatives of the Department, of dealer purchases of "damaged producer tobacco" where such tobacco is to be resold in the form normally marketed by producers.

The sixth amendment clarifies that under § 725.112(b)(1) the warehouseman would not be responsible for any penalty for producer overmarketings caused by errors made at the warehouse while the warehouseman was authorized to have possession of the marketing card, if such penalty would not have been assessed against the producer.

Since the 1971 crop of flue-cured tobacco is now being marketed, it is essential that farmers, warehousemen, and dealers know the provisions of this amendment as soon as possible. Accordingly, this amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendments are as follows:

1. Section 725.95(d) is amended to read as follows:

§ 725.95 Producers' penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate share.

* * * * *

(d) *Penalties not to be assessed.* Where the operator or another producer on the farm markets a quantity of tobacco above 110 percent of the effective marketing quota for the farm and such overage is found to have been caused by the failure to record or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer on the farm if: (1) For amounts of $10 or less, the county committee, and (2) for amounts above $10, the county committee, with the approval of the State committee, determines that each of the following conditions is applicable: (i) the failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and (ii) the farm operator or another producer on the farm had no knowledge of such failure or error. Overmarketings for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph (d) shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

2. Section 725.99, subdivisions (v) and (x) of paragraph (a)(4) and subparagraph (14) of paragraph (g) are amended to read as follows:

§ 725.99 Warehouseman's records and reports.

(a) *Record of marketing.* * * *

(4) *Tobacco sale bill and daily warehouse sales summary.* * * *

(v) Check block to show tied if tobacco marketed in tied form;

* * * * *

(x) Poundage balance before sale based on 110 percent of farm quota;

* * * * *

(g) *Daily warehouse sales summary.* * * *

(14) At the end of the season, each warehouseman shall: (i) Report on his final MQ–80 for the season the quantity of leaf account tobacco and floor sweeping tobacco, if any, on hand and its location, and (ii) permit its inspection and weighing by a representative of ASCS, and furnish him at that time a certification as to the actual weight of such tobacco. After the weight of such tobacco has been so obtained in this subdivision (ii) of this subparagraph, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

* * * * *

3. Section 725.100(c)(4) would be amended to read as follows:

§ 725.100 Dealer's records and reports.

* * * * *

(c) *Record and report of purchases and resales.* * * *

(4) At the end of the dealer's marketing operations, but not later than March 1, he shall for each kind of tobacco: (i) Show the word "final" on his final report, MQ–79 for the season, (ii) report on such final MQ–79 for the season the quantity of tobacco on hand and its location, and (iii) permit its inspection and weighing by a representative of ASCS, and at that time furnish him a certification as to the actual weight of such tobacco. After the weight of such tobacco has been so determined in subdivision (iii) of this subparagraph, it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

* * * * *

4. A new § 725.100a would be added as follows:

§ 725.100a Dealer purchases of damaged tobacco for later resale.

Any dealer, warehouseman, or other person who plans to purchase tobacco in the form normally marketed by producers for resale that was damaged by such things as, but not limited to fire and water, shall prior to purchase, report such plans to the State ASCS office issuing MQ–79, Dealer Record Book. Such report shall be timely made so as to allow prior inspection for the marketable value of such damaged tobacco, and the weighing and removal of such tobacco to be witnessed by representatives of the State ASCS office. Any damaged tobacco purchased prior to reporting such plans to the State ASCS office and subsequent inspection by an ASCS representative shall be considered excess tobacco if later resold.

5. Section 725.112, subparagraph (b)(1) is amended to read as follows:

§ 725.112 Warehouses authorized to retain producer marketing cards between sales.

* * * * *

(b) *Penalties considered to be the responsibility of warehouseman.* * * *

(1) Overmarketings resulting from errors made at the warehouse in entering

"balance after sale" pounds on the producer's marketing card or failure to deduct pounds sold on the producer's marketing card. Except that no warehouse operator shall be responsible for any penalty under this subparagraph, if such penalty would not have been assessed against the producer in accordance with paragraph (d) of § 725.95.

* * * * *

(Secs. 301, 314, 317, 373, 375, 52 Stat. 38, as amended, 48, as amended, 79 Stat. 66, as amended, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1301, 1314, 1314c, 1373, 1375)

Effective date. Date of publication of this document in the FEDERAL REGISTER (10–28–71).

Signed at Washington, D.C., on October 21, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71–15695 Filed 10–27–71;8:50 am]

PART 726—BURLEY TOBACCO

Subpart—Burley Tobacco, 1971–72 and Subsequent Marketing Years

On pages 18198 through 18212 of the FEDERAL REGISTER of September 10, 1971, there was published a notice of proposed rule making to issue regulations for establishing farm marketing quotas, the issuance of marketing cards, the identification of marketings, the collection and refund of penalties, and records and reports incident thereto for burley tobacco for the 1971–72 and subsequent marketing years.

Interested persons were given 15 days after publication of such notice in which to submit written data, views, and recommendations with respect to the proposed regulations. The data, views, and recommendations which were submitted pursuant to the notice were duly considered within the limits of the Agricultural Adjustment Act of 1938, as amended. The proposed regulations were adopted with the following changes:

1. Inserted §§ 726.71–726.79 [Reserved]" in the table of contents and in the text. These references were not included in the rule making notice.

2. Section 726.80 has been changed to make it clear that in the identification of kinds of tobacco the term "tobacco" with respect to any farm located in an area in which burley tobacco is normally produced shall include all tobacco produced on the farm, excluding other kinds of tobacco subject to marketing quotas.

3. Section 726.89(d) is changed to eliminate the requirement for Deputy Administrator approval and to eliminate reference to size of error as conditions for not assessing penalty in any case when tobacco in excess of 110 percent of the farm quota was marketed due to an error made by an ASCS employee.

4. Section 726.93(a)(4)(vii) is changed to delete the requirement that the balance after sale be recorded on the tobacco sale bill.

5. Section 726.93(b) is changed to permit owner or operator to remove marketing card from warehouse after weigh-in but prior to sale to effect a transfer of quota.

6. Section 726.93(d)(2) is changed to require suspended sales to be cleared within 7 days or on the last auction sale day, whichever comes first.

7. Section 726.93(k) is corrected by inserting a phrase "any damaged tobacco purchased prior to reporting such plans to the State ASCS office" which was inadvertently omitted in the notice of rule making.

8. Section 726.96(b) is changed to require recordkeeping and reporting at end of season of tobacco received by any person engaged in the business of redrying, prizing, or stemming tobacco or storage firms regardless of the quantity. Exception is that such person or firm shall not report tobacco handled for any association operating the price support program, tobacco purchased at auction, or tobacco previously reported on form MQ–79, dealer's record.

9. Other editorial changes of a technical nature are made as appropriate.

10. Authority provision has been added.

Since farmers are now harvesting their tobacco crops in preparation for market, it is essential that these regulations be made effective at the earliest possible date. Accordingly, this document is being made effective upon the date of its publication in the FEDERAL REGISTER (10–28–71).

Signed at Washington, D.C., on October 20, 1971.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

The regulations are as follows:

GENERAL

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

RECORDS AND REPORTS

RESTRICTION ON USE OF DDT AND TDE

(Secs. 301, 312, 313, 314, 316, 318, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 80 Stat. 120, as amended, 52 Stat. 63, as amended, 65, as amended, 66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1301, 1312, 1313, 1314, 1314b, 1314d, 1363, 1372–1375, 1377, 1378. Public Law 92–10 approved April 14, 1971)

§ 726.50 Basis and purpose.

The regulations contained in §§ 726.50 through 726.104 are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), and are applicable to burley tobacco for the 1971–72 and

subsequent marketing years, except that the regulations in Part 724 are applicable for the determination of farm marketing quotas for the 1971–72 marketing year. They govern the establishment of farm marketing quotas, the issuance of marketing cards, the identification of marketings of tobacco, the collection and refund of penalties, and the keeping of records and making of reports incident thereto. The applicability of the regulations for any marketing year subsequent to the 1971–72 marketing year is contingent upon the proclamation of a national marketing quota for such year pursuant to sections 312 and 319(a) of the Act.

§ 726.51 Definitions.

As used in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases defined in this section shall have the meanings herein assigned to them unless the context or subject matter otherwise requires. References contained herein to other parts of this chapter or title shall be construed as references to such parts and any amendments now in effect or later issued. The definitions in Part 719 of this chapter are hereby incorporated in these regulations unless the context or subject matter or the provisions of these regulations otherwise require.

(a) *Act.* The Agricultural Adjustment Act of 1938, as amended.

(b) *Auction sale.* A marketing of tobacco by a sale at public auction through a warehouse in the regular course of business, including sale of all lots or baskets of tobacco at public auction in sequence at a given time.

(c) *Base period.* The 5 calendar years immediately preceding the year for which farm marketing quotas are currently being established.

(d) *Buyers correction account.* The warehouse account of tobacco purchased at auction by the buyer, but not delivered to the buyer, or any tobacco returned by the buyer because of rejection by the buyer, lost ticket, or any other valid reason, which is turned back to the warehouseman and supported by an adjustment invoice from the buyer. This account shall include the pounds and amounts deducted resulting from short baskets and short weights, and pounds and amounts added resulting from long baskets and long weights, which buyers debit or credit to the warehouseman and support with adjustment invoices.

(e) *Current crop.* The crop produced in the current year.

(f) *Dealer or buyer.* A person who engages to any extent in acquiring or selling tobacco in the form normally marketed by producers.

(g) *Director.* The Director, or Acting Director, Commodity Stabilization Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(h) *Effective farm marketing quota.* The current year farm marketing quota plus or minus any temporary adjustments.

(i) *Excess tobacco for a farm.* The quantity of tobacco marketed above 110 percent of the effective farm marketing quota.

(j) *Experimental tobacco.* Tobacco grown by or under the direction of a publicly owned agricultural experiment station for experimental purposes only.

(k) *Farm acreage allotment.* The allotment established for 1970, after any permanent adjustment and prior to any temporary adjustment.

(l) *Farm marketing quota—(1) Old farm.* The pounds determined by multiplying the preliminary farm marketing quota by the national factor, adjusted as required by the minimum provisions, of § 726.57(a), plus any permanent quota adjustment.

(2) *New farm.* The pounds for the farm determined by the country committee, with the approval of the State committee.

(m) *Farm yield.* The farm yield determined as provided in § 726.55 or § 726.65.

(n) *Floor sweepings.* The actual quantity of scraps or leaves of tobacco which accumulate on the warehouse floor in the regular course of business: *Provided,* That floor sweepings above the pounds determined by multiplying 0.0024 by the total first sales of tobacco at auction for the season for the warehouse, shall be deemed to be leaf account tobacco. Floor sweeping tobacco shall be kept separate from any other tobacco when sold.

(o) *Leaf account tobacco.* All tobacco purchased or otherwise acquired by or for the account of a warehouse, and shall include but not be limited to, tobacco from Buyers Corrections Account, sales and resales of such tobacco, floor sweepings purchased from another warehouseman or dealer, and floor sweepings deemed to be leaf account tobacco under paragraph (n) of this section.

(p) *Market.* The disposition of tobacco in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons. "Marketing" and "marketed" shall have corresponding meanings to the term "market."

(q) *Marketing recorder or field assistant.* Any employee of the U.S. Department of Agriculture, or any employee of an Agricultural Stabilization and Conservation Service county (ASCS) office, whose duties involve the preparation and handling of the records and reports pertaining to the identification of marketings of tobacco.

(r) *Marketing year.* The period beginning October 1 of the year in which the tobacco is produced and ending September 30 of the following year.

(s) *New farm.* A farm for which a marketing quota is established in the current year which did not previously have a quota established for the current year.

(t) *Nonauction sale.* Any first marketing of tobacco other than by a sale at auction.

(u) *Old farm—(1) 1971 through 1975 crop years.* A farm which had a 1970 farm acreage allotment or there was burley tobacco planted or considered planted in 1 or more years of the base period.

(2) *1976 or later crop years.* A farm which had burley tobacco planted or considered planted in the base period.

(v) *Overmarketings.* The pounds by which the pounds marketed exceed the effective farm marketing quota.

(w) *Penalty-free carryover tobacco.* The pounds of unmarketed tobacco produced before calendar year 1971 which could have been marketed without penalty during the 1970–71 marketing year.

(x) *Planted or considered planted.* Credit assigned in the current year for a farm with an established farm marketing quota when:

(1) Burley tobacco is planted on the farm,

(2) Quota is: (i) Leased and transferred from the farm, (ii) in the eminent domain pool, or (iii) preserved under conservation programs or practices, as provided in Part 719 of this chapter,

(3) A restrictive lease on federally owned land is in effect prohibiting tobacco production, or

(4) Effective quota is zero because of overmarketings or a violation of regulations.

(y) *Preliminary farm marketing quota—(1) 1971 crop year.* The pounds determined by multiplying the 1970 farm acreage allotment by the farm yield.

(2) *1972 and later crop years.* The farm marketing quota for the preceding year.

(z) *Quota adjustments—(1) Temporary.* (i) Effective undermarketings, (ii) overmarketings from any prior year, (iii) reapportioned quota from eminent domain pool, (iv) quota transferred by lease or by owner, (v) pounds in violation of the regulations for a prior year, and (vi) for 1971 only, pounds of penalty-free carryover tobacco.

(2) *Permanent.* (i) Old farm adjustment from reserve, and (ii) pounds transferred to the farm from the eminent domain pool.

(aa) *Resale.* The disposition by sale, barter, exchange, or gift between living persons, of tobacco which has been marketed previously.

(bb) *Sale day.* The period at the end of which the warehouseman bills to buyers the tobacco purchased by them during such period.

(cc) *Scrap tobacco.* The residue which accumulates in the course of preparing tobacco for market, consisting chiefly of portions of tobacco leaves and leaves of poor quality.

(dd) *Suspended sale.* Any marketing of tobacco at auction for which the sale is not identified by a producer marketing card or a dealer's identification card by the end of the sale day on which such marketing occurred.

(ee) *Tobacco.* Burley tobacco, type 31, as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture.

(ff) *Tobacco available for marketing.* All tobacco produced on a farm which has not been marketed and which has not been disposed of so that it cannot be marketed.

(gg) *Trucker.* A person who trucks or hauls tobacco for producers or other persons.

(hh) *Undermarketings*—(1) *Actual.* The pounds by which the effective farm marketing quota is more than the pounds marketed.

(2) *Effective.* The smaller of actual undermarketings or the sum of the previous year's farm marketing quota plus pounds leased to the farm for the previous year.

(ii) *Warehouseman.* A person who engages in the business of holding sales of tobacco at public auction.

§ 726.52 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* If rounding is prescribed herein, computations shall be carried to two decimal places beyond the number of decimal places required and digits of 50 or less beyond the required number of decimal places shall be dropped; if 51 or more, the last required decimal place shall be increased by 1.

(b) *Yields and quotas.* Yields and quotas shall be determined in whole pounds. For example, 2006.50 equals 2006; and 2006.51 equals 2007.

§ 726.53 Supervisory authority of State ASC committee.

The State committee may take any action required by these regulations which has not been taken by a county committee. The State committee may also correct, or require a county committee to correct, any action taken by a county committee which is not in accordance with these regulations, or require a county committee to withhold taking any action which is not in accordance with these regulations.

§ 726.54 Instructions and forms.

The Director shall cause to be prepared and issued such forms as are necessary, and shall cause to be prepared such instructions with respect to internal management as are necessary for carrying out the regulations in this part. The forms and instructions shall be approved by and the instructions shall be issued by the Deputy Administrator.

§ 726.55 Determining farm yields for old farms for the 1971 crop year.

The farm yield for an old farm including farms reconstituted for the 1971 crop shall be that yield not to exceed 3,500 pounds per acre established as follows:

(a) An average yield per acre for each farm for each year of the period 1966 through 1970 shall be determined by dividing the total pounds of burley tobacco produced on such farm by the total acreage of burley tobacco harvested from such farm for each respective year.

(b) A simple average of the yields per acre for each farm for the 4 highest years of the 5 consecutive crop years beginning with the 1966 crop year shall be determined. If burley tobacco was not produced for at least 4 years of the 5-year period, the average of the yields for the years in which tobacco was produced shall be determined.

(c) If no burley tobacco was produced on the farm in the 5-year period (1966–70), a farm yield for the farm shall be appraised by the county committee taking into consideration (1) the soil and other physical factors affecting the production of tobacco on the farm, and (2) the farm yields determined for other farms on which the soil and other physical factors affecting the production of tobacco are similar.

§ 726.56 Determining preliminary farm marketing quotas.

(a) *Eligibility.* A preliminary farm marketing quota shall be determined for each old farm except as follows:

(1) The farm or all of cropland has gone out of agricultural production and eminent domain procedure of Part 719 of this chapter does not apply.

(2) Quota pooled under the provisions of Part 719 of this chapter has been canceled.

(3) A new farm quota is canceled.

(4) For 1976 and later crop years there was no acreage of burley tobacco planted or considered planted for any year of the base period.

(b) *Determination*—(1) *1971 crop.* A preliminary farm marketing quota shall be that determined by multiplying the 1970 allotment (prior to any reduction for violation of the regulations) by the farm yield.

(2) *1972 and later crop years.* The preliminary farm marketing quota shall be the farm marketing quota established for the preceding year.

§ 726.57 Determining farm marketing quotas and effective farm marketing quotas.

(a) *Farm marketing quotas.* The farm marketing quota shall be determined by multiplying the current year's preliminary farm marketing quota by the national factor for the current year plus permanent quota adjustments. However, for the 1972 and 1973 crop years, the farm marketing quota shall not be less than the smaller of:

(1) One-half acre times the farm yield times one-half the sum of the figure 1 and the national factor for the current year, or

(2) The farm marketing quota for the immediately preceding marketing year times one-half the sum of the figure 1 and the national factor for the current year.

(b) *Effective farm marketing quotas.* The effective farm marketing quota shall be the farm marketing quota plus or minus temporary quota adjustments.

§ 726.58 Determination of undermarketings and overmarketings for farms with quota covered by a cropland adjustment program agreement.

The farm marketing quota established for a farm covered by a cropland adjustment program agreement shall be considered as zero for the purpose of determining undermarketings and overmarketings.

§ 726.59 Determination of farm yields for combined farms for 1972 and later years.

The farm yield for a combined farm shall be the weighted average of the farm yields for the tracts being combined.

§ 726.60 Determination of yields for divided farms for 1972 and later years.

(a) *Contribution method.* Where a tract is separated from the parent farm and the tobacco marketing quota is divided by the contribution method, the farm yield shall be determined as follows:

(1) Where a farm yield was established for the tract prior to the time the tract became part of the parent farm such yield shall be the farm yield for the tract.

(2) Where the tract is one for which a farm yield has never been established and one which was not a separate farm in one or more years of the period 1966 through 1970, the farm yield shall be the same as the farm yield for the parent farm.

(3) Where the tract is (i) one for which a farm yield has never been established, and (ii) one which was a separate farm in 1 or more years of the period 1966–70, the farm yield shall be determined as provided in § 726.55. In determining a farm yield, the yield per acre for the parent farm shall be used for those years of the period 1966–70 the tract was part of the parent farm and the yield per acre for the tract when it was a separate farm shall be used in the remaining years.

(b) *Where the contribution method is not used.* When a farm is divided and the quotas are divided by any method other than the contribution method, the farm yield for such tract shall be the same as the farm yield established for the parent farm.

§ 726.61 Determination of quotas for reconstituted farms for 1972 and later years.

(a) Farm marketing quotas shall be reconstituted pursuant to the provisions of Part 719 of this chapter, except as provided in paragraph (b) of this section.

(b) Where (1) the farm is being divided by the contribution method, (2) a tract was a separate farm during 1 or more years of the 1966–71 period, and (3) such tract did not have a farm marketing quota established for 1972 or a later year, the farm marketing quota shall be determined as follows:

(i) Total the products obtained by multiplying the farm yield determined in accordance with § 726.60 for each tract by such tract's proportionate share of the 1970 allotment for the parent farm. Where the average of the 4 highest years' yields for the 1966–70 period for the divided farm exceeds 3,500 pounds, the average shall be used instead of the farm yield in this computation.

(ii) Determine the tract's proportionate share of the total obtained in subdivision (i) of this subparagraph and use such percentage to prorate the current

year's farm marketing quota and effective farm marketing quota among the divided farms.

§ 726.62 Correction of errors and adjusting inequities in marketing quotas for old farms.

(a) *General.* The farm marketing quota for an old farm may be adjusted to correct an error or adjust an inequity if the county determines, with the approval of a representative of the State committee, that the adjustment is necessary to establish a quota for such farm which is fair and equitable in relation to the quotas for other old farms in the community in which the farm is located. The reserve for adjusting inequities under this paragraph will be prorated to States based on the relationship of the total of the preliminary farm marketing quotas in each State to the national total of preliminary farm marketing quotas. Correction of errors shall be made out of that portion of the national reserve held at the national level.

(b) *Basis for adjustment.* Increases to adjust inequities in quotas shall be made on the basis of the past acreages and yields of tobacco, making due allowances for flood, hail, other abnormal weather conditions, plant bed, and other disease; land, labor, and equipment available for the production of tobacco, crop rotation practices; and the soil and other physical factors affecting the production of tobacco. Not more than 1 percent of the national marketing quota minus that part of the national reserve set aside for establishing new farm marketing quotas shall be made available for adjusting inequities and correction of errors. The total of all adjustments in old farm quotas in any county under this paragraph shall not exceed the pounds apportioned to the county by the State office for such purpose. The sum of adjustments for farms in the county owned, operated, or controlled by State, county, and community committeemen and the county executive director shall not be larger in relation to the sum of the preliminary farm marketing quotas for such farms than the sum of the adjustments for other farms in the county in relation to the preliminary farm marketing quotas for such farms.

(c) *CAP farms.* The quota for a farm under a cropland adjustment program agreement shall be given the same consideration under this paragraph as the quotas for other old farms.

(d) *Approved quota.* Adjustments in a farm quota under this paragraph shall become a part of the farm marketing quota.

§ 726.63 Time for making reduction of marketing quota for violation of the marketing quota regulations for a prior marketing year.

Any reduction made in a farm marketing quota for the current year for any of the reasons provided for in § 726.92 shall be made no later than April 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia; or May 1 of the current year in all other States. If the reduction cannot be made by such dates for the current year, the reduction shall be made in the marketing quota next established for the farm, but no later than by corresponding dates in a later year: *Provided*, That no reduction shall be made in marketing quota for any farm for a violation if the marketing quota for such farm for any prior year was reduced on account of the same violation.

§ 726.64 Marketing quotas and yields for farms acquired under right of eminent domain.

(a) *Marketing quotas.* The transfer of farm marketing quotas for farms acquired by an agency having the right of eminent domain to a pool and reallocation from the pool shall be administered as provided in Part 719 of this chapter, substituting farm marketing quotas for farm acreage allotment.

(b) *Yields for receiving farms.* The farm yield for a farm to which a pooled marketing quota is transferred shall be the yield for the receiving farm before transfer except where the receiving farm is not a tobacco farm. In such case, the farm yield shall be the same as the farm yield for the farm acquired by the agency having the right of eminent domain.

(c) *Undermarketings and overmarketings.* Undermarketings of the farm acquired by eminent domain shall be added to the marketing quota for the receiving farm and overmarketings of the acquired farm shall be subtracted from the marketing quota of the receiving farm. The pooled quota is considered planted while in the pool. Therefore, for the purpose of determining undermarketings during the time the quota is pooled, the effective quota is considered to be zero.

(d) *Release and reapportionment.* The displaced owner of a farm may, not later than April 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia, or May 1 of the current year for all other States, release in writing to the county committee for the current year all or part of the quota for the farm in a pool under Part 719 of this chapter for reapportionment for the current year by the county committee to other farms in the county having quotas for burley tobacco. The county committee may reapportion, not later than May 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia, or June 1 of the current year for all other States, the released quota or any part of it to other farms in the county on the basis of past production of tobacco, land, labor, and equipment available for the production of tobacco, crop rotation practices, and soil and other physical factors affecting the production of tobacco. The marketing quota reapportioned shall not, for purposes of establishing future farm quotas, be considered as planted on the farm to which the quota was reapportioned. No release and reapportionment of quota under this section shall be the result of any private negotiations between individuals. Any quota released shall be released to the county committee and such quota shall be reapportioned only by the county committee.

§ 726.65 Determination of marketing quotas for new farms.

(a) *General.* The marketing quota, other than a quota under § 726.64, for a new farm shall be that marketing quota which the county committee, with approval of the State committee, determines is fair and reasonable for the farm taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided*, That the marketing quota so determined shall not exceed 50 percent of the average of the marketing quotas established for two or more but no more than five old tobacco farms which are similar with respect to land, labor, and equipment available for the production of tobacco, crop rotation practices, and the soil and other physical factors affecting the production of tobacco.

(b) *Eligibility requirements for operator.* A tobacco marketing quota shall not be established for a new farm unless the operator meets each of the following conditions:

(1) *Owner and operator of farm.* The operator must be the sole owner of the farm. However, both husband and wife shall be considered the sole owner and operator of a farm which they own jointly.

(2) *Interest in another farm.* The operator shall not own or operate another farm in the United States with a current year allotment or quota for any kind of tobacco.

(3) *Availability of equipment and facilities.* The operator must own, or have readily available, adequate equipment and other facilities necessary to successfully produce burley tobacco.

(4) *Previous new farm allotment or quota.* Operator must not have been approved for a new farm allotment or quota for any Kind of tobacco in the preceding 3 years.

(5) *Experience.* Operator must have had experience in producing, harvesting, and marketing burley tobacco. Such experience must have been gained:

(i) By being a sharecropper, tenant, or farm operator. (Bona fide tobacco production experience gained by a person as a member of a partnership shall be accepted as experience gained in meeting this requirement.)

(ii) During at least two of the 5 years immediately preceding the year for which the new farm quota is requested. If the operator was in the armed services during the 5-year period, extend the period 1 year for each year of military service during the 5 years. (In no case shall the experience period extend more than 10 years.)

(iii) On a farm having a burley tobacco allotment or quota established for such years.

(6) *Income requirement.* Where the farm is operated by an individual, the

operator must expect to obtain more than 50 percent of his current year income from farming. If operated by a partnership, each partner must expect to obtain more than 50 percent of his current year income from farming. If operated by a corporation, the corporation must have no other major corporate purpose than ownership or operation of such farm, farming must provide its officers and general manager with more than 50 percent of their expected income, salaries and dividends from the corporation shall be considered as income from farming.

(7) *Computing operator's income.* The following shall be considered in computing operator's income.

(i) *Income from farming.* (*a*) The estimated return from home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm shall be included.

(*b*) The estimated return from the production of the requested quota shall not be included.

(ii) *Spouse's income.* The spouse's farm and nonfarm income shall be included in computation when the spouse is also part owner.

(8) *Special provision for low-income farmers.* The county committee may waive the income provisions in this section provided they determine that the farm operator's income, from both farm and nonfarm sources, is so low that it will not provide a reasonable standard of living for the operator and his family, and a State committee representative approves such action. In waiving the income provisions the county committee must exercise good judgment to see that their determination is reasonable in the light of all pertinent factors, and that this special provision is made applicable only to those who qualify. In making their determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family farm income, estimated family off-farm income, number of dependents, and other factors affecting the individual's ability to provide a reasonable standard of living for himself and his family.

(c) *Eligibility requirements for farms.* A marketing quota shall not be established for a new farm unless the farm meets each of the following eligibility conditions:

(1) *Current allotment or quota.* The farm must not have on the date of approval of a new farm quota an allotment or quota for any kind of tobacco.

(2) *Land, soil and topography.* The available land, type of soil and topography of the land on the farm must be suitable for tobacco production. Also, continuous production of tobacco must not result in an undue erosion hazard.

(3) *Eminent domain agency.* The farm cannot include land acquired by an agency having right of eminent domain until 5 years after the former owner was displaced.

(4) *Reconstitution—owner designation.* A farm which includes land which has no quota because the owner did not designate a quota for such land when the parent farm was reconstituted pursuant to Part 719 of this chapter is not eligible for a new farm quota for 5 years beginning with the year the reconstitution became effective.

(d) *Filing applications.* In order to be considered for a new farm quota the farm operator must file a written application at the office of the county committee by February 15 of the calendar year for which the quota is requested.

(e) *Downward adjustment.* The marketing quota established as provided in this section shall be subject to such downward adjustment as is necessary to bring the total of such quotas within the total pounds available for quotas to all new farms.

(f) *Failure to plant.* A new farm quota shall be reduced to zero if no tobacco is planted on the farm the first year.

(g) *False information.* Any new farm quota which was determined by the county committee on the basis of incomplete or inaccurate information knowingly furnished by the applicant shall be canceled by the county committee as of the date the quota was established. Where incomplete or inaccurate information was unknowingly furnished by the applicant, the allotment shall be canceled effective for the current crop year except where the provisions of § 726.66(d) applies.

(h) *New farm yields.* A farm yield shall be established for each new farm for which a farm marketing quota is established under this section. Such yield shall be appraised by the county committee based on farm yields established for similar farms in the area.

§ 726.66 Approval of marketing quotas, and notices to farm operators.

(a) *Review by State committee.* All farm yields and marketing quotas shall be determined by the county committee of the county in which the farm is located and shall be reviewed by a representative of the State committee. The State committee may revise or require revision of any determination of quota or yield made under these regulations. All yields and marketing quotas shall be approved by a representative of the State committee, and no official notice of marketing quota shall be mailed to a farm operator until such marketing quota has been so approved, except that revised notices without such prior approval may be mailed in cases (1) resulting from reconstitutions that do not involve the use of additional marketing quota, or (2) of quota reductions due to failure to return marketing cards where a satisfactory report of disposition of tobacco is not otherwise furnished.

(b) *Notice to farm operator.* An official notice of the effective farm marketing quota shall be mailed to the operator of each farm shown by the records of the county committee to be entitled to a quota. The notice to the operator of the farm shall constitute notice to all persons who as operator, landlord, tenant, or sharecropper are interested in the farm for which the quota is established. Insofar as practicable, all notices shall be mailed in time to be received prior to the date of any tobacco marketing quota referendum. A copy of such notice containing the date of mailing or a printout summary of such data shall be maintained for not less than 30 days in a conspicious place in the county office and shall thereafter be kept available for public inspection in the office of the county committee. A copy of the notice of marketing quota certified as true and correct shall be furnished without charge to any person interested in the farm for which the quota is established.

(c) *Mailing notices.* If the records of the county committee indicate that the marketing quota established for any farm may be changed because of (1) a violation of the marketing quota regulations for a prior marketing year, (2) removal of the farm from agricultural production, (3) division of the farm, or (4) combination of the farm, the mailing of the notice may be delayed: *Provided,* That the notice of marketing quota for any farm shall be mailed no later than April 1 of the current year in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia, or May 1 of the current year in all other States.

(d) *Marketing quota erroneous notice.* If the official notice of marketing quota issued for a farm erroneously stated a marketing quota larger than the correct effective farm marketing quota, the marketing quota shown on the erroneous notice shall be deemed to be the marketing quota and the basis for marketing quota penalty computation for the farm for the current marketing year only, if the county committee determines (with approval of the State executive director) that (1) the error was not so gross as to place the operator on notice thereof, and (2) that the operator, relying upon such notice and acting in good faith, planted tobacco on the farm and was not notified of the correct farm marketing quota prior to planting the tobacco. Undermarketings and overmarketings for farms for which the erroneous notice of marketing quota is applied shall be determined based on the correct effective farm marketing quota for the farm.

§ 726.67 Application for review.

Any producer who is dissatisfied with the farm marketing quota established for his farm may, within 15 days after mailing of the official notice of the farm marketing quota, file application in writing with the county ASCS office to have such quota reviewed by a review committee. The procedure governing the review of farm marketing quotas is contained in Part 711 of this chapter, which is available at the county ASCS office.

§ 726.68 Transfer of burley tobacco farm marketing quotas by lease or by owner.

(a) *Authorization of transfers.* It is hereby determined and found that transfers of burley tobacco farm marketing quotas by lease or by the owner will not impair the effective operation of the burley tobacco marketing quota or price

support program. Accordingly, such transfers of quotas shall be permitted in accordance with the provisions of this section.

(b) *Persons eligible*—(1) *Lease.* Effective beginning with the 1971 crop, the owner and operator (acting together if different persons) of any old farm for which a burley tobacco farm marketing quota is or will be established for the year in which a transfer by lease is to take effect, may transfer all or any part of the farm marketing quota established for such farm to any other owner or operator of a farm in the same county with a current year's farm marketing quota (old or new farm) for burley tobacco for use on such farm. The quota established for a farm as pooled quota under Part 719 of this chapter may be transferred during the 3-year life of the pooled quota.

(2) *By owner.* Effective beginning with the 1971 crop, the owner of any old farm for which burley tobacco farm marketing quota is or will be established for the year in which a transfer by owner is to take effect may transfer all or any part of the farm marketing quota established for such farm to another farm in the same county owned or controlled by such owner.

(c) *Maximum period of transfers.* Transfers of quotas by lease or by owner shall not exceed 5 years.

(d) *Filing and approval of transfer.* The transfer of a farm marketing quota or any part thereof shall not be effective until a copy of the lease agreement, determined to be in compliance with the provisions of this section, is filed with the county committee or designated county office employee at a market town location not later than February 15 of the current marketing year. The county committee may redelegate authority to approve leasing agreements to the county executive director or other county office employee. County office employees in market town locations designated by the State committee shall have authority to approve annual leases and transfers under the terms and conditions of this section even though the farms involved (which must be located in the same county) may be from a different county or State than the county committee supervising the market town location, subject to the review of the county committee for the county where the farms are administratively located.

(e) *Where to file transfer agreement.* Transfer agreements shall be filed with the county committee of the county where the farms are administratively located or with a designated county office employee at a market town location.

(f) *Marketing quota basis for transfer.* Marketing quota, pound for pound, shall be the basis for transfer.

(g) *Limit on amount of quota transferred*—(1) *Transferring farm.* The maximum marketing quota may be transferred from a farm shall be limited to the effective farm marketing quota.

(2) *Receiving farms.* The maximum marketing quota that may be transferred to a farm shall be the smaller of 15,000 pounds, or the pounds determined by subtracting the farm marketing quota established for the farm from the product of the farm yield and 50 percent of the cropland for the farm. The cropland in the farm for the current year for the purposes of such transfer shall be the total cropland as defined in Part 719 of this chapter.

(h) *Transferred quota considered produced on transferring farm.* For purposes of establishing quotas for subsequent years, the quota transferred to a farm shall be considered produced on the farm from which transferred.

(i) *Marketing quota for a new farm.* The marketing quota established for a new farm shall not be transferred to another farm.

(j) *Quotas on land under restrictive lease.* If a farm is federally owned and a lease is in effect restricting the production of burley tobacco, the quota established for such farm is not eligible for transfer.

(k) *Farms under long-term land-use programs.* A transfer of a quota to or from a farm covered by a Cropland Adjustment Program Agreement shall not be approved if the transferring or receiving farm has the quota crop base designated under such program agreement.

(l) *Transfer of pooled quota.* Quota established for a farm as pooled quota under Part 719 of this chapter may be transferred for a term of years not to exceed the remaining number of crop years of the 3-year life of the pooled quota.

(m) *No subleasing.* No transfer shall be made from a farm receiving quota under a transfer agreement for the term of the transfer.

(n) *Limitation on transfer to and from a farm for the same crop year.* No transfer of quota for any crop year shall be made (1) from a farm receiving quota by transfer for such year or (2) to a farm which had quota transferred from it for such year.

(o) *Consent of lienholder.* No transfer of quota other than an annual transfer shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(p) *Recomputation of quota for other than annual transfers.* The quota transferred shall be recomputed and adjusted where appropriate each year the transfer is in effect.

(q) *Zero marketing quota farms.* If the farm marketing quota for a farm for the current crop year is reduced to zero for violation of the tobacco marketing quota regulations, no marketing quota may be transferred to such farm for the current crop year.

(r) *Revised notices.* A revised notice showing the farm marketing quota after transfer shall be issued by the county committee to the operator of each farm involved in the transfer agreement.

(s) *Limited years for owner transfer to operator's farm.* A transfer to a farm controlled but not owned by the applicant shall be approved only if the county committee determines that the applicant will be the operator of the farm to which the transfer is to be made for each year of the period for which the transfer is requested. When the applicant from whom such transfer has been approved no longer is the operator of the receiving farm due to conditions beyond his control, the transfer shall remain in effect unless the transfer is terminated under paragraph (w) of this section. Conditions beyond the operator's control shall include, but not be limited to, death, illness, incompetency, or bankruptcy of such person.

(t) *Marketing quota after transfer.* The effective quota for a farm after transfer shall be the effective quota for the term of the transfer subject to adjustment under paragraph (p) of this section and shall be used for the purposes of determining (1) the amount of penalty to be collected on marketings of excess tobacco, (2) eligibility for price support, (3) undermarketings and overmarketings, and (4) the amount of reduction in quota for violation of the tobacco marketing quota regulations.

(u) *Reconstituted farms.* The quota for a farm being divided or combined in the current year shall be the quota for the farm after transfer has been made. However, in the case of a division, the county committee shall allocate the leased quota to the tracts involved in the division as the parent farm owner and operator designate in writing. In the absence of a designation, the county committee shall apportion the leased quota.

(v) *Farm in violation.* If consideration of a violation is pending which may result in a quota reduction for a farm for the current crop year, the county committee shall delay approval of any transfer until the violation is cleared or the quota reduction is made. However, if the quota reduction in such a case cannot be made effective for the current crop year before April 1 in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia and May 1 for all other States, an annual transfer may be approved by the county committee. In any case, if, after a transfer of quota has been approved by the county committee, it is determined that the quota for the farm from which or to which the quota is transferred is to be reduced for such farm, the quota reduction shall be delayed until the following year.

(w) *Cancellation, dissolution or revision of transfer*—(1) *Cancellation.* Any transfer approved in error or on the basis of incorrect information shall be canceled by the county committee. Such cancellation shall be effective as of the date of approval for purposes of determining overmarketings and undermarketings from the farms and for purposes of determining eligibility for price support and marketing quota penalties except that such cancellation shall not be effective for the current marketing year for purposes of determining price support and marketing quota penalties only if:

(i) The transfer approval was made in error or on the basis of incorrect information unknowingly furnished by the parties to the transfer agreement, and

(ii) The parties to the transfer agreement were not notified of the cancellation before marketings for the receiving farm exceed the correct effective farm marketing quota.

(2) *Dissolution or revision.* A transfer agreement may be dissolved or minor revision made where a request by all parties to the agreement is made in writing to the county committee by February 15 of the current marketing year. In such case, an official notice of the effective farm marketing quota, reflecting the dissolution or revision, shall be issued by the county committee to each of the operators involved in the transfer agreement. If the request to dissolve or revise the lease is made after February 15 of the current year, but prior to the last crop year for which the leasing agreement is effective, the next quota established for the farm shall reflect the dissolution or revision.

§ 726.69 Transfer of farm marketing quotas.

There shall be no transfer of farm marketing quotas except as provided in §§ 726.68, 726.70, and Part 719 of this chapter.

§ 726.70 Transfer of farm marketing quotas for farms affected by a natural disaster.

(a) *Designation of counties affected by a natural disaster.* The Deputy Administrator shall determine for any year those counties affected by a natural disaster (including but not limited to hurricane, rain, flash flood, hail, drought, and any other severe weather) which prevents the timely planting or replanting of any or all of the tobacco marketing quotas for any farm in the county. The county committee shall post in the county office a notice of any such determination affecting the county and, to the extent practicable, shall give general publicity in the county to such determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of tobacco quota within the farm marketing quota for such year to another farm or farms in the same county or in an adjoining county in the same or another State if such quota cannot be timely planted or replanted because of the natural disaster determined for such year. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The quota to be transferred shall not exceed the smaller of (1) the effective farm quota established under this part less such quota planted to tobacco and not destroyed by the natural disaster, or (2) the quota requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

(1) All or part of the effective farm quota for the farm from which the quota is to be transferred could not be timely planted or replanted because of the natural disaster and planting was not prohibited by the lease in the case of lands owned by the Federal Government.

(2) One or more of producers of tobacco on the farm from which the quota is to be transferred will be a bona fide producer engaged in the production of tobacco on the farm to which the quota is to be transferred and will share in the crop or in the proceeds of the tobacco.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee, or the Deputy Administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Planted or considered planted credit and eligibility as an old tobacco farm.* Any quota transferred under this section shall be considered for the purpose of determining future quotas to have been planted to tobacco on the farm from which such quota is transferred.

(g) *Closing dates.* The closing date for filing applications for transfers under this section with the county committee shall be July 15 of the current year. The county committee may accept applications filed after such closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

§§ 726.71–726.79 [Reserved]

IDENTIFICATION OF TOBACCO, MARKETING AND OTHER DISPOSITION OF TOBACCO, AND PENALTIES

§ 726.80 Identification of kinds of tobacco.

Any tobacco that has the same characteristics and corresponding qualities, colors and lengths, of burley tobacco shall be considered burley tobacco without regard to any factors of historical or geographical nature which cannot be determined by examination of the tobacco. The term "tobacco" with respect to any farm located in an area in which burley tobacco as classified in Service and Regulatory Announcement No. 118 (Part 30 of this title) of the former Bureau of Agricultural Economics of the U.S. Department of Agriculture, is normally produced shall include all tobacco, excluding other kinds subject to marketing quotas, produced on a farm unless the county committee with the approval of the State committee determines from satisfactory proof furnished by the operator of the farm that a part or all of such tobacco is certified by the Consumer and Marketing Service, U.S. Department of Agriculture, under the Tobacco Inspection Act (7 U.S.C. 511), and regulations issued pursuant thereto, as a kind of tobacco not subject to marketing quotas.

§ 726.81 Issuance of marketing cards.

(a) *General.* (1) A marketing card (MQ–76) shall be issued for the current marketing year for each farm having tobacco available for marketing. Cards shall be issued in the name of the farm operator except that (i) cards issued for experimental tobacco shall be issued in the name of the experiment station, and (ii) cards issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the name of other interested producers. A marketing card may be issued in the name of a producer who is not the farm operator if the county committee determines pursuant to the procedure in subparagraph (2) of this paragraph that such producer has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the current crop.

(2) If the county committee has reason to believe that one or more producers of the current crop tobacco on the farm have been or likely will be deprived of the right to use such marketing card to market his or their proportionate shares of the crop, a hearing shall be scheduled by the county committee and the operator of the farm and the producer or producers involved shall be invited to be present, or to be represented, at which time they shall be given the opportunity to substantiate their claims concerning the use of the farm marketing card to market each such producer's proportionate share of the effective farm marketing quota for such crop. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice. A summary of the evidence presented at the hearing shall be prepared for use of the county committee. If the farm operator or other producers on the farm do not attend the hearing, or are not represented, the county committee may take whatever action it deems proper on the basis of information available to it. If the county committee finds that any such producer on the farm has been or likely will be deprived of the right to use the marketing card issued for the farm to market his proportionate share of the crop, the marketing card issued for the farm shall be recalled and a separate marketing card, showing 110 percent of the producer's proportionate share of the effective farm marketing quota shall be issued to each such producer who it is determined has been or likely will be deprived of the opportunity to market his proportionate share of the crop and another marketing card (or other cards if considered preferable by the county committee) shall be issued showing 110 percent of the balance of the effective farm marketing quota to enable the other producers on the farm to market their proportionate shares. The marketing cards issued pursuant to this subparagraph shall reflect the proportionate pounds, if any, already marketed by each producer.

(3) The procedure in subparagraph (2) of this paragraph shall not apply to a person who was a producer on the farm in a prior year but who is not a producer on the farm of the current crop.

(b) *Person authorized to issue marketing cards.* The county executive director shall be responsible for the issuance of marketing cards.

(c) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the tobacco available for marketing from a farm shall be entitled to the use of the marketing card for marketing his proportionate share.

(2) Any person who succeeds, other than as a dealer, in whole or in part to the share of a producer in the tobacco available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing card and bear the same liability for penalties as the original producer.

(d) *Farms not eligible for price support.* The marketing card issued for a farm shall have the notation "No Price Support" where either of the following conditions exist:

(1) Tobacco is produced on land owned by the Federal Government in violation of a lease restricting the production of tobacco.

(2) DDT or TDE was used on tobacco available for marketing from the farm.

(e) *Cards for experimental tobacco.* A marketing card shall be issued to identify experimental tobacco.

(f) *Farm quota data entered on marketing card and supplemental card.* (1) Any marketing card issued to market tobacco shall show when issued, in the spaces provided on the reverse side, the pounds computed by multiplying 110 percent times the effective farm marketing quota.

(2) Where the farm operator requests it, a supplemental marketing card bearing the same name and identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of 110 percent of quota from prior marketing card shall be shown in the first space on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator so requests in writing and specifies in writing the number of pounds to be assigned to each card. In such cases, each marketing card shall show the assigned quota plus 10 percent of such assigned quota in the space "110 percent of quota".

(4) If, when authorized under Part 1421 of this title, a producer requests and obtains from the county committee an interim advance of CCC funds on part or all of his tobacco crop prior to marketing thereof, the estimated quantity of tobacco upon which the interim advance was made shall be entered in parentheses on the reverse side of the marketing card in the space for recording sales. Any poundage balance of the "110 percent of quota" data shall be entered below the estimated pounds upon which an interim advance was made.

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

§ 726.82 Claim stamping and replacing marketing cards.

(a) *Stamping to show claims.* (1) If any producer on a farm is indebted to the United States and such indebtedness is listed on the county claim record or has another debt required to be collected under applicable regulations, the face of the marketing card issued for the farm shall bear the notation "U.S. Claim" followed by the amount of indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the claim notation. A notation showing indebtedness to the United States shall constitute notice to any warehouseman or loan organization that, subject to prior liens, the net proceeds from any price support loan due the debtor shall be paid to the United States to the extent of the indebtedness shown. The acceptance and use of a marketing card bearing a notice and information of indebtedness to the United States shall not constitute a waiver by the producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action and the producer may reject price support from which such indebtedness would be deductible. As claim collections are made, the amount of the claim shown on the card shall be revised to show the claim balance, and the tobacco sale bill shall show the amount collected. A claim free marketing card shall be issued when the claim has been paid.

(2) Any marketing card may be marked for the purpose of notifying warehousemen or loan organizations that the tobacco being marketed pursuant to such card is subject to a lien held by the United States.

(b) *Replacing, exchanging, or issuing additional marketing cards.* Subject to the approval of the county executive director, two or more marketing cards may be issued for any farm. Upon the return to the county office of a marketing card which has been used in its entirety and before the marketing of tobacco from the farm has been completed, a new marketing card bearing the same name, information, and identification as the used card shall be issued for the farm. A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen.

§ 726.83 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) Any erasure or alteration has been made and not properly initialed by the county executive director or a marketing recorder.

(b) *Validating invalid cards.* If any entry is not made on a marketing card as required, either through omission or incorrect entry, and the proper entry is made and initialed by the county executive director who issued the card, or by a marketing recorder, then such card shall become valid.

(c) *Returning invalid cards.* In the event any marketing card becomes invalid (other than by loss, destruction, or theft, or by omission, alteration, or incorrect entry, which has not been corrected by the county executive director who issued the card, or by a marketing recorder), the farm operator, or the person having the card in his possession, shall return it to the county office where it was issued.

§ 726.84 Misuse of marketing card.

Any information which causes a marketing recorder, a member of a State, county, or community committee, or an employee of the State or county office to believe that any tobacco which actually was produced on one farm has been or is being marketed under the marketing card issued for another farm, shall be reported immediately by such person to the county or State office.

§ 726.85 Identification of marketings.

(a) *Identification of producer marketings.* Each auction and nonauction marketing of tobacco from a farm in the current year shall be identified by a marketing card, Form MQ–76, issued for the farm. The reverse side of the marketing card shall show in pounds (1) 110 percent of effective farm marketing quota, (2) balance of 110 percent of effective farm marketing quota after each sale, and (3) date of sale. Each producer sale at auction shall be recorded on a Form MQ–72–1, Report of Tobacco Auction Sale, and each producer sale at nonauction shall be recorded on Form MQ–72–2, Report of Tobacco Nonauction Purchase. For producer sales at nonauction, the dealer shall execute Form MQ–72–2 and shall enter the data on MQ–76. For producer sales at auction, Form MQ–72–1 and Form MQ–76 shall be executed only by the ASCS marketing recorder.

(b) *Verification of penalty by warehousemen or dealers.* Each sale of tobacco by a producer which is subject to penalty and which has been recorded by a marketing recorder shall be verified by a warehouseman or dealer to determine whether the amount of penalty shown to be due has been correctly computed. Such warehouseman or dealer shall not be relieved of any liability for the amount of penalty due because of any error which may occur in computing the penalty and recording the sale.

(c) *Check register.* The serial number on the tobacco sale bill(s) shall be recorded by the warehouseman on the check register or check stub for the check written covering the auction sale of tobacco by a producer.

(d) *Identification of dealer marketings of resale tobacco.* Each auction and nonauction marketing of resale tobacco in the current year shall be identified by a dealer identification card, Form MQ–79–2, issued to the dealer.

(e) *Separate display on auction warehouse floor.* Any warehouseman upon whose floor more than one kind of tobacco is offered for sale at public auction shall for each different kind of tobacco:

(1) Display it in separate areas on the auction warehouse floor.

(2) Identify each basket by a distinguishably different basket ticket clearly showing the kind of tobacco.

(3) Make and keep records that will insure a separate accounting and report of each of such kinds of tobacco sold at auction over the warehouse floor.

(f) *Cross-reference of tobacco sale bill number to prior tobacco sale bill covering tobacco identified by the same marketing card to be sold the same day.* Each warehouseman shall for each lot of tobacco weighed in on his floor for sale the same day cross-reference the tobacco sale bill to each prior tobacco sale bill for tobacco identified by the same marketing card. To accomplish the cross-reference, each other tobacco sale bill number shall be entered by the warehouseman in the "Remarks" space on the tobacco sale bill on all copies at the time he weighs in the tobacco at the warehouse.

(g) *Identification of returned first sale (producer) tobacco.* Tobacco which has been previously sold and returned to the warehouse by the buyer is resale tobacco. When such tobacco is resold by the warehouseman, it shall be identified as leaf account resale tobacco.

§ 726.86 Rate of penalty.

(a) *Basic rate.* The basic penalty rate shall be equal to seventy-five (75) percent of the average market price for the immediately preceding marketing year as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture. The rate of penalty will be determined for each marketing year and announced by the regulations in this subpart or amendment thereto.

(b) *Average market price and rate of penalty per pound.* These data will be issued annually as an amendment to these regulations.

(c) (1) *Average market price.* The average market price as determined by the Crop Report Board for the marketing year specified was:

AVERAGE MARKET PRICE

Marketing year:	Cents per pound
1970–71	72.2

(2) *Rate of penalty per pound.* The penalty per pound upon marketings of excess tobacco subject to marketing quotas during the marketing year specified shall be:

RATE OF PENALTY

Marketing year:	Cents per pound
1971–72	54

§ 726.87 Persons to pay penalty.

The persons to pay the penalty due on any marketing of tobacco subject to penalty shall be determined as follows:

(a) *Auction sale.* The penalty due on marketings by a producer through an auction sale shall be paid by the warehouseman who may deduct an amount equivalent to the penalty from the price paid to the producer.

(b) *Nonauction sale.* The penalty due on tobacco acquired directly from a producer, other than at an auction sale, shall be paid by the person acquiring the tobacco who may deduct an amount equivalent to the penalty from the price paid to the producer in the case of a sale.

(c) *Marketings outside the United States.* The penalty due on marketings by a producer directly to any person outside the United States shall be paid by the producer.

§ 726.88 Penalties considered to be due from warehousemen, dealers, buyers, and others excluding the producer.

Any marketings of tobacco under any of the following conditions shall be considered to be a marketing of excess tobacco.

(a) *Auction sale without marketing card.* Any first marketing of tobacco at an auction sale by a producer which is not identified by a valid marketing card at the time of marketing shall be considered to be a marketing of excess tobacco and the penalty thereon shall be collected and remitted by the warehouseman.

(b) *Nonauction sale.* Any nonauction sale of tobacco which:

(1) Is not identified by a valid marketing card and recorded at the time of purchase on MQ–79, Dealer's Report; or

(2) If purchased prior to the opening of the local auction market for the current year, is not identified by a valid marketing card and recorded on MQ–79 not later than the end of the calendar week which includes the first sale day of the local auction markets, shall be considered a marketing of excess tobacco. The penalty thereon shall be collected by the purchaser of such tobacco, and remitted with MQ–79.

(c) *Leaf account tobacco.* If part or all of any marketing of leaf account tobacco (including tobacco from the buyers corrections account), when added to prior leaf account resales, is in excess of prior leaf account purchases, such marketing shall be considered to be a marketing of excess tobacco unless and until such warehouseman furnishes proof acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. The actual quantity of floor sweepings which the State executive director determines have been properly identified as floor sweepings and sold and reported as such by the warehouseman shall be considered acceptable proof that such marketings are not marketings of excess tobacco if the amount thereof for the warehouse does not exceed the floor sweepings for the season of 0.24 percent of producers' sales of tobacco.

(d) *Dealer's tobacco—(1) Excess resale rule for mixed reporting of data.* If during any marketing year a warehouseman or a dealer has transactions in more than one kind of tobacco and his reports of marketings result in excess resales, penalty on such excess resales shall be due from such dealer at the highest rate of penalty applicable to any kind of tobacco reported or due to be reported under these regulations.

(2) *Excess resales above purchases.* The part or all of any marketing of tobacco by a dealer which such dealer represents to be a resale, which, when added to prior resales by such dealer (as shown or due to be shown on Form MQ–79), is in excess of his total prior purchases (as shown or due to be shown on such Form MQ–79) shall be considered to be a marketing of excess tobacco. The penalty thereon shall be paid by the dealer.

(i) During the auction marketing season, the penalty due from the dealer shall be withheld by the warehouseman from the proceeds due the dealer and immediately transmitted by the warehouseman to a marketing recorder.

(ii) Penalty due from a dealer which was not withheld by a warehouseman under subdivision (i) of this subparagraph shall be remitted weekly by him to the State office with his reports on Form MQ–79.

(e) *Resales not reported.* Any resale of tobacco which is required to be reported by a warehouseman or dealer, but which is not so reported within the time and in the manner required, shall be considered to be a marketing of excess tobacco, unless and until such warehouseman or dealer furnishes a report of such resale which is acceptable to the State executive director. The penalty thereon shall be paid by the warehouseman or dealer who fails to make the report as required.

(f) *Marketings falsely identified by a person other than the producer.* If any marketing of tobacco by a person other than the producer is identified by a marketing card other than the marketing card issued for the farm on which such tobacco was produced, such marketing shall be presumed to be a marketing of excess tobacco. The penalty thereon shall be paid by such person.

(g) *Carryover tobacco.* Any tobacco on hand and reported or due to be reported under § 726.93(g)(14) for warehousemen and § 726.94(c)(4) for dealers shall be included as a resale in determining whether an account has excess resales. Unless the warehouseman furnishes proof acceptable to the State committee and unless the dealer furnishes proof acceptable to the State executive director, showing that such account does not represent excess tobacco, penalty at the full rate shall be paid thereon by such warehouseman or dealer.

§ 726.89 Producers penalties; false identification, failure to account; canceled quotas; overmarketing proportionate share.

(a) *Penalties for false identification or failure to account.* If any producer falsely identifies or fails to account for

the disposition of any tobacco produced on a farm, penalty at the full rate shall be due on the larger of: (1) The actual marketings above 110 percent of the effective farm marketing quota, or (2) the amount of tobacco equal to 25 percent of the effective farm marketing quota.

(b) *Canceled quota.* If part or all of the tobacco produced on a farm has been marketed and the quota for the farm is canceled, any penalty due on the marketings shall be paid by the producers.

(c) *Overmarketing proportionate share of effective farm marketing quota.* If the county committee determines that the farm operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota with intent to deprive some other producer on the farm from marketing his proportionate share of the same crop of tobacco, such operator or other producer shall be liable for marketing penalties at the full rate per pound for each pound marketed above 110 percent of his proportionate share of the effective farm marketing quota: *Provided*, That the sum of such penalties shall not exceed the total penalty due on total marketings above 110 percent of the effective farm marketing quota for the farm on which such tobacco was produced. Before assessment of penalty pursuant to this paragraph (c), a hearing shall be scheduled by the county committee and the operator and affected producers shall be invited to be present, or to be represented, to determine whether the operator or another producer on the farm has marketed more than 110 percent of his proportionate share of the effective farm marketing quota. The notice of the hearing shall request the farm operator and affected producers to bring to the hearing tobacco sale bills and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken to impose penalty shall be taken after the hearing. If the farm operator or other affected producer does not attend the hearing, or is not represented, the county committee may take whatever action it deems necessary to assess penalty against the proper producers. If a hearing under § 726.81(a) is being held, and it is practicable to do so, such hearing and the hearing under this paragraph may be combined.

(d) *Penalties not to be assessed.* Where the operator or another producer on the farm markets a quantity of tobacco above 110 percent of the effective marketing quota for the farm and such overage is found to have been caused by the failure to record, or improper recording of tobacco poundage data on the marketing card, that amount of the penalty as was due to such failure to record or improper recording will not be required to be paid by the farm operator or other producer on the farm if: (1) For amounts of $10 or less the county committee, and (2) for amounts above $10 the county committee, with the approval of the State committee, determines that each of the following conditions is applicable: (i) The failure to record or incorrect recording resulted from action or inaction of a marketing recorder or another ASCS employee, and (ii) the farm operator or another producer on the farm had no knowledge of such failure or error. Over-marketing for a farm for which the marketing penalty will not be paid pursuant to the provisions of this paragraph (d) shall be determined based upon the correct effective farm marketing quota and correct actual marketings of tobacco from the farm.

§ 726.90 Payment of penalty.

(a) *Date due.* Penalties shall become due at the time the tobacco is marketed, except that in the case of false identification or failure to account for disposition, the penalty shall be due on the date of such false identification or failure to account for disposition. The penalty shall be paid by remitting the amount due to the State ASCS office not later than the end of the calendar week in which the tobacco becomes subject to penalty. A draft, money order, or check drawn payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, but any such draft or check shall be received subject to payment at par.

(b) *Auction sale—net proceeds.* If the penalty due on any auction sale of tobacco by a producer is in excess of the net proceeds of such sale (gross amount for all lots included in the sale less usual warehouse charges), the amount of the net proceeds accompanied by a copy of the tobacco sale bill covering such sale may be remitted as the full penalty due. Usual warehouse charges shall not include (1) advances to producers, (2) charges for hauling, or (3) any other charges not usually incurred by producers in marketing tobacco through a warehouse.

(c) *Nonauction sale.* Nonauction sales of excess tobacco shall be subject to the full rate of penalty and shall be paid in full even though the penalty may exceed the proceeds for the sale of tobacco.

§ 726.91 Request for return of penalty.

Any producer of tobacco and any other person who bore the burden of the payment of any penalty after the marketing of all tobacco available for marketing from the farm may request the return of the amount of such penalty which is in excess of the amount required to be paid. Such request shall be filed on Form MQ–85, Farm Record and Account, with the county office within 2 years after the payment of the penalty. Approval of return of penalty to producers shall be by the county committee, subject to the approval of the State executive director.

Records and Reports

§ 726.92 Producer's records and reports.

(a) *Failure to file reports or filing false reports.* If any producer on a farm files an incomplete or incorrect report, fails to file a report, or files or aids or acquiesces in the filing of any false report with respect to the amount of tobacco produced on or marketed from the farm, the tobacco quota next established for any such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) the failure to file, filing of, or aiding or acquiescing in the filing of, such report was not intentional on the part of any producer on the farm and that no producer on the farm could reasonably have been expected to know that the report was false: *Provided*, That the failure to file or the filing of or aiding or acquiescing in the filing of the report will be construed as intentional unless a correct report is filed and any penalty is paid in full, or (2) no person connected with the farm for the year for which the quota is being established caused, aided, or acquiesced in the filing of the false report or failure to file a report. If the conditions in subparagraphs (1) and (2) of this paragraph are not applicable, the next established quota shall be reduced for the farm.

(b) *Report of experimental tobacco.* For a farm on which experimental tobacco is being grown, the director of a publicly owned agricultural experiment station shall furnish the State ASCS office, prior to the beginning of the harvesting of tobacco from any farm on which experimental tobacco is being grown, a report for the current year showing the following information:

(1) Name and address of the publicly owned agricultural experimental station.

(2) Name of the owner, and name of the operator if different from the owner of each farm on which experimental tobacco is grown.

(3) The acreage of experimental tobacco grown on each farm.

(4) A certification signed by the Director of the publicly owned agricultural experiment station to the effect that such acreage of tobacco was grown on each farm for experimental purposes only, the tobacco was grown under his direction, and the acreage on each farm was considered necessary for carrying out the experiment.

(c) *False identification.* If tobacco was marketed or was permitted to be marketed in any marketing year as having been produced on any farm which, in fact, was produced on a different farm, the marketing quotas next established for both such farms and kind of tobacco shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committees that (1) no person on such farm intentionally participated in such marketing or could have reasonably been expected to have prevented such marketing: *Provided*, That, the marketing shall be construed as intentional, unless all tobacco from the farm is accounted for and payment of all additional penalty is made, or (2) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in such marketing.

(d) *Report on marketing card.* The operator of each farm on which tobacco is produced shall return to the county ASCS office each marketing card issued for the farm whenever marketings from the farm are complet d, and, in no event, later than 20 days, in the year of issuance of the card, after the close of the tobacco auction markets for the locality in which the farm is located. Failure to return the marketing card within 15 days after written request by certified mail from the county executive director shall constitute failure to account for disposition of all tobacco marketed from the farm unless disposition of tobacco marketed from the farm is otherwise accounted for to the satisfaction of the county committee. Upon failure to satisfactorily account to the county committee for disposition of tobacco marketed from the farm the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county committee and a representative of the State committee, that (1) the failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That such failure will be construed as intentional unless such proof of disposition is furnished and payment of all additional penalty is made; or (2) no person connected with such farm for the year for which the quota is being established, caused, aided, or acquiesced in the failure to furnish such proof.

(e) *Report of production and disposition.* In addition to any other reports which may be required by this subpart, the operator on each farm or any producer on the farm (even though no quota was established for the farm) shall, upon written request by certified mail from the State executive director, within 15 days after deposit of such request in the U.S. mail, addressed to such person at his last known address, furnish the Secretary on MQ–108, Report of Production and Disposition, a written report of the production and disposition of all tobacco produced on the farm by sending the same to the State ASCS office showing, as to the farm at the time of filing such report, (1) the total pounds of tobacco produced, (2) the amount of tobacco on hand and its location, (3) as to each lot of tobacco marketed, the name and address of the warehouseman, dealer, or other person to or through whom such tobacco was marketed and the number of pounds marketed, the gross price paid and the date of the marketings, and (4) the complete details as to any tobacco disposed of other than by sale. Failure to file the MQ–108 as requested, the filing of a false MQ–108, or the filing of an MQ–108 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for disposition of tobacco produced on the farm and the quota next established for such farm shall be reduced, except that such reduction for any such farm shall not be made if it is established to the satisfaction of the county and State committee that (i) failure to furnish such proof of disposition was unintentional and no producer on such farm could reasonably have been expected to furnish such proof of disposition: *Provided*, That such failure will be construed as intentional and unless such proof of disposition is furnished and payment of all additional penalty is made, or (ii) no person connected with such farm for the year for which the quota is being established caused, aided, or acquiesced in the failure to furnish such proof.

(f) *Amount of quota reduction.* The amount of reduction in the quota for the current year for a violation described in paragraph (a), (c), (d), or (e) of this section shall be that percentage which the amount of tobacco involved in the violation is of the respective effective farm marketing quota for the farm for the year in which the violation occurred. Such percentage shall then be applied to the farm marketing quota next established for the farm. The quantity of tobacco in violation shall be the amount of tobacco as determined by the county committee. If the actual quantity of tobacco is known, such quantity shall be determined by the county committee to be the amount of tobacco involved in the violation. If the actual quantity of tobacco is not known, the county committee shall determine the quantity in violation in the following manner: The total production of tobacco on the farm shall be determined by taking into consideration the condition of the crop during production, if known, and such other information as is available.

(g) *Quota reduction for combined farms.* If the farm involved in the violation is combined with another farm prior to the reduction, the reduction shall be applied as heretofore provided in this section to that portion of the quota for which a reduction is required.

(h) *Quota reduction for divided farms.* If the farm involved in the violation has been divided prior to the reduction, the reduction shall be applied as heretofore provided in this section to the quotas for divided farms required to be reduced. Quota reductions are applicable, unless the violating producer has no interest in the current tobacco crop.

(i) *Unauthorized erasure or alteration on marketing card.* Any unauthorized erasure or alteration of any information or data on a marketing card may be considered a violation of the U.S. Criminal Statutes.

(j) *County administrative hearings in connection with violations.* Except for the failure to return a marketing card to the county office, the quota for any farm shall not be reduced for a violation under this section until after the operator of the farm has been notified in writing by the county executive director of the time and place of a hearing to determine the nature and extent of the violation. The notice of the hearing shall request the farm operator to bring to the hearing tobacco sale bills and other relevant supporting documents. At least two members of the county committee shall be present at the hearing. The hearing shall be held at the time and place named in the notice and any action taken on the violation shall be taken after the hearing. If the farm operator does not attend the hearing or is not represented, the county committee may take whatever action it seems proper.

(k) *Sequence of quota reduction where the farm allotment is to be reduced because of a violation and overmarketings.* If the tobacco quota for a farm is to be reduced in the current year because of both (1) a violation and (2) overmarketings in a prior year, the reduction in the quota for the violation shall be made before making the reduction for overmarketings.

(l) *Correction of farm production records.* Where farm data for actual marketings are determined to be incorrect because of a violation, the records shall be corrected for each farm on which the tobacco was produced, and for each farm whose card was used to identify marketings.

(m) *Report on Form MQ–92, Estimate of Production.* An estimate of production, Form MQ–92, shall be prepared immediately prior to harvest for each farm for which the county or State ASC committee or a representative of the county or State committee believes that an MQ–92 for the farm would be in the best interests of the program. The county committee shall have authority to visit any farm for the purposes of making an estimate of production or determination of planted acreage needed to complete an estimate of production.

§ 726.93 Warehouseman's records and reports.

As provided in this section, each warehouseman in the burley producing area shall keep records and make reports for each kind of tobacco.

(a) *Record of marketing*—(1) *Auction sale.* Each warehouseman shall keep such records as will enable him to furnish the State office for each auction sale the following information:

(i) The name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a sale by a producer, and the name of the seller in the case of a resale.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer. In addition, with respect to each individual basket or lot of tobacco constituting the auction sale, the following information:

(*a*) Name of purchaser.

(*b*) Number of pounds sold.

(*c*) Gross sale price.

(2) *Separate account records.* Records of all purchases and resales of tobacco by the warehouseman shall be maintained to show a separate account for:

(i) Nonauction sales by farmers of tobacco purchased by or on behalf of the warehouseman.

(ii) Purchases and resales of leaf account tobacco. The resale record shall include separate data for leaf account tobacco and floor sweeping tobacco.

(3) *Buyers Correction Account.* Each warehouseman shall keep such records as will enable him to furnish a weekly report on Form MQ–71 to the State ASCS office showing the total pounds of the debits (for returned baskets, short baskets, and short weights of tobacco) and the credits (for long baskets, and long weights of tobacco) to the Buyers Corrections Account. Where the warehouseman returns to the seller tobacco debited to the Buyers Corrections Account, the warehouseman shall prepare an adjustment invoice to the seller. This invoice shall be the basis for a credit entry for the warehouse in the Buyers Corrections Account and a corresponding purchase (debit entry) in the case of a dealer on his MQ–79, Dealer's Report. Any balancing figure reflected on the warehouseman's summary of bill-outs shall not be included in the Buyers Corrections Account.

(4) *Tobacco sale bill and daily warehouse sales summary.* Each warehouseman shall use tobacco sales bills showing, as a minimum, the following information:

(i) Tobacco sale bill number;

(ii) Name and address of warehouse where sale is held;

(iii) Date of sale;

(iv) Number of pounds in each basket;

(v) Name and address of seller and (*a*) farm number (including State and county codes) for producer tobacco, and (*b*) dealer registration number for resale tobacco;

(vi) Identification number, if available, for each basket of tobacco to be offered for sale;

(vii) Poundage balance before sale for producer tobacco based on 110 percent of farm quota;

(viii) Name or symbol of purchaser of each basket;

(ix) Gross number of pounds sold;

(x) Sales price for each basket and gross sale proceeds for all baskets sold;

(xi) Nonauction purchases by the warehouse holding the sale;

(xii) Tobacco grade for tobacco consigned to price support;

(xiii) Marketing quota penalty collected; and

(xiv) Amount withheld from sale to cover claims due the United States.

The warehouseman shall not weigh in any tobacco for sale unless a card (MQ–76 for producers, MQ–79–2 for dealers) is furnished the weighman unless the tobacco is determined by a C&MS inspection to be a nonquota kind. The buyer and grade space of the tobacco sale bill shall show (*a*) nonauction purchases by the warehouse, (*b*) tobacco grade for tobacco consigned to price support, and (*c*) the symbol for tobacco bought by private buyers. A copy of the executed Form MQ–80, Daily Warehouse Sales Summary, shall be furnished to the marketing recorder for the Kansas City Data Processing Center (KCDPC).

(5) *Report of farm scrap resulting from grading tobacco for farmers.* Any warehouseman or any other person who grades tobacco for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from the grading of tobacco from each farm.

(6) *Report of farm scrap resulting from furnishing curing or stripping space for tobacco from farmers.* Any warehouseman or any other person who provides tobacco curing space or stripping space for farmers shall maintain records which will enable him to furnish the State ASCS office the name of the farm operator and the approximate amount of scrap tobacco obtained from each farm resulting from providing such space.

(7) *Labeling resales on tobacco sale bill.* In the case of resales for dealers, the name of the dealer making each resale, and in the case of resales for the warehouse, the word "Resale" shall be clearly shown on each tobacco sale bill covering such tobacco.

(8) *Nonquota tobacco or tobacco of a different kind.* Should tobacco be presented for sale that is represented to be nonquota tobacco or there is question as to what kind of tobacco is being offered, a C&MS inspection shall be obtained before the tobacco is weighed in and offered for sale. If a C&MS inspection shows that a basket or lot of tobacco is of a nonquota kind or of a different kind than that identified by the basket ticket after it is weighed in and a sale bill prepared, such tobacco shall be deleted from the original sale bill and a revised sale bill prepared.

(b) *Identification of producer sales of tobacco—tobacco sale bill.* The State and county codes and the farm serial number on the marketing card identifying the tobacco to be marketed at auction shall be recorded by the warehouseman on the tobacco sale bill at the time the tobacco is weighed in and the warehouseman shall retain the marketing card where tobacco is to be sold at auction (except where requested by owner or operator to effect a transfer of quota) only until the producer has been paid for the sale of the tobacco or the tobacco is removed from the warehouse by the producer. In any case where a producer's marketing card is found in the possession of warehouseman and no producer on the farm for which the card is issued has tobacco on the floor for sale or to be settled for such card will be picked up by an ASCS representative for return to the producer. The warehouseman shall be responsible for the safekeeping and proper use of the marketing card during his retention of it. Each tobacco sale bill issued to cover an auction sale of tobacco from a farm for which a marketing card is issued bearing the notation "No Price Support" shall bear the same notation. A separate tobacco sale bill shall be executed to cover any tobacco which represents more than 110 percent of the effective farm marketing quota and the notation, "No Price Support" shall be shown on such tobacco sale bill. The sale of such tobacco shall be considered a separate sale. The letters "NA" shall be shown on each line of a tobacco sale bill on which there is recorded tobacco purchased by or for the warehouse at nonauction sale and there shall be recorded on all such tobacco sale bills the farm serial number on the marketing card identifying the tobacco marketed at the time the tobacco is purchased at nonauction sale. A copy of the tobacco sale bill bearing the letters "NA" shall be furnished the producer for any lot or basket of such tobacco purchased by the warehouseman.

(c) *Marketing card.* Each marketing of burley tobacco from a farm shall be identified by a marketing card issued for the farm. The card shall be executed as follows:

(1) *Auction sale.* A marketing card used to cover an auction sale shall show on the reverse side the poundage balance of the "110 percent of quota". At the time of weighin the tobacco sale bill shall show the poundage balance of 110 percent of the farm's quota. The tobacco sale bill shall show the pounds on which penalty is due, and the amount of the penalty.

(2) *Nonauction sale to a warehouseman at the warehouse.* A marketing card used to cover a nonauction sale of tobacco to a warehouseman shall show on the reverse side the poundage balance of the "110 percent of quota". If the tobacco sale bill includes both an auction sale and a nonauction sale such combined pounds shall be used to compute and reflect the balance of the "110 percent of quota". The tobacco sale bill shall show the pounds on which penalty is due and the amount of the penalty.

(3) *Nonauction sale (country purchase) to a warehouseman.* Each purchase of tobacco from a producer from a burley producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless prior to purchase a C&MS inspection certification is obtained showing that the number of pounds offered for sale is of a kind of tobacco not subject to quotas. A marketing card used to cover a nonauction sale (country purchase) at the farm shall show on the reverse side the poundage balance of the "110 percent of quota". Each warehouseman shall record each nonauction purchase of tobacco made by him on MQ–79 and on Form MQ–72–2, Report of Tobacco Nonauction Purchase. The data to be reported on Form MQ–72–2 is set forth in § 726.94.

(4) *Tobacco under interim advance.* If tobacco is marketed from a farm, part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parenthesis the poundage balance of the tobacco upon which an interim advance was made, and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown

on the marketing card as that upon which an advance was made shall be reduced proportionately.

(d) *Suspended sale record.* (1) Any tobacco sale bill covering a sale of tobacco for which a valid marketing card or dealer identification card was not presented shall be given to a marketing recorder who shall stamp such bills, "Suspended."

(2) When cleared, such suspended sale shall show "suspended—cleared" and date cleared. Such tobacco sale data shall be submitted to KCDPC after the sale is cleared. If a suspended sale is not cleared from suspension within 7 days from date of sale or the last auction sale day for the warehouse for the season, whichever comes first, it shall be considered a sale of excess tobacco and penalty at the full rate shall be remitted by the warehouseman.

(e) *Warehouseman's entries on other dealer's report.* Each warehouseman shall record, or have the dealer record, on MQ–79, the total purchases and resales made by each such dealer or other warehouseman during each sale day at the warehouse. If any tobacco resold by the dealer is tobacco bought by him and carried over by him from a crop produced prior to the current crop, the entry on MQ–79 shall clearly show such fact.

(f) *Record and report of warehouseman's leaf account purchases and resales not on his floor.* Each warehouseman shall keep a record and make reports on MQ–79, Dealer's Report, showing:

(1) All nonauction purchases of tobacco, except nonauction purchases at his warehouse which are reported on MQ–80.

(2) All purchases and resales of tobacco at public auction through warehouses other than his own.

(3) For all purchases of tobacco from dealers other than warehousemen and resales of tobacco to dealers other than warehousemen, from MQ–79 shall be prepared and a copy, including copies of Form MQ–72–2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold: *Provided*, That, if tobacco is purchased prior to the opening of the local auction market, an MQ–79 shall be prepared and a copy, together with copies of MQ–72–2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets. A remittance for all penalties shown by the entries on MQ–79 and Form MQ–72–2 to be due shall be forwarded to the State ASCS office with the original copy of MQ–79.

(g) *Daily warehouse sales summary.* Each warehouseman shall prepare at the end of each sale day a report on MQ–80, Daily Warehouse Sales Summary, showing for each sale day:

(1) For each manufacturer, buyer, order buyer, and tobacco cooperative (pool), pounds of tobacco purchased at auction (consigned in the case of the pool).

(2) The sum of the items for subparagraph (1) of this paragraph.

(3) Resales at auction for each person listed under subparagraph (1) of this paragraph.

(4) For each dealer subject to reporting purchases and resales on MQ–79, as originally billed, the total pounds of tobacco purchased at auction, and resales at auction.

(5) The total pounds purchased at auction for the leaf account.

(6) The total pounds purchased at nonauction at the warehouse for the leaf account.

(7) The sum of the total pounds for subparagraphs (5) and (6) of this paragraph.

(8) (i) The total leaf account resales and (ii) a separate account for total floor sweeping resales.

(9) The sum of the total purchases for subparagraphs (2), (4), and (7) of this paragraph.

(10) The sum of the total resales for subparagraphs (3), (4), and (8) of this paragraph.

(11) For each warehouse sale of excess tobacco from a farm, the applicable farm number with daily remittance of the penalty due to accompany Form MQ–72–1.

(12) For each dealer, at time of settlement having excess resale tobacco, the applicable dealer identification number with daily remittance of the penalty due.

(13) As to the information required to be entered on MQ–80, Daily Warehouse Sales Summary, by the marketing recorder, the warehouseman shall keep and make available such records as will enable the marketing recorder to enter thereon: (i) The total number of Forms MQ–72–1 for the sale day and the sum of pounds sold and shown on Forms MQ–72–1, and (ii) the total number of suspended sale bills and the sum of such pounds sold.

(14) At the end of the season, each warehouseman shall: (i) Report on his final MQ–80 for the season the quantity of leaf account tobacco and floor sweeping tobacco if any, on hand and its location, and (ii) permit its inspection and weighing by a representative of ASCS, and furnish him at that time a certification of the actual weight of such tobacco. After the weight of such tobacco has been so obtained in this subdivision (ii), it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty if penalty is due.

(h) *Report to county office of long weights and long baskets.* Each warehouseman shall report to the county ASCS office or marketing recorder long weights and long baskets of producer tobacco (first sales) for which the farmer has been paid.

(i) *Report on Form MQ–78, Tobacco Warehouse Organization.* Each warehouseman shall annually, prior to opening of auction markets, furnish ASCS an executed Form MQ–78 showing:

(1) Form of business organization.

(2) Names and addresses of warehouse officials and bookkeeper.

(3) Names and addresses of other warehouses in which the officials and bookkeeper have a financial interest.

(4) Name and address of custodian of warehouse records, including their location.

(j) *Payee to be shown on auction warehouse check.* Any auction warehouse which issues a check to cover the auction or nonauction sale of tobacco shall issue such check only in the name of the payee. A warehouse check shall not be issued in the name of the seller and bearer, for example, "John Doe or Bearer".

(k) *Damaged tobacco purchased for later resale.* Any warehouseman who plans to purchase tobacco in the form normally marketed by producers for resale that was damaged by such things as, but not limited to, fire and water shall prior to purchase report such plans to the State ASCS office issuing MQ–79, Dealer Record book. Such report shall be timely made so as to allow prior inspection for the marketable value of such damaged tobacco, and the weighing and removal of such tobacco to be witnessed by representatives of the State ASCS office. Any damaged tobacco purchased prior to reporting such plans to the State ASCS office and subsequent inspection by an ASCS representative shall be considered excess tobacco if later resold.

(l) *Invoice to purchaser.* Warehousemen shall keep copies of bill out invoices to the purchaser showing by grade the basket number and pounds purchased.

§ 726.94 Dealer's records and reports.

Each dealer, making purchases from a burley producing area except as provided in § 726.95, shall keep the records and make the reports as provided by this section separately for each kind of tobacco.

(a) *Record of marketing.* Each dealer shall keep such records as will enable him to furnish the State ASCS office with respect to each lot of tobacco purchased by him the folowing information:

(1) (i) The name of the warehouse through which the tobacco was purchased in the case of a warehouse sale, (ii) the name of the operator of the farm on which the tobacco was produced and the name of the seller in the case of a nonauction sale, including the records and reports for farm scrap tobacco, and (iii) the name of the seller in the case of nonauction purchasers from warehousemen and dealers.

(2) Date of purchase.

(3) Number of pounds purchased.

(4) Amount of any penalty and the amount of any deduction on account of penalty from the price paid the producer, and as to each lot of tobacco sold by him the following information:

(i) Name of the warehouse through which the tobacco was sold in the case of a warehouse sale, and the name of the purchaser if other than an auction warehouse sale.

(ii) Date of sale.

(iii) Number of pounds sold.

(iv) In the event of a resale of tobacco bought by him and carried over from a crop produced prior to the current crop, the fact that such tobacco was so bought and carried over.

(b) *Nonauction sale (country purchase) to a dealer.* (1) (i) Each purchase of tobacco from a producer from a burley producing area shall be identified by a marketing card issued for the farm on which the tobacco was produced unless prior to purchase a C&MS inspection certification is obtained showing that the number of pounds offered for sale is of a kind of tobacco not subject to quotas. The reverse side of the marketing card shall show the poundage balance of the "110 percent of quota"; (ii) in addition, Form MQ–72–2, Report of Tobacco Nonauction Purchase, shall be prepared and shall show: (*a*) Date of purchase, (*b*) identification number of buyer, (*c*) identification of producer selling the tobacco as shown on the marketing card, including his name and address and complete farm number, (*d*) type code 31, (*e*) pounds purchased, and (*f*) amount of penalty collected. The dealer shall record each nonauction purchase of tobacco made by him on MQ–79.

(2) If tobacco is marketed from a farm part or all of which is tobacco upon which an interim advance was made pursuant to Part 1421 of this chapter, the tobacco sale bill and the marketing card issued for the farm shall show in parenthesis the poundage balance of the tobacco upon which an interim advance was made and the poundage balance of any other tobacco. As the interim advance is repaid on any tobacco the quantity shown on the marketing card as that upon which an advance was made shall be reduced proportionately.

(c) *Record and report of purchases and resales.* (1) Except as provided in subparagraph (2) of this paragraph, each dealer shall keep a record and make reports on MQ–79, showing all purchases and resales of tobacco made by or for the dealer, and in the event of purchase or resale of tobacco bought from a crop produced prior to the current crop, the fact that such tobacco was bought by him and carried over from a crop produced prior to the current crop.

(2) Form MQ–79 shall be prepared and a copy, together with executed copies of MQ–72–2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week in which such tobacco was purchased or resold, except as follows: (i) If tobacco is purchased prior to the opening of the local auction market, an MQ–79 shall be prepared and a copy, together with executed copies of Form MQ–72–2 for all nonauction purchases, forwarded to the State ASCS office not later than the end of the calendar week which would include the first sale day of the local auction markets; (ii) if tobacco is resold in a State other than where produced, and the auction markets at such locations open earlier than those where the tobacco would normally be sold at auction by farms, reports shall be prepared and forwarded, together with executed copies of MQ–72–2 for all nonauction purchases, not later than the end of the calendar week which would include the first sale day of the local auction market where the resale takes place.

(3) The data to be entered on MQ–72–2, Report of Tobacco Nonauction Purchase, for nonauction purchases from a producer shall be that enumerated under paragraph (b)(1)(ii) of this section. For nonauction purchases from a dealer, the data to be entered on MQ–72–2 shall be the following: (i) Date of purchase; (ii) identification number of buyer; (iii) identification number of dealer making the sale; (iv) type code 31; and (v) pounds purchased.

(4) At the end of the dealer's marketing operations, but not later than March 1, he shall for each kind of tobacco: (i) Show the word "final" on his final report, MQ–79 for the season, (ii) report on such final MQ–79 for the season the quantity of tobacco on hand and its location, and (iii) permit its inspection and weighing by a representative of ASCS, and at that time furnish him a certification of the actual weight of such tobacco. After the weight of such tobacco has been so obtained in this subdivision (iii), it shall be considered as the official weight for comparing purchases and resales for the purpose of determining the amount of penalty, if penalty is due.

(5) Notwithstanding the provisions of subparagraph (4) of this paragraph any dealer having tobacco transactions after March 1 shall make reports on MQ–79 at the end of each week, as provided in subparagraph (2) of this paragraph.

(d) *Daily report to warehouseman for buyers corrections account of tobacco received.* Notwithstanding the provisions of § 726.95, any dealer, buyer, or any other person receiving tobacco from or through a warehouseman at an auction sale or otherwise, which is not invoiced to him or which is incorrectly invoiced to him by the warehouseman, shall furnish the warehouseman on a daily sales basis an adjustment invoice or buyers settlement sheet. Such reports shall be furnished daily, if practicable; otherwise they shall be furnished at the end of each week.

(e) *Damaged tobacco purchased for later resale.* Any dealer or other person who plans to purchase tobacco in the form normally marketed by producers for resale that was damaged by such things as, but not limited to, fire and water shall prior to purchase report such plans to the State ASCS office issuing MQ–79, Dealer Record Book. Such report shall be timely made so as to allow prior inspection for the marketable value of such damaged tobacco, and the weighing and removal of such tobacco to be witnessed by representatives of the State ASCS office. Any damaged tobacco purchased prior to reporting such plans to the State ASCS office and subsequent inspection by an ASCS representative shall be considered excess tobacco if later resold.

§ 726.95 Dealers exempt from regular records and reports on MQ–79; and season report for exempted dealers.

(a) Any dealer or buyer who acquires tobacco only at auction sales and resales, in the form in which tobacco ordinarily is sold by farmers, 5 percent or less of any such tobacco shall not be subject to the requirements of § 726.94. Any dealer or buyer is required to report on MQ–79 and on MQ–72–2 nonauction purchases from producers and nonauction purchases from other sources.

(b) For the 1971–72 and subsequent marketing years, each dealer or buyer shall also make a report not later than April 1 of each year to the Director, Commodity Stabilization Division, showing by States where acquired, source and pounds of all tobacco received by him as a result of auction or nonauction sale, including tobacco received which was not billed to him. The report shall show:

(1) For purchases at auction for each warehouse (i) USDA registration number (warehouse code), (ii) name and address of warehouse, (iii) gross pounds originally billed to the buyer, (iv) gross pounds for which payment was made, (v) gross pounds from the company correction account deducted for short baskets, short weights and returned baskets and, (vi) gross pounds from the company correction account added for long baskets and long weights.

(2) For purchases at nonauction (i) name and address of seller (dealer or farmer), (ii) seller's number (dealer's registration number or farm number, including State and county code), and (iii) pounds purchased.

§ 726.96 Records and reports of truckers, persons redrying, prizing, or stemming tobacco, and storage firms.

(a) Each trucker shall keep such records as will enable him to furnish the State ASCS office a report with respect to each lot of tobacco received by him showing:

(1) The name and address of the producer.

(2) The date of receipt of the tobacco.

(3) The number of pounds received.

(4) The name and address of the person to whom it was delivered.

(b) Each person engaged in the business of redrying, prizing, or stemming tobacco and storage firms handling tobacco shall keep records with respect to each lot of tobacco received by him showing:

(1) The name and address of producer, dealer, warehouseman or other person for whom the tobacco was received.

(2) The date of receipt of tobacco.

(3) The number of pounds received.

(4) The purpose for which tobacco was received.

(5) The amount of any advance or loan made by him on the tobacco.

(6) The disposition of the tobacco.

(7) Person to whom delivered and pounds involved.

Any such person shall report this information to the State ASCS office within 15 days of the end of the marketing year, except for tobacco handled for an association operating the price support program, and tobacco purchased by him at auction or for which he has previously reported on Form MQ–79.

§ 726.97 Separate records and reports from persons engaged in more than one business.

Any person who is required to keep any record or make any report as a warehouseman, processor, dealer, buyer, trucker, or as a person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco, and who is engaged in more than one such business, shall keep such records as will enable him to make separate reports for each such business in which he is engaged to the same extent for each such business as if he were engaged in no other business.

§ 726.98 Failure to keep records and make reports or making false report or record.

(a) *Warehousemen and dealers*—(1) *Failure to keep records or make reports.* Under the provisions of section 373(a) of the act, any warehouseman, processor, buyer, dealer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco who fails to make any report or keep any record as required, or who makes any false report or record, is guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $500 for each offense. In addition, any tobacco warehouseman, dealer, or buyer who fails, upon being requested to do so, to remedy a violation by submitting complete reports and keeping accurate records shall be subject to an additional fine, not to exceed $5,000.

(2) *Failure to obtain producer's marketing card or dealer identification card.* The failure of (i) any dealer or warehouseman to obtain a producer's marketing card, MQ–76, to identify a sale of producer tobacco or (ii) any dealer or warehouseman who fails to obtain a dealer identification card, MQ–79–2, to cover a resale of tobacco, shall constitute a failure to make a report.

(b) *False representations—warehousemen, dealers, and producers.* In addition to the monetary penalties prescribed in §§ 726.88 and 726.89 the penalties designated in paragraph (a)(1) of this section are in addition to penalties prescribed by other criminal statutes including United States Code, title 18, section 1001, which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for a person convicted of knowingly and willingly committing such acts as making a false acreage report, altering a marketing card, falsely identifying tobacco or buying and selling unused "110 percent of quota poundage" on marketing cards.

§ 726.99 Registration of warehousemen and dealers.

Any dealer or warehouseman dealing in tobacco shall be registered with U.S. Department of Agriculture. Such registration will be handled by the North Carolina State ASCS Office, Raleigh, N.C. Any person desiring to register as a dealer or warehouseman shall complete an "Application for Dealer Identification Card" and submit it to the State office. Warehousemen will be assigned a three-digit identification number and dealers will be assigned a four-digit identification number. Persons requesting it will be issued a dealer identification card, Form MQ–79–2.

§ 726.100 Duties of Kansas City ASCS Data Processing Center.

Numerous recordkeeping and reporting provisions required by these regulations are the responsibility of the Kansas City ASCS Data Processing Center (also referred to as KCDPC). The duties of the center are set forth in writing in frequent issuances of internal procedures.

§ 726.101 Examination of records and reports.

For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, any warehouseman, processor, dealer, buyer, trucker, or person engaged in the business of sorting, redrying, prizing, stemming, packing, or otherwise processing tobacco for producers, shall make available at one place for examination by representatives of the State executive director and by employees of the Office of the Inspector General, and of the Commodity Stabilization Division and Tobacco Division of the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, upon written request by the State executive director, all such books, papers, records, basket tickets, tobacco sale bills, buyer adjustment invoices, accounts, canceled checks, check registers, check stubs, correspondence, contracts, documents, and memorandas as the State executive director or the Director has reason to believe are relevant and are within the control of such person.

§ 726.102 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained by him for 3 years after the end of the marketing year. Records shall be kept for such longer period of time as may be requested in writing by the State executive director, or the Director. The reporting and/or record-keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

§ 726.103 Information confidential.

All data reported to or acquired by the Secretary pursuant to the provisions of this subpart shall be kept confidential by all officers and employees of the U.S. Department of Agriculture, and by all members of county and community committees, and all county office employees and only such data so reported or acquired, as the Deputy Administrator deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under title III of the act.

RESTRICTION ON USE OF DDT AND TDE

§ 726.104 Determination of use of DDT and TDE.

(a) *Definition.* DDT means a pesticide bearing the chemical, or a mixture of 1,1,1-trichloro-2,2-bis (p-chlorophenyl) ethane and 1,1,1-trichloro-2-(o-chlorophenyl) -2- (p-chlorophenyl) ethane. TDE means a pesticide bearing the chemical or a mixture of 1,1-dichloro-2,2-bis (p-chlorophenyl) ethane. In addition, DDT or TDE shall include any products containing derivatives of such pesticides.

(b) *Producer's report.* For each farm on which burley tobacco is produced, the farm operator or any producer on the farm shall for each year, beginning with the 1970 crop, file with the county office a report on MQ–38, Certification of Use or Nonuse of DDT or TDE on Tobacco, showing whether or not DDT or TDE was used on the tobacco in the field or after being harvested.

(c) *Failure to file report.* If the operator of a farm on which tobacco is being produced fails or refuses, within 7 days after a request of the county committee to file a report on MQ–38, Certification of Use or Nonuse of DDT or TDE on Tobacco, showing whether or not DDT or TDE was used on such tobacco, all tobacco of such crop produced on such farm shall be considered by the county committee to have been subjected to such a pesticide unless the county committee finds that failure to file the report was due to circumstances beyond the control of the farm operator.

(d) *Notice to farm operator.* A written notice shall be furnished to the operator of each farm where the county committee determines that tobacco, after being transplanted in the field or after being harvested from a farm, was treated with DDT or TDE. Such determination by the county committee shall be based (1) the certification on MQ–38, or (2) failure to file MQ–38, or (3) other probative evidence that such pesticides were used on the tobacco. The notice to the farm operator shall constitute notice to all persons who as owner, operator, landlord, tenant, or sharecropper, are interested in the tobacco being grown on the farm.

(e) *Producer's right to recertify.* Any producer on a farm who certified on MQ–38 that the tobacco on the farm was subjected to DDT or TDE when in fact no such pesticides were used, may make a new certification of the facts on another form MQ–38.

(f) *Issuance of marketing cards—Notation on card.* If a farm has tobacco available for marketing on which DDT or TDE was used, the marketing card issued for the farm shall bear the notation "no price support".

[FR Doc.71–15643 Filed 10–27–71;8:49 am]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

PART 855—MAINLAND CANE SUGAR AREA

Proportionate Shares for Farms: 1972-Crop

Sec.
855.77 Definitions.
855.78 General provisions.
855.79 State acreage allocations.
855.80 Determination of farm bases for old-producer farms.
855.81 Establishment of shares for old-producer farms.
855.82 Shares for reconstituted farms.
855.83 Redetermination of bases and shares because of use of incorrect data.
855.84 Acreage reserve for farms in Louisiana.
855.85 Reallotment of unused acres to farms in Florida.
855.86 Establishment of shares for new-producer farms.
855.87 Appeals or corrections.

AUTHORITY: The provision of these §§ 855.77 to 855.87 issued pursuant to section 302 of the Sugar Act of 1948, as amended. (Secs. 301, 302, 403, 61 Stat. 929, 930 as amended; 932; 7 U.S.C. 1131, 1132, 1153).

§ 855.77 Definitions.

For the purpose of this part, the terms:

(a) "Act," "Secretary," "Deputy Administrator," "State Committee," "County Committee," "Producer," "Operator," and designation of a crop of sugarcane by year shall have the meanings set forth in § 892.1 of this chapter.

(b) "Farm" shall have the meaning set forth in Part 822 of this chapter.

(c) "Cane" means sugarcane.

(d) "Old-Producer Farm" means a farm which includes land on which there were accredited acres on such land in any of the crop years 1969, 1970, or 1971.

(e) "New-Producer Farm" means any farm that is not an old-producer farm.

(f) "Proportionate share" or "share" means the proportionate share for a farm in terms of planted acreage as provided in sections 301 and 302 of the Act.

(g) "Accredited acreage" or "accredited acres" means the area on the farm (within the share for such farm if shares are in effect) for any crop as designated by year on which sugarcane was grown and marketed (or processed) for the extraction of sugar or liquid sugar except for use as livestock feed or for the production of livestock feed, or which was harvested for seed or which was determined by the county committee to have been bona fide abandoned acreage to the extent of fulfilling at least the requirements for abandonment payments set forth in paragraph (c)(1) (i) and (ii) of § 845.2 of this chapter, as shown by office records of the county committee.

§ 855.78 General provisions.

Regulations pertaining to general conditional payments provisions are set forth in Part 892 of this chapter. Such regulations include provisions in regard to conditions which must be met to be eligible for payment, instructions for filing application for payment, requirements for harvesting within the farm share and for disposing of acreage in excess of the farm share. Also included are provisions covering sharecropper or share tenant protection, farm accredited acreage records, erroneous notice of the farm share or of excess acreage, acquisition of farm land by the right of eminent domain including the transfer of the share from the land so acquired to other land in the State, and provision for redetermination and review of determinations by county and State committees or the Deputy Administrator. Provisions pertaining to certification of acreage and land use in lieu of farm inspection and measurement are set forth in Part 718 of this title and in § 892.4 of this chapter. Provisions governing requests and appeals by producers for reconsideration or review of determinations by county or State committees or the Deputy Administrator are set forth in Part 780 of this title.

§ 855.79 State acreage allocations.

The acreage allocation shall be 240,306 acres for Florida and 375,916 acres for Louisiana, which includes the acreage made available under § 855.86 for new producer farms, under § 855.87 for fulfilling appeals and correcting errors, and for Louisiana the acreage made available under § 855.84 to compensate for unused proportionate share acreage.

§ 855.80 Determination of farm bases for old-producer farms.

The county committee for the county in which the farm headquarters is located shall determine a farm base for each old-producer farm or a portion thereof for the 1972 crop of cane as follows:

(a) For each old-producer farm, as constituted for the 1971 crop at the time the 1972 crop share is established, such base shall be the 1971 crop accredited acreage record of the farm, except that if the county committee determines that the 1971 crop accredited acreage is less than but at least 90 percent of the original 1971 crop share established pursuant to §§ 855.71, 855.72, or 855.75 for the farm or is less than 90 percent of such share because of reasons beyond the control of the operator, the farm base shall be such 1971 share. If it is known at the time farm bases are to be determined that 1972 crop acreage will not be harvested on a farm for which a base could be established, and the land was not acquired under right of eminent domain, a base will not be established.

(b) For each old-producer farm or part thereof removed from cane production by acquisition by a Federal, State, or other agency or entity entitled to exercise the right of eminent domain after the 1968 crop was harvested from such land, and the owner of such land did not have the State committee add the 1971 crop share established for such farm or part pursuant to § 855.71 or § 855.72 to the 1971 crop share established for other land owned by such owner under the provisions of § 855.71 or § 855.72, the farm base shall be the 1971 crop share so established for the farm or part removed from production.

§ 855.81 Establishment of shares for old-producer farms.

The county committee shall establish a 1972 crop share for any farm for which a base is determined pursuant to § 855.80 by applying to such farm base an adjustment factor computed by the State committee. In Louisiana, the factor shall be determined by dividing the State acreage allocation in § 855.79, less the sum of the acres made available to the State in §§ 855.84, 855.86, and 855.87 by the total of the bases established for all old-producer farms in the State pursuant to § 855.80. In Florida, the factor shall be determined by dividing the State acreage allocation in § 855.79, less the sum of the acres made available to the State in §§ 855.86 and 855.87 by the total of the bases established for all old-producer farms in the State pursuant to § 855.80. The share established by applying the adjustment factor to a farm base determined pursuant to § 855.80(b) shall, as provided in § 892.18 of this chapter, be added to the 1972 crop share established for other land in the State owned by the owner of the land who lost acreage under the right of eminent domain upon application to the State committee by such owner as provided in § 892.18 of this chapter. Provision is made in § 892.18 of this chapter for holding a share or part thereof in reserve for the future use of the owner of the land lost by the right of eminent domain.

§ 855.82 Shares for reconstituted farms.

(a) *Change in farm constitutions.* If the county committee determines after a 1972 crop share is established for the farm, that the 1972 crop farm will not be comprised of the same land as that included in the 1971 crop farm used as the basis for establishing the share or will not be comprised of the same land for which the application for a new-producer share was made, or determines that the farm was not properly constituted for the 1972 crop pursuant to the definitions of a farm and an operator, the farm or farms involved shall be reconstituted in accordance with such definitions. A share shall be determined as follows for the reconstituted farm.

(b) *Old-producer farms*—(1) *Subdivision.* The share for each subdivision of a farm which is subdivided shall be the portion of the 1972 crop share established for the farm pursuant to § 855.81, including any adjustments made in such share pursuant to § 855.84, § 855.85 or § 855.87, determined for each subdivision in accordance with the method used for dividing the accredited acreage record

of the farm set forth in § 892.9 of this chapter. However, if the method used for dividing such acreage record is other than by a written agreement of the interested persons to the division and if the share as so determined for any subdivision is greater than the acreage of cane growing on the subdivision for 1972 crop harvest, the county committee shall reduce the share for such subdivision to the acreage growing thereon, except that such reduction shall not be made if the county committee determines that acreage of cane on the subdivision was plowed down without the approval of the person acquiring the subdivision in order to obtain a larger share on the other subdivision or subdivisions. If such reduction is made, the acreage made available shall be distributed to increase the share in each of the other subdivisions of the parent farm on which the acreage growing for 1972 crop harvest exceeds the share determined for such subdivision, and such distribution of acreage by the county committee shall be prorated on the basis of the acreage growing on each subdivision.

(2) *Combinations.* The share for a reconstituted farm consisting of a combination of old-producer farms, a combination of subdivisions of such farms or combination of such farms and such subdivisions shall be the sum of the 1972 crop shares for such farms and subdivisions of such farms.

(c) *New-producer farms*—(1) *Subdivision.* The share established for a new-producer farm which is subdivided shall be prorated to the subdivisions by the percentage ratio that the acreage planted on each subdivision is to the total acreage planted on the farm. If there is no acreage of cane growing on the farm prior to subdivision, the share shall be canceled except that if the producer who requested the share retains a subdivision of the farm with sufficient cropland suitable for cane production at a level of such share, and before the share is canceled he files a written request with the county ASCS office to establish the share for his reconstituted new-producer farm, the share shall be established for such producer's reconstituted new-producer farm consistent with the requirements set forth in § 855.86 for establishment of new-producer farm shares.

(2) *Combinations*—(i) *Combined before planting.* The share for any new-producer farm or subdivision thereof which is combined with an old-producer farm or subdivision thereof prior to the planting of cane on the new-producer farm shall be canceled and the share established for the old-producer farm or subdivision thereof shall be the share for the reconstituted farm. If a new-producer farm or subdivision thereof is combined with another new-producer farm or subdivision thereof prior to the planting of cane on either of the new-producer farms or subdivision thereof, the shares for the new-producer farms shall be canceled and a share shall be established pursuant to § 855.86(d) for the reconstituted farm. The share established for a new-producer farm or for a subdivision thereof which is combined with land not part of a farm for which a share has been established, shall be the share for the reconstituted farm.

(ii) *Combined after planting.* If a new-producer farm or subdivision thereof is combined with another farm or subdivision thereof after cane has been planted on the new-producer farm the share established for the new producer farm or portion of such share determined for the subdivision thereof shall be added to the share established for the other farm or subdivision thereof. However, if the county committee determines that the operator of the new-producer farm, at the time he applied for a new-producer share, had begun negotiations or had arranged to subsequently transfer the new-producer farm to the operator of the other farm, the share established for the new-producer farm or portion of such share determined for the subdivision shall be canceled, and the share established for the other farm or subdivision thereof shall be the share for the reconstituted farm.

§ 855.83 Redetermination of bases and shares because of use of incorrect data.

Where incorrect data were used in determining a farm base or a share, such share shall be canceled and a new base shall be computed in accordance with § 855.80 using the correct data. A new share shall be established for the farm in accordance with § 855.81. Any acreage by which the incorrect share exceeds the newly established share and any acreage available under § 855.87 shall be used to increase shares for farms whose shares were established at levels lower than those to which they were entitled. In Florida, any acreage remaining shall be realloted under § 855.85, but if there is insufficient acreage to increase shares for farms whose shares were established at levels lower than those to which they were entitled, acreage becoming available under § 855.85(b) shall first be used to increase shares for such farms.

§ 855.84 Acreage reserve for farms in Louisiana.

(a) *Acreage available.* To offset proportionate share acreage which will be unused on farms in Louisiana, there are available 10,000 acres for increasing shares of old-producer farms established pursuant to §§ 855.81 and 855.83.

(b) *Filing requests.* Requests shall be filed at the ASCS county office in the county in which the farm headquarters is located not later than 10 days after the notice of the 1972 crop farm share is mailed to the farm operator. Late requests filed before the distribution of the acreage made available may be accepted as timely filed if the county committee determines that the operators had delayed filing for reasons beyond their control. Other late requests may be accepted prior to harvest if there is acreage still available after filling all timely filed requests.

(c) *Handling requests.* The county committee of each county shall modify each request, if necessary, considering the ability of the farm operator to use additional acreage in light of the establishment of proper sugarcane rotation practices and the maintenance of a proper relationship between total sugarcane acreage and suitable cropland. The county committee shall forward the requests, as modified, to the Louisiana State committee.

(d) *Establishing increases.* If the total of the requests for additional acreage, as modified by the county committees does not exceed the acreage made available under paragraph (a) of this section, the State committee shall authorize county committees to increase the shares of farms by the amount requested, as modified. If the total of the requests for additional acreage, as modified by the county committees, exceeds the acreage made available under paragraph (a) of this section, the State committee shall prorate the acreage to all farms for which requests were made on the basis of requests, as modified. The State committee shall authorize county committees to increase shares for such farms in accordance with the proration.

§ 855.85 Reallotment of unused acres to farms in Florida.

(a) *Eligibility.* Any old-producer farm in Florida for which a share is established pursuant to § 855.81 is eligible for an increase in the share established for the farm as provided in this section. A request for such increase must be filed by the operator of the farm in accordance with paragraph (c) of this section.

(b) *Source of unused acreage for increasing shares.* The following is available for reallocation:

(1) Unused acreage representing the total of the acreage of shares reduced pursuant to paragraph (h) of this section, excluding any acreage reserved by the State committee pursuant to § 892.18 of this chapter.

(2) Any acreage made available pursuant to § 855.86(a) for establishing shares for new-producer farms which is not requested by qualified applicants, and acreage representing new-producer shares which are canceled pursuant to § 855.82(c) and is not used as provided therein.

(3) Any acreage made available pursuant to § 855.87 for fulfilling appeals or corrections for erroneous shares which is not used for such purpose, or under § 855.83.

(c) *Filing requests for additional acreage.* Requests shall be filed at the county ASCS office in the county in which the farm headquarters is located by not later than 30 days after the notice of share determined pursuant to § 855.81 is mailed to the producer. Late requests filed before the distribution of unused acreage may be accepted as timely filed if the county committee determines that the operators had delayed filing for reasons beyond their control. Other late requests may be accepted prior to harvest if there is acreage still available after filling all timely filed requests.

(d) *Priority of adjustments.* Unused acreage determined pursuant to paragraph (b) of this section shall be used

first as needed to increase shares as provided in § 855.83; secondly, to adjust the shares for eligible old-producer farms.

(e) *Increasing shares.* Subject to the provisions of paragraph (d) of this section, acreage to be realloted pursuant to paragraph (f) of this section shall be used to increase the shares of old-producer farms whereon additional acreage may be used and requests have been filed pursuant to paragraph (c) of this section by considering the ability of the farm operator to use additional acreage in light of (1) availability and suitability of land, (2) availability of production and marketing facilities, (3) rotation practices, (4) maintenance of a proper relationship between total cane acreage and suitable cropland, and (5) the need for minimum acreage in a mill area.

(f) *Method for reallocating unused acreage.* The unused acreage becoming available under paragraph (b) of this section shall be realloted to farms in two steps as follows:

(1) *Initial reallocation.* The county committee of each county in Florida will determine the unused proportionate share acreage on farms with headquarters in the county. The total of the unused acreage so determined, not to exceed the total acreage reduction in shares made pursuant to paragraph (h) of this section, shall be forwarded to the Florida State committee together with all timely filed requests for increases. The State committee shall determine the increases to be made in the share for each farm in consideration of the criteria in paragraph (e) of this section. Increases shall be made immediately after the 30 day period for filing requests has expired.

(2) *Final reallocation.* The unused acreage becoming available pursuant to paragraphs (b), (2), and (3) of this section plus any unused acreage which was not reallotted in the initial reallocation shall be used by the State committee to increase shares of farms for which requests were not fully satisfied in the initial reallocation. Such increases shall be made in consideration of the criteria in paragraph (e) of this section. However, such acreage may not be reallocated before May 1, 1972.

(g) *Limitations.* No share shall be increased by an amount in excess of that requested or increased to cover acreage which was previously abandoned regardless of the cause of such abandonment.

(h) *Reduction in shares.* A share shall be reduced to the level of 1972 crop acreage on the farm if the county committee obtains a written statement from the farm operator in which he agrees to a reduction in his farm's share by the number of acres within such share that will not be used and the county committee determines that the failure to plant such acreage did not result from any action of a processor of cane denying the producer an opportunity to market cane from the underplanted acreage of the share determined for his farm pursuant to §§ 855.81 and 855.86, including any adjustments made pursuant to § 855.87.

§ 855.86 Establishment of shares for new-producer farms.

(a) *Acreage available.* There are available 1,000 acres for use in Florida and 1,000 acres for use in Louisiana for establishing shares for new-producer farms.

(b) *Filing requests.* A person desiring a share for a new-producer farm shall file a request at the local county ASCS office not later than November 1, 1971. Late requests may be accepted as timely filed prior to the establishment of shares for new-producer farms if the State committee determines that the person delayed filing for reasons beyond his control. Other late requests may be accepted if there is acreage still available after filling all timely filed requests.

(c) *Rating of applicants.* Subject to review and redetermination by the State committee, the county committee shall rate the applicant as "qualified" or "not qualified" to utilize a new-producer farm share by considering (1) the availability and suitability of land (2) availability of production and marketing facilities, and (3) whether the land on which cane will be grown is under his control through ownership or lease and there were no accredited acres on such land in any of the crop years 1969, 1970, or 1971, and such land is not an old-producer farm; *Provided*, That no applicant will be rated as "qualified" unless the county committee determines he will be the operator of the farm as defined in paragraph (l) of § 892.1 of this chapter and he is not the operator of an old-producer farm.

(d) *Size of share.* Each share shall be 100 acres, or a lesser acreage if requested, or such lesser acreage as the State committee determines if either the county or State committee determines that the available cropland will not support a share in the amount requested.

(e) *Establishing shares.* The State committee shall establish a share for the new-producer farm of each "qualified" applicant if the acreage provided in paragraph (a) of this section is sufficient to establish such shares. If there is insufficient acreage, the selection of "qualified" applicants to receive shares shall be by lot. Each drawing shall be supervised by a representative of the State committee. Persons included in a drawing shall be given advance notice and an opportunity to attend. Names (or farm numbers) shall be placed in a container and shall be indistinguishable to the person making the "draws." The person in charge shall announce the method of selection before the drawing.

(f) *Use of set-aside.* All acreage available for new-producers shall be allotted to qualified applicants if there are sufficient requests for such acreage. In Florida, any acreage within that provided in paragraph (a) of this section which is not requested by qualified applicants shall be used to increase shares of old-producer farms pursuant to § 855.85, but such acreage may not be used for this purpose before May 1, 1972.

§ 855.87 Appeals or corrections.

There are available 100 acres for use in Florida and 150 acres for use in Louisiana for fulfilling increases in shares resulting from appeals or for making corrections of erroneous shares. After the county committee has acted on its own initiative or on a request for reconsideration of the establishment of a share for an old-producer farm and has found that such share was in error because of the use of incorrect data or misapplication of these regulations, the State committee, upon its own initiative or upon application of the operator, may within the acreage made available under this section increase the share for such farm to a level so as to give effect to the use of correct data or proper application of these regulations. Any acreage within that made available which is not used for such purposes shall be used to increase shares of old-producer farms pursuant to § 855.83. In Florida, if there is any acreage remaining it shall be used to increase shares of old-producer farms pursuant to § 855.85.

STATEMENT OF BASES AND CONSIDERATIONS

Sugar Act requirements. The provisions with respect to producer compliance with the conditions for receiving payment, the basis for shares, and the protection of tenants and sharecroppers are set forth in sections 301 and 302 of the act (7 U.S.C. 1131, 1132).

General. The act requires that shares be established for farms in an area for a given crop when the Secretary determines that production will be greater than the quantity needed to enable the area to meet the quota and provide a normal carryover inventory as estimated by the Secretary for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed.

Proportionate shares have been required in the mainland cane sugar area for the last seven crops. The acreage allocated to the two States for the 1971 crop was 15 percent more than for the 1970 crop. The acreage increases in 1970 and 1971 restored all but about 7 percent of the 28 percent reduction that had occurred between 1964, the last unrestricted crop, and 1969.

Sugar production from the 1970 crop amounted to 1,252,000 tons which was less than the area's 1970 marketing quota. As a result the effective inventory on January 1, 1971, of 918,000 tons was 56,000 tons less than a year earlier. The 1971 crop is growing on 536,000 acres as compared to 466,000 acres in 1970. Prior to the damage to sugarcane in Louisiana resulting from Hurricane "Edith" on September 16, it was estimated that sugar production from the 1971 crop of mainland sugarcane would be about 1,400,000 tons if the average sugar yields from the 1967–70 crops were realized. However, due to the damage to the Louisiana crop, sugar production is now estimated at 135,000 tons less or 1,265,000 tons. This year's marketing

quota for the mainland sugarcane area is 1,239,000 tons. The estimated effective inventory on January 1, 1972 of 944,000 would be slightly larger than a year earlier and would amount to about 61 percent of the area's 1972 marketing quota inclusive of the increase in the area's quota of 300,000 tons, provided in the 1971 amendments to the Sugar Act.

In the absence of controls, the production of sugar from 1972 crop acreage could considerably exceed the quantity needed to enable the area to meet its quota and provide a normal carryover inventory. Therefore, a restriction of 1972 crop acreage to the extent provided by this regulation is necessary.

Public hearing. Pursuant to the act an informal public hearing was held in Pensacola, Fla., on June 9, 1971, to obtain the views and recommendations of interested persons on all matters relating to establishing 1972 crop shares. Spokesmen representing the American Sugar Cane League, the Louisiana and Florida Farm Bureau Federations, the Florida Sugar Cane League, and a Florida processing cooperative testified at the hearing on this matter. A brief was submitted at the hearing on behalf of a Florida producer. Briefs were submitted after the hearing by three Florida processors and the Florida Sugar Cane League.

Determination. This determination establishes a total acreage allocation of 616,222 acres for the 1972 crop, an increase of 15 percent over the 1971 crop. State allocations of 240,306 for Florida and 375,916 for Louisiana are established. However, 10,000 acres of the Louisiana allocation are to be used as a reserve in that State to offset estimated underplantings of proportionate share acreage. If plantings in Louisiana exceed 365,916 acres in 1972 an adjustment will be considered in that State's proportionate share acreage for the following crop.

Excluding the reserve of 10,000 acres, the total allocation is increased 13 percent over the 1971 crop, but is divided between States on the basis of the sugarcane in each State for the 1964 crop. Considering the increase in the area's quota of 300,000 tons of sugar, provided by the Sugar Act amendments of 1971, the effect of freeze and drought damage already suffered in some areas, the possibility of further freeze and hurricane damage which can seriously impair the accuracy of the production forecasts for both the 1971 and 1972 crops, the increase is believed fair and reasonable. The effect of this determination is to assign to the 1972 crop an acreage about 5 percent more than for 1964, the last unrestricted crop. The increase is 5 percent above that recommended by Louisiana and the same as that recommended by Florida. Both States recommended that 1972-crop acreage be divided between them on the basis of the sugarcane acreage in each State in 1964.

Farm bases will be determined in the same manner as for the five prior crops. This method was suggested by the Department in the press release announcing the hearing. It has proven equitable and has not been subject to criticism. Industry spokesmen recommended that it be used for the 1972 crop. A base will be the larger of the 1971 crop accredited acreage record or the 1971 crop original share if the farm operator utilized less than such share but at least 90 percent of such share or was prevented from utilizing such percentage of the share for reasons beyond his control. Thus, unless an operator elected to underplant his farm's 1971 crop share by more than 10 percent, the base for his farm will not be less than the farm's original 1971 crop share. A base will also be determined for any farm for which production was lost or reduced after the 1968 crop harvest through the transfer of acreage to any agency having the right of eminent domain.

The proportionate share for all old-producer farms will be computed by applying an adjustment factor to farm bases to keep the total of shares within each State allocation.

To offset estimated underplantings of proportionate share acreage on some farms in Louisiana, 10,000 acres are made available within that State's allocation for increasing the shares of old-producer farms on which additional acreage can be utilized. These increases will be made during the planting season and no further adjustment in shares would be made to compensate for unused acres. Producers desiring additional acreages must file a request for such acreage at the county office within 10 days after their notice of original share is mailed. Should the actual underplantings differ materially from the acreage reserve, consideration will be given to an appropriate adjustment in the proportionate share determination for the following crop.

With one exception, the handling of the reserve acreage will be in accord with the recommendation made by the spokesman for the American Sugar Cane League and the Louisiana Farm Bureau Federation. To discourage farm operators from filing requests for excessive increases, with the expectation that they will receive only the acreage they can utilize, the spokesman recommended that a conditional allocation from the reserve be granted each operator. The entire increase from the reserve in a farm's proportionate share would be revoked if the operator intentionally used less than 90 percent of the increase granted. Thus, any operator who willfully underplanted more than 10 percent of the reserve acreage would have to dispose of the entire increase in acreage for purposes other than for sugar or seed. Since the determination of the producer's intent to utilize the additional acreage necessarily would have to be made late in the year, an order at that time to dispose of all of his reserve acreage would be a severe and extremely costly penalty since production and cultivation expenses would have been incurred earlier on that acreage. To avoid the creation of such hardship the recommendation was not adopted. Rather, the Department relies on the authority provided county committees to modify any request for additional acreage which appears to be unreasonable in light of rotation practices generally followed and the relationship of cane acreage to farm cropland. The ability of farm operators to use additional acreage will be closely examined by the county committees. If the total of the requests, as modified, exceeds the 10,000 acres provided, an adjustment factor, determined on the basis of requests, will be applied to the reserve acreage.

In Florida, reallotment of unused acres again will be permitted, but certain modifications are made in the procedure followed in prior crops. The Department has been informed there is the likelihood that some producers will be denied the opportunity to market cane from the increased acreage made available for the 1972 crop because of limited processing capacity of a mill to which they have customarily marketed their cane. The other mills in the State which have been purchasing cane from a small number of producers, the mills which process administration cane only, and the three cooperatives desire to expand production. Because of the close proximity of several mills to most producers in the State, producers who desire to plant the increased acreage should have the opportunity to market cane from such acreage. Accordingly, provision is made to permit redistribution only of that unused acreage which is released in writing by producers and which the county committee determines did not result from any action on the part of a processor within the State to deny a producer a home for his cane. Distribution of the acreage will be made in two steps as recommended in a brief submitted after the hearing by the Florida Sugar Cane League. Producers desiring additional acreage must file a request for an increase in their farm's share within 30 days after receiving notice of their original share. The initial allocation will be made statewide and will be that acreage which is released. It should represent the bulk of the unused acreage. The second allocation will be made from unused acreage not initially reallocated plus that unused from the set-asides for new-producers and appeals.

Recommendations made by the spokesman for the Florida Farm Bureau Federation and a representative of a cooperative relating to the distribution of unused acreage by mill areas was not adopted because it is believed that the State committee should have more flexibility in granting increases. However, should the cane supply of a processor be jeopardized because of underplantings, the State committee is authorized within guidelines provided in this determination to distribute unused acreage to other farms in the same mill area.

New-producer shares will be established as recommended by industry spokesmen at 100 acres or a lesser acreage if requested. The larger share should ease the economic difficulties associated with beginning a new sugarcane operation. Qualification for receiving a share is eased. Land having no acreage of cane within the years 1969 through 1971 will

be classified as eligible for a new-producer share. Under prior regulations, if such land was part of an old-producer farm, it could not be considered as a new-producer farm.

Provisions covering requirements for harvesting within the farm share, disposition of acreage in excess of the farm share, protection of sharecroppers and tenants and acquisition of farmland by the right of eminent domain are now included in the General Conditional Payments Provisions.

The 1972 crop sugarcane acreage resulting from this regulation should provide a quantity of sugarcane which will enable the area to meet its quota under the act and provide a normal carryover inventory.

The provisions of this regulation constitute an equitable basis for establishing shares for farms in the area for the 1972 crop of sugarcane.

Accordingly, I hereby find and conclude that the foregoing regulation will effectuate the applicable provisions of the Act.

Effective date: Date of publication (10-28-71).

Signed at Washington, D.C. on October 22, 1971.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

Concurred:

CLARENCE D. PALMBY,
Assistant Secretary for International Affairs and Commodity Programs.

[FR Doc.71-15645 Filed 10-27-71;8:48 am]

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

[Valencia Orange Reg. 372]

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

Limitation of Handling

§ 908.672 Valencia Orange Regulation 372.

(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 October 26, 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 October 29, through November 4, 1971, are hereby fixed as follows:

(i) District 1: 102,000 cartons;

(ii) District 2: 498,000 cartons;

(iii) District 3: Unlimited.

(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: October 26, 1971.

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

[FR Doc.71-15823 Filed 10-27-71;11:27 am]

[Avocado Order 5, Amdt. 7; Avocado Reg. 6, Amdt. 2; Avocado Reg. 13, Amdt. 1]

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Limitations of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915; 36 F.R. 14126), regulating the handling of avocados grown in south Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Avocado Administrative Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitations on handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The amendments are based upon a current appraisal of present and prospective marketing conditions for avocados. Shipments of avocados are now being made in peak volume. The amendments would permit the handling within the production area of mature avocados which fail to meet currently prescribed grade, pack and container requirements in recognition of the existence of a consumer demand for avocados of such character within the area as authorized in a recent amendment to said marketing agreement and order (36 F.R. 14126). Shipment of avocados in accordance therewith would tend to serve the interests of producers and consumers consistent with the declared policy of the act.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of these amendments until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which these amendments are based became available and the time when these amendments must become effective in order to effectuate the declared policy of the act is insufficient; and these amendments relieve restrictions on the handling of avocados within the production area.

1. The provisions of paragraph (a)(1) of § 915.305 (Avocado Order 5) are hereby amended to read as follows:

§ 915.305 Avocado Order 5.

(a) *Order.* (1) On and after October 25, 1971, no handler shall handle between the production area and any point outside thereof any variety of avocados in containers having a capacity of more than four pounds of avocados, unless such avocados are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

* * * * *

2. The provisions of paragraph (a)(2) of § 915.306 (Avocado Regulation 6) are hereby amended to read as follows:

§ 915.306 Avocado Regulation 6.

(a) *Order.* (1) * * *

(2) On and after October 25, 1971, no handler shall handle any container of avocados between the production area and any point outside thereof, unless the avocados in such container meet the

requirements of standard pack and one of the pack specifications established in subparagraph (1) of this paragraph, and each container in each lot is marked or stamped to show the U.S. grade applicable to such lot: *Provided*, That, in lieu of such marking requirement, any handler may affix to the container a label, brand or trademark, registered with the Avocado Administrative Committee in accordance with the following, which appropriately identifies the grade of such avocados:

* * * * *

3. The provisions of paragraph (a) (1) of § 915.313 (Avocado Regulation 13; 36 F.R. 11509) are hereby amended to read as follows:

§ 915.313 Avocado Regulation 13.

(a) *Order.* (1) During the period June 14, 1971, through April 30, 1972, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided*, That, beginning October 25, 1971, avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305 for the handling of avocados on and after October 25, 1971, between the production area and any point butside thereof;

* * * * *

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

Dated: October 22, 1971, to become effective October 25, 1971.

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

[FR Doc.71–15731 Filed 10–26–71;12:35 pm]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Rev. 10, Amdt. 7]

PART 121—SMALL BUSINESS SIZE STANDARDS

Definition of the Term "Annual Receipts"

Currently the first sentence of § 121.3–2(b) of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations provides that the term "Annual receipts" as used in Part 121 means the gross income (less returns and allowances, sales of fixed assets and interaffiliate transactions) of a concern (and its affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes.

The intention of the above provision as a whole is that, in computing a concern's annual receipts, all of the receipts of such concern and its affiliates both domestic and foreign, less those receipts specifically excepted, are to be included. The provision covering receipts reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, was included only to provide an acceptable and meaningful source of information concerning the total receipts of a concern and its affiliates. It was not intended to exclude receipts of a foreign affiliate.

In order to clarify the above, the first sentence of § 121.3–2(b) is revised to read as follows:

§ 121.3–2 Definition of terms used in this part.

* * * * *

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes.

* * * * *

Effective date. This amendment shall become effective upon publication in the FEDERAL REGISTER (10–28–71).

Dated: October 19, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71–15611 Filed 10–27–71;8:45 am]

[Rev. 10, Amdt. 8]

PART 121—SMALL BUSINESS SIZE STANDARDS

Definition of Term "Nonmanufacturer"

Sections 121.3–8(b) and 121.3–8(c) of Part 121, Chapter I of Title 13 of the Code of Federal Regulations respectively define a small manufacturer and a small nonmanufacturer for the purpose of bidding on Government procurements. Section 121.3–14(h) provides that there can be only one manufacturer of the end item being procured in a particular procurement, and that the manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Section 121.3–2(r) defines the term "nonmanufacturer" as meaning any concern which, in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement.

From time to time it becomes necessary to determine whether a particular bidder is the manufacturer of the end item being procured and therefore subject to the applicable definition of a small manufacturer, or whether it is a nonmanufacturer and therefore subject to the applicable definition of a small nonmanufacturer.

Whether a concern is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision should be made by the appropriate SBA regional director or his delegatee and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

Accordingly § 121.3–14(h) of the regulation is revised to read as follows:

§ 121.3–14 Interpretations.

* * * * *

(h) *Sections 121.3–2(r) and 121.3–8(c) "Definition of nonmanufacturer".* For size determination purposes there can only be one manufacturer of the end item being procured. The manufacturer of the end item being procured is the concern which with its own forces transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular procurement is the manufacturer or a nonmanufacturer for the purpose of a size determination is not for determination by the contracting officer. The decision shall be made by the appropriate SBA regional director or his delegatee, and need not be consistent with the contracting officer's decision as to whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act, etc.

* * * * *

This amendment shall become effective on publication in the FEDERAL REGISTER (10–28–71).

Dated: October 19, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71–15612 Filed 10–27–71;8:45 am]

[Rev. 10, Amdt. 9]

PART 121—SMALL BUSINESS SIZE STANDARDS REGULATION

Definition of Small Custom Livestock Feed Yard for Purpose of Financial Assistance

A proposal was issued on April 28, 1971 (36 F.R. 7976) to amend the definition of a small custom livestock feed yard for the purpose of financial assistance by increasing the size standard

from annual receipts of $1 million or less to annual receipts not exceeding $2 million.

Interested persons were given 30 days in which to submit written comments thereon, and no adverse comment was received.

Accordingly Part 121 of Chapter I of Title 13 of the Code of the Federal Regulations is hereby amended by adding new paragraph (h) to § 121.3–10 to read as follows:

§ 121.3–10 Definition of small business for SBA loans.

* * * * *

(h) Custom livestock feeding: Any concern primarily engaged in custom livestock feeding is classified as small if its annual receipts do not exceed $2 million.

Effective date. This amendment shall become effective on publication in the FEDERAL REGISTER (10–28–71).

Dated: October 26, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71–15808 Filed 10–27–71;10:31 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 71–EA–106; Amdt. 39–1314]

PART 39—AIRWORTHINESS DIRECTIVES

McCauley Aircraft Propellers

Correction

In F.R. Doc. 71–14835 appearing on page 19672 in the issue of Saturday, October 9, 1971, the propeller model number *"D3A32C8–K"* appearing in the listing should read *"D3A32C88–K"*.

[Docket No. 71–EA–133; Amdt. 39–1325]

PART 39—AIRWORTHINESS DIRECTIVES

Fairchild Hiller Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation regulations so as to issue an airworthiness directive applicable to Fairchild Hiller FH1100 type helicopters.

There have been reports of cracking of the basic body structural components beneath the forward tail rotor drive bearing block. Since this deficiency can exist or develop in other helicopters of similar type design, an airworthiness directive is being issued so as to require repetitive inspections and eventual alteration of the structure.

Since the foregoing requires expeditious adoption of this airworthiness directive, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 F.R. 13697], § 39.13 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

FAIRCHILD HILLER: Applies to FH1100 Helicopters certificated in all categories, S/N's 9 through 208.

Compliance required as follows:

To preclude the possibility of failure of the FH1100 tail rotor bearing block, P/N 24–24010–3, inspect the fuselage frame Station 163.5 within the next 100 hours' time in service, unless already accomplished, and every 100 hours after the last inspection in accordance with Fairchild Hiller Service Bulletin FH1100–61–3, Section 4, Inspection Procedure. If cracks are found in the frame, prior to further flight, alter the frame according to procedures in the service bulletin, Section 2, Accomplishment Instructions, or later FAA-approved revision or alternate method approved by the Chief, Engineering and Manufacturing Branch, FAA—eastern region.

If no cracks are found during the 100-hour inspections, accomplish the alteration at the time of the next 1,200-hour aircraft overhaul in accordance with Section 2, Accomplishment Instructions, of the referenced service bulletin or later FAA-approved revision or an alternate method approved by the Chief, Engineering and Manufacturing Branch, FAA—eastern region. Incorporation of the alteration exempts the aircraft from further compliance with this airworthiness directive.

This amendment is effective November 2, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, and 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on October 18, 1971.

ROBERT H. STANTON,
Acting Director,
Eastern Region.

[FR Doc.71–15634 Filed 10–27–71;8:47 am]

[Docket No. 71–EA–137, Amdt. 39–1324]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to revise AD 68–7–4 applicable to Piper PA 23–250 type aircraft.

AD 68–7–4 issued on April 4, 1968 and effective April 11, 1968 is applicable to engine mounts on the PA 23–250 which were date stamped prior to May 26, 1965. Subsequent experience has demonstrated that the newer engine mounts are also cracking. Since this is a condition which can exist or develop in other aircraft of similar type design, an amendment to AD 68–7–4 is being issued to require inspection of all engine mounts.

As the foregoing requires expeditious adoption of the amendment, notice and public procedure hereon are impractical and the rule may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697) § 39.13 of the Federal Aviation Regulations is amended so as to revise AD 68–7–4 as follows:

PIPER AIRCRAFT. Applies to Piper PA–23–250 airplanes serial Nos. 27–2505 and up having engine mount part No. 31215.

Compliance required as indicated.

a. With airplanes having engine mount date stamped prior to 26 May 1965, within the next 50 hours in service after the effective date of this A.D. unless already accomplished within the last 50 hours in service and thereafter at intervals not to exceed 100 hours in service from the last inspection visually inspect the mount for cracks in the following areas:

(i) The lower forward lateral tube

(ii) The three-tube horizontal diagonal truss in and around the three welded junctures with the lower forward lateral fore and aft tube, and

(iii) The lower left horizontal fore and aft tube.

b. With airplanes having engine mounts date stamped 26 May 1965 and after, and having 1,000 or more hours in service, within the next 50 hours in service after the effective date of this A.D., unless already accomplished within the last 50 hours in service, and thereafter at intervals not to exceed 100 hours in service from the last inspection visually inspect the mount for cracks at all joints.

c. If cracks are found accomplish either of the following,

(i) Replace the engine mount prior to further flight with a new mount part No. 31215. After installation of new mount continue repetitive inspection of this mount after 1,000 hours as described in paragraph b.

(ii) Repair the engine mount prior to further flight in accordance with FAR 43. Conduct a magnetic particle, or equivalent method, inspection of the entire mount for cracks prior to approval of the repaired engine mount. Continue visual inspections of the mount within 100 hours in service and thereafter not to exceed 100 hours in service from the last inspection.

NOTE: On engine mounts date stamped prior to 26 May 1965, a pictorial description of the affected areas can be found in Piper Service Letter No. 462. The engine mount is date stamped on either of the two diamond-shaped gusset plates located near the upper firewall attachment points.

This amendment is effective November 2, 1971.

(Sec. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on October 15, 1971.

ROBERT H. STANTON,
Acting Chief,
Eastern Region.

[FR Doc.71–15633 Filed 10–27–71;8:47 am]

[Airspace Docket No. 70-WE-76]

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

Designation of Additional Control Area

On July 13, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 13039) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate an additional control area west of Santa Barbara, Calif.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. The Aircraft Owners and Pilots Association objected to the proposal on the following general bases:

1. It would put a 5,000-foot MSL "lid" on any traffic offshore from Point Conception to south of Catalina Island.

2. It would restrict usable training airspace and create a more hazardous area of congestion at and under the 5,000-foot level.

3. It would eliminate many miles of just offshore training and cross-country flight areas.

4. Airspace below 5,000 feet outside the Los Angeles terminal area is not needed for vectoring heavy jet aircraft.

5. There is serious doubt that any air carrier wants to operate jet aircraft below 5,000 feet except during takeoff and landing phases.

6. The proposal seems unnecessarily restrictive against the light-plane pilot.

In response to the above objections, we offer the following comments:

Item 1. Most of the airspace between Point Conception and Catalina Island is presently controlled airspace with a base of 1,200 feet above the surface. This includes the airspace around Catalina Island. Therefore, the proposed additional control area would add no additional burden, if the aircraft are 1,200 feet or more above the surface.

Item 2. Training is not prohibited in the additional control area.

Item 3. Most of the airspace just offshore is already controlled airspace with a base of 1,200 feet above the surface.

Item 4. The additional control area would provide controlled airspace for vectoring above 5,000 feet MSL.

Item 5. The warning areas in the additional control area would be made joint-use so that air carrier aircraft could conduct training above 5,000 feet MSL.

Item 6. The designation of this additional control area does not prohibit its use by any civil aircraft.

The FAA and the Commander, Pacific Missile Range, have negotiated a letter of procedure. This letter of procedure governs the air traffic control usage of the offshore airspace within the affected warning areas.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 9, 1971, as hereinafter set forth.

Section 71.163 (36 F.R. 2048) is amended by adding the following additional control area:

SANTA BARBARA, CALIF.

That airspace extending upward from 5,000 feet MSL bounded on the northwest by a line extending from lat. 34°30'00" N., long. 123°15'00" W., to lat. 35°26'30" N., long. 121°03'40" W., on the northeast by a line 3 nautical miles southwest of and parallel to the shoreline, on the southeast by a line 5 nautical miles southeast of and parallel to the Santa Catalina 048° and 228° true radials and the northwest boundary of Warning Area W-291, and on the southwest by the Oakland Oceanic CTA/FIR boundary.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510; Executive Order 10854, 24 F.R. 9565; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on October 22, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-15647 Filed 10-27-71;8:48 am]

[Airspace Docket No. 71-CE-84]

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

Alteration of Control Zone and Transition Area

On page 14657 of the FEDERAL REGISTER dated August 7, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the control zone and transition area at Dubuque, Iowa.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., January 6, 1972.

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

Issued in Kansas City, Mo., on October 5, 1971.

JOHN M. CYROCKI,
Director, Central Region.

(1) In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

DUBUQUE, IOWA

Within a 5-mile radius of Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'32" W.); within 3 miles each side of the Dubuque VORTAC 321° radial, extending from the 5-mile-radius zone to 8 miles northwest of the VORTAC; and within 3 miles each side of the Dubuque VORTAC 126° radial, extending from the 5-mile-radius zone to 8 miles southeast of the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

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

DUBUQUE, IOWA

That airspace extending upward from 700 feet above the surface within an 8½ mile radius of Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'32" W.); and within 4½ miles northeast and 9½ miles southwest of the Dubuque VORTAC 321° radial, extending from the VORTAC to 18½ miles northwest of the VORTAC; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 42°05'00" N., longitude 91°00'00" W., thence west along latitude 42°05'00" N., to and north along longitude 92°15'00" W., to and counterclockwise along the arc of a 29-mile-radius circle centered on the Waterloo, Iowa VORTAC, and to east along the south edge of V-100, to and clockwise along the arc of a 29-mile-radius circle centered on the Dubuque VOR TAC, to and southeast along the southwest edge of V-218, to and south along longitude 89°55'00" W., to and southwest along the northwest edge of V-216, and to west along the north edge of V-172, to and north along longitude 91°00'00" W. to the point of beginning, excluding the portion which overlies the State of Illinois.

[FR Doc.71-15630 Filed 10-27-71;8:46 am]

[Airspace Docket No. 71-CE-91]

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

Alteration of Control Zone and Transition Area

On pages 15452 and 15453 of the FEDERAL REGISTER dated August 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the control zone and transition area at Fairmont, Minn.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., January 6, 1972.

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

Issued in Kansas City, Mo., on October 5, 1971.

JOHN M. CYROCKI,
Director, Central Region.

(1) In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

FAIRMONT, MINN.

Within a 5-mile radius of Fairmont Municipal Airport (latitude 43°38'41" N., longitude 94°25'04" W.); within 2½ miles each side of the 132° bearing from the Fairmont Municipal Airport, extending from the 5-mile-radius zone to 6½ miles southeast of the airport, and within 2½ miles each side of the 319° bearing from the Fairmont Municipal Airport, extending from the 5-mile-radius zone to 6½ miles northwest of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airmans Information Manual.

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

FAIRMONT, MINN.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Fairmont Municipal Airport (latitude 43°38'41" N., longitude 94°25'04" W.); within 3 miles each side of the 132° bearing from Fairmont Municipal Airport, extending from the 7-mile-radius area to 8 miles southeast of the airport; and within 3 miles each side of the 319° bearing from Fairmont Municipal Airport, extending from the 7-mile-radius area to 8 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within 4½ miles southwest and 9½ miles northeast of the 132° bearing from the Fairmont Municipal Airport, extending from the airport to 18½ miles southeast of the airport; and within 4½ miles northeast and 9½ miles southwest of the 319° bearing from Fairment Municipal Airport, extending from the airport to 18½ miles northwest of the airport.

[FR Doc.71-15631 Filed 10-27-71;8:46 am]

[Airspace Docket No. 71-CE-61]

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

Alteration of Control Zone and Transition Area

On page 15454 of the FEDERAL REGISTER dated August 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the control zone and transition area at Green Bay, Wis.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., January 6, 1972.

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

Issued in Kansas City, Mo., on October 5, 1971.

JOHN M. CYROCKI,
Director, Central Region.

(1) In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

GREEN BAY, WIS.

That airspace with a 5-mile radius of Austin-Straubel Airport, Green Bay, Wis. (latitude 44°29'16" N., longitude 88°07'49" W.).

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

GREEN BAY, WIS.

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Austin-Straubel Airport, Green Bay, Wis. (latitude 44°29'16" N., longitude 88°07'49" W.); within 2½ miles each side of the Green Bay ILS southwest localizer course extending from the 9-mile radius to 8 miles southwest of the OM; within 5 miles each side of the Green Bay VORTAC 326° radial, extending from the 9-mile-radius area to 8 miles northwest of the VORTAC; and within 5 miles each side of the Green Bay ILS localizer northeast course extending from the 9-mile radius to 14 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface within a 26-mile-radius circle centered on the Green Bay VORTAC between the 032° and the 086° radius of the VORTAC.

[FR Doc.71-15628 Filed 10-27-71;8:46 am]

[Airspace Docket No. 71-CE-96]

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

Alteration of Control Zone and Transition Area

On page 15451 of the FEDERAL REGISTER dated August 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the control zone and transition area at Janesville, Wis.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., January 6, 1972.

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

Issued in Kansas City, Mo., on October 5, 1971.

JOHN M. CYROCKI,
Director, Central Region.

(1) In § 71.171 (36 F.R. 2055), the following control zone is amended to read:

JANESVILLE, WIS.

Within a 5-mile radius of the Rock County Airport (latitude 42°37'12" N., longitude 89°02'28" W.); within 3 miles each side of a 125° bearing from the Rock County Airport extending from the 5-mile-radius zone to 6½ miles southeast of the airport; and within 3 miles each side of a 321° bearing from the Rock County Airport extending from the 5-mile-radius zone to 6½ miles northwest of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

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

JANESVILLE, WIS.

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Rock County Airport, Janesville, Wis. (latitude 42°37'12" N., longitude 89°02'28" W.).

[FR Doc.71-15632 Filed 10-27-71;8:46 am]

[Airspace Docket No. 71-CE-82]

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

Alteration of Control Zones and Transition Area

On pages 15453 and 15454 of the FEDERAL REGISTER dated August 14, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of the Federal Aviation Regulations so as to alter the control zones and transition area at Milwaukee, Wis.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., January 6, 1972.

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

Issued in Kansas City, Mo., on October 5, 1971.

JOHN M. CYROCKI,
Director, Central Region.

(1) In § 7.171 (36 F.R. 2055), the following control zones are amended to read:

MILWAUKEE, WIS. (GENERAL MITCHELL FIELD)

Within a 5-mile radius of General Mitchell Field (latitude 42°56'51" N., longitude 87°-53'58" W.).

MILWAUKEE, WIS. (TIMMERMAN AIRPORT)

Within a 5-mile radius of Timmerman Airport (latitude 43°06'40" N., longitude 88°-02'00" W.); and within 3 miles each side of Timmerman VOR 336° radial, extending from the 5-mile-radius zone to 6½ miles northwest of the VOR. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

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

MILWAUKEE, WIS.

That airspace extending toward from 700 feet above the surface within a 9-mile radius of General Mitchell Field (latitude 42°56'51" N., longitude 87°53'58" W.); within a 5½-mile radius of Horlick-Racine Airport (latitude 42°45'45" N., longitude 87°49'00" W.); within 3 miles each side of the 027° bearing from Horlick-Racine Airport extending from the 5½-mile radius to 8 miles northeast of the airport; within an 8-mile radius of Timmerman Airport (latitude 43°06'40" N., longitude 88°02'00" W.); within a 6½-mile radius of the Waukesha County Airport (latitude 43°02'25" N., longitude 88°14'00"W.); and within 3 miles each side of the 274° bearing from the Waukesha County Airport extending from the 6½-mile radius to 7½ miles west of the airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 43°30'00" N., on the east by longitude 87°00'00" W., on the south by latitude 42°-30'00" N., and the Illinois-Wisconsin boundary, and on the west by longitude 88°30'00" W.

[FR Doc.71-15629 Filed 10-27-71;8:46 am]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965 _____)

Subparts J and K—Fire and Safety Standards

EXTENDED CARE FACILITIES AND NONACCREDITED HOSPITALS

On September 2, 1970, there was published in the FEDERAL REGISTER (35 F.R. 13888) a notice of proposed rule making with proposed amendments to Subparts J and K of Regulations No. 5 which proposed to incorporate the standards of the National Fire Protection Association's Life Safety Code, floor covering flammability standards, and other fire and safety standards into the conditions of participation for extended care facilities and nonaccredited hospitals.

Interested parties were given the opportunity to submit within 30 days data, views, or arguments with regard to the proposed amendments.

Comments were received from interested persons and leading organizations in the health care field, fire safety field, and the carpet and rug industry. After consideration of all the comments received, the amendments as proposed are hereby adopted with the following substantive changes:

(a) Since the Life Safety Code contains a requirement for carpeting, the separate reference to a carpeting test standard has been deleted. The Life Safety Code provides that where the fire authority of jurisdiction believes a floor covering may present an unusual fire hazard, the floor covering shall be tested in accordance with National Fire Protection Association Standard No. 255 and be required to conform to the Life Safety Code requirements for interior finishes.

The principles and methodology for testing carpet flammability have been under intensive review for some time and new kinds of tests or standards for testing are now being tried or will be studied in the near future. The Department fully supports further scientific discussion and additional experimentation, from both the public and private sectors, and will follow further developments in testing techniques closely, with the view of adopting any future tests or test designs which prove to be superior to the test method for floor covering specified in the Life Safety Code, i.e., Test of Surface Burning Characteristics of Building Materials (National Fire Protection Association Standard No. 255).

(b) In addition, §§ 405.1022 and 405.1134 have been modified to:

(1) Specify that the 21st edition, 1967 (the edition specified in title XIX of the Social Security Act and adopted by the Joint Commission on Accreditation of Hospitals), is the edition of the Life Safety Code established as the standard for extended care facilities and nonaccredited hospitals;

(2) Include provisions, consistent with provisions under title XIX of the Social Security Act, permitting waiver of specific requirements of Life Safety Code if the Secretary finds that the State Code adequately protects the patients in such facilities and hospitals, or if compliance would result in unreasonable hardship;

(3) Eliminate separate language relating to fire drills and fire extinguishers since these requirements are included in the Life Safety Code which has been adopted; and

(4) Update the requirements for the handling and storage of oxygen to conform to the latest National Fire Protection Association published standards on these subjects.

(c) Section 405.1134 is further modified to:

(1) Make its provisions consistent with title XIX and the requirements of the Joint Commission on Accreditation of Hospitals; and

(2) Revise the requirements applicable to the housing of blind and nonambulatory patients.

(Secs. 1102, 1842, 1862, 1870, 1871, 49 Stat. 647, as amended, 79 Stat. 309, 79 Stat. 325, 79 Stat. 331, 81 Stat. 846-847; 42 U.S.C. 1302, 1395 et seq.)

Effective date. These amendments shall be effective upon publication in the FEDERAL REGISTER (10-29-71).

Dated: October 8, 1971.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: October 26, 1971.

JOHN G. VENEMAN,
Acting Secretary of Health, Education, and Welfare.

Subparts J and K of Regulations No. 5 (20 CFR 405) are further amended as follows:

1. Paragraph (b) of § 405.1022 is amended by revising the material preceding subparagraph (1) and subparagraph (1) to read as follows:

§ 405.1022 Condition of participation—physical environment.

* * * * *

(b) *Standard: Life safety from fire.* The hospital meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to hospitals; except that the State agency may waive in accordance with criteria to be established by the Commissioner of Social Security for such periods as it deems appropriate, specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a particular hospital, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such hospital; and except that the Life Safety Code shall not apply in any State if the Secretary makes a finding that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in hospitals. The factors explaining the standard are as follows:

(1) The hospital:

(i) Meets the Life Safety Code standards of the Institutional Occupancy chapter 10 and those provisions in chapters 1 through 7 and 17, and Appendixes A and B as are applicable to hospitals (On any waiver of specific provisions of the Life Safety Code, the State agency determination includes, where possible, a statement from the fire authority having jurisdiction concerning the effect of the waiver on patient safety in the hospital.);

(ii) Maintains written evidence of regular inspection and approval by State or local fire control agencies;

(iii) In anesthetizing areas and storage locations for flammable anesthetic

agents, has floor materials and mechanical equipment used which comply with the provisions of National Fire Protection Association Standard No. 56A, "Standard for the Use of Inhalation Anesthetics."

(iv) Has procedures for the proper routine storage and prompt disposal of trash.

* * * * *

2. In § 405.1134 the material preceding paragraph (a) and paragraph (a) are revised to read as follows:

§ 405.1134 Condition of participation—physical environment.

The extended care facility is constructed, equipped, and maintained to insure the safety of patients and provides a functional, sanitary, and comfortable environment.

(a) *Standard: Life safety from fire.* The extended care facility meets such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that the State agency may waive in accordance with criteria to be established by the Commissioner of Social Security, for such periods as it deems appropriate; specific provisions of such Code which, if rigidly applied, would result in unreasonable hardship upon a particular extended care facility, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such extended care facility; and except that the Life Safety Code shall not apply in any State if the Secretary makes a finding in accordance with applicable provisions of section 1902 of the Social Security Act that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in extended care facilities. The factors explaining the standard are as follows:

(1) The facility is in compliance with the Life Safety Code standards of the Institutional Occupancy chapter 10 and those provisions in chapters 1 through 7, and 17, and Appendixes A and B as are applicable to nursing homes.

(2) On any waiver of specific provisions of the Life Safety Code, the State agency determination includes, where possible, a statement from the fire authority having jurisdiction concerning the effect of the waiver on patient safety in the extended care facility.

(3) The facility complies with all applicable State and local codes governing construction and fire protection.

(4) Reports of periodic inspections of the structure by the fire control authority having jurisdiction in the area are on file in the facility.

(5) Corridors used by patients are equipped with firmly secured handrails on each side.

(6) Where the State agency has permitted by waiver the participation of a facility of two or more stories which is not at least 2-hour fire resistive construction, blind, nonambulatory or physically handicapped patients are not housed above the street-level floor unless the facility is of 1-hour protected noncombustible construction (as defined in National Fire Protection Association Standard No. 220), fully sprinklered 1-hour protected ordinary construction, or fully sprinklered 1-hour protected wood-frame construction.

(7) No occupancies or activities undesirable to the health and safety of patients are located in the building or buildings of the extended care facility.

(8) Nonflammable medical gas systems, such as oxygen and nitrous oxide installed in the facility comply with applicable provisions of National Fire Protection Association Standard No. 56A (Standard for the Use of Inhalation Anesthetics) and National Fire Protection Association Standard No. 56F (Nonflammable Medical Gas Systems).

[FR Doc.71-15763 Filed 10-27-71;8:52 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 13—DEPARTMENT OF VETERANS BENEFITS, CHIEF ATTORNEY

Miscellaneous Amendments

Correction

In F.R. Doc. 71-14190 appearing at page 19021 in the issue for Saturday, September 25, 1971, in § 13.74(b), column 2, the 13th line, the word "department" should read "dependent".

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 50—Public Contracts, Department of Labor

PART 50-201—GENERAL REGULATIONS

Recordkeeping Requirements Under Safety and Health Provisions of the Walsh-Healey Public Contracts Act

Pursuant to authority in the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), and in Secretary of Labor's Order No. 12-71 (36 F.R. 8754), § 50-201.502 of Title 41, Code of Federal Regulations, is amended in order to provide uniformity in the recordkeeping requirements of both the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) and the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

Good cause is found for not providing notice and public procedure concerning this amendment. Notice and public procedure are found unnecessary because Government supply contractors were already required to comply with the recordkeeping requirements of the Occupational Safety and Health Act. This amendment shall become effective as of the date of its publication in the FEDERAL REGISTER (10-27-71). No delay in effective date is provided because the amendment does not increase the obligations of persons affected thereby.

Section 50-201.502 of Title 41, Code of Federal Regulations, is amended to read as follows:

§ 50-201.502 Record of injuries.

Every person who is or shall become a party to a Government contract which is subject to the provisions of the Walsh-Healey Public Contracts Act and the regulations thereunder, or who is performing or shall perform any part of such contract subject to the provisions of such Act or regulations, shall comply with the recordkeeping requirements of 29 CFR Part 1904.

(Sec. 4, 49 Stat. 2038, 41 U.S.C. 38)

Signed at Washington, D.C. this 20th day of October 1971.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.71-15520 Filed 10-27-71;8:45 am]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Subpart 101-47.4—Management of Excess and Surplus Real Property

SPILLS OF OIL AND OTHER HAZARDOUS SUBSTANCES

Section 101-47.402-1 is revised to advise holding agencies having custody and accountability of excess and surplus real property of their responsibility to comply with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan.

Section 101-47.402-1 is revised as follows:

§ 101-47.402-1 Responsibility.

The holding agency shall retain custody and accountability for excess and surplus real property including related personal property and shall perform the physical care, handling, protection, maintenance, and repairs of such property pending its transfer to another Federal agency or its disposal. Guidelines for protection and maintenance of excess and surplus real property are in § 101-47.4913. The holding agency shall be responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan, initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This amendment is effective upon publication in the FEDERAL REGISTER (10-28-71).

Dated: October 20, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-15675 Filed 10-27-71;8:49 am]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER G—PROCUREMENT

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Title 32, Chapter V, Subchapter G, is amended as follows:

PART 591—GENERAL PROVISIONS

1. Section 591.108 is revised; § 591.108–50 is revoked; in § 591.150 a new paragraph (e) is inserted and present paragraph (e) is redesignated as (f); §§ 591.302, 591.302–50, and 591–307(c) are added; § 591.401–50(a)(1) is amended; § 591.402(c) is amended; in § 591.403–51 the title is amended and paragraph (e) is added; in § 591.405 (a)(3) is amended, a new paragraph (c) inserted and present paragraphs (c) and (d) are redesignated as (d) and (e); § 591.450–3(b) is revised; § 591.450–6(b) is amended; § 591.450–7 revised; § 591.450–9 is revised; § 591.450–11(a) is amended; in § 591.452–1(a)(3) is added and (b) and (b)(1) are revised; in § 591.452–2(a) in the letter of appointment contained therein paragraph 3(a) is amended; § 591.452–4(b) is revised; present § 591.452–6 is redesignated as § 591.453; §§ 591.1003, 591.1003–1, 591.1005, and 591.1005–1 are added; § 591.1202–50 is revoked; § 591.5102(b)(1) and (5) are amended; in the appendix to § 591.5102 the delegation of authority Ref. No. SAOAS–71–1 dated Nov. 5, 1970 is superseded and a new SAOAS–71–1 dated May 28, 1971 inserted, and in this appendix the delegation of authority Ref. No. SAOAS–67–7 dated Oct. 28, 1966 is superseded and a new SAOAS–71–7 dated May 8, 1971 inserted, as follows:

§ 591.108 Departmental procurement instructions and ASPR and APP implementations.

(a) Implementations of ASPR and APP shall be published in a single directive identified as procurement instructions and shall be issued only by heads of procuring activities and only under the following conditions:

(1) Only those paragraphs in ASPR and APP which by their wording require implementation by a head of procuring activity may be implemented.

(2) Subject matter not covered in ASPR and APP shall not be included in procurement instructions unless and until such coverage has been forwarded to the addressee in § 591.150(b)(6) for review and approved by that addressee for publication.

(3) Coverage shall be limited to procedural instructions; shall meet the criteria in § 1.108 (a) and (b) of this title; shall not contain any statements of policy; and shall not repeat, paraphrase, amplify, clarify, restrict, or interpret coverage in ASPR and APP.

(4) Section, part, and paragraph numbers shall be keyed to the ASPR or APP section, part, or paragraph number being implemented.

(5) Sections, parts, and paragraphs of ASPR and APP shall not be cited when there is no implementation thereof.

(b) Heads of procuring activities may publish procedural procurement instructions of a temporary nature in Circulars numbered in the 715 series, provided the instructions meet the criteria in paragraph (a) of this section. Each circular shall indicate the date upon which it shall expire.

(c) Purchasing offices may issue procedural procurement instructions for use within the installations/activities served by the purchasing office and SOP's for use within the purchasing office.

(d) Procurement instructions referenced in paragraphs (a), (b), and (c) of this section except for internal SOP's, are official publications of Department of the Army activities and shall be authenticated in accordance with instructions in AR 310–1. No procurement instructions shall be issued in any media other than those prescribed in paragraphs (a), (b), and (c) of this section.

(e) One copy of each procedural procurement instruction and circular issued by a head of procuring activity shall be forwarded at the time of issuance to the addressee in § 591.150(b)(6).

§ 591.108–50 Distribution of HPA procurement instructions. [Revoked]

§ 591.150 Procurement channels and mailing addresses.

* * * * *

(e) When regulations require submission to a head of procuring activity or higher authority, the commander, his deputy, or the staff officer responsible for procurement shall sign the correspondence at each echelon through which processed.

(f) Flow of procurement authority:

* * * * *

§ 591.302 Sources of supplies and services.

§ 591.302–50 Procurement from U.S. sources by offshore purchasing offices.

It is Department of the Army policy that offshore purchasing offices shall not purchase supplies directly from sources within CONUS. Supplies shall be obtained by requisition through appropriate supply channels. The reasons for this policy are—

(a) To preclude bypassing of established supply channels,

(b) To eliminate possible duplication of effort by Government purchasing offices, and

(c) To permit consolidation of requirements for quantity procurement whenever practicable.

The policy does not apply to purchase of services.

§ 591.307 Priorities, allocations, and allotments.

* * * * *

(c) Detailed instructions for controls, allotment procedures, maintenance of records, and preparation and submission of reports are contained in AR 715–5.

§ 591.401–50 Exercise of functions of head of procuring activity.

* * * * *

(a) * * *

(1) U.S. Army Research Office, Arlington, Va.; and

* * * * *

§ 591.402 Authority of contracting officers.

* * * * *

(c) Technical personnel and others whose duties may require contact and discussions with suppliers and contractors have no authority to obligate or commit the Government contractually and shall not authorize purchases or direct changes in work under contracts which may change the contractual terms thereof or result in claims against the Government.

* * * * *

§ 591.403–51 Review of solicitations.

* * * * *

(e) Solicitations shall also be reviewed by quality assurance, technical, and other concerned personnel to the extent such skills are available and to the extent determined necessary by the contracting officer.

§ 591.405 Selection, appointment, and termination of appointment of contracting officers.

(a) * * *

(3) The Deputy or Assistant Deputy for Procurement, Office of the Assistant Secretary of the Army (Installations and Logistics);

* * * * *

(c) It is Department of the Army policy that only responsible U.S. citizens, under adequate control of the U.S. Government be appointed contracting or ordering officers.

(d) It is Department of the Army policy that the procurement mission assigned an installation/activity be the responsibility of a central purchasing office at the installation/activity. The number of contracting officers appointed shall be kept to the minimum essential for efficient operation.

(e) Organizational charts of each Army purchasing office are maintained on file in the office of the Deputy for Procurement Office of the Assistant Secretary of the Army (Installations and Logistics). Accordingly, whenever the organization of an Army purchasing office is changed, one copy of the revised organizational chart shall be forwarded the addressee in § 591.150(b)(6).

§ 591.450–3 Personal and profesisonal services.

* * * * *

(b) The Assistant Secretary of the Army (Installations and Logistics) normally makes annual determinations and findings required by statute and delegates authority to approve awards of contracts for the following services to designated heads of procuring activities, the delegation of authority being published in a Department of the Army Circular in the 715–2 series—

(1) Personal services to be performed outside the United States of experts and consultants in the fields of radio announcing in Asian languages, geodetics, anthropology and chemical analysis;

(2) Stenographic reporting services, where the services of qualified Government personnel are not available, in connection with—

(i) Functions of The Inspectors General,

(ii) Hearings before claims and appeals board of procuring activities,

(iii) Hearings in support of interference aspects of patent prosecution, and

(iv) Hearings in connection with agency Civil Service appeals and grievances;

(3) Personal services of actors, narrators, and other technical and professional personnel necessary in connection with motion pictures or television productions;

(4) Personal services of experts or consultants in the field of law to be performed outside the United States; and

(5) Personal services of instructors and translators in special purpose foreign languages and dialects.

* * * * *

§ 591.450–6 Utilities services.

* * * * *

(b) The purchase of utilities services is governed by ASPR Supplement No. 5 and AR 420–41, which define the term "utilities services" and prescribe the required approvals for utilities services contracts and modifications. All procurements without contracts, as well as all contracts and modifications which, under the provisions of the above regulations, are subject to the approval of the Chief of Engineers (as Army Power Procurement Officer), and any requests for interpretation of or deviation from ASPR Supplement No. 5, shall be submitted to the addressee in § 591.150(b)(7), attention: ENGMC–KU.

* * * * *

§ 591.450–7 Communication services.

See § 612.1006 of this chapter.

§ 591.450–9 Management studies and operations research studies.

(a) Management studies obtained by contract are explained in Chapter 2, AR 5–5. With respect to such studies, contracting officers shall not solicit bids or proposals nor award contracts or modifications, including amendments, extensions, additions or supplements which are of a substantive nature or which will require additional funding, without evidence of prior approval of the Comptroller of the Army for studies the total cost of which is estimated to be $100,000 or less, or of the Assistant Secretary of the Army (Financial Management) for studies the total cost of which is estimated to exceed $100,000.

(b) Operations research studies obtained by contract are explained in Chapter 4, AR 5–5. With respect to such studies, contracting officers shall not solicit bids or proposals nor award contracts or modifications, including amendments, extensions, additions, or supplements which are of a substantive nature or which will require additional funding, without evidence of prior approval of the Chief of Research and Development, Department of the Army, for studies the total cost of which is estimated to be $100,000 or less, or the Assistant Secretary of the Army (Research and Development) for studies the total cost of which is estimated to exceed $100,000.

(c) Contracting officers shall be alert to requests for mixed contract studies which have not been classified under any one of the above as "Management" or "Operations Research." Contracting officers shall ensure that appropriate approval has been obtained, as determined by the Comptroller of the Army (COA) prior to soliciting bids or proposals or awarding contracts or modifications, including amendments, extensions, additions, or supplements which are of a substantive nature or which will require additional funding.

(d) AR 5–5 is not applicable to the employment of experts or consultants on a per diem basis (see § 591.450–3).

§ 591.450–11 Automatic data processing equipment (ADPE).

(a) In connection with the award of contracts for acquisition for use of ADPE, see § 3.1100 of this title, § 593.1100 of this chapter, and AR 18–1.

* * * * *

§ 591.452–1 Policy.

(a) * * *

(3) Ordering officers not be appointed within a purchasing office (but see § 593.605 of this chapter).

(b) Ordering officers may be appointed pursuant to § 591.450(b) outside of a centralized purchasing office or at isolated locations for the purposes in paragraph (c) of this section and within the limitations stated in the ASPR or APP paragraphs referenced in paragraph (c) of this section only when—

(1) The appointing authority (see § 591.450(b)) determines in writing that the appointment of an ordering officer is essential for the efficient operation of the procurement mission and is not made for the purpose of decentralizing the procurement function; (the determination of essentiality shall identify those specific factors that interfere with effective execution of the procurement function by purchasing office personnel).

* * * * *

§ 591.452–2 Appointment.

(a) Ordering officers shall be appointed by a letter of appointment substantially in the following format, wording or paragraphs inapplicable to the appointment being omitted—

SUBJECT: Appointment of Ordering Officer (Alternate Ordering Officer).

* * * * *

3. *Standards of Conduct and Procurement Reporting Requirements.*

a. You shall comply with the standards of conduct prescribed in AR 600–50, Standards of Conduct for Department of the Army Personnel, and shall review the regulation at least semiannually.

* * * * *

§ 591.452–4 Surveillance.

* * * * *

(b) Activities of ordering officers shall be physically inspected or reviewed through examination of his purchase documents and records by the appointing authority or his designee, an individual well qualified in procurement procedures used by ordering officers.

* * * * *

§ 591.453 Other individuals authorized to make purchases.

* * * * *

§ 591.1003 Synopses of proposed procurements.

§ 591.1003–1 General.

Report Control Symbol COMM–1010 has been assigned the reporting requirement in § 1.1003 of this title.

§ 591.1005 Publicizing award information.

§ 591.1005–1 Synopsis of contract award.

Report Control Symbol COMM–1011 has been assigned the reporting requirement in § 1.1005–1 of this title.

§ 591.1202–50 Deviations and waivers. [Revoked]

§ 591.5102 Delegations of authority.

* * * * *

(b) * * *

(1) SAOAS–71–1—Delegation of Authority To Approve the Publication of Advertisements, Notices of Proposals.

* * * * *

(5) SAOAS–71–7—Delegation of Authority to Contract for Public Utility Services (Power, Gas, Water, and Communications) for Periods Not Exceeding 10 Years.

* * * * *

APPENDIX TO § 591.5102 DELEGATIONS OF AUTHORITY

Ref No: SAOSA–71–1

MAY 28, 1971.

DELEGATION OF AUTHORITY TO APPROVE THE PUBLICATION OF ADVERTISEMENTS, NOTICES OR PROPOSALS

1. Pursuant to title 5, United States Code, section 302(b)(2), and section IV Part 8 of the Armed Services Procurement Regulation, I hereby delegate, without authority to redelegate further except as stated below, the authority to approve the publication of advertisements, notices or proposals in newspapers, subject to the limitations in 44 United States Code 3701, 3702, and 3703, to:

Heads of Procuring Activities with authority to redelegate to their Deputies, Principal Assistants Responsible for Procurement, or installation/activity commanders.
The Adjutant General.
Director of Civilian Personnel, U.S. Army.
Director of Personnel and Training, U.S. Army Materiel Command.
Chief, U.S. Army Audit Agency.
Chief, Personnel Administration, Office of the Chief of Engineers.
Commanding General, U.S. Army Recruiting Command.
Division Engineers, Corps of Engineers.
Commander, U.S. Army Safeguard System Evaluation Agency.

2. Procedures prescribed in section IV Part 8 of the Armed Services Procurement Regulation shall be used in actions taken pursuant to this delegation of authority.

3. The foregoing delegation of authority becomes effective on July 1, 1971, and, as of that date, Delegation of Authority SAOSA–71–1, November 5, 1970, subject: Delegation of Authority to Approve the Publication of Advertisements, Notices or Proposals, is superseded without prejudice to any action taken pursuant thereto.

J. RONALD FOX,
Assistant Secretary of the Army (Installations and Logistics).

* * * * *

Ref No: SAOSA–71–7

MAY 8, 1971.

DELEGATION OF AUTHORITY TO CONTRACT FOR PUBLIC UTILITY SERVICES (POWER, GAS, WATER, AND COMMUNICATIONS) FOR PERIODS NOT EXCEEDING TEN YEARS

1. Under Department of Defense Directive 5100.32, April 5, 1971, subject: Delegation of Authority with Respect to Contracts for the Procurement of Public Utility Services, I hereby delegate (i) to the Chief of Engineers as the Department of the Army Power Procurement Officer, the authority to enter into contracts for public utility services (power, gas, and water), and (ii) to the Commanding Generals, U.S. Army Strategic Communications Command and U.S. Continental Army Command, the authority to enter into contracts for communications services, for periods extending beyond a current fiscal year but not exceeding 10 years under one or more of the following circumstances:

a. Where there are obtained lower rates, larger discounts, or more favorable conditions of service than those available under contracts the firm term of which would not extend beyond a current fiscal year.

b. Where connection or special facility charges payable under contracts the firm term of which would not extend beyond a current fiscal year are eliminated or reduced.

c. Where the utility company refuses to render the desired service except under a contract the firm term of which extends beyond a current fiscal year.

2. The authority delegated in paragraph 1 above may be redelegated (i) with respect to contracts for power, gas, and water, to the Deputy Department of the Army Power Procurement Officer, and (ii) with respect to contracts for communications services to a level no lower than chiefs of purchasing offices.

3. This authority shall be exercised strictly in accordance with the applicable provisions of the "Statement of Areas of Understanding Between the Department of Defense and General Services Administration" entitled "Procurement of Utility Services (Power, Gas, Water)," 15 F.R. 8227 (1950), and "Procurement of Communication Services," 15 F.R. 8226 (1950).

4. Unless distribution thereof is inadvisable for reasons of security, copies of contracts executed under the authority of this delegation and other pertinent data and information with respect thereto shall be furnished to the General Services Administration.

5. The foregoing delegation of authority becomes effective on May 5, 1971, and, as of that date, Ref No: SAOAS–67–7, October 28, 1966, subject: Delegation Of Authority To Contract For Public Utility Services (Power, Gas, Water, and Communications) For Periods Not Exceeding 10 Years, is superseded without prejudice to any action taken pursuant thereto.

J. RONALD FOX,
Assistant Secretary of the Army (Installations and Logistics).

* * * * *

PART 593—PROCUREMENT BY NEGOTIATION

2. Sections 593.202–2, 593.301(b), and 593.302(f) are amended; § 593.605–3(c) is amended by adding a new sentence at the end thereof; § 593.607–4(c) is added; § 593.608–9 (d) and (f) are amended; § 593.650 is revoked; and § 593.807–3 is revised, as follows:

§ 593.202–2 Application.

See AR 725–50 as it relates to the Uniform Material Movement and Issue Priority System (UMMIPS). See AR 500–60 in connection with procurements for disaster relief.

§ 593.301 Nature of determinations and findings.

* * * * *

(b) When class determinations and findings are requested, the identity of the property or services to be procured shall be clearly presented to the approving authority so as to apprise him of the procurement actions to which his approval would apply. Such identification is required to avoid an unlawful delegation of authority under 10 U.S.C. 2311. At the time an individual negotiated procurement is initiated under authority of a class determination and findings, the contracting officer shall ensure that formal advertising is not feasible or practicable and shall prepare a statement of use for each procurement exceeding $10,000 showing—

(1) The identity of the class determination and findings;
(2) Purchasing office;
(3) Item(s) and quantity(ies);
(4) Contractor;
(5) Contract type;
(6) Contract number, date, and amount; and
(7) Whether or not competitive.

A copy of the statement of use shall be forwarded to the cognizant head of procuring activity.

* * * * *

§ 593.302 Determinations and findings by the Secretary of a Department.

* * * * *

(f) Contracts for services of certain experts or consultants and for stenographic reporting services (see §§ 591.450–3, 593.306–55, 612.205, and 612.209 of this chapter). NOTE: A separate determination and findings is required to support such contracts not covered by an annual delegation; and

* * * * *

§ 593.605–3 Establishment of blanket purchase agreements.

* * * * *

(c) * * *

Individuals authorized to place calls under subparagraphs (1) and (2) of this paragraph are not ordering officers within the meaning of § 591.452 of this chapter.

* * * * *

§ 593.607–4 Procedures.

* * * * *

(c) Contracting or ordering officers shall authorize imprest fund purchases by signing Standard Forms 1165 in the block entitled "Purpose."

§ 593.608–9 Order—invoice—voucher method.

* * * * *

(d) The spaces on Standard Form 44 relating to payment shall be completed in accordance with AR 37–107. The seller's signature shall be obtained on Standard Form 44 unless the seller furnishes an invoice. The contracting officer shall request the finance and accounting officer to enter the order number of the completed Standard Form 44 on the check for payment so that the supplier may identify the transaction for which he is receiving payment.

* * * * *

(f) Pursuant to § 591.452 of this chapter, ordering officers may be appointed at isolated locations outside an installation or activity to make over-the-counter purchases not exceeding $250 using Standard Form 44 or DD Forms 1155 when the conditions in § 3.608–9 (b) (2) and (3) of this title are satisfied. An isolated location is one at an installation/activity other than that where the purchasing office is established and which is so remote that communications between the two locations are difficult.

* * * * *

§ 593.650 Postaward reviews of small purchases. [Revoked]

§ 593.807–3 Cost or pricing data.

(a) Requests for Secretarial waivers of requirements of § 3.807–3(a) (1) or (2) of this title shall be forwarded to the addressee in § 591.1506(b)(6) of this chapter (see § 591.150(d) of this chapter).

(b) One copy of each waiver authorized by a head of procuring activity in the case of a contract with a foreign government or agency thereof shall be forwarded the addressee in § 591.150(b)(6) of this chapter (see § 591.150(d) of this chapter) at the time of issuance together with a copy of the reasons for such determination.

PART 594—SPECIAL TYPES AND METHODS OF PROCUREMENT

3. The table of contents is amended by adding a new Subpart DDD; § 594.5401(a) is revised; and Subpart DDD is added, as follows:

§ 594.5401 General Educational Development (GED) Program.

(a) AR 621–5 sets forth the Army General Educational Development (GED) Program and prescribes policies and responsibilities for its administration. AR 604–20 sets forth Department of the Army security requirements for instructor personnel employed and paid by American universities to teach in the

GED program at overseas military installations.

* * * * *

Subpart DDD—Dependents School Teachers Contracts

Sec.
594.5601 Dependents education program.
594.5602 Contracts of employment.
594.5603 Contracts of employment principles.
594.5604 Required clauses.

AUTHORITY: The provisions of this Subpart DDD issued under secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012.

Subpart DDD—Dependents School Teachers Contracts

§ 594.5601 Dependents education program.

(a) AR 621–300 establishes the authority, policies, and administrative procedures pertaining to the Department of the Army program for the education of dependents residing on Federal property in the United States, Puerto Rico, Wake Island, Guam, American Samoa, and the Virgin Islands.

(b) This subpart prescribes policies and procedures for establishing contracts with dependents school employees when services are not procured by excepted appointment pursuant to CPR A7.

§ 594.5602 Contracts of employment.

(a) Standard Forms 26 shall be used for employing personnel in Army-operated schools and shall contain the clauses in § 594.5604.

(b) DD Form 592, Payroll for Personnel Services, shall be used as the public voucher form for payment purposes.

(c) Employees, both professional educators and nonprofessional (except substitute teachers and other personnel whose services are required irregularly) whose services are required for less than a 12-month period will be tendered a contract covering a 12-month period for the purpose of coverage for Civil Service Retirement, Group Life Insurance, and Health Benefits. License is given to contract a teacher in her first year of employment in a section 6 school from the beginning of the school year until June 30, i.e. the end of the fiscal year. Subsequent contract shall be on a 12-month basis.

(d) Contracting officers shall submit all requests for termination of contracts based upon alleged improper performance or conduct by the contractor, to the commander of the installation/activity concerned prior to notifying the contractor.

(e) A National Agency Check (NAC) shall be conducted prior to the employment of each professional educator to be regularly employed in on-post dependents' schools. The results of the NAC will assist the installation/activity commander in determining if the employment of the educator concerned is in the best interest of the U.S. Army. NAC's shall be requested in accordance with AR 381–130. Installation/activity commanders may employ educators prior to receiving the results of the NAC's when delay in initial hiring would be detrimental to the school.

(f) Teachers employed in dependents' schools are covered for unemployment compensation for Federal employees under the provisions of title XV of the Social Security Act, as amended.

§ 594.5603 Contracts of employment principles.

The following principles shall be applied to all the contracts of employment entered into pursuant to this subpart—

(a) For the purpose of the contract clause entitled "Approval of Contract," upon receipt from the Department of the Army of notice that the Commissioner of Education has approved the installation's proposal for authority and funds to operate an educational program, the installation commander, or such individual as he may designate, becomes the duly authorized representative of the Secretary and shall in such capacity personally approve such contracts of employment. The installation commander may designate his chief of staff or a senior officer of his headquarters staff as the individual to approve contracts of employment.

(b) Contracts shall not contain any provision relating to retirement for age or length of service.

(c) Contracts shall be negotiated on the basis of and shall provide for a rate of pay which is in general accord with pay schedules for similar positions in comparable school systems in surrounding localities.

(d) The monthly payment to be paid a contractor and to be set forth in the clause entitled "Compensation" shall be determined by dividing the total contract salary by the number of months school is in session or by the number of biweekly periods in which the school is in session, as applicable.

(e) The amount of sick leave to be specified in the clause entitled "Leave" shall be in the sum of subparagraphs (1) and (2) of this paragraph: *Provided, however,* That in no event shall such amount be in excess of the provision in subparagraph (1) of this paragraph plus the provision in subparagraph (3) of this paragraph:

(1) A number of days which is comparable in amount to the number of days of sick leave that is granted to employees in comparable school systems in the surrounding locality, or 10 days, whichever is the greater; and

(2) The number of days of sick leave accrued, but not used, by the employee in preceding periods of Federal employment, either under a similar type contract or as a Civil Service employee: *Provided, however,* That no accrued sick leave may be carried over to any succeeding period where there has been a break in Federal employment in excess of 3 continuous calendar years.

(3) Sick leave may accumulate to an amount equal but not to exceed the number of days of accumulation of sick leave which is comparable in amount to the number of days of sick leave which may be accumulated for similar employees in comparable school systems in the surrounding locality, or 30 days, whichever is the greater.

(f) The amount of administrative leave to be specified in the clause entitled "Leave" shall be—

(1) The number of days of administrative or emergency leave with pay granted to similar employees in comparable school systems in the surrounding locality; or

(2) The number of days which is equal to the total of three-fourths of 1 day times each full 2-week period of service included in the contract period minus regular school days embraced in school vacation periods excluding legal holidays, whichever is the greater.

(g) The Superintendent of Schools or the principal, with the approval of the School Board, may grant sabbatical leave where circumstances justify said leave, provided that this is a practice of a local educational agency used for comparability purposes and is included as part of the budget approved by the Office of Education, Department of Health, Education, and Welfare.

(h) All contracts entered into pursuant to this subpart shall cite as authority Public Law 874, 81st Congress; and, as authority for negotiation, 10 U.S.C. 2304(a)(3) when the contract amount is $2,500 or less, and 10 U.S.C. 2304(a)(4) when the contract amount is more than $2,500.

§ 594.5604 Required clauses.

(a) For contracts where services are required for less than a 12-month period (see § 594.5602(c))—

(1) *Definitions.* Insert the clause in § 7.103–1 of this title, less subparagraph (c), and substituting for (c) the following—

(c) The term "contractor" means the employee of the (specify school) with whom this contract is executed.

(2) *Payments.* Insert the clause in § 7.503–2 of this title.

(3) *Termination.* Insert the clause in § 7.503–7 of this title.

(4) *Disputes.* Insert the clause in § 7.103–12(a) of this title.

(5) *Assignment of claims.* Insert the clause in § 7.503–3 of this title.

(6) *Officials not to benefit.* Insert the clause in § 7.103–19 of this title, omitting the final phrase which begins "but this provision."

(7) *Covenant against contingent fees.* Insert the clause in § 7.103–20 of this title.

(8) *Patents.* Insert the clause in § 7.503–9 of this title.

(9) *Approval of contract.* Insert the clause in § 7.503–8 of this title.

(10) *Examination of records by the Comptroller General.* Insert the clause in § 7.104–15 of this title.

(11) *Renegotiation.* Insert the following clause—

RENEGOTIATION (JULY 1971)

This contract, and any subcontract hereunder, is subject to the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211 et seq.) and shall be deemed to contain all the provisions required by section 104 thereof, and is subject to any subsequent Act of Congress providing for the renegotiation of contracts.

(12) *Contract period.* Insert the following clause—

CONTRACT PERIOD (JULY 1971)

(a) The period covered by this contract shall extend from _____ to _____ and shall include _____ working days. In the event the school is closed temporarily because of an epidemic or for any other necessary cause, the period of performance may be extended by the contracting officer to make up for such lost time, and no additional payment shall be made for such makeup period.

(13) *Statement of services.* Insert a clause in substantially the form of one of the following—

(i) For a teacher—

STATEMENT OF SERVICE (JULY 1971)

The contractor shall teach (elementary) (secondary) school at the (insert name of installation) on regular school days at such hours as the principal shall designate. Performance by the contractor shall be in accordance with the direction of the school principal, and shall include the teaching of such subjects as may be prescribed, the keeping of required records, and such other curricular and extracurricular duties as are customarily performed by (an elementary) (a secondary) school teacher.

(ii) For a principal—

STATEMENT OF SERVICES (JULY 1971)

The contractor shall act as principal of (an elementary) (a secondary) school at (insert name of installation). Performance by the contractor shall be in accordance with the direction of the (insert the title of the person who is to supervise the work of the principal, e.g. post schools officer, post superintendent of schools) and includes the supervision of the school, the teaching staff thereof, keeping of required records, and such other curricular and extracurricular duties as are customarily performed by (an elementary) (a secondary) school principal.

(14) *Compensation.* Insert one of the following clauses—

COMPENSATION (JULY 1971)

The Government shall pay the contractor the sum of $_____ upon satisfactory performance of the services described in the clause entitled "Statement of Services." Payments shall be made (as of the last day in which school is in session of each month) (on a bi-weekly basis) during the period of required service in the amount of $_____ less deductions for Federal income tax, employee's contributions to Civil Service retirement, health benefits, and group life insurance. Where withholding of payments for purposes of State income taxes is authorized by 5 United States Code 84b, deductions for State income taxes shall also be made. The contractor shall furnish to the finance officer making payments on this contract appropriate withholding certificates, e.g. IRS Form W–4.

COMPENSATION AND BILLING (JULY 1971)

(a) The Government shall pay the contractor the sum stated in the schedule of this contract upon satisfactory performance of the services described in the clause entitled "Statement of Services." Billing periods and payments (less withholdings for Federal income tax, employee's contributions to Civil Service retirement, health benefits, and group life insurance) shall be made as follows:

(i) Payment for the portion of any month in which service begins will be made at 1/260th of the per annum amount for each workday in that month. Payment will be made ten (10) days following the last day of the month or the first workday thereafter.

(ii) Payment of the balance of the contract will be made in eleven (11) equal payments ten (10) days following the last day of each month (September through July) or the first workday thereafter.

(iii) Upon termination of this contract during the period of performance specified herein, final payment will include any monies earned at a daily rate of 1/210th of the contract amount times the number of days of actual performance which has been disbursed in accordance with (i) and (ii) above.

(b) Where withholding of payments for purposes of State income taxes is authorized by 5 United States Code 84b, deductions for State income taxes shall also be made.

(c) The contractor shall furnish the finance officer making payment on this contract appropriate withholding certificates, e.g. IRS Form W–4. Immediately following the close of the pay (billing) period, the superintendent shall cause to be submitted to the finance officer making payment a time and attendance report covering the services rendered during that period.

(15) *Leave.* Insert the following clause, omitting subparagraph (b) if the clause entitled "Compensation and Billing" (see subparagraph (14) of this paragraph) is used in the contract—

LEAVE (JULY 1971)

(a) *Annual leave.* The contractor shall be granted leave with pay on all legal holidays and regular school vacation periods.

(b) *Leave without pay.* The contractor shall be in a leave without pay status between the period for which services are not required and the expiration date of this contract. Such nonpay period is creditable for Civil Service retirement purposes to the extent provided in paragraph S3–4a, FPM Supplement 831–1.

(c) *Sick leave.* The contractor shall be granted sick leave with pay not to exceed _____ days per school year. If required by the principal, the contractor shall furnish a doctor's certificate when sick for three or more consecutive school days. Unused sick leave shall not be used as a basis for claiming additional compensation. Sick leave accural is at the rate of _____ days per school year. The contractor shall be permitted to take sick leave with pay not to exceed the number of days to be accured in this contract. The contractor may not accumulate more than _____ days sick leave.

(d) *Administrative leave.* The contractor shall be granted _____ days of administrative leave with pay at such times as are approved by (specify title of person who is to approve such leave).

(16) *Rate of pay.* Insert the following clause—

RATE OF PAY (JULY 1971)

The rate of pay as shown herein has been certified by the (insert name of installation and title of the appropriate dependents' school official) as fair and equitable and in general accord with the pay schedules for similar positions in selected comparable public school systems in surrounding localities. However, the right is reserved by the (insert title of appropriate dependents' school official and name of installation) to amend the rate of pay, either by increases or decreases, to include retroactive adjustments if pay schedules in selected comparable public school systems are changed, or if verification or certification requirements cause rate of pay changes, or if existing pay schedules for Department of the Army civilian employees performing similar duties on the same installation are changed.

(17) *Applicable funds.* Insert the following clause—

APPLICABLE FUNDS (JULY 1971)

Army funds to cover the services contemplated by this contract are made available on a quarterly reimbursable basis by the U.S. Department of Health, Education, and Welfare. The contract shall not be binding upon either party during any period for which adequate funds are not made available. It shall be the responsibility of the (insert name of installation and title of the appropriate Federal official) to determine in each instance that funds are available prior to making any call upon the contractor for performance of any part of the services covered herein.

(18) *Retirement.* Insert the following clause—

RETIREMENT (JULY 1971)

This contract is subject to the provisions of retirement as set forth in the appropriate Civil Service regulations. Deductions for the contractor's contribution shall be made by the finance and accounting officer from payments due the contractor. Deductions for the Government's contribution shall be made from funds set aside for that purpose.

(19) *Group life insurance.* Insert the following clause—

GROUP LIFE INSURANCE (JULY 1971)

The effective date of coverage shall be the first day of employment. The provisions of CPR 870–1 and Chapter 13, AR 37–105, shall apply to deductions and agency contributions.

(20) *Health benefits.* Insert the following clause—

HEALTH BENEFITS (JULY 1971)

The effective date of coverage shall be the first day of the first pay period after the registration form is received by the employing office which follows a period in which the employee was in a pay status.

(21) *Compliance with public school laws.* Insert the following clause—

COMPLIANCE WITH PUBLIC SCHOOL LAWS (JULY 1971)

In the performance of his services the contractor agrees that the grade level of instructions, the subjects to be taught, the number of teaching periods per day, and the number of teaching days per week and per month shall be in accordance with the Public School Laws of the State of (insert name of State in which the military installation is located).

(22) *Proper conduct.* Insert the following clause—

PROPER CONDUCT (JULY 1971)

The Government shall require the contractor to abide by the rules and regulations of the post dependents school board. The Government, when so recommended by the duly appointed school board for just cause, shall terminate this contract for failure of the contractor to comply with said rules and regulations, failure to meet physical qualification standards, or for reasons of

inefficiency, or repeated misconduct on the part of the contractor, by giving 15 days notice in writing; except in the case of failure to meet physical qualification standards, this contract may be terminated upon notification. Prior to termination for failure to comply with the aforementioned rules and regulations, inefficiency, or repeated misconduct, a detailed report concerning the violations shall be furnished the contracting officer with a request that the contract be terminated. The contracting officer shall submit all requests for termination based upon alleged improper performance or conduct by the contractor, through the commanding officer of the installation concerned, prior to notifying the contractor.

(23) *Security check.* Insert the following clause—

SECURITY CHECK (JULY 1971)

The contractor consents to a security check of his person as may be required by the U.S. Government authorities of any other civilian employee within a military reservation, and further agrees to furnish such background information as may be requested, in the manner and form requested, in order to accomplish such security check.

(24) *Physical examination.* Insert the following clause—

PHYSICAL EXAMINATION (JULY 1971)

The contractor shall present to the school officer, prior to performance under this contract, a certificate of medical examination obtained within the preceding 30 days. The examination will be made by a duly licensed physician at the contractor's exepense or at the (specify name and location of Army hospital or dispensary) at no expense to the contractor. The medical certificate must indicate that the contractor is free from any communicable diseases, has no physical defects which would prevent him from performance of duty under this contract, and does not suffer from any condition that would be detrimental to the health and welfare of his associates. Failure to meet the required health standards shall be grounds for termination of this contract under terms of the clause entitled "Proper Conduct."

(25) *Teaching certificate.* Insert the following clause—

TEACHING CERTIFICATE (JULY 1971)

The contractor represents that he holds a valid teaching certificate currently in full force and effect for the State of (insert name of State in which the military installation is located) which was issued by competent authority. (In the case of section 6 Schools in Puerto Rico, the contractor must hold valid certificate from any of the 50 States.) The contractor will exhibit the said teaching certificate to the principal or superintendent of the school upon request. Failure on the part of the contractor to procure and exhibit said teaching certificate shall render this contract invalid.

26) *Option to extend the term of the contract.* Insert clause in §1.1506(d) of this title.

(b) For contracts with employees whose services are required on a 12-month basis, include all the clauses prescribed in paragraph (a) of this section except the clause intitled "Leave," for which the following clause shall be substituted—

LEAVE (JULY 1971)

The Contractor shall accrue and be granted annual and sick leave in accordance with the Annual and Sick Leave Act of 1951, as amended, 5 U.S.C. 2061, and the applicable civilian personnel regulations.

(c) For contracts with substitute teachers, include all the clauses prescribed in paragraph (a) of this section, except the clauses entitled "Statement of Services," "Contract Period," and "Compensation and Billing," for which the following clauses shall be substituted—

(1) STATEMENT OF SERVICES (JULY 1971)

The contractor shall teach (elementary) (secondary) school at the (insert name of installation) on regular school days at such hours and on such days as the school principal shall designate during the period of performance on this contract as set forth in the clause entitled "Contract Period." It is understood and agreed that this is a call contract, that the contractor is a substitute teacher to perform services in the absence of a regularly employed teacher, and that the Government is not hereby obligated to issue any calls for the contractor's services.

(2) CONTRACT PERIOD (JULY 1971)

The period covered by this contract shall extend from ---------- to ----------.

(3) COMPENSATION (JULY 1971)

The Government shall pay the contractor upon satisfactory performance of the services described in the clause entitled "Statement of Services" the sum of $------ for each day worked. Payment shall be made monthly. Deductions for Federal income tax and social security contributions shall be made from payments. Where withholding of payments for purposes of State income taxes is authorized by 5 United States Code 84b, deductions for State income taxes will also be made. The contractor shall furnish the finance officer making payments on this contract appropriate withholding certificates, e.g. IRS Form W-4.

PART 595—INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

4. Section 595.201 is amended and § 595.601(d) is added, as follows:

§ 595.201 Procurement from General Services Administration Stores Depots.

AR 725-50 authorizes accountable property officers and other individuals identified therein to order supplies from General Services Administration Stores Depots using MILSTRIP procedures (see § 591.453 of this chapter).

§ 595.601 Printing and related supplies.

* * * * *

(d) The supplemental certificate in paragraph 4-3c, AR 37-107, is prescribed for use in connection with contracts and purchase orders involving payments for printing, binding, and blank-book work procured other than from the GPO.

PART 596—FOREIGN PURCHASES

5. Section 596.103-2(b) is amended; §§ 596.104-4(c) and 596.1150 are added, as follows:

§ 596.103-2 Nonavailability in the United States.

* * * * *

(b) Chief of purchasing offices, provided they are not acting as the contracting officer for the procurement involved, may approve procurements pursuant to § 6.103-2(c)(4) of this title. Approvals of officials in § 5.103-2 (2), (3), and (4) of this title (approval for procurement of items listed in § 6.105 of this title is required in accordance with § 6.103-2(b) of this title) shall be prepared in the format below and shall be signed by the approving authority—

FOREIGN SOURCE PROCUREMENT DETERMINATION

The requirement of the Buy American Act that domestic source end products be acquired for public use is not applicable to the procurement of the supplies described herein because said procurement is within the nonavailability exception stated in the Act. In accordance with the Balance of Payments Program, it is determined that the requirement cannot be foregone and that there is no United States substitute. Therefore, authority is granted to the contracting officer (insert name of installation/activity) to procure [describe supplies] of foreign origin at an [estimated] [actual] total cost of $------, including duty and transportation cost to destination.

(Signature)

* * * * *

§ 596.104-4 Evaluation of bids and proposals.

* * * * *

(c) The determination as to whether domestic cost is unreasonably high is to be made by comparison of domestic and foreign offers received, rather than by comparison of listed domestic and foreign prices available prior to solicitation.

§ 596.1150 Payment instructions.

(a) When the contracting officer makes an award using excess foreign currency where the additional cost will be assumed by the Department of the Treasury, he shall provide payment instructions to the local finance and accounting officer and to the U.S. Embassy Disbursing Officer as to the DOD appropriation amounts involved and the Treasury supported amounts in excess foreign currencies.

(b) Payments shall be made in the following manner—

(1) The local finance and accounting officer shall deposit a check at the U.S. Embassy Disbursing Office of the country concerned, covering the amount of the low dollar offer.

(2) The U.S. Embassy Disbursing Office shall issue a check in the total amount of the excess currency to the contractor, the difference being absorbed by the Department of the Treasury.

PART 597—CONTRACT CLAUSES

6. In the table of contents Subpart P is revoked but the subpart reserved; § 597.105 is revised; Subpart P is revoked, as follows:

§ 597.105 Additional clauses.

The clauses set forth in § 7.105 of this title may be used in accordance with instructions therein when it is desired to cover the subject matter thereof in contracts.

Subpart P—Contracts for Preparation of Personal Property for Shipment, Government Storage, and Performing Intracity or Intra-area Movement [Revoked]

PART 598—TERMINATION OF CONTRACTS

7. Section 598.650 is added, as follows:

§ 598.650 Contract completion by surety.

A surety under a performance bond is not obligated to complete contract work in the event of default by the contractor. However, to minimze its liability under the bond, the surety may assist the contractor, prior to termination of the contractor's right to proceed, by providing financial or other assistance.

PART 600—BONDS, INSURANCE, AND INDEMNIFICATION

8. Subpart A is revised as follows:

Subpart A—Bonds

Sec.
600.110 Substitution of surety bonds.
600.112 Execution and administration of bonds and consents of surety.

AUTHORITY: The provisions of this Subpart A issued under secs. 2301–2314, 3012, 70A Stat. 127–133, 157; 10 U.S.C. 2301–2314, 3012.

Subpart A—Bonds

§ 600.110 Substitution of surety bonds.

Requests for approval of acceptance of a new surety bond for a bond previously approved shall be forwarded to the Judge Advocate General, ATTN: Bonds Team, Department of the Army, Washington, D.C. 20310.

§ 600.112 Execution and administration of bonds and consents of surety.

(a) The original of all surety bonds, except those listed in paragraph (d) of this section shall be forwarded immediately after execution to the addressee in § 600.110. If the bond was required in support of a contract or modification thereof, the original signed bond shall be attached to the original signed contract or modification, as appropriate. If it is not practicable to forward the original contract or modification, a signed duplicate or an authenticated copy thereof shall be attached to the original bond.

(b) The Judge Advocate General shall examine each bond as to legal sufficiency, including proper form and execution, the authority of corporate officials who execute bonds on behalf of corporate sureties, and compliance by individual sureties with § 10.201–2 of this title. Bonds requiring corrective action before approval shall be returned with explanation of corrections necessary. If action by a surety only is required and the surety subscribes to the "Expediter Plan," then correction will be accomplished without return to the originating installation. (Under the "Expediter Plan" many of the surety companies have authorized a representative in Washington, D.C. to act on their behalfs in dealings with the Judge Advocate General.) Upon approval the Judge Advocate General shall then forward the bond, together with any attached contract or modification thereof which it supports, to the proper office for filing. The duplicate bond shall be retained and filed in the office to which it pertains or which authorized its acceptance. See § 600.202 for use of options in lieu of sureties.

(c) Consents of surety shall be handled in the same manner as bonds.

(d) The following bonds should be reviewed at local level and shall not be forwarded to the Judge Advocate General—

(1) Payment and performance bonds for contracts not exceeding $20,000;

(2) Blanket fidelity and forgery bonds;

(3) Bid bonds (except manual bid bonds);

(4) Subcontractor bonds;

(5) Permit bonds; and

(6) Nonappropriated fund activity bonds (except payment and performance bonds for construction contracts exceeding $20,000).

Local review should include verification of the authority of agents executing bonds on behalf of corporate sureties. Each bond should be accompanied by the agent's power of attorney.

PART 601—TAXES

9. Sections 601.353 and 601.354 are added, as follows:

§ 601.353 Indiana sales and use tax—construction contracts.

(a) A construction contractor or subcontractor may purchase materials free of the Indiana Sales and Use Tax if the contract or subcontract provides separate amounts applicable to the performance of services and the furnishing of materials. Tangible personal property purchased for use in fulfilling contract for the improvement of real estate for the United States is not subject to these taxes.

(b) Solicitations for fixed price construction contracts to be performed in Indiana shall contain the following statements—

(1) The contract to be awarded will be a construction contract which separately states amounts applicable to the performance of services and the furnishing of materials as contemplated in State of Indiana, Department of Revenue Circular ST–21 (Revised) dated July 1, 1969. Exemption from the Indiana Sales and Use Tax on material to be incorporated by the contractor and his subcontractors into the structure or improvement to real estate may be secured under the terms of the cited circular. The successful bidder to whom this contract is awarded should provide his supplier with a State of Indiana General Exemption Certificate (Form ST–105) with respect to such property.

(2) Prior to award of a contract, the successful bidder shall furnish a breakdown to be incorporated into the contract separately pricing: (i) Materials to be incorporated into the structure or improvement to real estate, (ii) services and other obligations of the construction contract, and (iii) total contract price.

(c) The following clause shall be included in solicitations for fixed-price construction contracts to be performed in Indiana—

INDIANA SALES AND USE TAX (JANUARY 1971)

(a) This contract is a construction contract which contains separate amounts applicable to the performance of the services and the furnishing of the materials as defined in State of Indiana, Department of Revenue Circular ST–21 (Revised) dated July 1, 1969. Notwithstanding any other provisions of this contract, the contract price does not include any amount for Indiana Sales and Use Tax on materials to be incorporated by the contractor or any subcontractor into the structure or improvement to real estate. The contractor or any subcontractor should provide his supplier with a State of Indiana General Exemption Certificate (Form ST–105) with respect to such property.

(b) For the purpose of complying with the requirements of State of Indiana, Department of Revenue Circular ST–21 (Revised) dated July 1, 1969, the contractor, pursuant to the requirements of the solicitation has furnished prior to contract award a breakdown separately pricing: (1) Materials to be incorporated into the structure or improvement to real estate, (2) services and other obligations of the construction contract, and (3) total contract price. This breakdown is for the sole purpose of complying with the requirements of State of Indiana, Department of Revenue Circular ST–21 (Revised) dated July 1, 1969 with regard to separate pricing of services and materials and has no other contractual significance.

(c) Any subcontracts awarded hereunder shall also contain separate amounts applicable to the performance of services and the furnishing of materials.

(d) At the time the contract is prepared for signature, a statement substantially as follows shall be included in the schedule—

It is understood and agreed that the contract price of $_____ is comprised of $_____ for materials and $_____ for services and other obligations.

(e) Invoices submitted by a contractor performing a cost reimbursement type construction contract normally include a breakdown between materials and services and thus would qualify for exemption from tax under the cited circular. Where such breakdowns are not furnished by the contractor, they should be obtained. To the extent that subcontracts are involved, the prime contractor should be requested to obtain comparable breakdown between materials and services from subcontractors.

§ 601.354 Kansas sales and use tax—construction contracts.

Kansas Law (Kans. Stats. Anno. sec. 79–3606, as amended by Kansas Senate bill No. 398, effective April 9, 1971), provides that all sales of tangible personal property or services purchased by a contractor for the erection, repair, or enlargement of buildings or other projects

for the United States, its agencies or instrumentalities shall be exempt from Kansas retailers' sales tax and compensating (use) tax. Upon award of the contract, the contracting officer should request the Department of Revenue, State of Kansas, Topeka, Kans. 66612 to issue an exemption certificate number for the project; and should furnish to the State the following information: Kind of project; location of project; date of contract; contract number; name and address of the contractor and the subcontractors. The contractor and the subcontractors should utilize the exemption certificate number, and furnish copies of invoices to the contracting officer, as indicated in the following clause. The contracting officer, upon completion of the project, should certify to the State that all purchases so made were entitled to exemption under K.S.A., sec. 79-3606(e), as required by the following clause.

(b) The following clause shall be used in all construction contracts for $10,000 or more to be performed in Kansas. This clause may be included in construction contracts for less than $10,000 to be performed in Kansas if the contracting officer considers it practicable to use the clause:

KANSAS SALES AND USE TAX (APRIL 1971)

Notwithstanding any other provision of this contract, the contract price excludes the Kansas retailers' sales tax and compensating (use) tax on all sales of tangible personal property or services purchased by the contractor or subcontractors for the erection, repair, or enlargement of buildings or other projects called for by this contract. In accordance with Kan. Stats. Anno., sec. 79-3606(e), as approved April 9, 1971, the contracting officer will obtain from the State and furnish to the contractor an exemption certificate for this project for use by the contractor and subcontractors in the purchase of materials for incorporation in the project and of services. The contractor and the subcontractors shall furnish the number of such certificate to all suppliers from whom such purchases are made, and the suppliers shall execute invoices covering the same bearing the number of such certificate. The contractor shall furnish copies of all such invoices to the contracting officer, who, upon completion of the project shall certify to the State that, upon information and belief, all purchases so made, based upon invoices furnished by the contractor, were entitled to exemption under said K.S.A., sec. 79-3606(e).

PART 602—LABOR

10. Sections 602.051 and 602.101-3(a) are amended; § 602.804 is added, as follows:

§ 602.051 Implementation.

So that there is maximum uniformity in application of basic labor policies within the Department of the Army, no implementation of this part shall be issued by any agency, command, or office of the Department of the Army without prior approval of the Labor Advisor, except as may be specifically authorized herein. If approval is obtained for implementing this part, the requirements in § 591.108(e) of this chapter shall apply.

§ 602.101-3 Reporting of labor disputes.

(a) The report of labor disputes prescribed in § 12.101-3 of this title to be submitted on DD Form 1507, Work Stoppage Report, has been assigned Reports Control Symbol SAOAS-40 for Department of the Army purchasing offices, both in CONUS and overseas.

* * * * *

§ 602.804 Equal opportunity clauses.

When the Equal Opportunity clause set forth in § 12.804(a) of this title is included in any contract requiring performance overseas where the contractor employs United States, third country, and local nationals, the following preamble to the clause is authorized for inclusion therein—

(The following clause is not applicable if this contract is exempt under ASPR 12-805. Exemptions include contracts and subcontracts not exceeding $10,000, and work under contracts and subcontracts which is to be performed outside the United States by employees who were not recruited within the United States.)

PART 606—PROCUREMENT FORMS

11. Section 606.551(b) is amended, as follows:

§ 606.551 Commercial warehousing and related services for household goods.

* * * * *

(b) DD Form 1164, Service Order for Household Goods, shall be used to place orders under Basic Agreements in accordance with instructions in Chapter 10, DOD Regulation 4500.34-R (see also §§ 591.452-1 and 612.651 of this chapter).

PART 612—SERVICE CONTRACTS

12. Section 612.102-1(a) is amended; § 612.200(b) is revised; §§ 612.204-50(a), 612.206(a)(4), and 612.207-3 are amended; § 612.250 is revised; Subparts D-E are reserved; Subpart F is added; Subparts G-I are reserved; and Subpart J is added, as follows:

§ 612.102-1 Policy.

(a) The prohibition upon personal services contracts within the Department of the Army includes those for management studies, operations research studies, and ADP services (see §§ 591.450-9 and 591.450-11 of this chapter and AR 5-5).

* * * * *

§ 612.200 Scope of subpart.

* * * * *

(b) This subpart does not apply to contracts for—

(1) Services of teachers in schools for military dependents (see AR 621-300);

(2) Services of contact surgeons (see AR 40-1);

(3) Services of technical personnel for management studies, operations research studies, and ADP services (see §§ 591.450-9 and 591.450-11 of this chapter, and AR 5-5); or

(4) Employment of counsel for Army personnel tried before a foreign tribunal (see AR 27-50).

§ 612.204-50 Employment by excepted appointment or by contract.

* * * * *

(a) The services are included in the categories set forth in § 591.450-3(b) (1), (3), (4), and (5) of this chapter;

* * * * *

§ 612.206 Requests for determinations and findings.

(a) * * *

(4) A statement signed by the cognizant head of procuring activity that the employment of the individual(s) by the proposed contract will not be in excess of the civilian personnel authorization established by the Department of the Army for the Army installation/activity in which the individual(s) is to work; and

* * * * *

§ 612.207-3 Taxes.

Individuals (other than aliens performing services outside the United States, the Virgin Islands, and Puerto Rico) who perform personal services on a temporary or intermittent basis under contracts are generally eligible for old age and survivors insurance coverage under social security statutes.

§ 612.250 Limitations upon procurements.

In procuring personal services by contract, the conflict of interest and other applicable provisions of Civilian Personnel Regulations (CPR A9) shall be observed. The pertinent provisions of CPR A9 relating to conflicts of interest shall be specifically incorporated into the contract by reference.

Subparts D-E [Reserved]

Subpart F—Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intracity or Intra-area Moves

Sec.

612.650 Placement of calls under contracts.
612.651 Commercial warehousing and related services.

AUTHORITY: The provisions of this Subpart F issued under secs. 2301-2314, 3012, 70A Stat. 127-133, 157; 10 U.S.C. 2301-2314, 3012.

Subpart F—Contract for Preparation of Personal Property, Belonging to Department of Defense Personnel, for Shipment or Storage and Intracity or Intraarea Moves

§ 612.650 Placement of calls under contracts.

(a) Oral calls may be placed with contractors inasmuch as the exact weight of the shipment involved, services to be performed, and the cost thereof cannot be predetermined so as to permit the issuance of a written delivery order before services are performed.

(b) Ordering officers may be appointed pursuant to § 591.452 of this chapter to

place calls as specified in paragraph (a) of this section.

(c) DD Form 1155 is not required either to confirm an oral call or to serve as a payment voucher, provided the contracting or ordering officer who made the oral call places a certificate of performance (see para 3-9e, AR 37-107) on all copies of the contractor's invoice and signs the certificate on the original thereof.

(d) If a contractor uses Standard Form 1034 as its invoice, the certificate of performance shall be placed on all copies thereof and the original shall be signed by the contracting or ordering officer who made the oral call.

(e) If a contractor has Standard Form 1034 printed at its own expense for its own use with repetitive data, such as contract number and date and payee's name and address, printed thereon, the contracting officer may request the contractor to have the certificate of performance printed on the face thereof, provided the contractor agrees to do so at no expense to the Government.

(f) Under no circumstances shall a contractor be required to use Standard Form 1034 as its invoice in lieu of its own invoice form.

§ 612.651 Commercial warehousing and related services.

(a) Chapter 10, DOD Regulation 4500.34-R, governs the commercial warehousing and related services for household goods for military and civilian personnel (see § 606.551 of this chapter).

(b) Ordering officers may be appointed pursuant to § 591.452 of this chapter to place service orders under such contracts. Instructions in Chapter 10, DOD Regulation 4500.34-R, shall be followed in placing service orders and ordering officers shall not be authorized to change terms and conditions of contracts in any way.

Subparts G-I [Reserved]

Subpart J—Communication Services

§ 612.1006 Who may procure communication services.

The Assistant Secretary of the Army (Installations and Logistics) has delegated to the Commanding Generals, U.S. Army Strategic Communications Command and U.S. Continental Army Command, with authority to redelegate to a level no lower than chiefs of purchasing offices, the authority to enter into contracts for communication services for periods extending beyond a current fiscal year but not exceeding 10 years (see § 591.5102 of this chapter).

[Rev. 6, Jul. 1, 1971] (Secs. 2301-2314, 3012, 70A Stat. 127-133, 157; 10 U.S.C. 2301-2314, 3012)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71-15622 Filed 10-27-71;8:46 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

SUBCHAPTER C—DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Coumaphos

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (15-965) filed by Chemagro Corp., Hawthorn Road, Post Office Box 4913, Kansas City, Mo. 64120, proposing an amendment to the regulation for coumaphos to provide for safe and effective use of additional premix levels and to delete the restriction regarding use of the drug in pelleted feeds for control of gastrointestinal roundworms in beef and dairy cattle. The amendment also restricts coumaphos from use (1) in the feed of beef and dairy cattle that are sick, under stress, or less than 3 months old; (2) in conjunction with oral drenches or with feeds containing phenothiazine. The supplemental application is approved.

The order also provides for recodification of the regulation concerning coumaphos in Part 121 to Part 135e in accordance with § 3.517 (21 CFR 3.517).

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under the authority delegated to the Commissioner (21 CFR 2.120), Parts 121 and 135e are amended, as follows:

1. Section 121.304 Coumaphos (*O,O*-Diethyl-*O*-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl phosphorothioate) is deleted.

2. A new section 135e.39 is added to Part 135e as follows:

§ 135e.39 Coumaphos.

(a) *Chemical name.* *O,O*-Diethyl *O*-3-chloro-4-methyl-2-oxo-2H-1-benzopyran-7-yl-phosphorothioate.

(b) *Approvals.* Premix level 1.12, 2.0, 11.2, and 50 percent has been granted; for sponsor see code No. 007 in § 135.501(c) of this chapter.

(c) *Assay limits.* Finished feed must contain not less than 80 percent nor more than 120 percent of the labeled amount of the drug.

(d) *Special considerations.* Adequate directions and warnings for use must be given and shall include a statement that coumaphos is a cholinesterase inhibitor and that animals being treated with coumaphos should not be exposed during or within a few days before or after treatment to any other cholinesterase inhibiting drugs, insecticides, pesticides, or chemicals.

(e) *Related tolerances.* See § 420.189 of this title.

(f) *Conditions of use.* It is used as follows:

	Amount	Limitations	Indications for use
Coumaphos	0.00012 lb. (0.054 gram) per 100 lb. body weight per day.	For beef and dairy cattle; feed for the duration of fly season in a complete feed containing 0.0033% or in a feed supplement containing not over 0.0066% coumaphos; do not feed to animals less than 3 months old; not for use in pelleted feeds.	As an aid in the reduction of fecal breeding flies through control of fly larvae.
Coumaphos	0.0002 lb. (0.091 gram) per 100 lb. body weight per day.	For beef and dairy cattle; feed 0.0002 lb. (0.091 gram) per 100 lb. animal weight per day for 6 days in a complete feed containing not over 0.0056% coumaphos; do not feed to animals less than 3 months old; do not feed to sick animals or animals under stress, such as those just shipped, dehorned, castrated, or weaned within the last 3 weeks; do not feed in conjunction with oral drenches or with feeds containing phenothiazine. Should conditions warrant, repeat treatment at 30-day intervals.	Control of infestations of gastrointestinal roundworms (*Haemonchus* spp., *Ostertagia* spp., *Cooperia* spp., *Nematodirus* spp., *Trichostrongylus* spp.),
Coumaphos	36.3 grams per ton (0.004%).	For chickens in complete feed; administer continuously for from 10 to 14 days; do not feed to chickens under 8 weeks of age nor within 10 days of vaccination or other conditions of stress; when reinfection occurs, treatment should be repeated 3 weeks after end of previous treatment; as sole medication; not for use in pelleted feeds.	For control of capillary worm (*Capillaria obsignata*) and as an aid in control of common roundworm (*Ascaridia galli*) and cecal worm (*Heterakis gallinae*).

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (10-27-71).

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

Dated: October 19, 1971.

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

[FR Doc.71-15562 Filed 10-27-71;8:45 am]

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

Subpart C—Sponsors of Approved Applications

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Droperidol and Fentanyl Citrate Injection

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (30-438V) filed by McNeil Laboratories, Inc., proposing the safe and effective use of droperidol and fentanyl citrate injection as a tranquilizer in dogs. The application is approved.

To facilitate referencing, McNeil Laboratories, Inc., is being assigned a code number and placed in the list of firms in § 135.501 (21 CFR 135.501).

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), Parts 135 and 135b are amended as follows:

1. Section 135.501 is amended in paragraph (c) by adding a new code No. 055, as follows:

§ 135.501 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

Code No.	*Firm name and address*
* * *	* * *
055 ----------	McNeil Laboratories, Inc., Camp Hill Road, Fort Washington, Pa. 19034.

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

§ 135b.37 Droperidol and fentanyl citrate injection.

(a) *Specifications.* Droperidol and fentanyl citrate injection is a sterile solution containing 20 milligrams of droperidol and 0.4 milligram of fentanyl citrate per cubic centimeter.

(b) *Sponsor.* See code No. 055 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) It is used in dogs as an analgesic and tranquilizer and for general anesthesia.

(2) It is administered as follows:

(i) For analgesia and tranquilization administer according to response desired, as follows:

(*a*) Intramuscularly at the rate of 1 cubic centimeter per 15 to 20 pounds of body weight in conjunction with atropine sulfate administered at the rate of 0.02 milligram per pound of body weight, or

(*b*) Intravenously at the rate of 1 cubic centimeter per 25 to 60 pounds of body weight in conjunction with atropine sulfate administered at the rate of 0.02 milligram per pound of body weight.

(ii) For general anesthesia administer according to response desired, as follows:

(*a*) Intramuscularly at the rate of 1 cubic centimeter per 40 pounds of body weight in conjunction with atropine sulfate administered at the rate of 0.02 milligram per pound of body weight and followed in 10 minutes by an intravenous administration of sodium pentobarbital at the rate of 3 milligrams per pound of body weight, or

(*b*) Intravenously at the rate of 1 cubic centimeter per 25 to 60 pounds of body weight in conjunction with atropine sulfate administered at the rate of 0.02 milligram per pound of body weight and followed within 15 seconds by an intravenous administration of sodium pentobarbital at the rate of 3 milligrams per pound of body weight.

(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 (10-28-71).

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

Dated: October 19, 1971.

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

[FR Doc.71-15642 Filed 10-27-71;8:47 am]

[DESI 7561]

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 141c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

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

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

PART 146e—CERTIFICATION OF BACITRACIN AND BACITRACIN-CONTAINING DRUGS

PART 148i—NEOMYCIN SULFATE

PART 148n—OXYTETRACYCLINE

PART 148p—POLYMYXIN

PART 148r—TYROTHRICIN

Confirmation of Order Revoking Provisions for Certification of Antibiotics in Combination With Other Drugs for Nasal Use

An order was published in the FEDERAL REGISTER of August 6, 1971 (36 F.R. 14469), amending the antibiotic drug regulations to repeal provisions for certification of antibiotics in combination with other drugs for nasal use. The order amended Parts 141a, 141c, 141e, 146a, 146c, 146e, 148i, 148n, 148p, and 148r by revoking §§ 141a.14, 141c.215, 141e.405, 141e.414, 141e.424, 146a.32, 146c.215, 146e.405, 146e.414, 146e.424, 148i.7, 148i.21, 148i.28 148i.40, 148i.41, 148i.42, 148i.43, 148n.16, 148p.7, and 148r.6 and all antibiotic certificates issued thereunder.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the above identified order. Accordingly the amendments promulgated thereby became effective September 15, 1971.

Firms affected by the order will be allowed 30 days after publication hereof in the FEDERAL REGISTER to recall outstanding stocks of the affected drugs. Certification of new stocks has been discontinued.

Dated: October 15, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-15639 Filed 10-27-71;8:47 am]

Chapter II—Bureau of Narcotics and Dangerous Drugs, Department of Justice

PART 301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

Phenmetrazine and Its Salts and Methylphenidate

A notice was published in the FEDERAL REGISTER of September 17, 1971 (36 F.R. 18582), proposing the transfer of phenmetrazine and its salts and methylphenidate from schedule III to schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513). All interested persons were given 30 days after publication to submit their objections, comments, or requests for hearing.

No objections nor requests presenting reasonable grounds for a hearing regarding the proposed order were received.

Based upon the fact no objections nor requests for a hearing were received as to the proposed transfer order and upon the investigations of the Bureau of Narcotics and Dangerous Drugs and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education, and Welfare, received pursuant to section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(b)), the Director of the Bureau of Narcotics and Dangerous Drugs, in view of

the order transferring amphetamines and methamphetamine to schedule II published in the FEDERAL REGISTER of July 7, 1971 (36 F.R. 12734), and the resulting strict production and distribution controls imposed upon amphetamines and methamphetamine by this transfer, finds that persons disposed to abuse amphetamines and methamphetamine now may direct their attention to methylphenidate and phenmetrazine, drugs which presently are not known to be the subject of substantial abuse in the United States. Further, there is no evidence to indicate that there is any abuse of methylphenidate and phenmetrazine when administered with proper medical supervision.

Therefore, under the authority vested in the Attorney General by section 201(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(a)), and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs by § 0.100 of Title 28 of the Code of Federal Regulations: *It is ordered*, That:

1. Section 301.02 of Title 21 of the Code of Federal Regulations be amended by adding new paragraphs (b) (8) and (9) to read:

§ 301.02 Definitions.

(b) * * *

(8) Phenmetrazine and its salts.

(9) Methylphenidate.

* * * * *

2. Section 308.12(d) of Title 21 of the Code of Federal Regulations be deleted and replaced with a new paragraph to read:

§ 308.12 Schedule II.

* * * * *

(d) *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers	1,100
(2) Methamphetamine, its salts, isomers, and salts of its isomers	1,105
(3) Phenmetrazine and its salts	1,630
(4) Methylphenidate	1,726

3. Section 308.13(b)(4) of Title 21 of the Code of Federal Regulations be amended to read:

§ 308.13 Schedule III.

* * * * *

(b) *Stimulants.* Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances which are currently listed as excepted compounds under 21 CFR 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

* * * * *

(4) The additional requirements imposed upon Phenmetrazine and its salts and Methylphenidate by virtue of their reclassification into schedule II shall become effective as follows:

(a) *Labeling and packaging.* All labels and seals on commercial containers of, and all labeling of, the above-controlled substances, which are packaged on and after May 1, 1972, shall comply with the requirements of 21 CFR Part 302.

(b) *Order forms.* All orders for the above-controlled substances received after December 31, 1971, shall comply with the order form requirements of 21 CFR Part 305.

(c) *Records and inventories.* All separate and other recordkeeping requirements of 21 CFR Part 304 for the above-controlled substances shall be complied with by January 1, 1972. Records maintained and inventories taken prior to the above compliance date, which are in compliance with the recordkeeping requirements for schedule III controlled substances, shall not be affected by this order. No new inventories of the above-controlled substances, in addition to that of May 1, 1971, is required as a result of this order. Where a positive conflict exists between State and Federal laws and regulations, so that the two cannot stand together, Federal law governs in accordance with section 708 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 903).

(d) *Prescriptions.* All prescriptions for the above-controlled substances shall comply with 21 CFR 306.01–306.15 by January 1, 1972. Any prescriptions for the above-controlled substances, which are entitled to be refilled under § 306.22, shall not be entitled to such refill in accordance with § 306.12 on and after the above compliance date.

(e) *Importation and exportation.* All importation and exportation of the above controlled substances shall be in compliance with 21 CFR Part 312, specifically as to import and export permits, by January 1, 1972.

(f) *Security.* All security requirements of 21 CFR 301.71–76 for the above-controlled substances shall be complied with by March 1, 1972.

(g) *Registration.* Any registrant presently not authorized to handle Phenmetrazine and its salts or Methylphenidate or both and/or schedule II controlled substances should apply to modify his registration to authorize the handling of such controlled substances by submitting, by January 1, 1972, a letter of request to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Post Office Box 28083, Central Station, Washington, DC 20005. The letter shall contain the registrant's name, address, registration number, and the substances and/or schedules to be added to his registration, and shall be signed by the same person who signed the most recent application for registration or re-registration. No fee shall be required to be paid for the modification. The request for modification shall be handled in the same manner as an application for registration.

This order is effective on the date of its publication in the FEDERAL REGISTER (10–28–71).

Dated: October 18, 1971.

JOHN FINLATOR,
Acting Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.71–15654 Filed 10–27–71;8:51 am]

Chapter III—Environmental Protection Agency

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2-(4-Chloro-6-Ethylamino-s-Triazin-2-Ylamino)-2-Methylpropionitrile

A petition (PP 0F0998) was filed by the Shell Chemical Co., Suite 1103, 1700 K Street NW., Washington, DC 20006, in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) proposing the establishment of a tolerance for negligible residues of the herbicide 2-(4-chloro-6-ethylamino - *s* - triazin-2-ylamino)-2-methylpropionitrile in or on the raw agricultural commodities fresh corn including sweet corn (kernels plus cob with husk removed), corn grain, and corn forage and fodder at 0.1 part per million.

Subsequently, the petitioner amended the petition by requesting a lower tolerance level of 0.05 part per million.

Prior to December 2, 1970, the Secretary of Agriculture certified that the pesticide is useful for the purpose for which a tolerance is proposed, and the Fish and Wildlife Service, Department of the Interior, stated that they have no objection to the proposed tolerance.

Part 120, Chapter I, Title 21, was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The proposed usage is not reasonably expected to result in residues of the pesticide in meat, milk, poultry, and eggs. The usage is classified in the category specified in § 420.6(a)(3).

2. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 420 is amended by adding a new section to Subpart C, as follows:

§ 420.307 2-(4-Chloro-6-ethylamino-s-triazin-2-ylamino)-2-methylpropionitrile; tolerances for residues.

A tolerance of 0.05 part per million is established for negligible residues of the herbicide 2-(4-chloro-6-ethylamino-s-triazin - 2-ylamino)-2-methylpropionitrile in or on the raw agricultural commodities fresh corn including sweet corn (kernels plus cob with husk removed), corn grain, and corn fodder and forage.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (10-28-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: October 21, 1971.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-15679 Filed 10-27-71;8:51 am]

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Cyprazine

A petition (PP 1F1069) was filed by the Gulf Oil Corp., 439 Seventh Avenue, Pittsburgh, PA 15230 in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) proposing the establishment of tolerances for negligible residues of the herbicide cyprazine (2-chloro-4-cyclopropylamino-6-isopropylamino-s-triazine) in or on the raw agricultural commodities fresh corn including sweet corn (kernels plus cob with husk removed), corn grain, corn fodder and forage, and sorghum and forage at 0.1 part per million.

The petitioner subsequently amended the petition by withdrawing the request for a tolerance on sorghum and sorghum forage.

Part 120, Chapter I, Title 21, was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration given data submitted in the petition and other relevant material, it is concluded that:

1. The pesticide is useful for the purpose for which the tolerance is being established.

2. The proposed usage is not reasonably expected to result in residues of the pesticide in meat, milk, poultry, and eggs. The usage is classified in the category specified in § 420.6(a)(3).

3. The tolerance established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 420 is amended by adding a new section to Subpart C, as follows:

§ 420.306 Cyprazine; tolerances for residues.

A tolerance of 0.1 part per million is established for negligible residues of the herbicide cyprazine (2-chloro-4-cyclopropylamino - 6 - isopropylamino-s-triazine) in or on the raw agricultural commodities fresh corn including sweet corn (kernels plus cob with husk removed), corn grain, and corn fodder and forage.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, Room 3175, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, DC 20250, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (10-28-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: October 21, 1971.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-15678 Filed 10-27-71;8:51 am]

Title 24—HOUSING AND HOUSING CREDIT

Subtitle A—Office of the Secretary, Department of Housing and Urban Development

[Docket No. R-71-111]

PART 8—EQUAL EMPLOYMENT OPPORTUNITY UNDER HUD CONTRACTS AND HUD ASSISTED CONSTRUCTION CONTRACTS

The purpose of these regulations is to set forth the procedures established by the Assistant Secretary for Equal Opportunity in the Department of Housing and Urban Development for carrying out his responsibility with respect to implementing the requirements of Executive Order 11246.

Notice of a proposed amendment to Title 24 of the Code of Federal Regulations to include a new Part 8 was published in the FEDERAL REGISTER on June 11, 1971 (36 F.R. 11296). Comments were received from interested persons and consideration was given to each comment.

In response to the comments received, § 8.15(b)(3) has been revised to make clear that it is the Contract Compliance Officer who will provide the notice of the contractor's commitment under the section to the labor union or workers' representatives.

Other comments proposed modifications which were not accepted as revisions to the final rule. For example, a suggestion that more definite remedies or sanctions be added to Part 8 was not adopted because there are sufficiently strong penalties set forth in 41 CFR Part 60-1 which are supplemented, but not supplanted, by 24 CFR Part 8. Similarly, extension of Part 8 applicability beyond multifamily programs, as suggested, is not considered appropriate at this time. Several other comments were not adopted because they clearly exceeded the intended scope of Part 8.

Accordingly, Title 24 is amended by including a new Part 8 to read as follows:

Sec.
8.1 Purpose.
8.5 Definitions.
8.10 Responsibilities.
8.15 Equal opportunity clause.
8.20 Exemptions.
8.25 Award of contracts.
8.30 Affirmative action compliance programs—nonconstruction contracts.
8.35 Affirmative action compliance programs—construction contracts.
8.40 Prebid requirements and conferences.
8.45 Participation in areawide equal employment opportunity program.
8.50 Reports and other required information.
8.55 Compliance reviews.
8.60 Complaint procedure.
8.65 Hearings and sanctions.
8.70 Intimidation and interference.
8.75 Segregated facilities certificate.

Sec.
8.80 Solicitations or advertisements for employees.
8.85 Access to record of employment.
8.90 Notices to be posted.
8.95 Program directives and instructions.
8.100 Effective date.

AUTHORITY: The provisions of this Part 8 issued under sec. 201, Executive Order 11246 30 F.R. 12319; and 41 CFR 60-1.6(c).

§ 8.1 Purpose.

This part prescribes standards and procedures for the Department of Housing and Urban Development in the implementation of its responsibilities as a compliance agency under Executive Order 11246; the rules and regulations of the Secretary of Labor, codified in 41 CFR Part 60, prescribed thereunder; and other rules, orders, instructions, designations, and directives issued by the Office of Federal Contract Compliance, Department of Labor.

§ 8.5 Definitions.

(a) "Administering agency" means any department, agency, and establishment in the executive branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) "Agency" means any contracting or any administering agency of the Government.

(c) "Applicant" means an applicant for Federal assistance from the Department involving a construction contract, or other participant in a program involving a construction contract as determined by the Department. The term also includes such persons after they became recipients of such Federal assistance.

(d) "Compliance Agency" means the agency designated by the Director on a geographical, industry, or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the order as the Director may determine to be appropriate. In the absence of such a designation the Compliance Agency will be determined as follows:

(1) In the case of a prime contractor not involved in construction work, the Compliance Agency will be the agency whose contracts with the prime contractor have the largest aggregate dollar value;

(2) In the case of a subcontractor not involved in construction work, the Compliance Agency will be the Compliance Agency of the prime contractor with which the subcontractor has the largest aggregate value of subcontracts or purchase orders for the performance of work under contracts;

(3) In the case of a prime contractor or subcontractor involved in construction work, the Compliance Agency for each construction project will be the agency providing the largest dollar value for the construction projects; and

(4) In the case of a contractor who is both a prime contractor and subcontractor, the Compliance Agency will be determined as if such contractor is a prime contractor only.

(e) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(f) "Contract" means any Government contract or any federally assisted construction contract.

(g) "Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

(h) "Department" means the Department of Housing and Urban Development.

(i) "Director" means the Director, Office of Federal Contract Compliance, U.S. Department of Labor, or any person to whom he delegates authority under the regulations of the Secretary of Labor.

(j) "Equal opportunity clause" means the contract provisions set forth in § 8.15 (a) or (b), as appropriate.

(k) "Facilities" as used in § 8.75, includes, but is not limited to waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(l) "Federally assisted construction contract" means any agreement or modification thereof between any applicant and any person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Department for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(m) "Government" means the Government of the United States of America.

(n) "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. Services, as used in this section includes, but is not limited to, the following services: Utility, construction, transportation, research, insurance, and fund depository. Government contract does not include (1) agreements in which the parties stand in the relationship or employer and employee, and (2) federally assisted construction contracts.

(o) "Hearing officer" means the individual or board of individuals designated to conduct hearings.

(p) "Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(q) "Order" means Parts II, III, and IV of Executive Order 11246, dated September 24, 1965 (30 F.R. 12319), as amended by Executive Order 11375 dated October 13, 1967 (32 F.R. 14303), and any Executive Order amending or superseding such orders.

(r) "Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(s) "Prime contractor" means any person holding a contract, and for the purposes of Subpart B (General Enforcement, Compliance Review, and Complaint Procedure) of the "rules and regulations", any person who has held a contract subject to the order.

(t) "Recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(u) "Rules, regulations, and relevant orders" of the Secretary of Labor used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

(v) "Secretary" means the Secretary of Housing and Urban Development.

(w) "Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

(x) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

(y) "Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B (General Enforcement; Compliance Review, and Complaint Procedure) of the "rules and regulations," any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(z) "United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

§ 8.10 Responsibilities.

(a) *General.* The Department of Housing and Urban Development is responsible for: (1) Implementing the requirements of the order, the "rules and regulations," OFCC directives and all other rules, regulations, and orders issued pursuant thereto, and (2) obtaining the compliance of all contractors for which the Department is the Compliance Agency.

(b) *Contract Compliance Officer (CCO).* The Assistant Secretary for Equal Opportunity has been designated the Contract Compliance Officer (CCO) for the Department by the Secretary (35 F.R. 7138, May 6, 1970), and is responsible for developing and administering the Department's program under the order.

(c) *General Deputy Contract Compliance Officer (GDCCO).* The Deputy Assistant Secretary for Equal Opportunity has been designated the General Deputy Contract Compliance Officer (GDCCO) for the Department by the Secretary (35 F.R. 7138, May 6, 1970), to assist the Contract Compliance Officer in the performance of his duties. He is authorized to exercise the authority delegated to the Contract Compliance Officer.

(d) *Deputy Contract Compliance Officer (DCCO).* Each Assistant Regional Administrator for Equal Opportunity has been designated by the Contract Compliance Officer as Deputy Contract Compliance Officer (DCCO) for the Region in which he serves. Deputy Contract Compliance Officers are responsible for field administration of programs of contract compliance in conformity with directives and guidelines promulgated by the Contract Compliance Officer.

(e) *Heads of Program Areas.* Assistant Secretaries of the Department who are authorized to extend Federal financial assistance which involves construction work shall be responsible for effectuating the Order, "rules and regulations," OFCC directives, this Part 8, directives of the Department and all other rules, regulations, and orders issued pursuant thereto as they relate to construction contracts financially assisted by the Department.

§ 8.15 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or repesentative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 25, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* Except as otherwise provided, the following language shall be included as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon

each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction[1] work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Department or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the Department may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000 and such other contracts as the Director may designate.

(e) *Incorporation by operation of the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

§ 8.20 Exemptions.

(a) *General—(1) Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. The Department, applicants, contractors, and subcontractors shall not procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open-end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by § 8.50 and maintaining a written affirmative action compliance program prescribed in §§ 8.30 and 8.35.

(b) *Specific contracts and facilities not connected with contracts.* The equal opportunity clause will not be required to be included in any contract or subcontract exempted by the Director under the provisions of 41 CFR 60–1.5(b) (1) or (2) provided such exemption has not been withdrawn under the provisions of 41 CFR 60–1.5(d).

(c) *National security.* Any requirement set forth in the regulations in this part shall not apply to any contract or subcontract whenever the Secretary determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the Secretary will notify the Director in writing within 30 days.

§ 8.25 Award of contracts.

(a) All Contracting Officers and all officers who approve applications for Federal financial assistance involving a construction contract, shall prior to approval follow either of the procedures in subparagraphs (1) or (2) of this paragraph:

(1) Notify the Contract Compliance Officer or appropriate Deputy as soon as practicable of the impending award of each nonexempt construction contract in excess of $100,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract subject to the equal opportunity clause, and

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Consult a list (supplied by the Contract Compliance Officer) of contractors who have previously been found to be in noncompliance with equal opportunity requirements. In the event of an impending award to any contractor on such list, the Contract Compliance Officer or appropriate Deputy shall be advised and the procedures of paragraph (b), (c), and (d) of this section shall be followed.

(b) The Contract Compliance Officer or appropriate Deputy shall review the available information relative to the prospective prime contractor's equal opportunity compliance status and notify the Contracting Officer or Approving Officer of any deficiencies found to exist. A copy of such report shall be forwarded to the Director.

(c) Contracting Officers or Approving Officers shall: (1) Notify the bidder, offeror, or applicant of any deficiencies found to exists by the Contract Compliance Officer or appropriate Deputy, and (2) direct any bidder, offeror, or applicant so notified to negotiate with the Contract Compliance Officer and to take such actions as the Contract Compliance Officer may require.

(d) The award of any such contract shall be conditioned upon the Contract

Compliance Officer's notification to the Contracting Officer or Approving Officer that the bidder, offeror, or applicant has taken action or has agreed to take action satisfactory to the Contract Compliance Officer, appropriate Deputy, or the head of the agency as provided in § 8.55(a). Any such agreement to take action shall be stated in the contract, if the Contract Compliance Officer so requires.

(e) In the case of nonconstruction contracts, all Contracting Officers shall:

(1) Notify the Contract Compliance Officer as soon as practicable of the impending award of each nonexempt, nonconstruction Government contract in excess of $50,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract or subcontract subject to the equal opportunity clause;

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements; and

(iii) Developed and have on file at each establishment affirmative action programs pursuant to Part 60–2 of the "rules and regulations."

(2) The Contract Compliance Officer shall notify the Compliance Agency (designated pursuant to the Director's Order No. 1 and 41 CFR 60–1.3(d)) of the impending award of each contract covered by subparagraph (1) of this paragraph. Based upon the information furnished by the Compliance Agency, the Contract Compliance Officer shall advise the Contracting Officer to take such action with respect to the impending award as may be appropriate pursuant to the rules, regulations, and relevant orders of the Secretary of Labor and this Part 8.

(f) The invitation for bids for each formally advertised nonconstruction contract, shall include a notice, and Department officials shall state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of $1 million, the prospective contractor and his known first-tier subcontractors with subcontracts of $1 million or more will be subject to a compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first-tier $1 million subcontractors has been conducted by the Compliance Agency within 12 months prior to the award. If an agency other than the Department is the Compliance Agency, the Department will notify the Compliance Agency and request appropriate action and findings in accordance with this paragraph. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to Part 60–2 of the "rules and regulations."

(g) A preaward compliance review may be conducted prior to award of contracts in any case where the CCO has reasonable grounds, based on a complaint, the Department's own investigation, or otherwise, to believe that the contractor or subcontractor is unable or unwilling to comply with the requirements of the equal opportunity clause. (Such reviews are in addition to those required pursuant to paragraph (f) of this section.)

§ 8.30 Affirmative action compliance programs—nonconstruction contracts.

Order No. 4 (41 CFR Part 60–2), issued by the Secretary of Labor, sets forth requirements for the development of affirmative action compliance programs for nonconstruction contractors.

§ 8.35 Affirmative action compliance programs—construction contracts.

(a) *Requirements of programs.* The Department or the applicant shall require each Federal or federally assisted construction prime contractor on projects costing $1 million or more, regardless of the number of employees, and each Federal or federally assisted construction prime contractor and subcontractor shall require each subcontractor on projects costing $1 million or more with a subcontract of $100,000 or more, regardless of the number of employees, to develop a written affirmative action compliance program.

(b) *Purposes.* The purposes of the written affirmative action program are:

(1) To identify areas of employment, employment policies and practices which require action by the contractor or subcontractor to assure equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, or national origin;

(2) To analyze these areas, policies, and practices to determine what actions by the contractor or subcontractor will be most effective in assuring equal opportunity; and

(3) To establish a plan to achieve employment opportunity through those actions identified as potentially most effective.

§ 8.40 Prebid requirements and conferences.

(a) In any area or for any class of contracts designated by the Director, or by the CCO, no bid invitations will be issued for any Federal or federally assisted construction contract unless such bid invitation contains definite minimum standards for affirmative action and a statement that contractors and subcontractors must meet such minimum standards to be eligible for award.

(b) Whenever the submission of a written affirmative action program is required before the award of a contract, definite minimum standards for such program shall be incorporated in the bid invitations or requests for proposal issued in connection with such contracts.

(c) When the Director or CCO so requires, a prebid conference will be held in which the minimum standards for affirmative action will be explained to those in attendance. All known prospective bidders will be notified of the date, time, and place of the prebid conference.

(d) Bids which fail to meet the standards prescribed shall be deemed nonresponsive and will not be considered for award.

§ 8.45 Participation in areawide equal employment opportunity programs.

Any contractor who is a participant in, or is a member of an organization or association which participates in, an areawide equal employment opportunity program which is approved by the Department and the Office of Federal Contract Compliance for the purpose of effectuating the goals of Executive Order 11246, may be deemed to be in compliance with the order by virtue of such participation and shall be exempt from the requirement of developing and maintaining a written affirmative action program, unless required to do so under the areawide equal employment opportunity program.

§ 8.50 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor shall file, and each prime contractor and subcontractor shall cause its subcontractors to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of the "rules and regulations" in accordance with 41 CFR 60–1.5; (ii) has 100 or more employees; (iii) is a prime contractor or first-tier subcontractor; and (iv) has a nonexempt contract, subcontract or purchase order, serves as a depository of Government funds, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided,* That any subcontractor below the first tier which performs construction work shall be required to file such a report if it meets requirements of subdivisions (i), (ii), and (iv) of this subparagraph.

(2) Each person required by subparagraph (1) of this paragraph to submit reports shall file such a report with the Department within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with subparagraph (1) of this paragraph, or at such other intervals as the CCO or the Director may require. The Department, with the approval of the Director, may extend the time for filing any report.

(3) The Director, the CCO, or the applicant, on his own motion, may require a prime contractor or subcontractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as

the Director, CCO or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is grounds for the imposition by the Department, the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the "rules and regulations." Any such failure shall be reported in writing to the Director by the CCO as soon as practicable after it occurs.

(b) *Requirements for bidders or prospective contractors*—(1) *Previous reports.* Each bidder or prospective prime contractor and proposed subcontractor, where appropriate, shall state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60–2; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause and (iii) if so, whether it has filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the CCO, the Deputy CCO, or the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the Department, the applicant, or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order and the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§ 8.55 Compliance reviews.

(a) *General.* The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made. Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the Contract Compliance Officer, the appropriate Deputy, or the Secretary of such commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(b) *Regular compliance reviews.* Each Deputy Contract Compliance Officer shall institute a program of regular compliance reviews of those contractors and subcontractors for which he is assigned responsibility.

(c) *Special compliance review.* The special compliance review of bidders, applicants, offerors, contractors, or subcontractors will be conducted at the request of the CCO or the Director, OFCC to determine compliance or ability to comply with the order, the "rules and regulations," these rules and regulations and directives issued pursuant thereto.

(d) *Reports*—(1) *Special compliance review reports.* A special compliance review report shall be provided to the CCO or the Director, OFCC, as directed.

(2) *Regular compliance review reports.* A report of each compliance review shall be forwarded to the CCO within 30 days after the regular review is conducted unless otherwise provided.

(3) *Preaward compliance review report.* A written report of every preaward compliance review required by the "rules and regulations," or otherwise required by the Director including findings, will be forwarded to the Director by the CCO within 10 days after the award for a postaward review.

(4) *Additional reports.* A written report of every other compliance review or any other matter processed by the Department involving an apparent violation of the equal opportunity clause shall be submitted to the Director. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

§ 8.60 Complaint procedure.

(a) *Who may file complaints.* Any employee of any contractor or applicant for employment with such contractor may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination in violation of the equal opportunity clause. Such complaint is to be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the CCO or the Director upon good cause shown.

(b) *Where to file.* Complaints may be filed with the Director of OFCC or at any HUD Regional or Area Office, FHA Insuring Office or with the CCO. Any HUD employee receiving a complaint shall forward the complaint directly to the CCO or his designee. The CCO shall transmit a copy of the complaint to the Director within 10 days after the receipt thereof.

(c) *Contents of complaint.* (1) The complaint should include the name, address, and telephone number of the complainant, the name and address of the prime contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his authorized representative.

(2) Where a complaint contains incomplete information, the CCO shall seek promptly the needed information from the complainant. In the event such information is not furnished to the CCO within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* For each complaint filed against a prime contractor or subcontractor for which HUD is the Compliance Agency, the CCO shall institute a prompt investigation and shall be responsible for developing a complete case record. A complete case record consists of the name and address of each person interviewed, and a summary of his statement, copies or summaries of pertinent documents, and a narrative summary of the evidence disclosed in the investigation as it relates to each violation revealed. When a complaint is filed against a prime contractor or subcontractor for which the Department is not the compliance agency, the CCO shall transmit the complaint to the Director for disposition.

(e) *Resolution of complaints.* (1) If the complaint investigation by the CCO shows no violation of the equal opportunity clause, he shall so inform the Director. The Director may request further investigation by the CCO.

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director, and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the CCO with the approval of the Director shall afford the contractor an opportunity for a hearing. If the final decision reached in accordance with the provisions of § 60–1.26 of the "rules and regulations" is that a violation of the equal opportunity clause

has taken place, the CCO with the approval of the Director, may cause the cancellation, termination, or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the order.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the CCO or the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the CCO or the Director.

(5) For reasonable cause shown, the CCO may reconsider or cause to be reconsidered any matter on his own motion or pursuant to a request.

(f) *Report to the Director.* Within 60 days from receipt of a complaint or within such additional time as may be allowed by the Director for good cause shown, the CCO shall process a complaint and submit to the Director the case record and summary report containing the following information:

(1) Name and address of the complainant.

(2) Brief summary of findings, including a statement as to the CCO's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause.

(3) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

§ 8.65 Hearings and sanctions.

(a) The Secretary with the approval of the Director may convene formal or informal hearings as he may deem appropriate for inquiring into the status of compliance by any prime contractor or subcontractor with the terms of the equal opportunity clause.

(b) The Secretary may propose or apply sanctions in the event of noncompliance by a contractor or subcontractor with the requirements of the equal opportunity clause, subject to the limitations of the "rules and regulations," particularly § 60–1.27.

(c) The conduct of hearings and the proposal and application of sanctions shall be in accordance with the requirements of the order and of the "rules and regulations."

§ 8.70 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by the CCO or the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

§ 8.75 Segregated facilities certificate.

Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, the Department or the applicant shall require the prospective prime contractor, and each prime contractor and subcontractor shall require each subcontractor, to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt subcontract.

§ 8.80 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 8.85 Access to record of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the order, and all rules and regulations promulgated pursuant thereto, by the Department or the Director for purposes of investigation to ascertain compliance with the equal opportunity clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the order and the administration of the Civil Rights Act of 1964, and in furtherance of the purposes of the order and that Act.

§ 8.90 Notices to be posted.

Contractors and subcontractors required to do so by paragraphs (1) and (3) of the equal opportunity clause shall post notices to be provided by the CCO. Such notices shall be in compliance with the requirements of § 60–1.42 of the "rules and regulations."

§ 8.95 Program directives and instructions.

Appropriate program officials may issue such directives, procedures, and instructions as they consider necessary to achieve equal employment opportunity in programs administered by them, provided such issuances are not inconsistent with the provisions of the order, the rules, regulations, and directives of the Secretary of Labor or the Director, and these regulations. A copy of such directives, procedures, and instructions shall be submitted to the CCO for approval prior to issuance.

§ 8.100 Effective date.

The regulations contained in this part shall become effective December 31, 1971, for all contracts, solicitations, invitations for bids, or requests for proposals which shall be sent by the Department or an applicant on or after said effective date and for all negotiated contracts which have not been executed as of said effective date.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[FR Doc.71-15615 Filed 10-27-71;8:45 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 15586; FCC 71-1047]

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

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Community Antenna Television Systems

Memorandum opinion and order. In the matter of amendment of Parts 2, 21, 74, and 91 of the Commission's rules and regulations relative to the licensing of microwave radio stations used to relay television signals to community antenna television systems.

1. The Commission has before it a number of petitions for reconsideration of the "Second Report and Order" in this proceeding, adopted on February 5, 1968 (11 FCC 2d 709), and responsive pleadings thereto as listed in appendix A.[1] Also pending is a petition for oral argument jointly filed on July 12, 1968, on behalf of most of the parties requesting reconsideration and a supporting

[1] Filed as part of original document.

statement of H & B Communications Corp. filed on July 25, 1968. The petitions under consideration seek reconsideration of Part II of the "Second Report and Order" which established frequency allocations for common carrier facilities relaying television signals to CATV systems.

2. Part II of the "Second Report and Order" established new rules which, with certain limited exceptions, declined to accept for filing or grant applications for new common carrier microwave facilities in the 3700–4200 MHz (4 GHz) and 5925–6425 MHz (6 GHz) bands for the purpose of serving CATV systems. Furthermore, these rules state that existing facilities serving CATV systems in the 4 and 6 GHz bands will be renewed after February 1, 1971, only if they are not within 50 miles of the top 25 metropolitan areas and on the condition that they cause no harmful interference to other point to point microwave stations or earth stations in the Satellite Communications Service. As a practical result of these rules, applications for new facilities to serve CATV systems are now accepted for filing only when they propose frequencies in the 10700–11700 MHz (11 GHz) band which is the next lowest frequency band available for common carrier use.[2]

3. Thirty-five miscellaneous common carrier (MCC's), a major CATV operator (H & B Communications Corp.), and a major microwave and CATV equipment Manufacturer (Jerrold Electronics Corp.) seek reconsideration of these frequency allocation rules. The MCC's which predominantly provide relay service to CATV systems, have in the past extensively used frequencies in the 6 GHz band. In general, petitioners contend that the new frequency allocations are unjustified and will have severe impact on the operations of the MCC's and their customers. They contend that a greatly increased number of relay stations would be required at 11 GHz, and that the possibility of having to replace existing 6 GHz facilities will have a prohibitive cost impact on their operations and rate schedules. The MCC's further argue that the Commission, in denying carriers serving CATV systems the use of the lower frequency bands, is engaging in an unwarranted discrimination against a class of carrier and class of customer and, furthermore, that the reallocation of frequencies is not necessary or justified. American Telephone & Telegraph Co. (A.T. & T.) supports the rules. It takes the position that the new rules are a constructive response to the problem of frequency congestion and blockage and that the impact on the MCC's has been overstated.

4. By Memorandum Opinion and Order released February 3, 1970, (21 FCC 2d 284) we noted that some relief may be warranted, but we delayed a decision at that time pending our evaluation of the following factors:

(a) The possible development of a microwave network for the relay of program material for CATV systems as encouraged by the "First Report and Order" in Docket No. 18397 (20 FCC 2d 201);

(b) The development of a domestic satellite communications program which will share (at least initially) the 4 and 6 GHz bands;

(c) The possible development of additional nationwide common carrier networks for the provision of data and other specialized services; and

(d) The size and extent of new facilities which may be needed for free or reduced rate educational television relay.

All of these factors, of course, have not fully developed, but they have evolved sufficiently to enable us to reasonably gauge their potential impact.

5. Reviewing these items briefly, we note that nine extensive proposals for domestic satellite systems have been filed in connection with the proceeding in the Docket No. 16495. Most propose the use of 4 and 6 GHz frequencies and involve substantial common carrier microwave facilities for terrestrial interconnection. In the field of data and other specialized common carrier communications we recently made a decision in the "First Report and Order" in Docket No. 18920, released June 3, 1971 (29 FCC 2d 870), to allow entry of new carriers to provide such services on a competitive basis. That decision opens the way for consideration of close to 2,000 microwave applications which would comprise substantial private line/data networks serving virtually all major cities. Insofar as relay facilities for educational television are concerned, we recently ordered A.T. & T. to construct a 110 point network for the Corporation for Public Broadcasting by 1973.[3] Substantial other facilities by miscellaneous carriers to provide statewide educational relay networks have also been proposed or authorized. While the situation concerning mandatory CATV program origination is unsettled,[4] we believe it likely that the future development of CATV, as envisioned in the Commission's letter of August 5, 1971, addressed to several committees of Congress (FCC 71–787), will require substantial new microwave facilities for video transmission.

6. In sum, these projected uses for common carrier microwave frequencies are substantial and when added to the increasing demand for these frequencies by landline carriers for telephone and telegraph purposes, it presents a picture of growing congestion in the 4 and 6 GHz bands and of blockage of the expansion of established routes in many areas. In recognition of the congestion problem, we adopted in the "First Report and Order" in Docket No. 18920, supra, technical changes in the rules requiring prior frequency and route coordination, restricted use of frequency diversity, and new antenna standards. These measures were designed to help conserve frequencies, and while we believe that they will prove effective, at best, they can only ameliorate the basic congestion problem in the lower bands.

7. The impact of video transmission on the radio spectrum is particularly substantial when considered in light of the transmission bandwidth required. We are told that one microwave channel in the 6 GHz band carrying one video signal alternatively could carry 1,800 4 kHz voice circuits or in excess of 4,000 4.8 kilobit data circuits. Moreover, the passage of time tends to support our view that the predominant use of 11 GHz frequencies will have no substantial adverse economic or other consequences on carriers serving primarily CATV systems. The predictions of doubling costs and rates made by some of the MCC's simply have not been borne out by 3 years of general operations in this band.

8. This is not to say that we do not recognize that 11 GHz operation poses some problems due to its propogation characteristics. Many petitioners refer to a well-known study by Hathaway and Evans of the Bell Laboratories.[5] That study was the result of a 1 year experiment over a microwave path between Mt. Vernon and Mobile, Ala., an area of frequent heavy rainfall. The Hathaway and Evans study indicates, as do earlier reports, that 11 GHz is largely the equal of 4 and 6 GHz except for attenuation caused by heavy rainfall; the greater the droplet size and intensity of fall, the larger the transmission loss per mile. The study concluded that 11 GHz transmission paths should be somewhat shorter to assure greater fade margins. Based primarily on that study, several MCC's, without practical experience at 11 GHz, projected that they would have to double the number of relay stations to provide adequate reliability. However, this has not happened. In fact, we are not aware of a single instance where an intermediate relay facility has been proposed in order to utilize 11 GHz frequencies on a system initially engineered for 6 GHz frequencies. Moreover, it would appear from numerous 11 GHz CATV relay applications subsequently filed that in practice the 11 GHz path lengths are not significantly shorter than the 6 GHz path lengths.[6] In short, it appears that experi-

[2] Exception is made for power splits and technical changes not involving new service or increased use of frequencies. (See rule § 21.701(1) and Interpretive Ruling (15 FCC 2d 703.))

[3] See Memorandum Opinion and Order in Docket 18316, released June 3, 1971 (FCC 71–584).

[4] By decision of May 13, 1971, the U.S. Court of Appeals, for the Eighth Circuit held the mandatory origination requirement to be beyond the Commission's statutory authority. "Midwest Video Corporation v. U.S.", Case No. 20,439. The application of this rule has been suspended pending the outcome of further judicial review. Public Notice, May 27, 1971, FCC 71–557.

[5] "Radio Attenuation at 11 kmc and Some Implications Affecting Relay System Engineering" by S. D. Hathaway and H. W. Evans, "The Bell System Technical Journal," Jan. 1959.

[6] A random sample of 50 applications proposing new 11 GHz stations had path lengths averaging 35.8 miles as compares to 36.4 miles for another sample of 50 applications proposing 6 GHz frequencies. Both samples contained applications from a number of different carriers representing varied geographic locations and conditions.

ence has proved the 11 GHz band quite useful and that in most cases path lengths need not be substantially shortened.[7]

9. A number of petitioners contend that the frequency restrictions are discriminatory toward CATV and CATV carriers. We agree that a distinction is drawn as to a class of service (although not against a class of carriers since the restrictions apply equally to all carriers). However, in view of the congestion in the lower bands and the particularly heavy spectrum impact caused by CATV service (as noted in paragraph 7), we believe that this classification is in the public interest in order to meet the growing demand for terrestrial and satellite general communications and is a proper exercise of our authority under section 303 (a), (b), (c), and (r) of the Communications Act. Moreover, we consider the classification to be reasonable since the 11 GHz band appears to be capable of providing satisfactory relay service to CATV systems. Also, we note that this use of the 11 GHz band for common carrier service to CATV systems is consistent with our allocation for private CATV relay (in the Community Antenna Relay Service) in the nearby 12.7–12.95 GHz band.

10. Under these circumstances we would be most reluctant to return to the status quo ante. However, we do believe that some provisions of the rules and policies as adopted can be modified to provide substantial relief without thwarting our ultimate objectives. Therefore, we have decided to:

(a) Maintain the prohibition against the authorizations of new frequency paths in the 4 and 6 GHz bands to serve CATV systems but to continue our policy of considering waiver requests pursuant to our Memorandum Opinion and Order of February 3, 1970, supra; and

(b) Eliminate the conditions on renewals of licenses granted after February 1, 1971.

11. We believe such course of action is a reasonable compromise. The lower frequencies will be reserved in the areas of greatest congestion, yet waivers will permit CATV use in many areas where congestion is not a problem. But a carrier, once authorized a lower frequency for CATV purposes, would not be subject to the uncertainty and financial risk entailed in an authorization subject to preemption. As a practical matter the elimination of this secondary status is not likely to cause any substantial impact on the future availability of these frequencies for other uses since we anticipate few situations where the facts would warrant preemption, and even in those situations the existing use of the frequencies may be challenged at the next license renewal period pursuant to normal procedures. Under the current rules those stations rendering CATV service on the lower frequencies that are located within 50 miles of one of the top 25 metropolitan areas are not renewable and would have to relocate or modify frequencies in 1971. Since such facilities are few in number, we will make them eligible for renewal. However, because these areas are subject to the greatest frequency demands, no waivers for new or additional 4 or 6 GHz facilities will be granted in these restricted zones absent compelling and unusual circumstances.[8]

12. Accordingly, we conclude that the rules as modified herein, are reasonable and in the public interest. As to the request for oral argument, we believe that it is unnecessary in view of the substantial relief granted herein and the extensive treatment of the subject contained in the pleadings. Authority for the modified rules adopted herein is contained in sections 4 (i) and (j), 303 (a), (b), (c), and (n), and 307(b) of the Communications Act.

13. In view of the foregoing, *It is hereby ordered*, That the petitions for reconsideration are granted to the extent indicated herein but are otherwise denied.

14. *It is further ordered*, That the petition for oral argument is denied.

15. *It is further ordered*, That the policies set forth herein and the modified rules as contained in appendix B below are adopted, effective November 30, 1971.

16. *It is further ordered*, That this proceeding is terminated.

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

Adopted: October 14, 1971.

Released: October 19, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[9]

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

[7] For a recent evaluation of the adjacent 12 GHz band, see the "Lenkurt Demodulator," June 1971.

[8] This limitation also applies to any application pending on the release date of the "Second Report and Order" (Feb. 15, 1968) which would otherwise have "grandfather" status pursuant to our Order of Feb. 21, 1968 (11 F.C.C. 2d 735). Heretofore, the grant of any such grandfathered application in a restricted 50 mile zone was not usually practicable since it would not have been eligible for renewal in 1971.

[9] Commissioner Johnson concurring in the result; Commissioner Reid not participating.

Parts 2 and 21 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

§ 2.106 [Amended]

Section 2.106 is amended by deleting footnote NG55 in its entirety, and reference to footnote NG55 at 3,700–4,200 MHz and at 5,925–6,425 MHz in the table.

Section 21.701(i) is revised to read as follows:

§ 21.701 Frequencies.

* * * * *

(i) Applications for new stations or frequency paths (except for power splits of existing frequency paths) in the bands 3,700–4,200 MHz and 5,925–6,425 MHz which are to be used to relay television signals to community antenna television systems will not be accepted for filing or granted: *Provided, however,* That waivers of this provision may be granted for good cause shown, including a showing that the proposed frequency usage is not likely to affect adversely the development of any major communications route; and *Provided further,* That such waivers will not be granted, absent a showing of compelling and unusual circumstances, for new stations or frequency paths (except for power splits of existing frequency paths) within fifty (50) miles of the coordinates of the principal city, as set forth in the U.S. Department of Commerce publication "Air Line Distance Between Cities in the United States," of one of the top 25 standard metropolitan statistical areas, as ranked by the U.S. Census Bureau.

[FR Doc.71-15650 Filed 10-27-71;8:51 am]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 90—PROCEDURES FOR TRANSFER OF MINERS WITH EVIDENCE OF PNEUMOCONIOSIS

Correction

In F.R. Doc. 71-15574 appearing at page 20600 in the issue for Wednesday, October 27, 1971, the second and third letters following Figure 1 at the end of the document were inadvertently printed. They should be deleted.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Parts 4, 6]

UNLADING; LADING AND OVERTIME SERVICES

Granting of Permits and Special Licenses on a Term Basis and Their Revocation

Notice is hereby given that under the authority contained in Revised Statutes 251, as amended (19 U.S.C. 66), and sections 448, 450, 451, 624, and 644 of the Tariff Act of 1930, as amended (19 U.S.C. 1448, 1450, 1451, 1624, 1644), it is proposed to amend the Customs regulations to provide for the granting of permits-special licenses for unlading, lading, and overtime services of Customs officers on a term basis in situations where they are not currently granted on that basis and to further implement Treasury Decision 71-39 relating to security of cargo in unlading areas. The proposed regulations in tentative form are set forth below:

Section 4.10 is amended to read:

§ 4.10 Request for overtime services.

Request for overtime services in connection with the entry or clearance of a vessel, including the boarding of a vessel for the purpose of preliminary entry,[1] shall be made on Customs Form 3171. (See § 24.16 of this chapter regarding pleasure vessels.) Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless a term special license (unlimited or limited to the service requested) has been issued (see § 4.30(g)) and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. Such request shall not be approved (previously issued term special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of § 4.30 regarding terminal facilities and employee lists, respectively, and the required cash deposit or bond, on Customs Form 7567 or 7569, has been received. Separate bonds shall be required if overtime services are requested by different principals.

Paragraphs (a), (b), (c), (f), (g), (h), and (i) of § 4.30 are amended to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter, and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288,[2] no passengers,[3] cargo,[4] baggage,[5] or other article [6] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the United States and no cargo, baggage, or other article shall be laden [7] on a vessel destined to a port or place outside the Customs territory of the United States, if Customs supervision of such unlading [8] or lading [9] is required, until the district director of Customs shall have issued, on Customs Form 3171, a permit (for lading and unlading during official hours) or a special license (for lading or unlading at night or on a Sunday or holiday when overtime services of a Customs officer is required).

(b) Application for a permit or special license shall be made by the master, owner, or agent of the vessel on Customs Form 3171, and shall specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Arrangements, in the case of a term permit or term special license, shall be made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation shall be specifically noted on the application.

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond,[10] on Customs Form 7567 or 7569, has been received. When a carrier has on file a bond on Customs Form 3587, no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

* * * * *

(f) The district director may issue a term permit on Customs Form 3171 for any period up to 1 year, but not longer than the period of the supporting bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours.

(g) The district director may issue a term special license on Customs Form 3171 for any period up to 1 year, but not longer than the period of the supporting bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage at night or on a Sunday or holiday when Customs supervision is required. (See § 24.16 of this chapter regarding pleasure vessels.)

(h) A special license for the unlading or lading of a vessel at night or on a Sunday or holiday shall be refused by the district director if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The district director shall not issue a permit or special license to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A vessel bond, on Customs Form 7567 or 7569, or cash deposit shall have been given; or

(3) The merchandise is to be discharged into the custody of the district director as provided for in section 490(b), Tariff Act of 1930.[11]

* * * * *

Section 6.2 (e) and (f) are amended to read as follows:

§ 6.2 Landing requirements.

* * * * *

(e) *Permits to unlade and lade.* A permit on Customs Form 3171 running for any period up to 1 year, but not longer than the period of the supporting bond, may be issued to any and all aircraft to unlade passengers or merchandise, including baggage, or to lade merchandise or baggage during official hours. Except when a term permit has been issued and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the specific nature of the services desired and the exact times they will be needed, a separate application for a permit shall be filed in the case of each arrival or departure. The permit shall not be issued (previously issued term permits shall be revoked) unless the carrier complies with the provisions of § 4.30 of this chapter regarding terminal facilities and employee lists, and the required cash deposit or bond, on Customs Form 7567 or 7569, has been received.

(f) *Special licenses to unlade and lade.* A special license on Customs Form 3171 running for any period up to 1 year, but not longer than the period of the supporting bond, may be similarly issued to any and all aircraft to unlade passengers or merchandise, including baggage, or to lade merchandise or baggage from such aircraft at night or on a Sunday or holiday when Customs supervision is required. A previously issued

term special license shall be revoked unless the carrier complies with the provisions of § 4.30 of this chapter regarding terminal facilities and employee lists, and the required cash deposit or bond, on Customs Form 7567 or 7569, has been received. (See § 24.16(c) of this chapter as to private aircraft.) Separate bonds shall be required if overtime services are requested by different principals.

* * * * *

Prior to the issuance of the proposed amendments, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Washington, D.C. 20226, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Written material or suggestions submitted will be available for public inspection in accordance with § 103.3(b) of the Customs regulations (19 CFR 103.3(b)) at the Bureau of Customs, Washington, D.C., during regular business hours.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: October 8, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-15685 Filed 10-27-71;8:51 am]

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Part 75]

INSTALLATION OF AUTOMATIC WARNING DEVICES AND FIRE SUPPRESSION DEVICES ON BELT HAULAGEWAYS

Proposed Requirements

In accordance with the provisions of section 311(g) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), and pursuant to the authority vested in the Secretary of the Interior under section 301(d) of the Act, there was published in the FEDERAL REGISTER for March 5, 1971 (36 F.R. 4406-08), a notice of proposed rule making setting forth proposed amendments to Part 75 of Subchapter O, Chapter I, Title 30, Code of Federal Regulations, prescribing requirements for the installation of automatic fire warning devices on underground conveyor belts and prescribing a schedule for the installation of fire suppression devices in belt haulageways.

Interested persons were afforded a period of 45 days in which to submit written comments, suggestions, or objections concerning the proposed amendments. Responses were received from 25 persons and organizations including coal producing companies, equipment manufacturers and industry associations. Many such comments and suggestions were found to have substantial merit and have been adopted. In other cases changes were made in the proposed standards based upon comments and objections received. In view of the extensive revisions made pursuant to the comments received the Department has decided to republish the standards as proposed rule making.

Accordingly, the proposed amendments to Part 75 concerning the installation of automatic fire warning devices and fire suppression devices on belt haulageways published in the FEDERAL REGISTER for March 5, 1971 (36 F.R. 4406-08), are hereby withdrawn and the revised proposed amendments set forth below are substituted in lieu thereof.

Interested persons may submit written comments, suggestions, or objections to the Director, Bureau of Mines, Washington, D.C., 20240, no later than 45 days following publication of this notice in the FEDERAL REGISTER.

LEWIS M. HELM,
Deputy Assistant Secretary of the Interior.

OCTOBER 22, 1971.

It is proposed that Part 75 of Chapter I, Subchapter O, Title 30, Code of Federal Regulations be amended by adding the following:

§ 75.1103-2 Automatic fire sensors; approved components; installation requirements.

(a) The components of each automatic fire sensor required to be installed in accordance with the provisions of § 75.1103-1 shall be of a type listed, approved and installed in accordance with the recommendations of the Underwriters' Laboratories, Inc., Factory Mutual Engineering Corp. or other nationally recognized testing laboratory.

(b) Where applicable, and not inconsistent with these regulations, automatic fire sensors shall be installed in accordance with National Fire Protection Association Code 72A and the manufacturer's recommendations.

§ 75.1103-3 Automatic fire sensor and warning device systems; minimum requirements; general.

Automatic fire sensor and warning device systems installed in belt haulageways of underground coal mines shall be assembled from components which meet the minimum requirements set forth in §§ 75.1103-4 through 75.1103-7 unless otherwise approved by the Secretary.

§ 75.1103-4 Automatic fire sensor and warning device systems; installation; minimum requirements.

(a) Automatic fire sensor and warning device systems shall provide identification of fire within each belt flight (each belt unit operated by a belt drive). Where used, sensors responding to temperature rise at a point shall be located at or above the elevation of the top belt, and installed at the beginning and end of each belt flight, at the belt drive, and in increments along each belt flight so that the maximum distance between sensors does not exceed 125 feet (at loading points on secondary belts the distance from the tail piece to the first outby sensor may be 125 feet for a period not exceeding 24 hours). Where used, sensors responding to radiation, smoke, gases, or other indications of fire, shall be spaced at regular intervals to provide protection equivalent to point-type sensors.

(b) Automatic fire sensor and warning device systems shall be installed so as to minimize the possibility of damage from roof falls and the moving belt and its load.

(c) Infra-red, ultraviolet and other sensors whose effectiveness is impaired by contamination shall be protected from dust, dirt and moisture.

(d) The voltage of automatic fire sensor and warning device systems shall not exceed 120 volts.

(e) Automatic fire sensor and warning device systems shall be provided with a standby power source which will remain operative for a minimum of 4 hours after the primary source of power to the system is deenergized unless the belt haulageway is examined immediately for hot rollers and fire each time the primary source of power to the system has been deenergized (if the belt has been energized at any time within the preceding 4 hours).

§ 75.1103-5 Automatic fire warning devices; audible and visual signals; manual resetting.

(a) Automatic fire sensor and warning device systems shall upon activation provide an effective warning signal (preferably both visual and audible) at a location where mine personnel are on continuous duty and have telephone or equivalent communication with surface and face activities. When the belt is stopped the warning station shall be attended for 4 hours thereafter unless the belt haulageway is examined for hot rollers and fire immediately after such stoppage.

(b) Electrically or pneumatically operated automatic fire sensor and warning device systems shall provide an audible and/or visual signal to indicate broken circuits and the operating condition of the system.

(c) Automatic fire sensor and warning devices shall include a manual reset feature.

§ 75.1103-6 Automatic fire sensors; belt haulageway fire suppression devices.

Automatic fire sensor and warning device systems may be used to actuate deluge type water systems, foam generator systems, or multipurpose dry-powder systems.

§ 75.1103-7 Electrical components; permissibility requirements.

The electrical components of each automatic fire sensor and warning device system installed inby the last open crosscut or in return airways shall be permissible.

§ 75.1103-8 Automatic fire sensor and warning device systems; inspection requirements.

(a) Automatic fire sensor and warning device systems shall be inspected weekly, and a functional test of the complete

system shall be made at least once annually. Inspection and maintenance of such systems shall be by a qualified person.

(b) A record of the annual inspection conducted in accordance with paragraph (a) of this section shall be maintained by the operator; a record card of the weekly inspections shall be kept at each belt drive.

§ 75.1103–9 Fire suppression systems; approved components; installation requirements.

(a) A fire suppression system conforming to the applicable requirements of this section through § 75.1103–11 shall be installed in each belt haulageway of each underground coal mine.

(b) The components of each fire suppression system shall be listed or approved by the Bureau of Mines, Underwriters' Laboratories, Inc., Factory Mutual Engineering Corp., or other nationally recognized testing laboratory.

(c) The components of fire suppression systems shall be installed in accordance with the applicable National Fire Protection Association Code(s) and, where not inconsistent, the manufacturer's recommendations.

§ 75.1103–10 Fire suppression systems; minimum requirements; installation.

(a) The following materials shall be stored within 100 feet of each belt drive:

(1) 500 feet of fire hose;

(2) Tools to open and reseal a stopping between the belt entry and adjacent intake entry;

(3) Materials to construct a stopping and an air lock; and

(4) 240 pounds of bagged rock dust.

(b) The entry containing the main waterline and the crosscuts containing water outlets between such entry and the belt haulageway (if the main waterline is in an adjacent entry) shall be maintained accessible and in safe condition for travel and firefighting activities. Each stopping in such crosscuts or adjacent crosscuts shall have an access door.

(c) Suitable communication lines extending to the surface shall be provided in the entry containing the main waterline or in the belt haulageway.

(d) The fire suppression system required at the belt drive shall include the belt discharge head.

(e) A crew consisting of at least five members for each working shift shall be trained in firefighting operations. Fire drills shall be held at intervals not exceeding 6 months.

(f) A high-expansion foam device located within 100 feet of a belt drive may be substituted for 300 of the 500 feet of fire hose required to be stored at that belt drive by paragraph (a) of this section. Where used, such foam generators shall produce foam sufficient to fill 100 feet of the belt haulageway in not more than 5 minutes. Sufficient power cable and water hose shall be provided so that the foam generator can be installed at any crosscut along that part of the belt operated by the belt drive by which the generator is located. A 1-hour supply of foam producing chemicals shall be stored underground; tools and hardware required for its operation shall be stored at the foam generator.

§ 75.1103–11 Fire suppression systems; additional requirements.

The fire suppression system in all belt haulageways where the air velocity exceeds 100 feet per minute and/or the belt is not fire resistant shall meet the following requirements in addition to those listed in § 75.1103–10.

(a) The maximum distance between sensors along the belt haulageway shall be 50 feet; at loading points on secondary belts the distance from the tailpiece to the first outby sensor may be 50 feet for a period not exceeding 24 hours.

(b) Materials listed in § 75.1103–10(a) shall be stored along the belt haulageway or in an adjacent entry so that the maximum distance between stores does not exceed 1,000.

§ 75.1103–12 Fire suppression systems; inspection.

Each fire hydrant shall be tested (by opening to insure it is in operating condition) and each fire hose shall be tested, at intervals not exceeding 1 year. A record of these tests shall be maintained at an appropriate location.

[FR Doc.71–15646 Filed 10–27–71;8:49 am]

[30 CFR Parts 75, 77]

FEDERAL STANDARDS FOR QUALIFICATION OF PERSONS PERFORMING ELECTRICAL WORK IN COAL MINES

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91–173), it is proposed that Part 75, Subchapter O of Chapter I, Title 30, Code of Federal Regulations, be amended by revising § 75.153, as set forth below, and that Part 77, Subchapter O, of Chapter I, Title 30, Code of Federal Regulations be amended by revising § 77.103, as set forth below. These proposed revisions prescribe the standards pertaining to underground coal mines, and surface coal mines and surface work areas of underground coal mines respectively, under which persons must be qualified in order to perform electrical work on low-, medium-, or high-voltage distribution circuits or equipment, or to examine, test, and maintain electric equipment. The Bureau of Mines is currently developing electrical retraining programs so that qualified individuals may remain qualified as prescribed by proposed §§ 75.153(g) and 77.103(g).

Interested persons may submit written comments, suggestions, or objections to the Director, Bureau of Mines, Washington, D.C. 20240, no later than 45 days following publication of this notice in the FEDERAL REGISTER.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

OCTOBER 20, 1971.

Part 75, Subchapter O, Chapter I, Title 30, Code of Federal Regulations would be amended by revising § 75.153 as follows:

§ 75.153 Electrical work; qualified person.

(a) Except as provided in paragraph (f) of this section, an individual is a qualified person within the meaning of §§ 75.511 and 75.512 to perform electrical work (other than work on energized surface high voltage lines) if:

(1) He has been qualified as a mine electrician by the State in which the mine is located, or has at least 1 year of experience, prior to the date of the application required by paragraph (c) of this section, in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment; and

(2) He attains a satisfactory grade on each of the series of six written tests approved by the Secretary and prescribed in paragraph (b) of this section.

(b) The series of six written tests approved by the Secretary shall include the following categories:

(1) Direct current theory and application;

(2) Alternating current theory and application;

(3) Electric equipment and circuits;

(4) Permissibility of electric equipment;

(5) Fire protection; and

(6) Requirements of Subparts F through M of this Part 75.

(c) In order to take the series of six written tests approved by the Secretary an individual shall apply to the District Manager of any Coal Mine Health and Safety District and shall certify that he meets the requirements of subparagraph (a)(1) of this section. The tests will be administered in the Coal Mine Health and Safety Districts at regular intervals, or as demand requires.

(d) A score of at least 80 percent on each of the six written tests will be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that 1 percentage point shall be added to an individual's score in each test for each additional year of experience beyond the 1 year minimum requirement specified in paragraph (a)(2) of this section; however in no case shall an individual be given more than 5 percentage points for such practical experience.

(e) An individual may, within 30 days from the date on which he took the tests, repeat those on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum time of 3 months shall elapse prior to such retesting.

(f) An individual who has, prior to the effective date of this section, been qualified to perform electrical work specified in §§ 75.511 and 75.512 (other than work on energized surface high voltage lines) shall continue to be qualified until December 31, 1972. To remain qualified after

December 31, 1972, such individual shall, in accordance with paragraphs (c), (d), and (e) of this section, attain a satisfactory grade on each of the series of six written tests prescribed in paragraph (b) of this section.

(g) An individual qualified in accordance with this section shall, in order to remain qualified, certify annually to the District Manager of the Coal Mine Health and Safety District wherein he is employed, that he has satisfactorily completed an approved electrical retraining program.

Part 77, Subchapter O, Chapter I, Title 30, Code of Federal Regulations would be amended by revising § 77.103 as follows:

§ 77.103 Electrical work; qualified person.

(a) Except as provided in paragraph (f) of this section, an individual is a qualified person within the meaning of Subparts F, G, H, I, and J of this Part 77 to perform electrical work (other than work on energized surface high voltage lines) if:

(1) He has been qualified as a mine electrician by the State in which the mine is located, or has at least 1 year of experience, prior to the date of the application required by paragraph (c) of this section, in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment; and

(2) He attains a satisfactory grade on each of the series of six written tests approved by the Secretary and prescribed in paragraph (b) of this section.

(b) The series of six written tests approved by the Secretary shall include the following categories:

(1) Direct current theory and application;

(2) Alternating current theory and application;

(3) Electric equipment and circuits;

(4) Permissibility of electric equipment;

(5) Fire protection; and

(6) Requirements of Subparts F, G, H, I, J, L, and M of this Part 77.

(c) In order to take the series of six written tests approved by the Secretary an individual shall apply to the District Manager of any Coal Mine Health and Safety District and shall certify that he meets the requirements of paragraph (a)(1) of this section. The tests will be administered in the Coal Mine Health and Safety Districts at regular intervals, or as demand requires.

(d) A score of at least 80 percent on each of the six written tests will be deemed to be a satisfactory grade. Recognition shall be given to practical experience in that 1 percentage point shall be added to an individual's score in each test for each additional year of experience beyond the 1 year minimum requirement specified in paragraph (a)(2) of this section; however in no case shall an individual be given more than 5 percentage points for such practical experience.

(e) An individual may, within 30 days from the date on which he took the tests, repeat those on which he received an unsatisfactory score. If further retesting is necessary after this initial repetition, a minimum time of 3 months shall elapse prior to such retesting.

(f) An individual who has, prior to the effective date of this section, been qualified to perform electrical work specified in Subparts F, G, H, I, and J of this Part 77 (other than work on energized surface high voltage lines) shall continue to be qualified until December 31, 1972. To remain qualified after December 31, 1972 such individual shall, in accordance with paragraphs (c), (d), and (e) of this section, attain a satisfactory grade on each of the series of six written tests prescribed in paragraph (b) of this section.

(g) An individual qualified in accordance with this section shall, in order to remain qualified, certify annually to the District Manager of the Coal Mine Health and Safety District wherein he is employed, that he has satisfactorily completed an approved electrical retraining program.

[FR Doc.71-15676 Filed 10-27-71;8:49 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1438]

1972 GUM NAVAL STORES PRICE SUPPORT PROGRAM

Notice of Proposed Rule Making

The Secretary of Agriculture is considering undertaking, through Commodity Credit Corporation, a price support program for crude pine gum produced in the United States during the calendar year 1972, under the authority of sections 301 and 401 of the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1447 and 1421), hereinafter called "the Act", and sections 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (62 Stat. 1070, as amended; 15 U.S.C. 714b and 714c). Determinations to be made include (a) the level of price support for the crude pine gum; and (b) the manner of making such support available to producers.

In making such determinations the following factors are relevant:

(a) *The level of price support for crude pine gum.* The Act authorizes the Secretary to make price support available to producers of crude pine gum at a level not to exceed 90 percent of the crude pine gum parity price. The Act requires that, in determining the level of such support, consideration be given to the supply of the commodity in relation to the demand therefor, the price levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture and the national economy, the ability to dispose of stocks acquired through a price support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

(b) *The manner of making price support available to producers.* The Act authorizes the Secretary to make price support available to producers through loans, purchases or other operations. Gum naval stores are marketed primarily in the form of gum rosin and gum terpentine. Gum resin is the more storable of the two commodities and currently accounts for over 80 percent of the value of crude pine gum. Therefore, consideration is being given to continuing the practice of supporting the price of crude pine gum through loans on gum rosin. The rosin support rates would be derived from the level of price support for crude pine gum. An allowance would be made for the prospective market value of the turpentine content of crude pine gum during the 1972 calendar year.

Before making any of the foregoing determinations, consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Oilseeds and Special Crops Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received by the Director not later than 30 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Director during regular business hours (8:15 a.m. to 4:45 p.m., Monday through Friday) (7 CFR 1.27(b)).

KENNETH E. FRICK,
Executive Vice President,
Commodity Credit Corporation.

OCTOBER 20, 1971.

[FR Doc.71-15644 Filed 10-27-71;8:49 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[24 CFR Part 610]

[Docket No. R-71-148]

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Last Resort Housing Replacement by Displacing Agency

Pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601), the Department proposes to amend Title 24 of the Code of Federal Regulations to include a new Part 610 entitled, "Last Resort Housing Replacement by Displacing Agency under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

Although for purposes of this notice of proposed rulemaking proposed Part 610 appears under the heading "Subtitle A, Office of the Secretary, Department of Housing and Urban Development," it is contemplated that a final rule in this matter will appear under the heading of Chapter VI—Office of the Assistant Secretary for Community Planning and Management, consistent with the revision of Title 24 of the Code of Federal Regulations now in preparation and expected to be completed prior to further rulemaking under this docket.

The proposed part, principal provisions of which are summarized below, is intended to prescribe, for all Federal and State agencies which cause residential displacement in the administration of direct Federal or federally assisted projects, the criteria and procedures for the implementation of section 206(a) of the Act. This section provides that where such projects cannot proceed to construction because of the unavailability of adequate replacement housing, the head of the Federal agency or the federally assisted agency may use project funds to provide the needed replacement housing.

Heads of displacing agencies shall make a proper analysis, in accordance with § 610.5, to determine whether adequate replacement housing is available to satisfy the requirements of the Act.

Section 610.6 permits displacing agency heads, based on the analysis pursuant to § 610.5, to make a determination to use project funds under section 206(a) of the Act to provide the necessary replacement housing.

Section 610.7 requires displacing agency heads to develop replacement housing plans.

Section 610.8 requires that displacing agencies submit their replacement housing plans for review and comment to HUD (or the Farmers Home Administration, where appropriate) and to regional and State clearinghouses designated pursuant to OMB Circular A–95. By memorandum of January 4, 1971, to heads of departments and agencies, the President authorized the Secretary of Housing and Urban Development to develop and issue procedures for all Federal and State agencies to follow in carrying out their responsibilities under section 206(a) of the Act.

Determination by the displacing agency of feasibility and compliance with Federal standards and with local and/or areawide housing plans is required by § 610.9.

Approval of the replacement housing plan by the Federal funding agency is required by § 610.10 in the case of a federally assisted project.

Section 610.11 explains implementation of the replacement housing plan.

Section 610.15 states that a displaced person is not required to accept a replacement dwelling in lieu of his acquisition payment and/or supplemental payment.

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or statements. Communications should identify the proposed rule by the above docket number and title, and should be filed in triplicate with the Rules Docket Clerk, Office of General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. All relevant material received on or before November 29, 1971, will be considered before adoption of a final rule. Copies of comments submitted will be available for examination during business hours at the above address.

Sec.

§ 610.1 Purpose.

It is the purpose of this part to set forth uniform criteria and procedures for the implementation of section 206(a), which shall be applied and administered to promote the purposes and policies of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

§ 610.2 Legislative authority.

The legislative authority is pursuant to section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

§ 610.3 Applicability.

Pursuant to paragraph 4 of the President's memorandum of January 4, 1971, to the heads of department and agencies concerning the Uniform Relocation and Real Property Acquisition Policies Act of 1970, these criteria and procedures are applicable to all Federal and State agencies administering Federal projects causing residential displacement.

§ 610.4 Definitions.

For purposes of this part the following definitions shall apply:

(a) "Federal Agency" means any department, agency, or instrumentality in the executive branch of the United States Government (except the National Capital Housing Authority), and wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency) and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(b) "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, or any political subdivision thereof.

(c) "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(d) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance, and any annual payment or capital loan to the District of Columbia.

(e) "Displacing agency" means a Federal agency in the case of a direct Federal project causing displacement, and a State agency in the case of a project receiving Federal financial assistance and causing displacement.

(f) "Federal project" means any direct Federal project or any project receiving Federal financial assistance.

(g) "HUD" means the area office (or, where none exists, the regional office of the Department of Housing and Urban Development).

§ 610.5 Determination that section 206 (a) may be utilized.

Whenever, in connection with the planning, development or execution of a Federal project, it appears to the head of the displacing agency that adequate replacement housing may not be available to satisfy the requirements of the Act, the head of the displacing agency shall undertake the following, using existing data and supplementing them where necessary, to ascertain more precisely the need to utilize section 206(a) to provide such housing.

(a) *Inventory of household relocation needs.* Prepare an inventory of the characteristics and relocation needs of the families and individuals to be displaced.

(b) *Inventory of available housing.* Prepare (1) an inventory of currently available comparable replacement sale and rental housing, and (2) an inventory of housing planned to be constructed or rehabilitated and which will be available as comparable replacement housing. In preparing such inventories the displacing agency shall consult Federal, State, or local agencies which may be able to provide such housing or are knowledgeable with respect to housing programs.

(c) *Inventory of other displacement projects.* In order to avoid reliance by more than one displacing agency on the same replacement housing resources, the displacing agency shall coordinate with the other displacing agencies with respect to the utilization and allocation of these resources.

(d) *Analysis of inventories.* Correlate and analyze the information contained in the above inventories.

§ 610.6 Determination to use project funds under section 206(a).

If the analysis undertaken in accordance with § 610.5 of this part indicates that adequate replacement housing is not or will not be available to satisfy the requirements of the Act, the head of the displacing agency may make a determination to use project funds under section 206(a) to provide such necessary replacement housing. In the case of a federally assisted project, the displacing agency shall secure prior approval for such use of project funds under section 206(a) from the Federal agency providing financial assistance for the project.

§ 610.7 Development of replacement housing plan.

Following a determination pursuant to § 610.6, the head of the displacing agency, in accordance with § 610.7 (a) or (b) of this part, shall develop or cause to be developed a replacement housing plan to produce adequate replacement housing. The plan shall specify how and when the housing will be provided, how it will be financed and the amount of project funds to be diverted to such housing, the prices at which it will be rented or sold to the families and individuals to be displaced, the arrangements for housing management and social services as appropriate, the arrangements for maintaining rent levels appropriate for the persons to be rehoused, and disposition of proceeds from rental, sale, or resale of such housing. In the development of the plan, innovative approaches and methods for the provision of suitable replacement housing are encouraged. If 25 units or less of replacement housing need to be provided, the head of the displacing agency may proceed under § 610.7(c) of this part.

(a) *Replacement Housing Plan developed by displacing agency.* If the head of the displacing agency elects to develop the replacement housing plan, he shall appoint an advisory committee which shall consult with and provide advice and assistance to the displacing agency in the development of the plan. The advisory committee shall include representatives of the following: The displacing agency; the chief executive officer of the jurisdiction in which displacement will occur; and State and local agencies knowledgeable regarding housing in the area, including but not limited to the local housing authority, the local redevelopment agency and the centralized relocation agency, if any. In addition, the committee may include representatives of other appropriate public and private groups similarly knowledgeable regarding housing. The failure of any person to participate on the committee shall not preclude the committee from satisfying the requirements of this section.

(b) *Replacement Housing Plan developed by an agency other than displacing agency.* If the head of the displacing agency elects not to develop a replacement housing plan under § 610.7 (a), he shall engage a State or local housing agency, or other agency or organization having experience in the administration or conduct of housing programs to develop the replacement housing plan. In such case, the head of the displacing agency shall appoint an advisory committee to work with the agency or organization so engaged. The Advisory Committee shall be constituted and shall function as under the provisions of § 610.7(a).

(c) *Provisions of housing by head of displacing agency—25 units or less.* If 25 units or less of replacement housing are required, the head of the displacing agency may plan and provide such housing without the assistance of an advisory committee or a housing or other agency pursuant to § 610.7 (a) or (b). The head of the displacing agency undertaking such activities shall be guided by the project selection and minimum property standards for comparable existing Federal housing programs and shall comply with the policies and procedures specified in § 610.16 of this part.

(d) *Consultation.* From the inception of the replacement housing plan and continuing during the course of its development in accordance with this part, the agency developing the plan shall consult with HUD (or the Farmers Home Administration, where appropriate) and with the residents to be displaced or their representatives.

(e) *Use of section 215 for planning and other preliminary expenses.* Consideration should be given to the opportunities for stimulating the development of the required supply of housing through the use of seed money loans for planning and other preliminary expenses under section 215 of the Act (84 Stat. 1901).

§ 610.8 Submission of replacement housing plan for comment.

The head of the displacing agency shall submit any replacement housing plan developed in accordance with § 610.7 (a) or (b) above to HUD (or the Farmers Home Administration, where appropriate) and the regional and State clearinghouse designated pursuant to OMB Circular A-95. HUD (or the Farmers Home Administration, where appropriate) shall review and comment on the plan with respect to plan feasibility, project selection, minimum property standards, compatibility with local housing plans, and compliance with the Civil Rights Acts and Executive orders specified in § 610.16 of this part. The regional and State clearinghouses shall review and comment on the plan with respect to its compatibility with the areawide housing plan or strategy developed or being developed by the Regional Planning Agency.

HUD (or the Farmers Home Administration, where appropriate) and the regional and State clearinghouse shall review the plan and submit their comments to the displacing agency within 30 calendar days after receipt of the plan.

§ 610.9 Determination by displacing agency of feasibility and compliance.

Upon receipt and consideration of the comments on the plan, or passage of the 30-day review period provided in § 610.8, without receiving any comments, the displacing agency shall determine whether the plan is feasible and whether it complies with Federal standards and regulations with respect to project selection, minimum property standards and the Civil Rights Acts and Executive orders specified in § 610.16 of this part. In addition, the displacing agency shall determine whether the plan is compatible with local housing plans and the area wide housing plan or strategy. If any of the above determinations by the displacing agency is negative, the displacing agency (taking into consideration any comments received in connection with the reviews provided in § 610.8) shall revise the plan as necessary to overcome any such negative determinations.

§ 610.10 Approval of plan by Federal agency.

In the case of a federally assisted project, the head of the displacing agency shall secure approval of the replacement housing plan from the Federal agency providing financial assistance for the project, before proceeding with the implementations of the plan.

§ 610.11 Implementation of the replacement housing plan.

Upon making the determinations required by § 610.9, and securing approval where required by § 610.10, the head of the displacing agency may expand project funds and take such other actions as necessary to implement the replacement housing plan through methods including but not limited to the following:

(a) Transfer of project funds to State and local housing agencies;

(b) Transfer of project funds to HUD or the Farmer's Home Administration;

(c) Contract with nonprofit or for-profit organizations experienced in the development of housing;

(d) Interest subsidy payments;

(e) Direct construction by the displacing agency.

Whenever practicable, the head of the displacing agency shall utilize the services of Federal, State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing programs.

§ 610.12 Housing production.

The head of the displacing agency shall monitor the production of the replacement housing to assure that it is in accordance with the replacement housing plan and in compliance with Federal standards and regulations with respect to project selection, minimum property standards and with the Civil Rights Acts and Executive orders specified in § 610.16 of this part.

§ 610.13 Advice and technical assistance by HUD and other Federal agencies.

Throughout the entire planning, development, and implementation process, the HUD Area or Insuring Office Director shall provide the displacing agency with advice, technical assistance, and general information as needed. HUD shall also review pending applications for housing subsidy assistance or mortgage insurance to determine their effects on any estimated replacement housing deficit and keep the displacing agency advised as applications are received or commitments are made that are likely to affect any estimated deficit. Where appropriate, the Farmers Home Administration shall provide the displacing agency with similar assistance.

§ 610.14 Aggregate housing under jointly financed programs.

Where several agencies are administering programs resulting in residential displacement, opportunities shall be investigated for joint development and financing in order to aggregate their resources to provide replacement housing in sufficient quantity to satisfy the aggregate needs of such programs.

§ 610.15 Displaced person not required to accept replacement dwelling in lieu of acquisition payment and supplemental payment.

No agency may require a displaced person, without his written consent, to accept a dwelling provided by such agency under section 206(a) in lieu of his acquisition payment, if any, for the real property from which he is displaced or the supplemental payment for which he may be eligible under sections 203 and 204 of the Act (84 Stat. 1896 and 1897).

§ 610.16 Conformity with the Act and other statutes, policies and procedures.

(a) *Civil Rights Acts and Executive orders.* The administration of this part shall be in conformity with the provisions of section 1 of the Civil Rights Act of 1866 (42 U.S.C. 1982), title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and regulations issued pursuant thereto.

(b) *Dwelling and relocation standards.* Any plan developed and implemented for providing replacement housing under section 206(a) and all such housing provided thereunder shall be in conformity with all relocation regulations, standards, and guidelines of the Federal agency providing the project funds. Final determination of conformity with such regulations, standards, and guidelines shall be made by the head of the Federal agency providing project funds.

Issued at Washington, D.C., October 22, 1971.

GEORGE ROMNEY,
Secretary, Department of Housing and Urban Development.

[FR Doc.71-15698 Filed 10-27-71;8:52 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 71-RM-6]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Billings, Mont., control zone and transition area.

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 Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station, Post Office Box 7213, Denver, CO 80207. 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. 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, 10255 East 25th Avenue, Aurora, CO 80010.

The airspace requirements for Billings, Mont., have been reviewed in accordance with the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). As a result of the review, it has been determined that the control zone and transition area must be altered to provide controlled airspace protection for the instrument procedures.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (36 F.R. 2055) the following control zone is amended to read as follows:

BILLINGS, MONT.

Within a 5-mile radius of Logan Field Airport (latitude 45°48'25" N., longitude 108°31'55" W.); within 4 miles each side of the Billings ILS west localizer course extending from the 5-mile-radius zone to 8 miles west of the OM; within 3.5 miles each side of the Billings VORTAC 267° radial extending from the 5-mile-radius zone to 8 miles west of the VORTAC; within 2 miles each side of the Billings VORTAC 095° radial extending from the 5-mile-radius zone to 12 miles east of the VORTAC; and within 2 miles each side of the Billings ILS east localizer course extending from the 5-mile-radius zone to Lockwood NDB.

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

BILLINGS, MONT.

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Billings VORTAC extending from the Billings VORTAC 008° radial clockwise to the 075° radial; within a 24-mile radius of Billings VORTAC extending from the Billings VORTAC 075° radial clockwise to the 124° radial; within a 13-mile radius of Billings VORTAC extending from the Billings VORTAC 124° radial clockwise to the 147° radial; within a 21-mile radius of Billings VORTAC extending from the Billings VORTAC 147° radial clockwise to the 197° radial; within a 13-mile radius of the Billings VORTAC extending from the Billings VORTAC 197° radial clockwise to the 219° radial; within a 21-mile radius of Billings VORTAC extending from the Billings VORTAC 219° radial clockwise to the 287° radial; within a 31-mile radius of the Billings VORTAC extending from the Billings VORTAC 287° radial clockwise to the 312° radial; that airspace within a 25-mile radius of Billings VORTAC extending from the Billings VORTAC 312° radial clockwise to the 008° radial; that airspace extending upward from 1,200 feet above the surface within a 25-mile radius of Billings VORTAC extending from the Billings VORTAC 008° radial clockwise to the 057° radial; within a 35-mile radius of Billings VORTAC extending from the Billings VORTAC 057° radial clockwise to the 212° radial; within a 25-mile radius of Billings VORTAC extending from the Billings VORTAC 212° radial clockwise to the 266° radial; within a 35-mile radius of Billings VORTAC extending from the Billings VORTAC 266° radial clockwise to the 301° radial; within a 42-mile radius of Billings VORTAC extending from the Billings VORTAC 301° radial clockwise to the 008° radial; that airspace extending upward from 6,200 feet MSL within a 35-mile radius of Billings VORTAC extending from the Billings VORTAC 008° radial clockwise to the 057° radial and from the Billings VORTAC 212° radial clockwise to the 266° radial; and that airspace extending upward from 9,500 feet MSL within a 55-mile radius of Logan Field Airport (latitude 45°48'25" N., longitude 108°31'55" W.) extending from the Billings VORTAC 087° radial clockwise to the 150° radial and from the Billings VORTAC 266° radial clockwise to the 317° radial, excluding the portions that overlie VOR Federal Airways.

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

Issued in Aurora, Colo., on October 18, 1971.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.71-15626 Filed 10-27-71;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 71-AL-9]

CONTROL ZONE, CONTROL AREA EXTENSION AND TRANSITION AREA

Proposed Alteration, Revocation, and Designation

The Federal Aviation Administration (FAA) is considering an amendment to

Part 71 of the Federal Aviation Regulations that would alter the Kotzebue, Alaska control zone, revoke the Kotzebue, Alaska control area extension and designate the Kotzebue, Alaska transition area.

Alteration of the control zone is required to protect the final approach courses for the VOR runway 26 and VOR/DME runway 08 final approach courses. It is also required by revised criteria for the Kotzebue NDB (ADF)-1 final approach course.

The control area extension will be revoked and a transition area designated in lieu thereof to provide controlled airspace for aircraft conducting instrument approach, departure and holding procedures beyond the limits of the control zone.

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, Alaska Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, AK 99501. 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 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The airspace actions proposed in this docket would:

1. Amend the Kotzebue, Alaska control zone to read as follows:

With a 5-mile radius of Wien Memorial Airport, Kotzebue, Alaska (lat. 66°53'02" N. Long. 162°36'05" W.) within 3 miles each side of that 048° T (029° M) bearing from the Kotzebue RBN extending from the 5-mile radius zone to 7 miles northeast of the RBN; within 3 miles each side of the Kotzebue VORTAC 278° T (259° M) radial extending from the 5-mile radius zone to 10 miles west of the VORTAC; and within 3 miles each side of the Kotzebue VORTAC 090° T (071° M) radial extending from the 5-mile radius zone to 8 miles east of the VORTAC.

2. Revoke the Kotzebue, Alaska control area extension.

3. Designate the Kotzebue, Alaska transition area as follows:

That airspace extending upward from 700 feet above the surface within a 19-mile radius of the Kotzebue VORTAC; that airspace extending upward from 1,200 feet above the surface within 5 miles each side of the Kotzebue VORTAC 103° T (084° M) radial extending from the VORTAC to 43 miles east of the VORTAC; that airspace extending upward from 5,500 MSL within 5 miles each side of the Kotzebue VORTAC 103° T (084° M) radial extending from a point 43 miles east of the VORTAC to 59 miles east, and that airspace extending upward from 7,500 MSL within 5 miles each side of the Kotzebue 103° T (084° M) radial at 59 miles east of the VORTAC widening to 8.5 miles each side of the 103° T (084° M) radial at 111 miles east of the Kotzebue VORTAC.

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

Issued in Washington, D.C., on October 20, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-15623 Filed 10-27-71;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 71-SW-45]

FEDERAL AIRWAY SEGMENTS

Proposed Designation and Alteration; Extension of Comment Period

In a notice of proposed rule making published in the FEDERAL REGISTER on September 16, 1971 (36 F.R. 18533), it was stated that the Federal Aviation Administration proposed to alter and designate segments of VOR Federal airway Nos. 19 and 83 in the vicinity of Albuquerque, N. Mex. In accordance with the terms of the notice, the time for public comment was to expire on October 15, 1971.

Subsequent to the publication of the notice in the FEDERAL REGISTER, it has come to the attention of the FAA that normal distribution of copies of the notice to interested members of the aeronautical public had been delayed. Accordingly, in order to provide sufficient time within which the public can properly comment on the proposals contained in Airspace Docket No. 71-SW-45, notice is hereby given that all comments received on Airspace Docket No. 71-SW-45 on or before November 25, 1971, will be considered by the Federal Aviation Administration before action is taken on the regulatory action proposed therein.

Communications should be submitted in triplicate to the Director, southwest region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101.

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 October 20, 1971.

T. MCCORMACK,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-15625 Filed 10-27-71;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 71-RM-23]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Sidney, Mont., transition area.

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 Chief, Air Traffic Division, Federal Aviation Administration, Park Hill Station, Post Office Box 7213, Denver, CO 80207. 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. 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, 10255 East 25th Avenue, Aurora, CO 80010.

New public instrument approach procedures have been developed for the Sidney-Richland Municipal Airport, Sidney, Mont. Accordingly, it is necessary to alter the transition area to adequately protect aircraft executing the new instrument procedures.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (36 F.R. 2140) the description of the Sidney, Mont., transition area is amended to read as follows:

SIDNEY, MONT.

That airspace extending upward from 700' above the surface within a 9-mile radius of Sidney-Richland Municipal Airport (latitude 47°42'35" N., longitude 104°11'10" W.), and that airspace extending upward from 1,200' above the surface within 9½ miles east and 4½ miles west of the 356° bearing from the Sidney NDB (latitude 47°42'45" N., longitude 104°10'56" W.), extending from the 9-mile-radius area to 18½ miles north of the NDB; and within 9½ miles southeast and 4½ miles northwest of the 215° bearing from the Sidney NDB extending from the 9-mile-radius area to 18½ miles southwest of the NDB; and within 9½ miles northeast and 5 miles southwest of the 135° bearing from the Sidney NDB extending from the 9-mile-radius area to 19½ miles southeast of the NDB.

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

Issued in Aurora, Colo., on October 18, 1971.

M. M. MARTIN,
Director, Rocky Mountain Region.

[FR Doc.71-15627 Filed 10-27-71;8:46 am]

Hazardous Materials Regulation Board

[49 CFR Part 179]

[Docket No. HM-01; Notice No. 71-25]

TRANSPORTATION OF HAZARDOUS MATERIALS

Cold Compressed Gases in Tank Cars

Correction

In F.R. Doc. 71-15022 appearing at page 20166 in the issue for Saturday, October 16, 1971, the following changes should be made:

a. In § 179.102-18(a)(11), in the penultimate line, "Minimum Operating Temperature" should be in capital letters.

b. In § 179.400-24, the following two changes should be made in the second column of the table:

1. The second item should read, "Minus 423 F."

2. The ninth item, reading "00-0000GHK.", should be moved down two lines, so as to appear opposite the line in the first column which reads "conducting original test."

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 69-7; Notice 14]

OCCUPANT CRASH PROTECTION

Proposed Standards for Explosive Materials and Pressure Vessels

Correction

In F.R. Doc. 71-14882 appearing at page 19705 in the issue of Saturday, October 9, 1971, the agency notice number in brackets should read as set forth above.

[49 CFR Part 571]

[Docket No. 4-3; Notice 3]

JACKING SYSTEMS

Suspension of Rule Making

The purpose of this notice is to suspend rule making in Docket No. 4-3, "Jacking Systems".

An advance notice of proposed rule making in this docket was issued October 14, 1967 (33 F.R. 14278) and a notice of proposed rule making was issued on November 5, 1970 (35 F.R. 17055). After consideration of the available information, it has been determined that sufficient justification for a standard of the nature proposed has not been shown at this time. Accordingly, no standard on the subject of jacking systems will be published without additional notice and opportunity for comment.

This notice is issued under the authority of sections 103, 112, and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. secs. 1392, 1401, 1407) and the delegations of authority at 49 CFR 1.51 and 501.8.

Issued on October 20, 1971.

ROBERT L. CARTER,
Acting Associate Administrator, Motor Vehicle Programs.

[FR Doc.71-15636 Filed 10-27-71;8:47 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL "CONCERN"

Definition for the Purpose of Government Procurement

Currently § 121.3-2(i) of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations in pertinent part defines the term "concern" as meaning any business entity organized for profit with a place of business located in the United States.

The requirement that a concern have a place of business in the United States contemplates that such a concern would be making a significant contribution to the U.S. economy through payment of taxes and use of American products, material and labor. However the language is so broad that it could be argued that a foreign manufacturer can qualify as small for the purpose of small business set-aside procurements even if its only place of business in the United States is a sales office with a minimal number of employees and its manufacturing is done outside the United States.

In order to clarify the rule and in the interest of strengthening the small business set-aside program, it is proposed to revise the definition of "concern" in § 121.3-2(i) to read as follows:

§ 121.3-2 Definition of terms used in this part.

* * * * *

(i) "Concern" means any business entity organized for profit with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and use of American products, material and labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see paragraph (a) of this section) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

* * * * *

Interested parties may file with the Small Business Administration within 30 days of publication of this proposal in the FEDERAL REGISTER, written statements of facts, opinions, or arguments concerning this proposal.

All correspondence shall be addressed: Small Business Administration, Size Standards Staff, 1441 L Street NW., Washington, DC 20416.

Dated: October 19, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-15614 Filed 10-27-71;8:45 am]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1048]

[No. MC-C-6; 94 M.C.C. 172]

PHILADELPHIA, PA., COMMERCIAL ZONE

Proposed Redefinition of Limits

OCTOBER 22, 1971.

Petitioner: Southern New Jersey Development Council. Petitioner's representative: Alexandria Markowitz, 1180 Karin Street, Post Office Box 793, Vineland, NJ 08360.

By petition filed October 15, 1971, the above-named petitioner requests the Commission to reopen the above-proceeding for the purpose of redefining the limits of the Philadelphia, Pa., commercial zone, which were most recently defined on November 19, 1963, in Philadelphia, Pa., Commercial Zone, 94 M.C.C. 172 (49 CFR 1048.6), so as to extend the partial exemption under section 203(b)(8) of the Interstate Commerce Act to the following points: Ashland, Audubon, Barrington, Bellmawr, Beverly, Billingsport, Bridgeboro, Bridgeport, Brooklawn, Cambridge, Centerton, Cherry Hill, Cinniminson, Clarksboro, Collingswood, Colonial Manor, Deer Park, Delanco, Delran, Deptford, Edgewater Park, Ellisburg, Eriton, Evesham, Fairvie, Fellowship, Gibbstown, Hadden Heights, Haddonfield, Lawnside, Lenola, Magnolia, Maple Shade, Marlton, Mickleton, Moorestown, Mount Ephraim, Mount Laurel, Mount Royal, National Park, Nortonville, Oaklyn, Paulsboro, Prospect, Red Bank, Repaupo, Riverside, Riverton, Runnemede, Thorofare, W. Deptford, Westmont, Westville, Woodbury, Woodbury Heights, present communities within the zone include: Camden, Gloucester City, Merchantville, Palmyra, Pennsauken, Woodlynne.

The area sought for inclusion is described as follows: from the New Jersey shore of the Delaware River at the tripoint State marker, through Nortonville, N.J., to Interstate Highway 295, thence along Interstate Highway 295 to its junction with U.S. Highway 322, thence easterly along U.S. Highway 322 to its junction with the New Jersey Turnpike, thence along New Jersey Turnpike to its intersection with Camden County Highway 544, thence easterly along Camden County Highway 544 to New Jersey Highway 73, thence northerly along New Jersey Highway 73 to the New Jersey Turnpike, thence along the New Jersey

Turnpike to Rancocas Creek, thence along Rancocas Creek to U.S. Highway 130, thence along U.S. Highway 130 to the northern boundary of Edgewater Park, N.J., thence along said boundary to the Delaware River.

No oral hearing is contemplated at this time, but anyone wishing to make representation in favor of, or against, the above-proposed specific redefinition of the limits of the Philadelphia, Pa., commercial zone, may do so by the submission of written data, views, or arguments. An original and 15 copies of such data, views, or arguments shall be filed with the Commission on or before December 1, 1971. Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th and Constitution, Washington, D.C., during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

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

[FR Doc.71-15694 Filed 10-27-71;8:51 am]

[49 CFR Part 1322]

[Ex Parte No. MC-1 (Sub-No. 5)]

PAYMENT OF RATES AND CHARGES OF MOTOR CARRIERS TO SHIPPERS

OCTOBER 15, 1971.

Notice is hereby given that by joint petition filed August 5, 1971, the American Association of Oilwell Drilling Contractors and the Shippers Oil Field Traffic Association request the Commission to institute a rulemaking proceeding, pursuant to the provisions of 5 USCA section 553(e) and Rule 44 of the Commission's general rules of practice (49 CFR 1100.44), for the purpose of amending or modifying title 49 CFR 1322.1 and 1322.3 of the Commission's rules and regulations governing the extension of credit by motor common carriers to shippers.

As here pertinent, the current regulations provide:

§ 1322.1 *Carrier may extend credit to shipper.* (a) *Extension of credit.* Upon taking precautions deemed by them to be sufficient to assure payment of the tariff charges within the credit period herein specified, common carriers by motor vehicle may relinquish possession of freight in advance of the payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called shippers, for a period of 7 days excluding Saturdays, Sundays and legal holidays * * *

§ 1322.3 *Period of credit following delivery of freight.* Freight bills for all transportation charges shall be presented to the shippers within 7 calendar days from the first 12 midnight following delivery of the freight, except that motor common carriers of household goods shall present their freight bills for all transportation charges to the shippers within 15 calendar days, excluding Saturdays, Sundays and holidays, from the first 12 midnight following delivery of the freight.

Acting on behalf of specialized motor common carriers, the petitioners seek to have the following proviso added immediately following the above-quoted provisions of § 1322.1:

* * *, except as provided in 1322.3 relating to carriers of household goods and in 1322.4 relating to carriers of oilfield equipment.

They also seek to have a new regulation inserted following § 1322.3 reading as follows:

§ 1322.4—Motor Carriers of oilfield equipment shall be allowed a period not in excess of fifteen (15) calendar days from the date of delivery of all the equipment to the Shipper, excluding Saturdays, Sundays and holidays within which to assemble its charges and present their freight bill for such transportation to the shippers. Shippers of oilfield equipment shall be allowed a period not in excess of fifteen (15) calendar days from the date of receipt of such freight bill from the carrier, excluding Saturdays, Sundays and holidays within which to examine all charges and tender payment to the carrier.

The current regulations numbered § 1322.4 et seq. would be numbered § 1322.5 et seq.

In support of the request, the petitioners aver that if the proceeding is instituted as requested, they would show that it is impossible for specialized carriers to comply with the requisites of the current regulations regarding the 7-day credit extension period because of certain unique features of shipping oilfield equipment, i.e., (1) the exact location of the job site is often not known to the carriers, (2) the shipping of oilfield equipment necessitates dismantling and reassembling of the equipment, (3) shipments often require numerous truckloads, (4) vehicles often require special permits, (5) charges for accessorial services must be approved, (6) assembly of charges is time consuming, (7) carriers must examine charges in detail, (8) shippers must examine charges in detail, and (9) time in transit in the U.S. Mails. They disclaim any desire to enrich shippers through the extension credit.

A copy of this notice will be served upon the petitioners; and notice of the filing of this petition will be given to the general public by depositing a copy of this notice in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

Any person interested in any of the matters in the petition, and desiring to participate therein may, on or before 30 days from the publication of this notice in the FEDERAL REGISTER, file replies to the petition indicating whether they support or oppose the determination sought. An original and 15 copies of such replies must be filed with the Office of Proceedings of this Commission (Room 5354) and must show service of 2 copies thereof upon petitioners' attorney, Joseph M. Shelton, 4000 First National Bank Building, Dallas, Tex. 75202. Thereafter, the nature of further proceedings herein, if any, will be designated. Written material or suggestions submitted will be available for public inspection at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C., during regular business hours.

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

[FR Doc.71-15693 Filed 10-27-71;8:51 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

PROPOSED OUTER CONTINENTAL SHELF OIL AND GAS LEASE SALE OFFSHORE EASTERN LOUISIANA

Environmental Impact Statement

OCTOBER 21, 1971.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Department of the Interior, has prepared a final environmental impact statement relating to a proposed Outer Continental Shelf general oil and gas lease sale. The environmental statement considers 86 tracts of Outer Continental Shelf lands which have been identified for oil and gas leasing potential. All 86 tracts are located in the Gulf of Mexico offshore eastern Louisiana.

Reading copies of the Final Environmental Impact Statement are available in Room 5643 of the Interior Building in Washington, and in BLM's New Orleans Office. Copies may be obtained for $1 by writing the Director, Bureau of Land Management (130), U.S. Department of the Interior, Washington, D.C. 20240, or the Manager, BLM Outer Continental Shelf Office, Post Office Box 53226, New Orleans, LA 70153.

BURT SILCOCK,
Director,
Bureau of Land Management.

[FR Doc.71-15696 Filed 10-27-71;8:51 am]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

ANIMAL AND PLANT HEALTH SERVICE; AGRICULTURAL RESEARCH SERVICE

Director of Science and Education; Assignment of Functions and Delegation of Authority

On September 23, 1971, 36 F.R. 18884, the Department gave notice of a proposal to transfer the Regulatory and Control functions of the Agricultural Research Service to the Director of Science and Education and to establish a new Animal and Plant Health Service under the direction of an Administrator who would report to the Director of Science and Education. The Department gave public notice of the proposed action and invited comments from interested persons and groups. Responses have been favorable. Therefore, in accordance with the proposal, I am transferring the Regulatory and Control program functions of the Agricultural Research Service to the Director of Science and Education and establishing the Animal and Plant Health Service, effective October 31, 1971.

Pursuant to the authority contained in 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, Secretary's Order dated November 27, 1964 (29 F.R. 16210) as amended is amended as follows:

1. A new delegation to the Director of Science and Education is added as section 210 as follows:

Section 210. Assignment of Functions.

The following assignment of functions is hereby made to the Director of Science and Education which may be redelegated to the Administrator of the Animal and Plant Health Service on a temporary basis:

(a) Control, suppression, eradication, or prevention of insect pests, plant diseases, and nematodes, including the administration of the Federal Plant Pest Act, Mexican Pink Bollworm Act, Mexican Border Act, and Golden Nematode Act. (7 U.S.C. 145, 147a, 148, 149, 150–150g, 150aa–150jj.)

(b) Inspection of plants and plant products offered for export and certification that products meet the import requirements of foreign countries. (7 U.S.C. 147a(b).)

(c) Inspection and quarantine of products and articles to prevent the dissemination into the United States or interstate transportation of plant pests including the administration of the Plant Quaranine Act. (7 U.S.C. 151–167.)

(d) Control of introduction of honeybees offered for import into the United States under the Honeybee Act. (7 U.S.C. 281–282.)

(e) Cooperation with State agencies in control and eradication of plant and animal diseases and pests and the coordination of administration of Federal and State laws relating to such activities. (7 U.S.C. 450.)

(f) Inspection and certification for exportation of inedible poultry and animal products and byproducts. (7 U.S.C. 1622, 1624.)

(g) Control, suppression, and eradication of the poisonous weed Halogeton Glomeratus on range and pasture lands and other lands. (7 U.S.C. 1651–1656.)

(h) Administration of the Animal Welfare Act relating to the humane care of certain animals used for purposes of research, experimentation, exhibition, or held for sale as pets. (7 U.S.C. 2131–2154.)

(i) Administration of the Horse Protection Act, relating to prohibiting the movement in interstate commerce of horses that are sored. (15 U.S.C. 1821–1831.)

(j) Import inspection and certification for duty-free entry of purebred animals for breeding purposes. (19 U.S.C. 1202.)

(k) Import inspection and quarantine of poultry and animals, and products and byproducts thereof, to prevent the spread of contagious, infectious, and other communicable diseases of animals and poultry. (19 U.S.C. 1306(a), 1306(c), 21 U.S.C. 96, 101–105.)

(l) Control, suppression, eradication, or prevention of contagious, infectious, and other communicable diseases of animals including the administration of the Foot-and-Mouth Program. (21 U.S.C. 111–134h.)

(m) Inspection and control of domestic production, marketing, and importation of virus, serum, toxin, or analogous products for the use in the treatment of animals under the Virus-Serum-Toxin Act. (21 U.S.C. 151–158.)

(n) Assisting the Consumer and Marketing Service in cooperating with the various States in performing State meat and poultry inspection activities as provided by the Federal Meat Inspection Act and the Poultry Products Inspection Act. (21 U.S.C. 454, 661.)

(o) Inspection and certification of livestock as disease-free for export purposes. (21 U.S.C. 612–614, 618.)

(p) Administration of the 28-Hour Law concerning the care of animals in transit. (45 U.S.C. 71–74.)

(q) Inspection of vessels used to carry export livestock and regulating the accommodations necessary for safe and proper transportation and humane treatment of such animals. (46 U.S.C. 466a.)

Done at Washington, D.C., this 26th day of October 1971.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[FR Doc.71-15754 Filed 10-27-71;8:52 am]

ADMINISTRATOR, ANIMAL AND PLANT HEALTH SERVICE

Delegation of Functions

1. I hereby delegate to the Administrator, Animal and Plant Health Service on a temporary basis, all of the functions and responsibilities vested in me by the Secretary of Agriculture on October 28, 1971 (36 F.R. 20707), with respect to animal and plant protection.

2. The Administrator, Animal and Plant Health Service, shall carry out such functions and responsibilities in accordance with and subject to Sections 1 through 40 of the Secretary's Statement of Organization and Delegations, 29 F.R. 16210, as amended in 32 F.R. 11895, and any other applicable directives of the Secretary of Agriculture or the Director of Science and Education.

This delegation shall be effective October 31, 1971.

Done at Washington, D.C., this 26th day of October 1971.

NED D. BAYLEY,
Director, Science and Education.

[FR Doc.71-15755 Filed 10-27-71;8:52 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 10029]

CERTAIN DRUGS CONTAINING HYDROCORTISONE AND COAL TAR FOR TOPICAL USE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs:

1. Supertah H–C Ointment containing hydrocortisone, coal tar extract, and stearyl alcohol; The Purdue Frederick Co., 99–101 Saw Mill River Road, Yonkers, New York 10701 (NDA 10–452).

2. Tarcortin Cream containing hydrocortisone and coal tar extract; Reed & Carnrick Pharmaceuticals, 30 Boright Avenue, Kenilworth, New Jersey 07033 (NDA 10–029).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). The effectiveness classification and marketing status are described below.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and, in the absence of adequate documentation to show the contribution of coal tar, concludes that combination preparations containing hydrocortisone with coal tar are probably effective for topical use in psoriasis, allergic eczema, atopic dermatitis, contact dermatitis, neurodermatitis, anogenital pruritus, diaper rash, and infantile eczema.

B. *Marketing status.* 1. Marketing of such drug with labeling which recommends or suggests its use for indications for which it has been classified as probably effective may be continued for 12 months as described in paragraphs (c), (e), and (f) of the notice "Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study" published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273).

2. Within 60 days from publication hereof in the FEDERAL REGISTER, the holder of any approved new drug application for such drug is requested to submit a supplement to his application to provide for revised labeling as needed, which, taking into account the comments of the Academy, furnishes adequate information for safe and effective use of the drug; is in accord with the guidelines for uniform labeling published in the FEDERAL REGISTER of February 6, 1970 (21 CFR 3.74); and recommends use of the drug for the probably effective indications as follows:

INDICATIONS

For topical usé in psoriasis, allergic eczema, atopic dermatitis, contact dermatitis, neurodermatitis, anogenital pruritus, diaper rash, and infantile eczema.

The supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new drug regulations (21 CFR 130.9 (d) and (e)) which permit certain changes to be put into effect at the earliest possible time, and the revised labeling should be put into use within the 60-day period.

3. After 60 days following publication hereof in the FEDERAL REGISTER, any such drug on the market without an approved new drug application and shipped within the jurisdiction of the Federal Food, Drug, and Cosmetic Act should be labeled in accord with this notice.

A copy of the NAS–NRC report has been furnished to each firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 10029, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original new drug applications: Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD–67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–60), Bureau of Drugs.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: September 30, 1971.

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

[FR Doc.71–15641 Filed 10–27–71;8:47 am]

[DESI 12753]

THIETHYLPERAZINE MALEATE

Drugs for Human Use, Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following drugs for oral and parenteral administration:

1. Torecan Tablets, containing thiethylperazine maleate; Sandoz Pharmaceuticals Division, Sandoz, Inc., Route 10, Hanover, New Jersey 07936 (NDA 12–753).

2. Torecan Injection, containing thiethylperazine maleate; Sandoz Pharmaceuticals Division, Sandoz, Inc. (NDA 12–754).

The drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new-drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new-drug application is required from any person marketing such drugs without approval.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy reports, as well as other available evidence, and concludes that:

1. Thiethylperazine maleate (oral and parenteral) is effective for use as adjunctive treatment in the relief of nausea and vomiting.

2. Thiethylperazine maleate (oral and parenteral) is possibly effective for the treatment of vertigo.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new-drug applications and abbreviated supplements to previously approved new-drug applications under conditions described herein.

1. *Form of Drug.* Thiethylperazine maleate preparations are in tablet form suitable for oral administration or sterile aqueous solution form suitable for parenteral administration.

2. *Labeling conditions.* a. The labels bear the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drugs are labeled to comply with all requirements of the Act and regulations. The labeling bears adequate information for safe and effective use of the drug and is in accord with the guidelines for uniform labeling published in the FEDERAL REGISTER of February 6, 1970. The "Indications" section is as follows:

INDICATIONS

Adjunctive treatment for the relief of nausea and vomiting.

3. *Marketing status.* Marketing of such drugs may be continued under the conditions described in the notice entitled "Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study" published in the FEDERAL REGISTER, July 14, 1970 (35 F.R. 11273), as follows:

a. For holders of "deemed approved" new drug applications (i.e., an application which became effective on the basis of safety prior to October 10, 1962), the submission of a supplement for revised labeling, an abbreviated supplement for updating information, and adequate data to show the biologic availability of the drug in the formulation which is marketed as described in paragraphs (a)(1)(i), (ii), and (iii) of the notice of July 14, 1970.

b. For any person who does not hold an approved or effective new drug application, the submission of an abbreviated new drug application, to include adequate data to assure the biologic availability of the drug in the formulation which is or is intended to be marketed, as described in paragraph (a)(3)(ii) of that notice.

c. For any distributor of the drug, the use of labeling in accord with this announcement for any such drug shipped within the jurisdiction of the Act as described in paragraph (b) of that notice.

d. For indications for which the drug has been classified as possibly effective (not included in the "Indications" section above), continued use as described in paragraphs (d), (e), and (f) of that notice.

A copy of the NAS–NRC report has been furnished to each firm referred to above. Communications forwarded in response to this announcement should be identified with the reference number DESI 12753, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD–100), Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD–60), Bureau of Drugs.

Requests for the Academy's report: Drug Efficacy Study Information Control (BD–67), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD–60), Bureau of Drugs.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: October 4, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71–15640 Filed 10–27–71;8:47 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 8555]

REPORTS OF NEAR MIDAIR COLLISIONS

Termination of Policy

The Federal Aviation Administration policy on the reporting of near midair collisions made effective in 1968 (32 F.R. 16539) and continued in effect since that time, will terminate on December 31, 1971.

This policy prescribed that the Administrator would take no enforcement or other adverse action, remedial or disciplinary, against any person involved in a near midair collision report to the FAA during the effective period of the policy. Furthermore, the Administrator would, upon written request of the person making the report, withhold that report and the identity of those persons involved from public disclosure in accordance with section 1104 of the Federal Aviation Act of 1958. The final report based upon the 1968 study has been issued, and the recommended actions to reduce the midair collision potential have been initiated. The additional reports received subsequent to the issuance of the final report substantiate the 1968 data; thus, the FAA proposes to allow the present policy to terminate on December 31, 1971.

The FAA will continue to encourage the transmission of near midair collision reports; however, enforcement of applicable Federal Aviation Regulations that might be identified during the investigation of such incidents will be pursued.

Interested persons are invited to submit such written data, views, or arguments as they may desire with regard to the termination of the present policy. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC–24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before December 3, 1971, will be considered by the Administrator before taking final action on the proposed policy determination. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Issued under the authority of sections 305, 307(c), 312(c), 313(a), 601(a), 701(a), and 1104 of the Federal Aviation Act of 1958 (49 U.S.C. 1346, 1348(c), 1353(c), 1354(a), 1421(a), 1441(a), and 1504).

Issued in Washington, D.C., on October 20, 1971.

J. H. SHAFFER,
Administrator.

[FR Doc.71–15635 Filed 10–27–71;8:47 am]

National Highway Traffic Safety Administration

[Docket No. 70–12; Notice 13]

TIRE IDENTIFICATION AND RECORD KEEPING

Notice of Public Meeting

The purpose of this notice is to announce the scheduling of a public meeting to be held November 11, 1971, to discuss certain aspects of the Tire Identification and Record Keeping Regulation (36 F.R. 1196).

Comments have been received indicating that tire dealers selling the tires of many different tire manufacturers find it a hardship to record the names and addresses of first purchasers because of the variety of forms supplied by the tire manufacturers. Tire dealers have also commented that, for competitive reasons, they prefer not disclosing the names of their customers to tire manufacturers. Suggestions have been made recommending that the regulation be amended to allow dealers to select their own means of recording and maintaining the names of the tire purchasers.

The meeting is being held to provide interested persons with the opportunity to present their views on this matter.

In addition, suggestions are requested for methods of extending the existing tire size code system to provide for a means of identifying future tire sizes which may be manufactured.

Persons who desire to make a formal presentation should contact Mr. Edward H. Wallace, Chief, Tire Division, National Highway Traffic Safety Administration, 400 Seventh Streeet SW., Washington, DC 20590 (area code 202–426–2800), by letter or telephone before November 9, 1971, indicating the time needed for the presentation and if any special equipment is needed. A general outline of the planned presentation should also be submitted at this time. Persons whose presentations include photographs, slides, motion pictures, or other visual aids should plan to submit copies of them for the record at the meeting.

An agenda will be available at the meeting. A transcript of the meeting will be made, and will be available for examination in the Docket Section, Room 5221, 400 Seventh Street SW., Washington, DC, approximately 3 days after the meeting.

The date, time, and place of the meeting are as follows:

Date: November 11, 1971.
Time: 1:30 p.m.
Place: Room 2230, Nassif Building, 400 Seventh Street SW., Washington, DC.

This notice is issued under the authority of sections 103, 112, 119, and 203 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1401, 1407, 1423) and the delegations of authority at 49 CFR 1.51 and 501.8.

ROBERT L. CARTER,
Acting Associate Administrator, Motor Vehicle Programs.

OCTOBER 21, 1971.

[FR Doc.71–15637 Filed 10–27–71;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50–404; 50–405]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matters

The Virginia Electric and Power Co., 700 East Franklin Street, Richmond, VA 23209, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, dated September 15, 1971, for authorization to construct and operate two additional nuclear reactors, designated as the North Anna Power Station Units No. 3 and No. 4, on the applicant's site in Louisa County, Va.

The site is located south of the North Anna River, approximately 24 miles southwest of Fredericksburg, 40 miles north-northwest of Richmond, Va., and 38 miles east of Charlottesville, Va. The reactors will be located adjacent to North Anna Power Station Units No. 1 and No. 2 on a peninsula in a reservoir

that is to be formed when an earthen dam is constructed approximately 5 miles southeast of the site.

The proposed nuclear powerplant will consist of two pressurized water reactors, each of which is designed for initial operation at approximately 2,631 thermal megawatts with a gross electrical output of approximately 950 megawatts.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after October 21, 1971.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Office of the Board of Supervisors, Louisa County Courthouse, Louisa, Va. 23093.

Dated at Bethesda, Md., this 5th day of October 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-14808 Filed 10-20-71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23224]

EASTERN AIR LINES, INC.

Waycross Deletion Case; Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 23, 1971, at 10 a.m. (local time), in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner John E. Faulk.

In order to facilitate the conduct of the conference parties are instructed to submit to the Examiner and other parties (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before November 12, 1971, and the other parties on or before November 19, 1971. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights.

Dated at Washington, D.C., October 22, 1971.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.71-15681 Filed 10-27-71;8:49 am]

[Dockets Nos. 21223, 23798; Order 71-10-93]

FLYING TIGER CORP. ET AL.

Order Regarding Acquisition of National Equipment Rental Ltd.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of October 1971.

By Order 71-9-112, dated September 29, 1971, the Board tentatively approved, pursuant to section 408 of the Federal Aviation Act of 1958, as amended (the Act), and in accordance with the requirements of condition 6 of Order 70-6-119, May 5, 1970, the acquisition of control of Canberra Management Corp. (Canberra) and of National Equipment Rental Ltd. (NER) and its system of subsidiaries and affiliated companies by Flying Tiger Corp. (FTC) through North American Car Corp. (NAC).

In addition, the Board indicated that its final approval would be made subject to the conditions (1) that the transfer of any aircraft leasing business or companies within NER system of subsidiaries and affiliates to any other company within the FTC system of subsidiaries and affiliates would be subject to prior Board approval and previous conditions set forth in paragraph 1 of Order 71-8-101, August 24, 1971, and the conditions, to the extent applicable, imposed in Order 70-6-119; (2) that the FTC and NER system of subsidiaries and affiliates should divest themselves of any and all interest in Interior Airways, Inc. (Interior); and (3) that the Board retain jurisdiction over the proceeding.

In accordance with the statutory requirements of section 408(b), Order 71-9-112 was published in the FEDERAL REGISTER and a copy furnished to the Attorney General. The terms afforded interested parties 5 days within which to file comments or request a hearing with respect to the Board's proposed action.

Alaska Airlines, Inc. (Alaska) and FTC have each filed comments.

Alaska states that a finite reasonable and not indefinite period of time should be established for the divestiture of any and all interests in Interior by the FTC and NER systems of subsidiaries and affiliated companies, and suggests that the time frame within which divestiture must occur shall not extend beyond 60 days after the acquisition approved by the Board has been completed.

FTC's comments anticipate the submission for Board approval of a plan which would provide that, "Within sixty (60) days after completion of the acquisition of International Aerodyne Corp. (IAC) (through acquisition of its parent, National Equipment Rental Ltd.) the total interest of International Aerodyne in Interior Airways will be disposed of by placing all such interest in the control of an independent trustee with specific instructions to dispose thereof within such limited time period as is deemed sufficient for that purpose by the trustee."

Comments received from the parties are limited to that portion of the applicants' request and tentative order which relates to FTC's indirect acquisition of the equity interests or other control of Interior, a subsidiary of IAC.[1]

With respect to this issue the Board in Order 71-9-112 concluded tentatively that the proposed acquisition in its entirety should be approved if made subject, inter alia, to the divestiture by the FTC and NER systems of subsidiaries and affiliates of any and all interests in Interior. Furthermore, the Board in its tentative order contemplated that the time and manner of divestiture would be determined in the final order.

The comments of FTC and Alaska appear to reflect a wide divergence of views in regard to the specific details of implementing the divestiture of Interior interests as a condition of the Board's final approval of the proposed acquisition. On the one hand, Alaska suggests as reasonable the divestiture of interests in Interior within a period of 60 days after the proposed acquisition has been completed. On the other hand, FTC anticipates submitting a plan to the Board which in broad terms contemplates that, within 60 days of the acquisition, a trust consisting of the Interior interests would be established with instructions to the trustee to dispose of such interests within such time as the trustee deems sufficient for that purpose.

In our view neither proposal sets forth adequate and realistic terms for a complete divestiture. Alaska's proposal, if we interpret it correctly, would appear to place FTC under the disadvantages of an early forced sale in disposing of the acquired interests in Interior. FTC's proposal, on the other hand, is patently indefinite as to the time frame and substantially indefinite as to terms. Far from contemplating any fixed time certain for divestiture, FTC proposes at some undated time to submit a plan for divestiture which is described only in the broadest of terms and having no fixed time for completion.

Based on all of the matters of record it appears that the parties have recognized and the Board in its tentative order has found that divestiture of the interests in Interior is an appropriate condition for the approval of the proposed acquisition agreement. However, the Board's requirements for divestiture necessarily contemplate something more realistic and more definitive than that proposed by the parties. In general, we believe that a proposed plan for divestiture should at a minimum establish an irrevocable trust with no retention of control, directly or indirectly, by the settlor of the trust of any interest either legal, beneficial, or reversionary in the subject matter of the trust, other than the proceeds; and provide by its terms, in addition to the interim separation of control, a date certain for total disposition of the subject matter of the trust through arm's length dealing.

In view of the foregoing, the Board has concluded that prior to our disposition of this matter FTC should be given a further opportunity to submit an executed sales agreement, or a proposed trust agreement disposing of any and all interests in Interior Airways and meeting the requirements set forth above. We will, therefore, defer Board action on this matter pending such submission with service upon Alaska. Alaska

[1] Motion for Order of Approval, appendix B, page 6.

or other interested persons will also be provided an opportunity to submit comments.

Accordingly, it is ordered, That:

1. Further Board action with respect to Order 71-9-112, dated September 29, 1971, be and it hereby is deferred pending the filing in these dockets by Flying Tiger Corp., with prior service upon Alaska Airlines, of an executed sales agreement, or a proposed trust agreement disposing of any and all interests in Interior Airways and meeting the requirements set forth herein;

2. Alaska Airlines and any other interested persons may, within 5 days after the filing of such submission, file comments with respect thereto; and

3. The Attorney General of the United States be furnished a copy of this order within 1 day of publication.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[3]

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-15680 Filed 10-27-71;8:49 am]

[Docket No. 23910]

NIGERIA AIRWAYS, LTD.

Foreign Air Carrier Permit Application; Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 26, 1971, at 10 a.m. (local time) in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Joseph L. Fitzmaurice.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before November 19, 1971.

Dated at Washington, D.C., October 22, 1971.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.71-15682 Filed 10-27-71;8:50 am]

[Docket No. 23608]

POMAIR N.V.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on November 10, 1971, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

Dated at Washington, D.C., October 22, 1971.

[SEAL] WILLIAM H. DAPPER,
Hearing Examiner.

[FR Doc.71-15683 Filed 10-27-71;8:50 am]

[Docket No. 22364]

U.S. MAINLAND AND HAWAII FARES

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be held before the Board on November 24, 1971, at 10 a.m., local time, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC.

Dated at Washington, D.C., October 21, 1971.

[SEAL] RALPH L. WISER,
Chief Examiner.

[FR Doc.71-15684 Filed 10-27-71;8:50 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF AGRICULTURE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Assistant to the Secretary (Civil Rights and Equal Opportunity in Employment and Housing), Office of the Secretary, Immediate Office.

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

[FR Doc.71-15668 Filed 10-27-71;8:49 am]

DEPARTMENT OF AGRICULTURE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Director of Equal Opportunity, Office of the Secretary, Immediate Office.

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

[FR Doc.71-15664 Filed 10-27-71;8:48 am]

DEPARTMENT OF THE ARMY

Notice of Title Change in Noncareer Executive Assignment

By notice of March 31, 1970, F.R. Doc. 70-3871 the Civil Service Commission authorized the Department of the Army to fill by noncareer executive assignment the position of Deputy for Reserve Affairs and Personnel Policy. This is notice that the title of this position is now being changed to Deputy for Reserve Affairs.

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

[FR Doc.71-15659 Filed 10-27-71;8:48 am]

DEPARTMENT OF DEFENSE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary of Defense (Environmental Quality), Office of the Secretary of Defense.

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

[FR Doc.71-15663 Filed 10-27-71;8:48 am]

DEPARTMENT OF DEFENSE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the ASD (M&RA) for Drug Abuse Control, Office of the Secretary of Defense.

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

[FR Doc.71-15669 Filed 10-27-71;8:49 am]

DEPARTMENT OF DEFENSE

Notice of Title Change in Noncareer Executive Assignment

By notice of July 3, 1969, F.R. Doc. 69-7867 the Civil Service Commission authorized the Department of Defense to fill by noncareer executive assignment

[3] Murphy, member, dissenting statement filed as part of original document.

the position of Deputy Assistant Secretary (Near East and South Asian Affairs), Office of the Assistant Secretary of Defense (International Security Affairs). This is notice that the title of this position is now being changed to Deputy Assistant Secretary (Near East, African and South Asian Affairs), Office of the Assistant Secretary of Defense (International Security Affairs).

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

[FR Doc.71-15661 Filed 10-27-71;8:48 am]

GENERAL SERVICES ADMINISTRATION

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the General Services Administration to fill by noncareer executive assignment in the excepted service the position of Executive Assistant to the Administrator.

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

[FR Doc.71-15665 Filed 10-27-71;8:48 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Director of Public Information, Office of the Secretary, Office of Public Information.

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

[FR Doc.71-15670 Filed 10-27-71;8:49 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Health, Education, and Welfare to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Public Affairs (Operations), Office of the Secretary, Office of Public Affairs.

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

[FR Doc.71-15666 Filed 10-27-71;8:48 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Special Assistant for Problems of the Elderly and Handicapped, Office of the Assistant Secretary for Renewal and Housing Management, Relocation and Special Services Division.

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

[FR Doc.71-15671 Filed 10-27-71;8:49 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Title Change in Noncareer Executive Assignment

By notice of December 20, 1969, F.R. Doc. 69-15149 the Civil Service Commission authorized the Department of Housing and Urban Development to fill by noncareer executive assignment the position of Assistant for New Communities. This is notice that the title of this position is now being changed to Director, Office of New Communities Development, Office of the Assistant Secretary for Community Planning and Management.

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

[FR Doc.71-15662 Filed 10-27-71;8:48 am]

DEPARTMENT OF THE INTERIOR

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Associate Solicitor, Division of Reclamation and Power, Office of the Solicitor" to "Associate Solicitor, Division of Water and Power Resources."

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

[FR Doc.71-15660 Filed 10-27-71;8:48 am]

DEPARTMENT OF LABOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Deputy Under Secretary, Office of the Secretary, Office of the Under Secretary.

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

[FR Doc.71-15667 Filed 10-27-71;8:49 am]

DEPARTMENT OF LABOR

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Deputy Under Secretary for Economic Affairs and Program Coordination, Office of the Secretary, Office of the Under Secretary.

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

[FR Doc.71-15672 Filed 10-27-71;8:49 am]

PROFESSOR OF HISTORY, ARMY WAR COLLEGE, PA.

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. 5723, the Civil Service Commission found a manpower shortage for a position of Professor of History, GS-101-15, U.S. Army War College, Carlisle Barracks, Pa. The finding is self-canceling when the position is filled.

Assuming other legal requirements are met, an appointee to this position may be paid for the expense of travel and transportation to first post of duty.

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

[FR Doc.71-15673 Filed 10-27-71;8:49 am]

COST OF LIVING COUNCIL

[Order No. 3]

PAY BOARD

Delegation of Authority Concerning Stabilization of Wages and Salaries

Correction

In F.R. Doc. 71-15256, appearing at page 20202 in the issue of Saturday, October 16, 1971, the paragraph preceding paragraph 5, should read as follows:

4. The Chairman may redelegate to any agency, instrumentality, or official of the United States any authority under this Executive order, and may, in carrying out the functions delegated to it by this Executive order, utilize the services of any other agencies, Federal or State, as may be available and appropriate.

FEDERAL COMMUNICATIONS COMMISSION

[FCC 71-1074]

AFFILIATION AGREEMENTS AND NETWORK PROGRAM PRACTICES

Requests for Waiver of Memorandum Opinion and Order "Prime Time" Rule

In the matter of requests for waiver of § 73.658(k) the "Prime Time Access rule" (three requests by individual stations).

1. The Commission here considers three requests for waiver of the "prime time access rule", § 73.658(k), which became effective October 1, 1971, and in general limits to 3 hours the amount of network programing which television stations may present during "prime time", which, in the eastern time zone in which these stations are located, is 7 to 11 p.m., eastern time. Two of the requests, both by UHF ABC-affiliated stations in intermixed markets, were filed in August 1971, but inadvertently were not considered in the Commission's recent actions on requests for waiver of this rule. The third, on behalf of the Miami, Fla. CBS-affiliated station, is a "one time" matter.

2. The two stations first mentioned are WLKY-TV, Louisville, Ky., and WKEF, Dayton, Ohio, both affiliated with ABC in markets where the other two affiliated stations are VHF. Both assert their difficult situation competing with these well-established, multiple owned VHF affiliated stations, and in programs to 4 hours on Sunday nights by presenting at that time one ABC show carried on the network on another evening, thus clearing time for a local movie. WLKY-TV, in particular, emphasizes the importance of this "counter programing" local movie effort on Wednesdays, in gaining it a substantial audience and increased revenues, and at the same time the need for it to clear as much ABC programing as possible in order to enhance its chances of getting a higher network rate. It is claimed that if the station cannot provide maximum ABC clearance in addition to its local Wednesday programing, both it and ABC are likely to suffer seriously. In both cases, the additional ABC Sunday programing would be compensated by carrying less such material on the night when the local movie would be run (Wednesdays for WLKY-TV, Saturdays for WKEF). Neither total of weekly ABC programing would thus exceed 21 hours; that of WLKY-TV would be 20 with the waiver.

3. We have recently denied requests of this nature filed by VHF stations, on the ground that the rule speaks of 3 hours a night, not 21 hours a week, the importance of leaving some prime time available each evening for nonnetwork material (including nonnetwork "strip" programing whose development may thus be encouraged), and of avoiding the possibility that stations might relegate all of their prime-time nonnetwork programs to one relatively poor viewing night of the week, presenting 3½ or 4 hours of network material on other, more desirable evenings. See "Requests for Waiver of the 'Prime Time Access' rule (§ 73.658(k)) (Requests of Individual Stations)", FCC 71-1039, released October 12, 1971, paragraphs 4-5. In our view, the same result should be reached in these cases. The Commission is aware of the substantial and to a degree special problems which these UHF stations in intermixed markets face, which we have recognized in the past. However, in our judgment the existence of these problems does not warrant the granting of special treatment in the present matter, in view of the considerations mentioned above and in the decision cited. We certainly do not wish to underestimate the importance of these stations' local "counter-programing" efforts; but, as pointed out in the decision cited, they retain considerable flexibility within the framework of the rule, either to cut back network programs on the same evening, or to present the network program involved on a delayed basis outside of prime hours, if that is acceptable to the network. We also noted earlier that the great majority of affiliated stations coming under the rule had not found it necessary to ask for waiver on this basis; and this includes the three other markets of the "top 50" where there are UHF affiliates competing with VHF stations (Hartford-New Haven, Conn., Charlotte, N.C., and Birmingham, Ala.). Thus, we do not find that applying the rule in these cases will unduly restrict programing flexibility. We adhere to our decision that, in general, clearance of a network program during prime time, on an evening other than that when it originates on the network, should be accompanied by a corresponding cutback in other network prime-time programing on the evening when the station carries the program in question.

4. However, we also recognize that this decision is being issued rather late in relation to the fall season. Accordingly, to avoid disruption of program schedules which may already have been published, waiver is granted to these two stations through Sunday, October 24.

5. The other request is by Wometco Enterprises, Inc., the licensee of Station WTVJ, Miami, for a "one-time" waiver for Monday, October 18. The previous week, CBS will preempt a 1-hour Tuesday evening program to present a National Geographic special program. WTVJ already carries such material locally on Mondays on a syndicated basis, and does not wish to carry the same type of material on two successive nights, which might mean audience confusion. Therefore, it wants to carry the CBS Tuesday National Geographic program (presented on the network on October 12) on the following Monday as part of its regular series of such material. With the regular 3 hours of Monday-evening CBS programing this would make 4 hours. It would compensate for this by carrying a syndicated variety show on October 12 in place of the CBS program.

6. In view of the general observations set forth above, waiver requests of this type must, in general, be denied. In the future they will be. However, again, this decision is being issued rather late in relation to the time for which waiver is requested; and, indeed, one of the dates involved (on which WTVJ proposes to preempt the CBS program for a local program, carrying the CBS program later under the requested waiver) has already passed. Accordingly, to avoid disruption we believe it appropriate to grant the waiver. As indicated, our present view is that in the future such requests must be denied.

7. In view of the foregoing, *It is ordered*, That the requests for waiver of § 73.658(k) filed in August, 1971 by Springfield Television Broadcasting Corp. (WKEF, Dayton, Ohio) and WLKY-TV, Inc. (WLKY-TV, Louisville, Ky.) are denied, except that these stations may present up to 4 hours of ABC network programs on Sunday, October 17 and Sunday, October 24, provided they either have cut back during the week preceding, or cut back during the week following, to a corresponding extent on ABC programing during prime-time on another evening.

8. *It is further ordered*, That the waiver request filed by Wometco Enterprises, Inc. (WTVJ, Miami, Fla.) on September 13, 1971, is granted, for October 18, 1971 only.

Adopted: October 14, 1971.

Released: October 19, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[1]

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

[FR Doc.71-15651 Filed 10-27-71;8:51 am]

[1] Commissioners Burch and Wells abstaining from voting: Commissioner Robert E. Lee dissenting; and Commissioner Reid not participating.

FEDERAL HOME LOAN BANK BOARD

[No. 71-1085]

FEDERAL SAVINGS AND LOAN INSURANCE CORP.

Appointment as Sole Receiver for Northwest Guaranty Savings and Loan Association

OCTOBER 22, 1971.

Whereas, by Federal Home Loan Bank Board No. 71-1083 dated October 22, 1971, the Federal Home Loan Bank Board, acting under authority conferred upon it by section 406(c)(2) of the National Housing Act, as amended (12 U.S.C. 1729(c)(2)), did appoint the Federal Savings and Loan Insurance Corp. as sole receiver for Northwest Guaranty Savings and Loan Association, Seattle, Wash., effective as of October 27, 1971, for the purpose of liquidating said Association; and

Whereas, § 569a.3 of the rules and regulations for Insurance of Accounts (12 CFR 569a.3) requires that notice of the appointment by the Federal Home Loan Bank Board of the Federal Savings and Loan Insurance Corp. as receiver for an insured institution shall be filed for publication in the FEDERAL REGISTER.

Now, therefore, be it resolved that the Secretary to the Board is directed to file the following notice for publication in the FEDERAL REGISTER:

NOTICE OF APPOINTMENT OF RECEIVER

Notice is hereby given that the Federal Home Loan Bank Board, acting under authority conferred upon it by section 406(c)(2) of the National Housing Act, as amended (12 U.S.C. 1729(c)(2)), did, by Order No. 71-1083 dated October 22, 1971, appoint the Federal Savings and Loan Insurance Corp. as sole receiver for Northwest Guaranty Savings and Loan Association, Seattle, Wash., and that the said Federal Savings and Loan Insurance Corp., as receiver for Northwest Guaranty Savings and Loan Association, shall have and exercise all powers, rights, and privileges, and assume and perform all the duties and responsibilities, of a receiver accorded or imposed by and subject to provisions of law and the regulations and orders of the Federal Home Loan Bank Board, including, without limitation, the provisions of Part 569a of the rules and regulations for the Insurance of Accounts (12 CFR 569a.1-569a.12).

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.71-15697 Filed 10-27-71;8:51 am]

FEDERAL POWER COMMISSION

[Docket No. RP 72-47]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Proposed Changes in Curtailment Procedure

OCTOBER 19, 1971.

Take notice that on October 5, 1971, Consolidated Gas Supply Corp. (Consolidated), pursuant to sections 4 and 5 of the Natural Gas Act, tendered for filing revised tariff sheets to its FPC Gas Tariff, first revised volume No. 1[1] to become effective 60 days from the date of filing. The changes contained in those tariff sheets embody Consolidated's curtailment plan, which is set forth in a new section 11 of the General Terms and Conditions of Consolidated's tariff replacing the third paragraph of the existing section 10. The new section 11 is intended to set forth the particular rules by which the general provisions of the existing section 10 would be implemented during a period of curtailment of deliveries.

In support of its filing, Consolidated states that its early submittal is to enable its customers and their consumers to know what the curtailment rules are should curtailment become necessary and to plan accordingly thus minimizing the economic impact of such curtailment.

Consolidated's proposed curtailment rules are contained in §§ 11.02 and 11.03 of the General Terms and Conditions of its tariff and are based on end-use concepts. The highest priority uses are domestic and commercial. The next priority is industrial usages of 60 MMcf per year or less as to each consumer billing location. Larger industrial usages are subdivided into two categories; the higher priority is accorded to uses for which conversion to an alternative fuel cannot be feasibly accomplished and is listed in appendix A. Appendix B contains a listing of the lowest priority industrial usages where alternative fuel can be feasibly accomplished.

The above recitation describes, in part, Consolidated's proposed curtailment plan. The full proposal is on file with the Commission and is available for public inspection.

Consolidated states that copies of its filing have been mailed to each of its jurisdictional customers and the State Commissions shown on its service list. Consolidated states further that its filing is available during regular business hours for public inspection at its main offices in Clarksburg, W. Va.

Any person desiring to be heard or to make any protest with reference to this filing should on or before November 9, 1971, file with the Federal Power Commission, 441 G Street NW., Washington, DC 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 participate as parties in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Any order issued in this proceeding will be subject to the Commission's Statement of Policy Implementing the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Stat. 799, as amended by Public Law 92-15, 85 Stat. 38) and Executive Order 11615 including such amendments as the Commission may require.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-15616 Filed 10-27-71;8:45 am]

[1] The revised tariff sheets are identified as first revised sheet Nos. 51, 52, and 58 and original sheet Nos. 53-A, 53-B, 53-C, and 53-D.

[Project No. 1494]

GRAND RIVER DAM AUTHORITY

Notice of Application for Permission To Allow Construction of a Non-Project Structure

OCTOBER 20, 1971.

Public notice is hereby given that application for permission to allow construction of a nonproject structure has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Grand River Dam Authority (correspondence to: J. Duke Logan, Acting General Counsel, Grand River Dam Authority, Drawer G, Vinita, OK 74301) for constructed Project No. 1494 located on the Grand River in Mayes, Craig, Delaware, and Ottawa Counties Okla., and McDonald County, Mo., and affecting navigable waters of the United States. The nonproject construction would be located in Delaware County, Okla.

The application seeks permission to allow as part of a recreation development known as Shangri-La Estates a nonproject earth-fill dam approximately 175 feet long and 40 feet in height above foundation, with crest at elevation 752 feet m.s.l., to be constructed across the entrance to a cove located in E½NW¼ Sec. 15, T. 24 N., R. 23 E., Indian Meridian, on the east edge and near the southern tip of an island (known as Monkey Island) connected by a short causeway to the shore of Pensacola Lake, the project reservoir. The dam spillway with crest at elevation 750 feet m.s.l. would retain at that level a small lake with a surface area of about 1.7 acres into which project water would be pumped from Pensacola Lake. Return flow would be over the spillway which would be landscaped as a natural waterfall.

Any person desiring to be heard or to make any protest with reference to said

application should on or before December 2, 1971, file with the Federal Power Commission, 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,
Secretary.

[FR Doc.71-15617 Filed 10-27-71;8:45 am]

[Docket No. RP72-13]

LOUISIANA-NEVADA TRANSIT CO.

Notice of Extension of Time and Postponement of Hearing

OCTOBER 19, 1971.

On October 15, 1971, Commission Staff Counsel filed a motion for an extension of time to and including November 15, 1971, within which to file testimony, pursuant to the order issued August 17, 1971, in the above-designated matter. The motion also requests that the hearing be postponed from October 27, 1971, to November 30, 1971. The motion states that all parties concur.

Upon consideration, notice is hereby given that the time is extended to and including November 15, 1971, within which any parties or the Commission's staff planning to present testimony in opposition to Louisiana-Nevada Transit Co.'s proposed curtailment procedures shall file and serve on the Presiding Examiner, the Commission's staff, and all parties prepared written testimony in support of their positions. The hearing is postponed, to commence on December 7, 1971, at 10 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-15618 Filed 10-27-71;8:45 am]

[Project No. 2719]

PENNSYLVANIA POWER & LIGHT CO. AND METROPOLITAN EDISON CO.

Notice of Application for Preliminary Permit for Unconstructed Project

OCTOBER 20, 1971.

Public notice is hereby given that application for preliminary permit has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Pennsylvania Power & Light Co. and Metropolitan Edison Co. (correspondence to: Mr. Austin Gavin, Executive Vice President, Pennsylvania Power & Light Co., 901 Hamilton Street, Allentown, PA 18101, and Mr. John G. Miller, Vice President, Metropolitan Edison Co., Post Office Box 542, Reading, PA 19601) for proposed Project No. 2719, to be known as the Stony Creek Project, to be located on Stony Creek, a tributary of the Susquehanna River, in the County of Dauphin, Pa.

According to the application, the proposed Stony Creek Project would be a conventional recirculating pumped storage facility with an upper reservoir where the summit of Third Mountain bifurcates into Stony Mountain and Sharp Mountain. This upper reservoir would be some 1,000 feet above the lower reservoir and would be formed by a dam across Stony Creek. The upper reservoir would be connected to other facilities by means of one or more shafts or tunnels.

Initial indications are that the project will provide approximately 1,500 mv. of capacity. It is expected that the average annual output will be approximately 2.5 billion kw.-hr.

The project would be carefully designed so as to minimize intrusion upon the landscape, to take full advantage of recreational opportunities, and to have minimum adverse effects upon the environment.

The use or market for the power and energy to be generated by the project would be equally divided between each applicant. Such power and energy would be utilized in supplying Pennsylvania Power & Light Co.'s 828,000 customers in its service area which includes all or parts of 29 counties in central eastern Pennsylvania and more than 1.3 million customers of Metropolitan Edison Co. and of the affiliates of Metropolitan Edison Co. in the General Public Utilities Corp. system. No construction is authorized under a preliminary permit.

Any person desiring to be heard or to make protest with reference to said application should on or before December 22, 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 a 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,
Secretary.

[FR Doc.71-15619 Filed 10-27-71;8:45 am]

[Project No. 2718]

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASH.

Notice of Application of Preliminary Permit Unconstructed Project

OCTOBER 20, 1971.

Public notice is hereby given that application for preliminary permit has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Public Utility District No. 1 of Chelan County, Wash. (correspondence to: Mr. Howard C. Elmore, Manager, Public Utility District No. 1 of Chelan County, 327 North Wenatchee Avenue, Wenatchee, WA 98801) for proposed Project No. 2718, to be known as Antilon Lake (Antilon Creek-Columbia River Basin) and Lake Chelan (Chelan River-Columbia River Basin), in the counties of Chelan, Grant, and Douglas, Wash.

According to the application, the proposed Antilon Lake pumped storage project would consist of: Construction of two earth and rock dams on Antilon Lake. Antilon Lake Dam (south dam) about 180 feet high and Antilon Creek Dam (north dam) about 194 feet high, to raise the existing lake about 120 feet to an elevation of 2,440 feet to serve as the upper pondage for the pumped storage plan. The upper reservoir would have a surface area of some 320 acres and a gross volume of 21,100 acre-feet. Normal fluctuation would be about 20 feet. A spillway in the right abutment of the Antilon Creek Dam would have sufficient capacity to pass any expected natural flows into the lake and would also serve as an emergency overflow. Water would pass from a power intake located immediately upstream of Antilon Creek Dam through power and pumping conduits ultimately branching into four conduits to the units in the underground powerhouse. Water from the units would discharge into separate draft tube sections to a tailrace surge chamber and then pass through a 30-foot ID section about 5,400 feet in length terminating at the pump intake in Applicant's Lake Chelan FPC Project No. 637, which would serve as the lower pondage for the proposed project. The installation would utilize four motor-generators and reversible Francis type pump-turbine units. A 4,600 foot access tunnel would be provided from the powerhouse to a surface access road. Planned recreation includes 22 trailer and camper sites and 42 tent sites. There would be 1 beach with bathhouses, comfort stations, and toilets. Also there would be 2 boat ramps and 30 boat docks. No construction is authorized under a preliminary permit.

Any person desiring to be heard or to make protest with reference to said application should on or before December 18, 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 a 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,
Secretary.

[FR Doc.71-15620 Filed 10-27-71;8:45 am]

[Docket No. CP72-66]

UNITED GAS PIPE LINE CO.

Supplemental Notice of Application

OCTOBER 19, 1971.

On September 16, 1971, United Gas Pipe Line Co. (Applicant), 1525 Fairfield Avenue, Shreveport, LA 71102, filed in Docket No. CP72-66 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(c) of the regulations under said Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas sales and transportation facilities. Notice of this application was issued by the Commission on September 29, 1971.

Take further notice that Applicant states the authorization requested herein will not be used to effect deliveries of natural gas in excess of the volumes contained in its service agreements which are on file with the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 2, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.71-15621 Filed 10-27-71;8:45 am]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

DISCLOSURE OF INFORMATION TO THE PUBLIC

This notice supplements the notice of the establishment of the Occupational Safety and Health Review Commission, published in the FEDERAL REGISTER of May 21, 1971 (vol. 36, No. 99, p. 9277), and is published for the purpose of informing the general public of the availability of information from the Commission pursuant to the Freedom of Information Act (5 U.S.C. 552-559, Public Law 89-487, 80 Stat. 250 revising 5 U.S.C. 553, 60 Stat. 237, 5 U.S.C. 1002 (1964)).

(1) *Availability of decisions and records.* Decisions and identifiable records of the Commission are available for public inspection and copying except those exempt under subsection (e) of the Freedom of Information Act, i.e., records concerning:

(a) Matters specifically required by Executive order to be kept secret;

(b) Matters related solely to the internal personnel rules and practices of the Commission;

(c) Matters specifically exempted from disclosure by statute;

(d) Trade secrets and commercial or financial information obtained from any person and privileged and confidential;

(e) Interagency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the Commission;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(g) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.

(2) *Requests for records.* Requests for disclosure of Commission records may be made in person or in writing addressed to the Executive Secretary, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, DC 20006. Each request shall specify the record(s) sought and contain a reasonably precise description thereof to enable the Executive Secretary to locate it.

(3) *Inspection and copies.* A person requesting available records may inspect and copy them in the Office of the Executive Secretary on business days from 9-4:30 p.m.

(4) *Determination.* The Executive Secretary shall make records available when so requested, unless it is determined that the matter requested is exempt. The Executive Secretary shall give written notice of such determination, and such notice will include the reasons therefor.

(5) *Appeals.* Any person whose request is denied by the Executive Secretary may appeal that determination to the general counsel of the Commission within 15 days of the date of the notice of denial. The general counsel will determine the merits of the request and direct that written notice of the final determination be given promptly to the person requesting the information.

(6) The Commission's methods of operation and rules of procedure are published at 29 CFR 2200 (FEDERAL REGISTER of August 31, 1971, vol. 36, No. 169, p. 17409, et seq.)

CAROLE A. BETTERLEY,
Executive Secretary.

OCTOBER 18, 1971.

[FR Doc.71-15638 Filed 10-27-71;8:47 am]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS AT SPECIAL MINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS OR IN AGRICULTURE

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR Part 519), and Administrative Order No. 621 (36 F.R. 12819), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly rates lower than the minimum wage rates otherwise applicable under section 6 of the act. While effective and expiration dates are shown for those certificates issued for less than a year, only the expiration dates are shown for certificates issued for a year. The minimum certificate rates are not less than 85 percent of the applicable statutory minimum.

The following certificates provide for an allowance not to exceed the proportion of the total hours worked by full-time students at rates below $1 an hour to the total number of hours worked by all employees in the establishment during the base period in occupations of the same general classes in which the establishment employed full-time students at wages below $1 an hour in the base year.

Arrington's Food Market, foodstore; Front Street, Taylorsville, Miss.; 7-11-72.

Auerbach's, variety-department store; 2457 Washington Boulevard, Ogden, UT; 9-2-72.

Boyd's Little Giant Food Store, foodstore; Olive Hill, Ky.; 8-19-72.

Braselton Brothers, Inc., variety-department store; Braselton, Ga.; 8-8-72.

Buehler Market, foodstore; 2315 N Street, Omaha, NE; 9-2-72.

Buy-Rite, Inc., foodstore; 308 South Silver, Paola, KS; 9-2-72.

Cannata's Super Market, Inc., foodstore; 813 Brashear Avenue, Morgan City, LA; 8-2-72.

Charlie Womack Garden & Nursery, agriculture; 1602 Cherokee Road, Florence, SC; 7-9-72.

Clarys 5 & 10, variety-department stores: 178 Crogan Street, Lawrenceville, GA; 8-4-71 to 5-6-72; 127-133 Front Street, Sylvester, GA; 8-12-72.

Draper & Darwin Store, variety-department store; 334 Main Street, Franklin, TN; 7-28-72.

Duckwall Stores Co., variety-department store; No. 29, Lyons, Kans.; 8-2-72.

Eagle Stores Co., Inc., variety-department store; No. 14, Gastonia, N.C.; 9-9-72.

George T. Romig & Co., variety department store; 209 Main Street, Mill Hall, PA; 8-12-72.

Mrs. Gertrude Nauman, agriculture; 411 Bergner Building, Harrisburg, Pa.; 8-4-72.

Glendive Community Hospital, hospital; Prospect and Ames, Glendive, Mont.; 8-5-72.

W. T. Grant Co., variety-department stores, 8-31-72, except as otherwise indicated: No.

853, Middlesex, N.J.; No. 724, Parsippany, N.J.; No. 173, Paterson, N.J. (9–2–72); No. 393, Roselle, N.J.; No. 751, Broomall, Pa. (8–20–72); No. 589, Newport, Vt. (9–2–72); No. 241, St. Johnsbury, Vt. (9–2–72); No. 343, Milwaukee, Wis. (7–20–72).

Greenville Car Wash-East, Inc., carwash; 1522 Laurens Road, Greenville, SC; 7–25–72.

Harold Mangelsen & Sons, Inc., variety-department store; 3457 South 84th Street, Omaha, NE; 8–4–71 to 7–30–72.

Hoffman's, Inc., variety-department store; 200 Union Street, Lynn, MA; 9–2–72.

Jr.'s J & J Cash Market, foodstore; Circle Drive, McKenzie, Tenn.; 8–5–72.

Kantar's Department Store, variety-department store; 4 Erie Street, St. Mary's, PA; 8–4–72.

Keltsch Bros., Inc., drugstore; 1203 West State Street, Fort Wayne, IN; 8–31–72.

Kiefer's Pharmacy, Inc., drugstore; 201 South Seventh Street, Dade City, FL; 7–26–72.

Krause Super Valu, Inc., foodstore; Carson, N. Dak.; 8–16–72.

S. S. Kresge Co., variety-department stores, 9–2–72, except as otherwise indicated: No. 590, Waterbury, Conn.; No. 270, Davenport, Iowa; No. 71, Des Moines, Iowa; No. 100, Dubuque, Iowa; No. 210, Marshalltown, Iowa; No. 163, Sioux City, Iowa; No. 235, Louisville, Ky. (8–3–72); No. 157, Newport, Ky. (7–13–72); No. 695, Hagerstown, Md. (8–2–72); No. 669, Laurel, Md. (8–11–72); No. 659, Detroit, Mich. (7–23–72); No. 89, Hannibal, Mo.; No. 82, Kansas City, Mo.; No. 58, St. Joseph, Mo.; Nos. 24 and 601, St. Louis, Mo.; No. 4616, Springfield, Mo.; No. 11, Webster Groves, Mo.; No. 608, Morristown, N.J.; No. 4590, Burlington, Vt. (8–10–72).

Landry Stores, Inc., variety-department store; Main and Pere Megret Streets, Abbeville, La.; 8–7–72.

H. B. Magruder Memorial Hospital, hospital; Fulton Street, Fort Clinton, Ohio; 8–6–72.

The Mart, Inc., apparel store; 180 Main Street, Paterson, NJ; 8–31–72.

McCrory-McLellan-Green Stores, variety-department stores, 8–2–72, except as otherwise indicated: No. 444, Bessemer, Ala. (8–8–72); Nos. 1106 and 1128, Birmingham, Ala.; No. 442, Gadsden, Ala. (8–9–72); No. 600, Huntsville, Ala. (8–4–72); No. 1109, Montgomery, Ala.; No. 315, Baton Rouge, La.; No. 298, Lafayette, La. (8–8–72); No. 229, New Orleans, La. (8–4–72); No. 1312, New Orleans, La. (8–15–72); No. 1125, Shreveport, La.; No. 616, Columbia, Miss. (8–10–72); No. 575, Columbus, Miss.; No. 302, Gulfport, Miss. (8–3–72); No. 275, McComb, Miss. (8–3–72); No. 91, Burlington, N.J. (8–1–71 to 7–30–72); No. 251, Newark, N.J. (7–29–72); No. 1006, Plainfield, N.J. (8–27–72); No. 37, Bradford, Pa. (7–21–72).

Meyer Brothers, variety-department store; 131 Main Street, Paterson, NJ; 8–31–72.

Morgan & Lindsey Inc., variety-department stores, 8–2–72, except as otherwise indicated: No. 3090, Arabi, La.; No. 3083, Morgan City, La.; No. 3068, New Orleans, La. (8–4–72); No. 3019, Ruston, La.; No. 3086, Sulphur, La.; No. 3051, Jackson, Miss.

M. E. Moses Co., Inc., variety-department store; No. 19, Dallas, Tex.; 8–16–72.

G. C. Murphy Co., variety-department stores: No. 429, Wapakoneta, Ohio, 7–31–72; No. 34, Blairsville, Pa., 7–28–72; No. 56, Pittsburgh, Pa., 8–4–72.

The Name Dropper, apparel store; 122 Normandale Arcade, Montgomery, Ala.; 8–4–72.

Neisner Bros., Inc., variety-department stores, 9–2–72: No. 127, East Paterson, N.J.; No. 149, Middletown, N.J.

J. J. Newberry Co., variety-department store; No. 351, Norway, Maine; 9–2–72.

Northwood Deaconess Hospital & Homes Association, hospital; Northwood, N. Dak.; 8–6–72.

Oklahoma Memorial Union, Inc., student-union shop; 900 Asp Avenue, Norman, OK; 8–9–71 to 7–13–72.

Olson Supermarket, foodstore; 1406 West Main Street, Chanute, KS; 9–2–72.

Piggly Wiggly, foodstores, 8–11–72: No. 47, Allendale, S.C.; Hamlin, Tex.

Public Drug Store, drugstore; Tusca Shopping Plaza, Beaver, Pa.; 8–4–72.

Red Dot Super Market, foodstore; Ellijay, Ga.; 7–12–71 to 7–2–72.

Red & White Super Market, foodstore; Nashville, N.C.; 7–17–72.

Regan's, Inc., apparel store; 100 West Erwin, Tyler, TX; 8–6–72.

Roberts Market, foodstore; Afton, Wyo.; 7–22–72.

Robison Restaurant Corp., restaurant; 3424 Peach Street, Erie, PA; 8–1–72.

Rose's Stores, Inc., variety-department store; No. 10, Rockingham, N.C.; 8–18–72.

W. A. Rowe Floral Co., agriculture; Kirkwood, Mo.; 8–6–71 to 7–26–72.

Rozier Mercantile Co., variety-department store; Two East Ste. Maries Street, Perryville, MO; 8–15–72.

Rusty's Food Centers, Inc., foodstore; Ninth and Iowa, Lawrence, Kans.; 9–2–72.

Scott Stores Co., variety-department store; No. 9279, Sault Ste. Marie, Mich.; 7–22–72.

Smith's Food King, Inc., foodstore; No. 5, Roy, Utah; 8–20–71 to 8–6–72.

Smith's Quality Super Market, Inc., foodstore; 141 Manchester Street, Glen Rock, PA; 8–7–72.

Speckarts Fine Foods, foodstore; 69 North First East, Provo, UT; 8–25–72.

Sterling Stores Co., Inc., variety-department stores, 8–2–72: Capitol Avenue and Center Street, Little Rock, Ark.; 208–212 Main Street, Russellville, AR.

Steve's Shoes Inc., shoe store; 345 Blue Ridge Center, Kansas City MO; 8–6–71 to 7–28–72.

T. G. & Y. Stores Co., variety-department stores, 9–2–72, except as otherwise indicated: No. 143, Mission, Kans.; No. 158, Independence, Mo.; No. 163, Jefferson City, Mo.; No. 132, Kansas City, Mo.; No. 43, Cushing, Okla. (8–23–72); No. 34, Tulsa, Okla. (8–11–72).

Tuten's Red & White Food Store, foodstore; No. 532, Estill, S.C.; 8–11–72.

Walker Shoe Store, shoestores, 7–21–72; 608 Walnut, Des Moines, IA; 756 Main, Dubuque, IA; 112–116 East Fourth Street, Waterloo, Ia.

Ward Bros. Inc., apparel store; 72 Lisbon Street, Lewiston, ME; 9–2–72.

The following certificates were issued to establishments relying on the base-year employment experience of other establishments, either because they came into existence after the beginning of the applicable base year or because they did not have available base-year records. The certificates permit the employment of full-time students at rates of not less than 85 percent of the applicable statutory minimum in the classes of occupations listed, and provide for the indicated monthly limitations on the percentage of full-time student hours of employment at rates below the applicable statutory minimum to total hours of employment of all employees.

Ambler Nursing Home, Inc., nursing home; Bethlehem and Butler Pike, Ambler, Pa.; nurse's aide; 5 to 8 percent; 8–31–72.

A. J. Bayless Markets, Inc., foodstore; No. 60, Flagstaff, Ariz.; package clerk, service clerk; 20 to 23 percent; 8–14–72.

Black Angus Restaurant, restaurant; Poteau, Okla.; dishwasher, waiter, waitress, cashier; 8 to 17 percent; 7–31–72.

Bob White's Chevyland, Inc., auto dealer; 301–307 West Church Street, Martinsville, VA; used car cleanup; 2 percent; 7–14–72.

Britts Department Store, variety-department store; No. 549, Bricktown, N.J.; stock clerk, salesclerk, window trimmer, office clerk, janitorial, marker; 9 to 17 percent; 9–2–72.

Bus's Foodland, foodstore; Arnolds Park, Iowa; stock clerk, salesclerk, carry out; 13 to 20 percent; 8–14–72.

C-Mart, variety-department store; 90 East Marion Street, Mount Gilead, OH; salesclerk, stock clerk, cashier, carryout, marker; 9 to 32 percent; 8–31–72.

Cooper's, apparel store; 227 West Coal Avenue, Gallup, NM; salesclerk, stock clerk, office clerk, gift wrapper; 5 to 18 percent; 8–28–72.

Dick's Super Market, foodstore; 106 West Oak Street, Boscobel, WI; stock clerk, cleanup, bagger, carryout; 17 to 22 percent; 8–14–72.

Dorothy's, Inc., apparel store; 108 East Kemp, Watertown, SD; salesclerk, stock clerk; 9 to 24 percent; 8–31–72.

Duckwall Stores Co., variety-department store; No. 90, Pampa, Tex.; stock clerk, salesclerk; 22 to 48 percent; 8–7–72.

Edward's Inc., variety-department store; Bell Tower Shopping Center, University Ridge, Greenville, S.C.; salesclerk, stock clerk, pricer, checker, lay-a-way clerk; 10 to 15 percent; 8–11–72.

Ferguson Free Car Wash, service station and car wash; 7901 Beechmont Avenue, Cincinnati, OH; service station attendant, detailer; 46 to 78 percent; 8–14–72.

Fiser's AG Supermarket, foodstore; Main and Pine Streets, Sheridan, Ark.; 8–5–72.

Food Giant Super Market, foodstore; No. 11, Tucson, Ariz.; carryout; 16 to 24 percent; 7–31–72.

W. T. Grant Co., variety-department stores: No. 1113, Rockland, Maine, salesclerk, cashier, office clerk, stock clerk, 6 to 10 percent, 9–2–72; No. 66, Pompton Plains, N.J., salesclerk, office clerk, stock clerk, 8 to 33 percent; 8–20–72.

H. E. B. Food Store, foodstore; No. 126, Gonzales, Tex.; bottle clerk, sacker, package clerk; 10 percent; 8–31–72.

Hi Nabor Super Market, Inc., foodstore; 7201 Winbourne Avenue, Baton Rouge, LA; bagger, bottle clerk; 20 percent; 8–13–72.

Jim's Super Valu, foodstore; Rockwell City, Iowa; carryout, stock clerk, produce clerk, cashier; 12 to 14 percent; 7–20–72.

Keltsch Association, Inc., drugstores, for the occupations of checker, fountain clerk, 11 to 15 percent, 8–31–72: 103 South Main Street, Auburn, IN; 3209 North Anthony Boulevard, Fort Wayne, IN; 5439 South Anthony Boulevard, Fort Wayne, IN; 6320 East State Boulevard, Fort Wayne, IN; 1402 Wells Street, Fort Wayne, IN.

S. S. Kresge Co., variety-department stores, for the occupations of salesclerk, stock clerk, checker-cashier, office clerk, except as otherwise indicated: No. 4086, Birmingham, Ala., 3 to 11 percent, 7–26–72 (salesclerk); No. 4184, Mobile, Ala., 3 to 11 percent; 7–26–72 (salesclerk, stock clerk, maintenance clerk, checker-cashier, office clerk); No. 4046, Hot Springs, Ark., 2 to 19 percent, 8–2–72 (salesclerk); No. 4586, Alton, Ill., 7 to 23 percent, 7–24–72; No. 4561, Chicago, Ill., 17 to 32 percent, 7–20–72; No. 4438, Indianapolis, Ind., 3 to 10 percent, 8–31–72; No. 170, Cedar Rapids, Iowa, 3 to 10 percent, 9–2–72; No. 4077, Lexington, Ky., 6 to 23 percent, 7–26–72 (salesclerk, stock clerk, maintenance clerk, office clerk, checker-cashier, customer service, counter filling); No. 4128, Lake Charles, La., 2 to 15 percent, 7–22–72 (salesclerk); No. 14, Wheaton, Md., 9 to 21 percent, 7–21–72 (salesclerk); No. 49, Kansas City, Mo., 13 to 20 percent, 9–2–72; No. 4060, Charlotte, N.C., 11 to 22 percent,

7-28-71 to 6-22-72 (salesclerk, checker-cashier); No. 4182, Greensboro, N.C., 11 to 22 percent, 8-5-72 (salesclerk, checker-cashier); No. 307, Ironton, Ohio, 1 to 12 percent, 7-15-71 to 4-9-72 (salesclerk, stock clerk, office clerk, checker-cashier, customer service, counter filling, maintenance); No. 4004, Knoxville, Tenn., 2 to 17 percent, 8-2-72 (salesclerk, stock clerk, maintenance, office clerk, checker-cashier, customer service, counter filling); No. 4244, Knoxville, Tenn., 2 to 17 percent, 8-1-72 (salesclerk, stock clerk, maintenance, office clerk, checker-cashier, customer service, counter filling); No. 4093, Madison, Tenn., 2 to 10 percent, 7-19-72 (checker-cashier, maintenance, stock clerk, customer service, salesclerk, office clerk, display clerk, counter filling); No. 4103, Nashville, Tenn., 2 to 5 percent, 7-23-72 (salesclerk, stock clerk, maintenance, office clerk, checker-cashier, customer service, counter filling); No. 4133, Irving, Tex., 7 to 27 percent, 8-18-72 (salesclerk); No. 4084, Lynchburg, Va., 3 to 10 percent, 7-14-72 (salesclerk); No. 4188, Charleston, W. Va., 7 to 47 percent, 7-27-72 (salesclerk, stock clerk, maintenance clerk, office clerk, checker-cashier, customer service, counter filling); No. 4618, Sheboygan, Wis., 4 to 20 percent, 7-31-72.

The La Crescent Nursing Center, nursing home; 701 Main Street, La Crescent, MN; orderly, nurse's aide, kitchen aide, housekeeper; 6 percent; 8-31-72.

Lerner Shops, apparel stores, for the occupations of salesclerk, cashier, credit clerk, 14 to 32 percent, 8-31-72, except as otherwise indicated: No. 490, Aurora, Colo. (4 to 27 percent, 8-14-72); No. 343, Merritt Island, Fla. (3 to 22 percent, 8-11-71 to 7-21-72); No. 283, Schaumburg, Ill.; No. 282, Waukegan, Ill.; No. 350, Irving, Tex. (4 to 11 percent, 8-14-72); No. 295, Fairmont, W. Va. (5 to 22 percent, 8-3-72).

Leys Department Store, variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, porter, 8 to 12 percent, 8-31-72: 258 North Main Street, West Bend, MS; 435 East Mill Street, Plymouth, WI.

McCrory-McLellan-Green Stores, variety-department stores, for the occupations of salesclerk, office clerk, stock clerk, porter, except as otherwise indicated: No. 7503, Decatur, Ala., 2 to 21 percent, 8-3-72 (salesclerk, stock clerk, office clerk); No. 3501, Northport, Ala., 7 to 24 percent, 8-19-72 (salesclerk, office clerk, stock clerk); No. 361, New Smyrna Beach, Fla., 3 to 22 percent, 8-2-72; No. 232, Wauchula, Fla., 10 to 30 percent, 7-31-72; No. 247, Omaha, Nebr., 7 to 21 percent, 8-10-71 to 7-31-72; No. 1, Scottdale, Pa., 8 to 27 percent, 8-4-72; No. 215, Norfolk, Va., 7 to 21 percent, 7-23-72 (salesclerk, stock clerk, porter).

McDonald's Hamburgers, restaurants, for the occupation of general restaurant worker: 5347 Independence Avenue, Kansas City, MO, 31 to 58 percent, 8-14-72; 2529 Elm Street, Erie, PA, 7 to 42 percent, 8-20-72.

Minimax, foodstore; 1001 South Broadway, La Porte, TX; checker, bagger, janitorial; 9 to 10 percent; 8-25-72.

Morgan Floral Co., agriculture; 624 Platte Avenue, Fort Morgan, CO; general agricultural nursery work; 21 to 81 percent; 7-20-72.

Morgan & Lindsey Inc., variety-department stores: No. 3046, Alexandria, La., salesclerk, stock clerk, 6 to 22 percent, 8-15-72; No. 3030, Many, La., salesclerk, stock clerk, office clerk, 12 to 45 percent, 8-11-72.

M. E. Moses Co., Inc., variety-department store; No. 36, Hurst, Tex.; salesclerk, checker; 19 to 44 percent; 8-6-72.

G. C. Murphy Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, janitorial, except as otherwise indicated: No. 259, North Palm Beach, Fla., 12 to 24 percent, 8-31-72; No. 335, Pensacola, Fla., 12 to 25 percent, 8-31-72; No. 305, Landover, Md., 10 to 34 percent, 8-6-72; No. 310, Jackson, Ohio, 9 to 22 percent, 8-5-72; No. 307, Greensburg, Pa., 7 to 21 percent, 8-11-72; No. 51, McKees Rocks, Pa., 13 to 27 percent, 8-7-72 (salesclerk, stock clerk, janitorial); No. 8, Washington, Pa., 3 to 23 percent, 8-25-72; No. 94, York, Pa., 5 to 19 percent, 8-21-72.

Neisner Bros., Inc., variety-department store; No. 142, Trenton, N.J.; salesclerk, stock clerk; 13 to 24 percent; 9-2-72.

One Stop Pharmacy, Inc., drugstores, for the occupations of salesclerk, stock clerk, 5 to 11 percent, 7-29-72: 3824 Auburn, Rockford, Ill.; 517 Marchesano Drive, Rockford, Ill.

Piggly Wiggly, foodstores: 2-6 Cooper Street, Evergreen, Ala., bagger, carryout, 9 to 13 percent, 8-4-72; Highway 6 and Eureka Street, Batesville, Miss., sacker, carryout, stock clerk, butcher's helper, 34 to 58 percent, 7-27-72; Candor, N.C., bagger, checker, stock clerk, 20 percent, 8-18-72; No. 45, Hampton, S.C., package clerk, checker, market clerk, 10 percent, 8-11-72.

Platte Fair United Super Grocery, foodstore; Platte City, Mo.; carryout, cleanup, stock clerk; 25 to 38 percent; 8-31-72.

Reed Drug Co., drugstores, for the occupations of salesclerk, stock clerk, delivery clerk, cashier, 38 to 40 percent, 7-20-72, except as otherwise indicated: 7810 Olson Highway, Minneapolis, MN; 201 South Main Street, Stillwater, MN (salesclerk, stock clerk, cashier); 505 South Lake Avenue, White Bear Lake, MN.

Reppert Pharmacy, drugstore; 3501 Ingersoll Avenue, Des Moines, IA; salesclerk, soda fountain clerk, delivery clerk; 16 to 25 percent; 8-12-71 to 7-30-72.

Rose's Stores, Inc., variety-department stores: No. 206, Ozark, Ala., salesclerk, stock clerk, checker, window trimmer, merchandise marker, order writer, 13 to 32 percent, 8-14-72; No. 207, Washington, N.C., salesclerk, checker, 11 to 27 percent, 8-31-72; No. 97, Lebanon, Tenn., salesclerk, 3 to 16 percent, 7-27-72.

Rusty's Food Centers, Inc., foodstore; 620 North Second Street, Lawrence, KS; sacker, courtesy clerk, carryout; 12 to 20 percent; 9-2-72.

Smith's Food King Inc., foodstores, for the occupations of bagger, carryout, 26 to 33 percent, 8-6-72, except as otherwise indicated: No. 25, Granger, Utah; No. 6, Layton, Utah (8-20-71 to 8-6-72); No. 15, Murray, Utah; Nos. 3 and 4, Ogden, Utah (8-20-71 to 8-6-72); No. 19, Ogden, Utah; Nos. 14 and 77, Salt Lake City, Utah.

Sovine's Super Market, Inc., foodstore; Scott Depot, W. Va.; cashier, stock clerk, carryout; 16 to 22 percent; 8-6-72.

Spies Super Valu, foodstore; 910 East Sioux, Pierre, SD; checker, carryout, janitorial, wrapper, stock clerk; 18 to 24 percent; 8-18-72.

Sterling Stores Co., Inc., variety-department stores, for the occupations of salesclerk, stock clerk, janitorial: 1605 East Harding, Pine Bluff, AR, 6 to 17 percent, 8-13-72; 519 Waldron, Corinth, MS, 12 to 43 percent, 8-5-72; Highway 84 and Locust Street, Caruthersville, MO, 6 to 31 percent, 8-22-72.

Stop & Shop Super Market, foodstore; 327 Washington Street, Chillicothe, MO; carryout, stock clerk; 16 to 45 percent; 7-28-71 to 7-19-72.

Straight-Way Market, foodstore; 357 Mountain Avenue, Berthoud, CO; carryout, sacker, stock clerk; 16 to 28 percent; 8-17-71 to 7-19-72.

Stucky's Pecan Shoppe, foodstore; No. 292, Brewster, Kans.; salesclerk, check out, snack bar clerk; 30 to 58 percent; 8-31-72.

Super Duper Food, foodstores, for the occupations of stock clerk, sacker, 6 to 10 percent, 8-7-72: 2665 Buffalo Gap Road, Abilene, TX; 3661 North Sixth Street, Abilene, TX.

Swiss Village, Inc., nursing home; Berne, Ind., junior nurse's aide, dining room helper, kitchen helper; 13 to 23 percent; 8-19-72.

T. G. & Y. Stores Co., variety-department stores, for the occupations of salesclerks, stock clerk, office clerk, 8-13-72, except as otherwise indicated: No. 656, Corona, Calif., 20 to 30 percent (8-31-72); No. 1405, Kansas City, Kans., 15 to 29 percent (8-31-72); No. 1404, Shawnee, Kans., 15 to 29 percent (8-31-72); No. 159, Columbia, Mo., 5 to 30 percent (9-2-72); No. 151, Gladstone, Mo., 22 to 39 percent (8-23-72); No. 454, Hannibal, Mo., 14 to 30 percent (9-2-72); No. 152, Parkville, Mo., 22 to 31 percent (9-11-72); No. 280, Belen, N. Mex., 13 to 24 percent (8-26-72); No. 288, Espanola, N. Mex., 13 to 24 percent (8-27-72); No. 32, Clinton, Okla., 7 to 23 percent; No. 1009, Tulsa, Okla., 24 to 30 percent; No. 1701, Lake City, S.C., 18 to 30 percent (salesclerk, stock clerk, 8-11-72); No. 402, Dimmitt, Tex., 14 to 30 percent (8-26-72); No. 843, League City, Tex., 30 percent; No. 804, Odessa, Tex., 7 to 21 percent; No. 809, Texas City, Tex., 30 percent (8-27-72).

Thriftway Super Market, foodstore; Pembroke, N.C.; cashier, bagger, stock clerk; 19 to 20 percent; 7-6-72.

Tradewell Super Market, foodstore; Sixth Avenue, Fifth Street West, Huntington, W. Va.; stock clerk, carryout, cashier; 16 to 22 percent; 8-19-72.

Walker Shoe Store, shoestore; 516 Fourth Street, Sioux City, IA; stock clerk; 8 to 16 percent; 8-10-71 to 7-21-72.

Way-Fair Restorium, Inc., nursing home; Fairfield, Ill.; nurse's aide, orderly, dishwasher; 0 to 4 percent; 8-16-72.

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under a certificate. The certificate may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 30 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C. this 19th day of October 1971.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[FR Doc.71-15677 Filed 10-27-71;8:49 am]

INTERSTATE COMMERCE COMMISSION

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

OCTOBER 22, 1971.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate

or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. 2047, filed October 5, 1971. Applicant: VICTOR LANGE, doing business as LANGE TRUCK LINE, Post Office Box 28, Pleasanton, TX 78064. Applicant's representative: Mert Starnes, The 904 Lavaca Building, 78701, Post Office Box 2207, 78767, Austin, TX. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of general commodities, (1) between Floresville, Tex., and the junction of U.S. Highway 281 and Farm Road 536 as follows: From Floresville, Tex., to the junction of U.S. Highway 281 over Farm Road 536, and return over the same route, serving all intermediate points; (2) between Floresville, Tex., and Pleasanton, Tex., as follows: From Floresville, Tex., to Pleasanton, Tex., over State Highway 97, and return over the same route, serving all intermediate points; (3) between Poth, Tex., and the junction of U.S. Highway 281 and Farm Road 541 as follows: From Poth, Tex., to the junction of U.S. Highway 281 over Farm Road 541 and return over the same route, serving all intermediate points; (4) between Falls City, Tex., and Campbellton, Tex., as follows: From Falls City, Tex., to Campbellton, Tex., over Farm Road 791 and return over the same route, serving all intermediate points; (5) between Karnes City, Tex., and Whitsett, Tex., over Farm Road 99 and return over the same route, serving all intermediate points; (6) between Kenedy, Tex., and Three Rivers, Tex., as follows: From Kenedy, Tex., to Three Rivers, Tex., over State Highway 72 and return over the same route, serving all intermediate points; (7) between Jourdanton, Tex., and Tilden, Tex., as follows: From Jourdanton, Tex., to Tilden, Tex., over State Highway 16 and return over the same route, serving all intermediate points; (8) between Jourdanton, Tex., and San Antonio, Tex., as follows: From Jourdanton, Tex., to San Antonio, Tex., over State Highway 16 and return over the same route, serving all intermediate points; and (9) between the junction of U.S. Highway 281 and Farm Road 140 and the junction of Farm Road 140 and State Highway 16, as follows: From the junction of U.S. Highway 281 and Farm Road 140 to the junction of Farm Road 140 and State Highway 16 over Farm Road 140 and return over the same route, serving all intermediate points. The applicant proposes to tack and coordinate the proposed additional services with all services now authorized in intrastate commerce and in interstate or foreign commerce under certificate No. 2047. Both intrastate and interstate authority sought.

HEARING: Approximately 30 days after being published in the FEDERAL REGISTER. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Post Office Drawer 12967, Capitol Station, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. 2627, filed October 5, 1971. Applicant: CENTRAL FREIGHT LINES, INC., 303 South 12th, Waco, TX. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* (1) between Tyler, Tex., and Henderson, Tex., as follows: From Tyler, Tex., over Texas Highway 64 to Henderson, Tex., serving no points not presently authorized to be served, with joinder of this authority at the termini so as to render a through service over this route and applicant's authorized routes joining at said termini; (2) between Jacksonville, Tex., and Carthage, Tex., as follows: From Jacksonville, Tex., over U.S. Highway 79 to Henderson, Tex., thence over U.S. Highway 79 to Carthage, Tex., serving no points not presently authorized to be served, with joinder of this authority at the termini so as to render a through service over this route and applicant's authorized routes joining at said termini; (3) between Carthage, Tex., and Longview, Tex., as follows: From Carthage, Tex., over Texas Highway 149 to Longview, Tex., serving no points not presently authorized to be served, with joinder of this authority at the termini so as to render a through service over this route and applicant's authorized routes joining at said termini; and (4) between Livingston, Tex., and Woodville, Tex., as follows: From Livingston, Tex., over U.S. Highway 190 to Woodville, Tex., serving no points not presently authorized to be served, with joinder of this authority at the termini so as to render a through service over this route and applicant's authorized routes joining at said termini coordinating the proposed service with all service rendered under other authority. NOTE: Applicant proposes to tack and coordinate the proposed additional services with all services authorized in intrastate commerce under certificates Nos. 2627, 2054, 4337 and 4336 and with all services now authorized in interstate and foreign commerce under authorities granted in Docket No. MC-30867 and all subs thereunder. Applicant seeks no duplicating authority. Both intrastate and interstate authority sought.

HEARING: Approximately 30 days after published in the FEDERAL REGISTER. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Post Office Drawer 12967, Capitol Station, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

State Docket No. H-5063, filed September 30, 1971. Applicant: TRUMAN J. WAHRER, doing business as WAHRER TRUCK LINES, Charleston, Iowa. Applicant's representative: Joseph L. Pehlan, 608 Seventh Street, Fort Madison, IA 52627. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* except those of unusual value, and except livestock, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, over a regular route between Fort Madison, Denmark, Douds, Pilot Grove, and Argyle and between those points and points presently held by the applicant. Both intrastate and interstate authority sought.

HEARING: February 10, 1972, at the Iowa State Commerce Commission, Des Moines, Iowa at 10 a.m. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 23740 (Sub-No. 2), filed October 1, 1971. Applicant: THE ROCKET FREIGHT LINES CO., 2921 Dawson Road, Tulsa, OK. Applicant's representative: Wilburn L. Williamson, 3535 Northwest 58th, 280 National Foundation Life Center, Oklahoma City, OK 73112. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities,* over the following routes, between Tulsa, Okla., and Muskogee, Okla., as follows: From Tulsa, Okla., over U.S. Highway 64 to its intersection with Oklahoma Highway 162, thence over Oklahoma Highway 162 to Taft, Okla., thence over Oklahoma Highway 162 to its intersection with U.S. Highway 64, thence over U.S. Highway 64 to Muskogee, Okla., and return over the same route, serving the termini and all intermediate points, except Bixby, Okla., and including the off-route points of Jamesville and Yahola. Applicant seeks to operate the entire route in intrastate and interstate and foreign commerce.

HEARING: November 8, 1971, 9 a.m., Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Okla. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Okla. 73105, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 23740 (Sub-No. 3), filed October 5, 1971. Applicant: THE

ROCKET FREIGHT LINES CO., 2921 Dawson Road, Tulsa, OK. Applicant's representative: Wilburn L. Williamson, 3535 Northwest 58th, 280 National Foundation Life Center, Oklahoma City, OK 73112. Certificate of Public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, over the following routes: Between Oklahoma City, Okla., and the Oklahoma-Kansas border north of Grainola, Okla., as follows: From Oklahoma City via Interstate Highway 35 to its intersection with U.S. Highway 60, thence over U.S. Highway 60 to its intersection with U.S. Highway 177, thence over U.S. Highway 177 to Blackwell, Okla., thence over U.S. Highway 177 to its intersection with U.S. Highway 60, thence over U.S. Highway 60 to Ponca City, Okla., thence over U.S. Highway 77 to the Oklahoma-Kansas border north of Newkirk, Okla., thence over U.S. Highway 77 to its intersection with U.S. Highway 60, thence over U.S. Highway 60 to its intersection with State Highway 18, thence over State Highway 18 to the Oklahoma-Kansas border north of Grainola, Okla., and return over the same route, serving the termini and all intermediate points and the off-route points of Autwine, Kildare, Chilocco, Uncas, Apperson, Burdank, Webb City, Lyman, and Foraker. Applicant seeks to operate the entire route in intrastate and interstate and foreign commerce.

HEARING: November 8, 1971, 9 a.m., Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Okla. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Okla. 73105, and should not be directed to the Interstate Commerce Commission.

By the Commission.

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

[FR Doc.71-15687 Filed 10-27-71;8:50 am]

[Notice 29]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 22, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIER OF PASSENGERS

No. MC-2072 (Deviation No. 2), LAKE SHORE SYSTEM, INC., 600 West Town Street, Columbus, OH 43215, filed September 30, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 22 and Interstate Highway 79 over Interstate Highway 79 (portion of which is known as Pennsylvania Highway 50) to junction Interstate Highway 70, thence over Interstate Highway 70 to Wheeling, W. Va., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From junction U.S. Highways 19 and 22 at the southern end of West End Bridge in Pittsburgh, Pa., over U.S. Highway 19 to junction Penn-Lincoln Parkway, thence over the Penn-Lincoln Parkway to junction U.S. Highway 22, approximately 4 miles west of Moon Run, Pa., thence over U.S. Highway 22 to Steubenville, Ohio, thence over Ohio Highway 7 to Bridgeport, Ohio, thence over U.S. Highway 40 to Wheeling, W. Va., thence return to Bridgeport, thence over U.S. Highway 40 to Columbus, Ohio, and (2) from junction U.S. Highway 22 and 30 approximately 14 miles west of Pittsburgh, Pa., over U.S. Highway 22 to Cadiz, Ohio, thence over U.S. Highway 36 (portion also known as U.S. Highway 250) to Coshocton, Ohio, thence over Ohio Highway 16 to Columbus, Ohio, and return over the same routes.

No. MC-107586 (Deviation No. 15) (Cancels Deviation No. 11), CONTINENTAL BUS SYSTEM, INC., 315 Continental Avenue, Dallas, TX 75207, filed September 20, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: Between Dallas, Tex., and Houston, Tex., over completed portions of Interstate Highway 45, with access roads to and from authorized intermediate points on carrier's regular service route over U.S. Highway 75, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Rhome, Tex., over Texas Highway 114 via Grapevine to Dallas, Tex., thence over U.S. Highway 75 to Ennis, Tex., and (2) From Salt Lake City, Utah, over Alternate U.S. Highway 50 (formerly U.S. Highway 50) via Springville, Utah, to junction U.S. Highway 50, thence over U.S. Highway 50 via Grand Junction, Montrose, and Gunnison, Colo., to Salida, Colo., thence over Colorado Highway 291 to junction U.S. Highway 285, thence over U.S. Highway 285 to junction Colorado Highway 9 at Fairplay, Colo., thence over Colorado Highway 9 to Alma, Colo., thence return over Colorado Highway 9 to junction U.S. Highway 285 at Fairplay, thence over U.S. Highway 285 to Denver, Colo., thence over U.S. Highway 287 via Amarillo and Wichita Falls, Tex., to Fort Worth, Tex. (also from Wichita Falls over U.S. Highway 281 to junction Texas Highway 199, thence over Texas Highway 199 to Fort Worth), thence over U.S. Highway 287 to Corsincana, Tex., thence over U.S. Highway 75 to Houston, Tex., and return over the same routes.

By the Commission.

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

[FR Doc.71-15688 Filed 10-27-71;8:50 am]

[Notice 33]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 22, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-730 (Deviation No. 40), PACIFIC INTERMOUNTAIN EXPRESS CO., Post Office Box 958, Oakland, CA 94604, filed October 5, 1971. Carrier's representative: Alfred G. Krebs, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Mason City, Iowa, over U.S. Highway 18 to junction U.S. Highway 218 at or near Floyd, Iowa, thence over U.S. Highway 218 to Waterloo, Iowa, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Waterloo, Iowa, over

U.S. Highway 20 to junction U.S. Highway 65, thence over U.S. Highway 65 to Mason City, Iowa, and return over the same route.

No. MC-43475 (Deviation No. 4), GLENDENNING MOTORWAYS, INC., 1665 West County Road C, St. Paul, MN 55113, filed September 15, 1971, amended October 13, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: Between Mankato, Minn., and New Ulm, Minn., over Minnesota Highway 68, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From St. Paul, Minn., over city streets to Minneapolis, Minn., thence over U.S. Highway 212 to Glencoe, Minn., thence over Minnesota Highway 19 to Winthrop, Minn., thence over Minnesota Highway 15 to New Ulm, Minn., thence over U.S. Highway 14 to Brookings, S. Dak., (2) from St. Paul, Minn., over city streets to Minneapolis, Minn., thence over U.S. Highway 169 to Mankato, Minn., thence over Minnesota Highway 60 to Madelia, Minn., thence over Minnesota Highway 15 to Fairmont, Minn., and (3) from Winthrop, Minn., over Minnesota Highway 19 to the Minnesota-South Dakota State line, and return over the same routes.

No. MC-71459 (Deviation No. 1), O.N.C. MOTOR FREIGHT SYSTEM, 2800 West Bayshore Road, Palo Alto, CA 94303, filed September 20, 1971. Carrier proposes to operate a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction California Highway 99 (formerly U.S. Highway 99) and California Highway 14 (near Sylmar, Calif.), over California Highway 14 to junction U.S. Highway 395 (near Inyokern, Calif.), thence over U.S. Highway 395 to Reno, Nev., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From junction California Highway 99 (formerly U.S. Highway 99) and California Highway 14, over California Highway 99 to junction U.S. Highway 40 at Sacramento, Calif., thence over U.S. Highway 40 to Reno, Nev., and return over the same route.

No. MC-89723 (Deviation No. 22), MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103, filed September 28, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over deviation routes as follows: (1) From Mount Vernon, Ill., over U.S. Highway 460 to Nashville, Ill., and (2) from junction U.S. Highway 460 and Illinois Highway 153 over U.S. Highway 460 to junction Illinois Highway 3, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From St. Louis, Mo., over St. Louis Municipal (Eads) Bridge to East St. Louis, Mo., thence over Illinois Highway 3 via Dupo, Columbia, Waterloo, Ruma, Evansville, and Ellis Grove, Ill., to junction Illinois Highway 150 to Chester, Ill., (2) from Red Bud, Ill., over Illinois Highway 154 via Sparta, Ill., to junction Illinois Highway 153, thence over Illinois Highway 153 via Coulterville, Ill., to junction U.S. Highway 460, thence over U.S. Highway 460 to Nashville, Ill., thence over Illinois Highway 127 to junction Illinois Highway 177, thence over Illinois Highway 177 via Hoyleton, Ill., to junction U.S. Highway 51, thence over U.S. Highway 51 via Centralia and Central City, Ill., to junction U.S. Highway 50, thence over U.S. Highway 50 to Salem, Ill. (also from Centralia over Illinois Highway 161 to junction Illinois Highway 37, thence over Illinois Highway 37 to Salem), and (3) from junction Illinois Highways 161 and 37 over Illinois Highway 37 to Mount Vernon, Ill., and return over the same routes.

By the Commission.

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

[FR Doc.71-15689 Filed 10-27-71;8:50 am]

[Notice 85]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

OCTOBER 22, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 92983 (Sub-No. 544), filed October 18, 1971. Applicant: ELDON MILLER, INC., Post Office Box 2508, Kansas City, MO 64142. Applicant's representative: A. Bruce Fraser (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and blends*, in bulk, from Cedar Rapids, Clinton, Keokuk, and Muscatine, Iowa, to points in the United States (except Alaska and Hawaii). 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.

HEARING: November 10, 1971, Room 1086A, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL, before a Hearing Examiner.

No. MC 99234 (Sub-No. 2) (Republication), filed April 26, 1965, published in the FEDERAL REGISTER, issues of June 3, 1965, and April 26, 1967, and republished this issue. Applicant: WESTWAY MOTOR FREIGHT, INC., 4350 Kendrick Street, Golden, CO. Applicant's representative: Marion F. Jones, 420 Denver Club Building, Denver, Colo. 80202. The report and recommended order of the Hearing Examiner, of July 21, 1971, was made effective on August 20, 1971, and notice was served on August 31, 1971. Said report and order finds, in part, and as pertinent herein; that upon receipt of a written request from applicant within 30 days from the effective date of the order herein, notice should be published in the FEDERAL REGISTER of proposed operation by applicant as a common carrier by motor vehicle, over irregular routes, in the transportation of general commodities, except those of unusual value, classes A and B explosives, household goods, and those requiring special equipment, between Denver, Broomfield, and Littleton, Colo., and points in that part of Jefferson County, Colo., on and north of U.S. Highway 285, on the one hand, and, on the other, points in Colorado; and that upon receipt of said written request this proceeding should be assigned for hearing, at a time and place to be hereafter fixed, on the question of whether the public convenience and necessity require operation by applicant as a common carrier by motor vehicle over irregular routes between the points and the area described above. NOTE: By letter filed with the Commission on September 20, 1971, applicant has made the above-described request.

No. MC 114087 (Sub-No. 6) (Republication) (Notice of Filing Petition for Modification of Existing Permit), filed July 8, 1971, published in the FEDERAL REGISTER, issue of July 28, 1971, and republished this issue. Petitioner: DECATUR PETROLEUM HAULERS, INC., Decatur, Ala. Petitioner's representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, Ala. 35203. An order of the Commission, Operating Rights Board, dated September 27, 1971, finds: That operation by petitioner in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of coke, in bulk, from Decatur, Ala., to Siglo, Mount Pleasant, and Godwin, Tenn., under a continuing contract with the Monsanto Co. of St. Louis, Mo., subject to the prior receipt of a request in writing by Decatur Petroleum Haulers,

Inc., for the cancellation of its permit No. MC-114087 (Sub-No. 6) will be consistent with the public interest and the national transportation policy; that petitioner is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the petition as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

NOTICE OF FILING OF PETITION

No. MC 113678 (Sub-No. 384) (Notice of filing of Petition for Modification of Certificate), filed September 27, 1971. Petitioner: CURTIS, INC., Post Office Box 16004, Stockyards Station, Denver, CO 80216. Petitioner's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Petitioner states it holds authority to engage in interstate or foreign commerce as a motor common carrier in docket No. MC 113678 (Sub-No. 384), which, as is involved herein specifically authorizes transportation over irregular routes of "Materials and supplies used in the manufacture of aquariums and household pet cages, from Maywood, Hackensack, and East Paterson, N.J., and Philadelphia, Pa., to Gardena and Mountain View, Calif." Petitioner further states that the authorities set forth herein above were sought and obtained for the purpose of providing a transportation service for the Meteframe Corp. The service to be provided thereunder was necessitated by the need to transport between three and five truckloads per month of raw materials, parts and supplies from a raw material supplier located at Philadelphia, Pa., to Gardena and Mountain View, Calif. Petitioner states that subsequent to the issuance of the certificate involved herein, Meterframes supplier moved from Philadelphia, Pa., to Harleysville, Pa. Petitioner states that it is only necessary that the point of origin for outbound commodities be corrected and modified in order that petitioner might engage in operations for which the certificate involved herein was issued.

Wherefore, petitioner requests that certificate No. MC 113678 (Sub-No. 384) issued June 22, 1971 to Curtis, Inc., Denver, Colo., to be changed and modified to read as follows: "Irregular routes: *Aquariums, household pet cages, and aquarium accessories, supplies, and equipment,* From Maywood, Hackensack, and East Paterson, N.J., to Gardena and Mountain View, Calif., with no transportation for compensation on return except as otherwise authorized. From Gardena and Mountain View, Calif., to points in Arkansas, Colorado, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, New Mexico, Oregon, Texas, Washington, and Wisconsin, with no transportation for compensation on return except as otherwise authorized; *Materials and supplies* used in the manufacture of aquariums and household pet cages, From Maywood, Hackensack, and East Paterson, N.J., and Harleysville, Pa., to Gardena and Mountain View, Calif., with no transportation for compensation on return except otherwise authorized. *Brine shrimp,* frozen or freeze dried, From Menlo Park, Calif., to points in Georgia, Illinois, Kansas, Minnesota, Missouri, New Jersey, Ohio, Oregon, Rhode Island, Virginia, and Washington with no transportation for compensation on return except as otherwise authorized." Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 71459 (Sub-No. 25), filed October 1, 1971. Applicant: O. N. C. MOTOR FREIGHT SYSTEM, 2800 West Bayshore Road, Palo Alto, CA 94303. Applicant's representative: Clifford J. Boddington (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* except: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A; (2) automobiles, trucks, and buses, new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis; (3) livestock, bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine; (4) commodities requiring the use of special refrigeration or temperature control in specially-designed and constructed refrigerator equipment; (5) liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles;

(6) Commodities when transported in bulk in dump trucks or in hopper-type trucks; (7) commodities when transported in motor vehicles equipped for mechanical mixing in transit; (8) logs; and (9) articles of extraordinary value as set forth in Rule 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof; Part I: (1) Between all points and places in the San Francisco territory as described in Part "II" below; (2) between all points and places on and within 10 miles laterally of the following highways (see exception): (a) California Highway No. 9 between Cupertino and Saratoga, inclusive; (b) California Highway No. 17 between Campbell and Los Gatos, inclusive; (c) U.S. Highway No. 101 between San Francisco and Novato, inclusive; (d) U.S. Highway No. 40 between Richmond and Sacramento, inclusive; (e) U.S. Highway No. 50 between Hayward and Sacramento, inclusive; (f) California Highway No. 4 between Pinole and Stockton, inclusive; (g) California Highway No. 24, between Oakland and Sacramento, inclusive; (h) California Highway No. 21 between Cordelia and Mission San Jose, inclusive; (i) California Highway No. 12 between Fairfield and Lodi, inclusive; and (j) unnumbered highway between Concord and Byron, inclusive. Exception: the 10-mile extension above noted shall not apply north of Novato, and (3) through routes and rates may be established between any and all points and places specified in (1) and (2) above.

Part II: San Francisco Territory includes all the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente, easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right-of-way; southerly along the Southern Pacific Co. right-of-way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue, easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along

the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line, northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. NOTE: This application is a matter directly related to MC-F-11333, published in the FEDERAL REGISTER issue of October 13, 1971. If a hearing is deemed necessary, applicant requests it be held at San Francisco, Calif.

No. MC 76032 (Sub-No. 287), filed September 15, 1971. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, CO 80223. Applicant's representative: Jack Goodman, 35 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 Davenport, Iowa, as an intermediate point in connection with applicant's regular-route service from Chicago, Ill., over U.S. Highway 34 to junction Illinois Highway 92, thence over Illinois Highway 92 to Moline, Ill., thence over U.S. Highway 6 to Omaha, Nebr., thence over U.S. Highway 275 through Waterloo, Nebr., to Fremont, Nebr., thence over U.S. Highway 30 to junction U.S. Highway 138, near Big Springs, Nebr., thence over U.S. Highway 138 to Sterling, Colo., and thence over U.S. Highway 6 to Denver, Colo., and return over the same route, restricted against the transportation of traffic originating at or destined to Davenport, Iowa. NOTE: The instant application is a matter directly related to MC-F-11300, published in the FEDERAL REGISTER issue of September 9, 1971. Applicant states that instant application and the finance application be consolidated for disposition in view of the relationship. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11346. Authority sought for purchase by BARBER TRANSPORTATION CO., Post Office Drawer 2047, Rapid City, SD 57701, of a portion of the operating rights of UNITED-BUCKINGHAM FREIGHT LINES, INC., 5773 South Prince Street, Littleton, CO 80120, and for acquisition by ZELLA S. BARBER, also of Rapid City, S. Dak. 57701, of control of such rights through the purchase. Applicants' attorneys: Marion F. Jones, 420 Denver Club Building, Denver, Colo. 80202, and John F. Mueller, 602 Midland Savings Building, Denver, Colo. 80202. Operating rights sought to be transferred: *General commodities*, with exceptions, as a *common carrier* over regular routes, between Martin and Winner, S. Dak., serving certain specified intermediate and off-route points in South Dakota, with restriction, between Rushville, Nebr., and Martin, S. Dak., for operating convenience only, serving no intermediate points, between Martin, S. Dak., and Crawford, Nebr., between Pine Ridge, and Hot Springs, S. Dak., serving all intermediate points and certain specified off-route points in South Dakota, between Dickinson, and Bowman, N. Dak., serving certain specified intermediate and off-route points in North Dakota, between Reeder, and Hettinger, N. Dak., serving the intermediate point of Bucyrus, N. Dak., between Amidon and Regent, N. Dak., serving the intermediate points of New England and Havelock, N. Dak., between Sioux Falls, S. Dak., and Sibley, Iowa, serving certain specified intermediate and off-route points in Iowa, between Ellsworth, Minn., and Sioux Falls, S. Dak., serving the intermediate points of Ashcreek, Steen, and Hills, Minn., between Sioux City, and Rock Rapids, Iowa, serving no intermediate points, but serving the off-route points of Doon and George, Iowa, with restrictions, between Miller, and Sturgis, S. Dak., between Sioux Falls and Philip Junction, S. Dak.; *general commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, over irregular routes, between points within 20 miles of Akron, Iowa, including Akron, between Akron, Iowa, and points within 20 miles thereof, on the one hand, and, on the other, points within 100 miles of Akron, between Sioux City, Iowa, on the one hand, and, on the other, points in Nebraska and South Dakota within 15 miles of Sioux City. Vendee is authorized to operate as a *common carrier* in South Dakota, Wyoming, Illinois, Iowa, Minnesota, Nebraska, North Dakota, and Montana. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11347. Authority sought for control by MID-AMERICAN LINES, INC., 127 West 10th Street, 11th Floor, Kansas City, MO 64105, of BRUCE MOTOR FREIGHT, INC., 3920 Delaware Avenue, Post Office Box 623, Des Moines, IA 50303, and for acquistion by LEROY WOLFE and HELEN WOLFE, both of 4303 Homestead Drive, Prairie Village, KS 66208, of control of BRUCE MOTOR FREIGHT, INC., through the acquisition by MID-AMERICAN LINES, INC. Applicants' attorneys: Jack Goodman, 39 South La Salle Street, Chicago, IL 60603, and Homer E. Bradshaw, Des Moines Building, 11th Floor, Des Moines, Iowa 50309. Operating rights sought to be controlled: *General commodities*, with certain specified exceptions, as a *common carrier* over regular routes, in the States of Minnesota, Iowa, Missouri, Illinois, Indiana, and Ohio, including principal routes, Minneapolis and Kansas City via Albert Lea, Minn., and Des Moines, Iowa, Minneapolis and St. Louis, via Owatonna, Minn., Cedar Rapids and Ottumwa, Iowa, and Kirksville and Columbia, Mo. (also via Keokuk, Iowa, and Hannibal, Mo.), Minneapolis and Chicago over one route via Eau Claire, Wisconsin Dells and Milwaukee, Wis., a second via La Crosse, Wisconsin Dells, Madison, and Janesville, Wis., and a third via Rochester, Minn., Dubuque, Iowa, and Rockford, Ill., between Des Moines and Chicago via Davenport, Iowa, Cedar Rapids and Chicago via Clinton, Iowa, routes radiating from Indianapolis, Ind., and extending to (a) Chicago, Ill., via Lafayette, Ind. (also via Kokomo and Plymouth, Ind.), (b) Fort Wayne, Ind., via Marion, Ind., (c) Dayton, Ohio, via Richmond, Ind., (d) Cincinnati, Ohio, via Rushville, Ind., (e) Louisville, Ky., via Versailles and Madison, Ind. (also via Columbus and Seymour, Ind.), (f) Vincennes, Ind., via Spencer, Ind., and (g) Terre Haute, Ind., via Brazil, Ind., with various other commuting routes in Indiana to such main routes;

General commodities, with exceptions, over irregular routes, between Minneapolis and St. Paul, Minn., and the site of the Twin City Ordnance Plant in Mounds View Township, Ramsey County, Minn., between Minneapolis, St. Paul, South St. Paul, Inver Grove Heights, West St. Paul, Newport, North St. Paul, Columbia Heights, Robbinsdale, St. Louis Park, Hopkins, Edina, Richfield, Red Rock, McCarron Lake, Fort Snelling, and State Fair Grounds, Minn., between points in Minnesota within 35 miles of Minneapolis, Minn., including Minneapolis, Minn., between points in that part of Illinois north of U.S. Highway 30, and points in that part of Indiana north of U.S. Highway 30 and west of Indiana Highway 51, including points on the indicated portions of the highways specified, on the one hand, and, on the other, points on the regular service routes specified in Part B, Chemolite, Minn., and points in the Minneapolis-St. Paul, Minn., commercial zone, as defined by the Commission; *poultry, butter, and eggs*, from Osceola, Creston, Gowrie, and Coon Rapids, Iowa, to Chicago, Ill.; *butter, eggs, poultry, dressed rabbits, meat, canned goods, paper, and junk*, from points in that

part of Minnesota bounded by a line beginning at the Wisconsin-Minnesota State line and extending along unnumbered highway through Duxbury to certain specified points in Minnesota; *iron and steel articles*, from the plantsite of Jones & Laughlin Steel Corp., located in Putnam County, Ill., to points in Indiana and Kentucky; *materials, equipment, and supplies* used in the manufacture and processing of iron and steel articles, from points in Indiana and Kentucky, to the plantsite of Jones & Laughlin Steel Corp., located at Putnam County, Ill., with restriction; over numerous alternate routes for operating convenience only. MID-AMERICAN LINES, INC., is authorized to operate as a *common carrier* in Missouri, Illinois, Kansas, Nebraska, Michigan, Ohio, and Indiana. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11350. Authority sought for purchase by ALL-AMERICAN TRANSPORT, INC., 1500 Industrial Avenue, Sioux Falls, SD 57101, of a portion of the operating rights and property of PRATT'S DRAY & STORAGE, INC., 222 West Illinois, Spearfish, SD 57783, and for acquisition by BUFFALO EXPRESS, INC., and, in turn, by H. LAUREN LEWIS, both of Post Office Box 769, Sioux Falls, SD 57101, of control of such rights and property through the purchase. Applicants' attorneys: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603 and H. Lauren Lewis, Post Office Box 769, Sioux Falls, SD 57101. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between Spearfish, S. Dak., and Buffalo, S. Dak., serving no intermediate points, between Buffalo, S. Dak., and Aberdeen, S. Dak., serving the intermediate and off-route points of Reva, Bison, Meadow, Coal Springs, Glad Valley, Strool, and Sorum, S. Dak.; *general commodities*, over irregular routes, between Red Water Spur, Deadwood, and Spearfish, S. Dak., with restriction. Vendee is authorized to operate as a *common carrier* in Minnesota, South Dakota, Iowa, Nebraska, Illinois, North Dakota, Wisconsin, Indiana, Michigan, Ohio, Kentucky, and Missouri. Application has been filed for temporary authority under section 210a(b).

MOTOR CARRIER PASSENGERS

No. MC-F-11348. Authority sought for purchase by D & M BUS CO., 146 Northmont Boulevard, Danville, VA 24541, of a portion of the operating rights of VIRGINIA STAGE LINES, INCORPORATED, 114 Fourth Street SE., Charlottesville, VA 22902, and for acquisition by E. H. STEPHENS, also of Danville, Va. 24541, of control of such rights through the purchase. Applicants' attorney: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Operating rights sought to be transferred: Passengers and their baggage, and express, mail and newspapers in the same vehicle with passengers, as a common carrier over regular routes, between Lynchburg, Va., and the Virginia-North Carolina State line, between Durham, N.C., and the North Carolina-Virginia State line, between Danville, Va., and Milton, N.C., between Roxboro, N.C., and Milton, N.C., serving all intermediate points. Vendee is authorized to operate as a common carrier in Virginia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.71-15690 Filed 10-27-71;8:50 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 22, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42290—*Bulgur to Gulf Ports, Pensacola, Fla. to Corpus Christi, Tex., for export.* Filed by Southwestern Freight Bureau, agent (No. B-267), for interested rail carriers. Rates on wheat, in carloads, as described in the application, from points in Arkansas, Colorado, Iowa, Kansas, Missouri (including East St. Louis, Ill.), Nebraska, Oklahoma, Texas, and Wyoming, to Gulf Ports, Pensacola, Fla., to Corpus Christi, Tex., for export.

Grounds for relief—Revision of commodity description.

Tariffs—Supplement 77 to The Atchison, Topeka, and Santa Fe Railway Co. tariff ICC 15044, and eight other schedules named in the application. Rates are published to become effective on November 22, 1971.

FSA No. 42291—*Chlorine to Quinlan, Fla.* Filed by M. B. Hart, Jr., agent (No. A6285), for interested rail carriers. Rates on chlorine, in tank carloads, as described in the application, from Evans City and Mobile, Ala., to Quinlan, Fla.

Grounds for relief—Market competition.

Tariff—Supplement 58 to Southern Freight Association, agent, tariff ICC S-938. Rates are published to become effective on December 2, 1971.

By the Commission.

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

[FR Doc.71-15691 Filed 10-27-71;8:50 am]

ASSIGNMENT OF HEARINGS

OCTOBER 22, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 121060 Sub 8, Arrow Truck Lines, Inc., assigned November 29, 1971, Birmingham, Ala., will be held in the West Committee Meeting Room, Municipal Auditorium, 1930 Eighth Avenue North, Birmingham, AL.

MC 115904 Sub 24, Louis Grover, assigned December 2, 1971, in Room 314, Federal Annex Building, 135 South State Street, Salt Lake City, UT.

MC 30605 Sub 146, The Santa Fe Trail Transportation Co., assigned November 1, 1971, at Phoenix, Ariz., is canceled and reassigned for hearing on January 17, 1972, at a hearing room to be later designated in Phoenix, Ariz.

MC-F-10314, Smithsons Holdings, Ltd.—Control—Smith Transport (U.S.), Ltd., MC-F-11173, Smithsons Holdings, Ltd., And Canadian Pacific Railway Co.—Investigation of Control—Smith Transport (U.S.), Ltd., assigned January 10, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

FD 26659, Sub 1, 2, 3, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 23, 26, 27, 28, and FD 26773, FD 26781, R. D. TIMPANY, TRUSTEE OF THE PROPERTY OF THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, assigned December 6, 1971, at the U.S. Post Office and Courthouse, Courtroom No. 1, 300 South Main Street, Wilkes-Barre, PA, and December 8, 1971, at the Lehigh County Courthouse, Room 403, 455 Hamilton Street, Allentown, PA, and December 13, 1971, at the Somerset County Administration Building, Room L—Lower Level, North Bridge and East High Streets, Somerville, N.J.

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

[FR Doc.71-15692 Filed 10-27-71;8:50 am]

CUMULATIVE LIST OF PARTS AFFECTED—OCTOBER

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 October.

3 CFR

Page

PROCLAMATIONS:
4085 ... 19239
4086 ... 19899
4087 ... 19961
4088 ... 20025
4089 ... 20137
4090 ... 20213

EXECUTIVE ORDERS:
11007 (see EO 11625) ... 19967
11458 (superseded by EO 11625) ... 19967
11588 (amended by EO 11627) ... 20139
11615 (superseded by EO 11627) ... 20139
11617 (superseded by EO 11627) ... 20139
11621 ... 19435
Amended by EO 11622 ... 19491
11622 ... 19491
11623 ... 19963
11624 ... 19965
11625 ... 19967
11626 ... 20027
11627 ... 20139
11628 ... 20285
11629 ... 20647

5 CFR

213 ... 19245, 19437, 19493, 19971, 20351, 20649
550 ... 20649
733 ... 20649
890 ... 20220, 20504

7 CFR

51 ... 19243
53 ... 19301
54 ... 19301
55 ... 19301
56 ... 19301
70 ... 19301
215 ... 19493, 20503
225 ... 20351
270 ... 20145
271 ... 20145
272 ... 20145
273 ... 20145
274 ... 20145
301 ... 20423
331 ... 19667
722 ... 20215
724 ... 20148
725 ... 20649
726 ... 20651
729 ... 20575
850 ... 19244
855 ... 20666
873 ... 20352
874 ... 20287
905 ... 20215
906 ... 19971, 20029
908 ... 19493, 19972, 20354, 20670
910 ... 19302, 19359, 19668, 19901, 20149, 20217, 20503, 20576
913 ... 19668, 20150
915 ... 20670
927 ... 20355
929 ... 19668
932 ... 20217, 20355
947 ... 20029

7 CFR—Continued

Page

966 ... 19437
982 ... 20503
989 ... 20150
1030 ... 20576
1063 ... 19571
1070 ... 19572
1078 ... 19572
1079 ... 19572
1094 ... 20218
1133 ... 19669
1427 ... 20577
1464 ... 20577
1890s ... 19670

PROPOSED RULES:
7 ... 20532
52 ... 19976
58 ... 20608
795 ... 19505
811 ... 20437
815 ... 20246
905 ... 19702
906 ... 20439
911 ... 20610
926 ... 20302
932 ... 19265
944 ... 19911
947 ... 19314
982 ... 19442, 20164
984 ... 19390
993 ... 19603
1007 ... 19315, 19604
1030 ... 20046
1036 ... 20440
1060 ... 19604
1061 ... 19604
1063 ... 19604
1064 ... 19604
1065 ... 19604
1068 ... 19604
1069 ... 19604
1070 ... 19604
1071 ... 19604
1073 ... 19604
1076 ... 19604
1078 ... 19604
1079 ... 19604
1090 ... 19604
1094 ... 19604
1096 ... 19604
1097 ... 19604
1098 ... 19604
1102 ... 19604
1103 ... 19604
1104 ... 19604
1106 ... 19604
1108 ... 19604
1120 ... 19604
1126 ... 19604
1127 ... 19604
1128 ... 19604
1129 ... 19604
1130 ... 19604
1131 ... 19604
1132 ... 19604
1138 ... 19604
1438 ... 20700
1464 ... 19389
1610 ... 20533
1701 ... 19391, 19607, 20246, 20247, 20302, 20440
1806 ... 20532

8 CFR

Page

103 ... 20151
204 ... 20151
242 ... 20151

9 CFR

51 ... 20578
56 ... 19972
72 ... 19245, 19972, 20277
76 ... 20358, 20359
78 ... 20032
92 ... 20287
311 ... 19901
316 ... 19901
317 ... 19901
331 ... 20578

PROPOSED RULES:
1 ... 20472
2 ... 20472
3 ... 20472

10 CFR

PROPOSED RULES:
50 ... 20051

12 CFR

201 ... 19901
224 ... 19901
226 ... 19671
531 ... 19973
556 ... 20287
561 ... 20360
569 ... 19973

PROPOSED RULES:
207 ... 19515
220 ... 19515
221 ... 19515
226 ... 19706
541 ... 20311
545 ... 20311
700 ... 20247, 20373

13 CFR

120 ... 19572
121 ... 20671
301 ... 20360
305 ... 20151, 20152

PROPOSED RULES:
114 ... 19707
121 ... 20705

14 CFR

39 ... 19359, 19360, 19493–19496, 19572, 19573, 19671, 19672, 20033, 20152, 20219, 20417, 20672
71 ... 19302–19304, 19360, 19361, 19496, 19573–19576, 19904–19906, 20034–20036, 20153, 20219, 20363–20366, 20418, 20673, 20674
73 ... 20036, 20366
75 ... 19672, 19906, 20036, 20366, 20579
93 ... 19673
95 ... 19673
97 ... 19248, 19677, 20153, 20418, 20579
121 ... 19361
135 ... 20036
207 ... 20366
221 ... 19974

14 CFR—Continued

Page

244 ... 20154
249 ... 20579
296 ... 20155
297 ... 20156
302 ... 19678
385 ... 20291
399 ... 20157
1204 ... 20219
1241 ... 20580

PROPOSED RULES:

1 ... 19506
37 ... 20441
39 ... 19392, 19507, 19912, 20307
43 ... 19507
61 ... 19393
67 ... 19393, 19396
71 ... 19321, 19398, 19399, 19614–19617, 19704, 19705, 19913, 20047–20051, 20372, 20703, 20704
73 ... 19321, 19322
75 ... 20051
91 ... 19507, 20444
121 ... 19393
123 ... 19506
127 ... 19393
135 ... 19507
183 ... 19393
207 ... 19515, 20372
208 ... 19515, 20372
212 ... 19515, 20372
214 ... 19515, 20372
221 ... 20309
223 ... 19399
228 ... 19914
372 ... 19515, 20372
399 ... 20309

15 CFR

374 ... 19437
376 ... 19437
379 ... 19437

PROPOSED RULES:

7 ... 19406

16 CFR

13 ... 19679–19693, 20584–20596

PROPOSED RULES:

434 ... 20185

17 CFR

200 ... 20037, 20367
231 ... 19362
241 ... 19362
249 ... 19363, 20504
274 ... 19363, 20504

PROPOSED RULES:

270 ... 19516

18 CFR

301 ... 20423
304 ... 20423

PROPOSED RULES:

101 ... 19443, 20174, 20445
104 ... 19443, 20174, 20445
105 ... 19443, 20174
125 ... 20052
141 ... 19443, 20174
154 ... 20174
201 ... 19443, 20174, 20445
204 ... 19443, 20174, 20445
205 ... 19443, 20174
225 ... 20052
260 ... 19443, 19515, 20174
601 ... 20373

19 CFR

Page

4 ... 19693
18 ... 20291
153 ... 20220

PROPOSED RULES:

4 ... 20697
6 ... 19598, 20697

20 CFR

405 ... 19249, 20675
625 ... 20419

PROPOSED RULES:

405 ... 20165

21 CFR

2 ... 19496
3 ... 20037
29 ... 20292
121 ... 19363, 20430, 20432, 20685
135 ... 19497, 20686
135 ... 20686
135c ... 19497, 19576, 20368, 20432
135e ... 19497, 20432, 20685
141 ... 20222
141a ... 19694, 20686
141c ... 20597, 20686
141d ... 20510
141e ... 19694, 20686
144 ... 20433
145 ... 20223
146a ... 19694, 19695, 20686
146c ... 19694, 20597, 20686
146d ... 20510
146e ... 19694, 20598, 20686
147 ... 20223
148i ... 19694, 20686
148n ... 20598, 20686
148p ... 20686
148r ... 19695, 20686
151a ... 20223
301 ... 20686
303 ... 20038
308 ... 20686
420 ... 19251, 19695, 20158, 20687, 20688

PROPOSED RULES:

1 ... 19978
3 ... 19978
19 ... 19703
121 ... 20306, 20534
131 ... 20534
135e ... 20534
144 ... 20534
165 ... 20306
191 ... 19391, 19980
295 ... 19703, 20046, 20534
420 ... 19268

22 CFR

41 ... 19304, 19907

23 CFR

15 ... 20220

24 CFR

8 ... 20688
71 ... 20504
241 ... 20038
1914 ... 19908, 19975, 20225, 20508
1915 ... 19909, 19975, 20225, 20509

PROPOSED RULES:

200 ... 19316, 19320
203 ... 19703
610 ... 20700

25 CFR

Page

41 ... 19251
43g ... 20226

26 CFR

1 ... 19251, 20039
31 ... 20510, 20598
147 ... 19251
301 ... 20510, 20599

PROPOSED RULES:

1 ... 19256, 19371, 19598, 19702, 20164, 20233, 20517
15 ... 20233
201 ... 20045
301 ... 19371, 20164, 20517

28 CFR

0 ... 20428

PROPOSED RULES:

48 ... 20435

29 CFR

5 ... 19304
5a ... 19305
9 ... 19576
55 ... 19364
1601 ... 20600
1610 ... 20600
2001 ... 19580

PROPOSED RULES:

1518 ... 19266
1910 ... 19266, 20305

30 CFR

75 ... 19497, 19583, 20227
90 ... 20600, 20696
400 ... 20730

PROPOSED RULES:

55 ... 20045
56 ... 20045
57 ... 20045
75 ... 20607, 20698, 20699
77 ... 20699

31 CFR

316 ... 20299

32 CFR

591 ... 20677
593 ... 20679
594 ... 20679
595 ... 20682
596 ... 20682
597 ... 20682
598 ... 20683
600 ... 20683
601 ... 20683
602 ... 20684
606 ... 20684
612 ... 20684

PROPOSED RULES:

1499 ... 20537

32A CFR

OEP (Ch. I):
ES Reg. 1:
Circ. 18 ... 19311
Circ. 19 ... 19440
Circ. 20 ... 20042
Circ. 21 ... 20300
Circ. 22 ... 20433
Circ. 102 ... 20482

33 CFR

Page

110 ... 20603
117 ... 19694, 20159, 20227, 20228
147 ... 19498
207 ... 20511

PROPOSED RULES:

26 ... 20306
117 ... 19391, 19392, 19704, 19980–19982

36 CFR

7 ... 20511
50 ... 20511

PROPOSED RULES:

2 ... 19388
5 ... 19976
7 ... 19976, 20534
212 ... 20247
221 ... 19506

37 CFR

PROPOSED RULES:

2 ... 19315

38 CFR

2 ... 19974
13 ... 20676
21 ... 19252

39 CFR

123 ... 19974
211 ... 19472
212 ... 19473
213 ... 19475
222 ... 19476
223 ... 19480
235 ... 19483
619 ... 20332, 20513
821 ... 19484

41 CFR

1–15 ... 19365
3–1 ... 19586
4–4 ... 20512
4–5 ... 20512
5A–16 ... 20428
5A–73 ... 20428
3–4 ... 19695, 20039
6–1 ... 20512
6–3 ... 20512
6–6 ... 20513
8–52 ... 19499
8–75 ... 19696
8–95 ... 19696
9–12 ... 19365
14–2 ... 19438
14–18 ... 19438

41 CFR—Continued

Page

15–2 ... 19501, 20429
50–201 ... 20676
60–3 ... 19307
101–19 ... 19366
101–26 ... 19906
101–30 ... 20292
101–42 ... 19367
101–47 ... 20676
114–25 ... 20603
114–26 ... 19502
114–38 ... 20293

42 CFR

21 ... 20159
73 ... 20160
420 ... 20513

PROPOSED RULES:

78 ... 19607

43 CFR

PUBLIC LAND ORDERS:

1545 (revoked in part by PLO 5138) ... 20515
1843 (revoked in part by PLO 5141) ... 20516
3272 (see PLO 5138) ... 20515
3878 (see PLO 5138) ... 20515
4754 (see PLO 5138) ... 20515
4797 (see PLO 5138) ... 20515
5133 ... 20228
5134 ... 20514
5135 ... 20514
5136 ... 20514
5137 ... 20514
5138 ... 20515
5139 ... 20515
5140 ... 20515
5141 ... 20516

45 CFR

116 ... 20014
177 ... 20161
1201 ... 19697

PROPOSED RULES:

101 ... 20612
1201 ... 19400, 20248

46 CFR

45 ... 19253
221 ... 20228
381 ... 19253, 19367

PROPOSED RULES:

146 ... 20165
381 ... 20164
530 ... 19982
545 ... 19982

47 CFR

Page

0 ... 19438, 19586, 20229, 20230
1 ... 19438, 19591, 20230
2 ... 19588, 20694
13 ... 19440
21 ... 20694
73 ... 19310, 19591, 20368
74 ... 19591, 19974, 20230, 20694
81 ... 19503
87 ... 19503
89 ... 19367, 19504, 20040
91 ... 19367, 19588, 20694
93 ... 19367, 19504
95 ... 19367, 19588

PROPOSED RULES:

2 ... 19916
21 ... 19323, 19916
73 ... 19442, 19618, 20534–20536
74 ... 19442
89 ... 19916
91 ... 19916

49 CFR

1 ... 19593, 20162
25 ... 19369
173 ... 19370, 20604
177 ... 19370
213 ... 20336
393 ... 20297
395 ... 20368
567 ... 19593
568 ... 19593
571 ... 19254, 20369
575 ... 19310
1033 ... 19370, 20430
1048 ... 19909

PROPOSED RULES:

172 ... 20166
173 ... 20166, 20173
179 ... 20166, 20705
232 ... 20308
567 ... 19617
571 ... 19266, 19705, 20705
575 ... 19617
1048 ... 20705
1322 ... 20706

50 CFR

10 ... 19910
28 ... 19698, 20299
32 ... 19311, 19370, 19594, 19910, 20041, 20042, 20162, 20163, 20299, 20370, 20371, 20516
33 ... 20371
259 ... 19699

LIST OF FEDERAL REGISTER PAGES AND DATES—OCTOBER

Pages	*Date*
19237–19291	Oct. 1
19293–19351	2
19353–19430	5
19431–19484	6
19485–19564	7
19565–19660	8
19661–19893	Oct. 9
19895–19953	13
19955–20017	14
20019–20129	15
20131–20205	16
20207–20277	19
20279–20343	Oct. 20
20345–20410	21
20411–20496	22
20497–20568	23
20569–20640	27
20641–20733	28

federal register

THURSDAY, OCTOBER 28, 1971
WASHINGTON, D.C.

Volume 36 ■ Number 208

PART II

FEDERAL METAL AND NONMETALLIC MINE SAFETY BOARD OF REVIEW

Procedural Regulations

Title 30—MINERAL RESOURCES

Chapter IV—Federal Metal and Nonmetallic Mine Safety, Board of Review

PART 400—PROCEDURAL REGULATIONS

Amendment of Proposed Procedural Regulations

On September 1, 1971, notice of proposed rule making containing rules of procedure for the Federal Metal and Nonmetallic Mine Safety Board of Review was published in the FEDERAL REGISTER, and interested persons were invited to comment thereon within 30 days. After consideration of the comments received, the rules of procedure as proposed are hereby adopted, subject to the following changes:

1. In paragraph (a) of § 400.5, the period ending the paragraph is removed and the following is added to the paragraph, "and a copy to the District Manager of the Metal and Nonmetal Mine Safety District office of the district where the mine is located."

2. In paragraph (e) of § 400.5, the word "receipt" is changed to "receipts" and the word "a" is deleted in the second line.

3. In paragraph (c) of § 400.38, the semicolon following the word "hearing" is changed to a period and the portion of the paragraph after the word "hearing" is deleted.

4. In paragraph (a) of § 400.57, after the words "Upon making a finding and order the Board shall cause" the paragraph is changed by inserting the words "a true copy thereof to be sent by registered mail or by certified mail to all parties or their attorneys of record. The Board shall cause".

Effective date. These amendments are effective upon the date of publication in the FEDERAL REGISTER (10–28–71).

JUBAL HALE,
Executive Secretary.

Subpart A—General

Subpart B—Initiation of Proceedings and Preliminary Matters

Subpart C—Hearings

Subpart D—Operation of the Board and the Making of Final Orders

Subpart E—Appeals

AUTHORITY: The provisions of this Part 400 issued under subsection 10(h) of the "Federal Metal and Nonmetallic Mine Safety Act" of 1966 (80 Stat. 779; 30 U.S.C. 729(h)).

Subpart A—General

§ 400.1 Definitions.

As used in this chapter:

"Act" means the Federal Metal and Nonmetallic Mine Safety Act of 1966 (80 Stat. 772; 30 U.S.C. 721–40). Section numbering used in the text of these regulations is as in Statutes at Large. U.S.C. citations are included parenthetically.

"Applicant" means the operator filing an application.

"Application" means an application of an operator to have an order made pursuant to section 8 or section 9 of the act (30 U.S.C. 727, 728) reviewed by the Board.

"Board" means Federal Metal and Nonmetallic Mine Safety Board of Review.

"Mine" has the meaning set out in section 2 of the act (30 U.S.C. 721).

"Operator" has the meaning set out in section 2 of the act (30 U.S.C. 721).

"Operator appointee" means an appointee to the Board whose background and experience made him representative of the viewpoint of metal and nonmetallic mine operators, as required by subsection 10(c) of the act (30 U.S.C. 729(c)).

"Respondent" means the Secretary responding to the filing of an application.

"Secretary" has the meaning set out in section 2 of the act (30 U.S.C. 721).

"Worker appointee" means an appointee to the Board whose background and experience made him representative of the viewpoint of metal and nonmetallic mine workers as required by subsection 10(c) of the act (30 U.S.C. 729(c)).

§ 400.2 Scope and descriptive guidelines.

(a) These regulations shall govern proceedings under section 11 of the act (30 U.S.C. 730) to have orders issued pursuant to section 8 or section 9 of the act (30 U.S.C. 727, 728) reviewed by the Board.

(b) These regulations are to be construed and applied to achieve the objectives set forth in subsection 11(i) of the act (30 U.S.C. 730(i)) which provides inter alia, "In view of the need for prompt decision * * * all action * * * shall be taken as rapidly as practicable consistent with adequate consideration of the issues involved."

§ 400.3 Parties; intervention.

(a) The parties to any proceeding shall be the operator, who shall be designated as the applicant, and the Secretary, who shall be the respondent.

(b) The Board may in its discretion grant to any interested person, worker, or the collective bargaining agent affected by an order being reviewed the right to intervene and to participate in the review proceeding to the extent and in the manner the Board deems proper. However, issues may not be enlarged beyond those established by the operator's application, nor shall unreasonable delay or prolonging of proceedings be permitted. Intervention may be permitted at any time on motion, but an opportunity to meet all evidence presented will be given.

§ 400.4 Filing and form of documents.

(a) *Where to file.* All initial pleadings or documents in a proceeding described in this part shall be filed with the Federal Metal and Nonmetallic Mine Safety Board of Review, 1875 Connecticut Avenue NW., Suite 707, Washington, DC 20009. If a proceeding has been assigned for hearing, as these regulations elsewhere provide, the parties may be notified of a different filing address; however, in any event, any papers filed at the above address will be promptly forwarded, and either address will be a proper place of filing.

(b) *When filed.* A document is filed only when received at a proper place of filing before 5 p.m.

(c) *Number of copies.* Except as otherwise provided, a party shall furnish an original and two copies of all documents filed.

(d) *Caption, title, and signature.* (1) All documents filed shall be captioned in the name of the operator of the mine to which the proceeding relates and in the name of the mine. After a docket number has been assigned to the proceeding, the caption shall contain such docket number. The caption may include the other information appropriate for identification of the proceeding.

(2) After the caption each such document shall contain a title which shall be descriptive of the document and which shall identify the party by whom the document is submitted.

(3) The original of all documents filed shall be signed at the end by the parties submitting the document, or, if the party is represented by an attorney, by such attorney. The address of the party or the attorney shall appear beneath the signature.

(e) *Retention of documents.* All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding will be retained with the official record of the proceeding. However, the withdrawal of original documents may be permitted while the case is pending before the Board upon the submission of true copies in lieu thereof. When a decision

has become final and no longer appealable, the 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 condition of granting permission for such withdrawal.

§ 400.5 Service; posting.

(a) The application for review shall be served upon the respondent by sending a copy of said document by registered or certified mail, return receipt requested, to the Secretary of the Interior, c/o Office of the Solicitor, 18th and C Streets NW., Washington, DC 20240 and a copy to the District Director of the Metal and Nonmetal Mine Safety District Office of the district where the mine is located.

(b) Copies of all documents filed in any proceeding shall be served on the parties. All documents filed subsequent to the application for review may be served by personal service or by first class mail, unless otherwise ordered by the Board. Service by mail is complete upon mailing.

(c) Whenever a party is represented by an attorney who has signed a document filed on behalf of such party or otherwise enters an appearance on behalf of such party, service thereafter shall be made on the attorney.

(d) A copy of any application for review filed by an operator shall be posted on the bulletin board at the mine affected at the time it is filed, and all notices of time and place of hearing shall be similarly posted by the operator promptly on their receipt; if there is no mine bulletin board, the above documents shall be posted at a conspicuous place in the mine area.

(e) An operator initiating proceedings under these rules shall file return receipts as proof of service of the original application for review. A certificate of service shall accompany all documents filed; the certificate accompanying an application shall also include a statement that the application has been posted, as required by paragraph (d) of this section.

§ 400.6 Motions.

(a) Oral motions may be permitted during the course of a hearing, otherwise motions shall be in writing. Motions may be supported with documentary evidence including affidavits, transcripts of oral deposition, and answers to interrogatories.

(b) Unless otherwise ordered by the Board, a statement of opposition to a motion, supported by documentary evidence if desired, may be filed and served within 10 days of date of service. Unless requested by the Board, oral arguments on motions will not be permitted.

§ 400.7 Transcripts of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested, costs of transcripts to be borne by the requesting person(s). If the reporting is done pursuant to contract between the reporter and the Board, fees for transcripts will be at rates established by the contract.

§ 400.8 Subpoena power and witnesses.

(a) Any member of the Board may sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. The Executive Secretary may sign and/or issue subpoenas as provided in § 400.56(c).

(b) Subpoenas may be served by any person who is not a party and is not less than 18 years of age. The original subpoena bearing a certificate of service shall be filed with the Board.

(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 either 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.

§ 400.9 Time.

(a) *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.

(b) *Extensions of time.* A hearing date or the time for filing or serving any document may, on good cause shown, be extended by the Board, except for the time for filing a notice of appeal. A request for an extension of time must be filed within the time allowed for the filing or serving of the document.

Subpart B—Initiation of Proceedings and Preliminary Matters

§ 400.20 Application of operators.

(a) An operator notified of an order made pursuant to section 8 of the act (30 U.S.C. 727) may apply to the Board for annulment or revision of such order without seeking its annulment or revision under section 9 of the act (30 U.S.C. 728). An operator notified of an order made pursuant to section 9 of the act (30 U.S.C. 728) may apply to the Board for annulment or revision of such order. The operator must apply in writing and the application must meet the requirements of these rules as to filing, form, and manner of service and posting.

(b) The operator shall be designated as the applicant in such proceeding and the Secretary as the respondent. The application shall recite the order complained of and other facts sufficient to advise the Board of the nature of the proceeding. He may allege in such application:

(1) That danger as set out in such order does not exist at the time of filing of such application,

(2) That violation of a mandatory safety standard, as set out in such order, has not occurred,

(3) That such violation has been totally or partially abated,

(4) That the period of time within which such violation should be totally abated, as fixed in the findings upon which such order was based, was not reasonable, or

(5) That the area of the mine described in such order is not so affected at the time of the filing of such application.

§ 400.21 Time and place of hearing.

Immediately upon the filing of an application, the Board shall fix the time for the prompt hearing thereof. As soon thereafter as necessary arrangements are completed, the Board shall fix the place for such hearing. Prompt notice of the time and place of the hearing will be given the parties.

§ 400.22 Answer.

Within 10 days of service of an application on him, unless otherwise ordered by the Board, the respondent shall file and serve upon the applicant an answer to applicant's application. The answer shall be in sufficient factual detail to informatively meet the allegations contained in the application.

§ 400.23 Temporary relief.

Pending a hearing on the merits, the applicant may file with the Board a written request that the Board grant such temporary relief from an order issued pursuant to section 8 or section 9 of the act (30 U.S.C. 727, 728) as the Board may deem just and proper. Such temporary relief may be granted by the Board only after a hearing by the Board at which both the parties were afforded an opportunity to be heard, and only after ample notice was given to respondent of the filing of applicant's request and of the time and place of the hearing thereon as fixed by the Board.

§ 400.24 Accelerated procedure.

The applicant may file a written request based on extreme urgency to have proceedings under these rules accelerated and have the Board undertake to have the applicant's application heard and determined without regard to its normal position on the docket. Said request shall set forth:

(a) The reasons for urgency which shall include the number of workers, if any, which have been withdrawn from an affected area of the mine pursuant to the order under review and who are not at work elsewhere in the mine.

(b) How soon the applicant will be prepared to appear at a hearing on the merits, and (1) does the applicant wish to take oral depositions or serve interrogatories and (2) does the applicant feel that the filing of an answer by the respondent is necessary to his adequate preparation, and will he waive the filing of an answer.

(c) Such other matter as the applicant wishes to put in his petition. Proceedings will be accelerated to the extent the Board in its discretion feels the objectives of the act will be furthered, but no case will be unreasonably delayed to accelerate another and in no case will there be a hearing on the merits with less than 5 days' notice to the parties.

§ 400.25 Depositions.

(a) *When permitted:* The Board may, for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories for use as evidence for the purpose of discovery.

(b) *Order on depositions:* Unless otherwise stipulated by the parties when a deposition of a party is taken, the time, place, and manner of taking depositions shall be governed by the order of the Board.

(c) Written notice of the name of a witness and the time and place of taking his deposition must be served by the party taking such deposition on the other party 5 days prior to taking such deposition unless a different time is ordered by the Board.

§ 400.26 Interrogatories and production of documents.

(a) Either party may serve written interrogatories or a request for admission of facts upon the other party to a proceeding brought under these rules.

(b) A party served with written interrogatories shall answer such interrogatories within 15 days of service unless the proponent of the interrogatories agrees to a longer time or unless the Board by order specifies a different time or excuses the party from answering on good cause shown.

(c) For good cause shown, the Board may order a party to produce and permit inspection and copying or photographing of designated documents relevant to the proceeding.

Subpart C—Hearings

§ 400.36 General.

Hearings shall be conducted by the Board, or a panel of one or more members of the Board, at such time and place as the Board may order.

§ 400.37 Nature of hearings.

All hearings held under this act shall be public. Hearings will be recorded verbatim, and concise opening and closing statements may be made, before and after the presentation of evidence, and will be recorded. Briefs, and/or oral arguments (in addition to the aforementioned closing statements) may be presented to the Board prior to its rendering a decision only if the Board in its discretion so permits.

§ 400.38 Panel.

(a) The Chairman of the Board, with the concurrence of at least two members, including one worker appointee and one operator appointee, may order that a hearing be conducted by a panel of one or more members of the Board. The hearing will be conducted in a manner similar to a hearing before the Board, and the panel may:

(1) Rule on offers of proof and receive relevant evidence,

(2) Take depositions or have depositions taken when the ends of justice would be served,

(3) Regulate the course of the hearing,

(4) Hold conferences for settlement or simplification of the issues,

(5) Dispose of procedural request or similar matters,

(6) Rule on motions to intervene.

(b) The panel shall submit the transcript of such hearing to the entire Board for its action thereon.

(c) The order appointing the panel to hear a case shall designate the member of the panel who is to preside at a hearing.

(d) If a hearing is being conducted by the Board and all of its members are not present, it may at any time declare itself to be a panel and proceed accordingly.

§ 400.39 Preliminary rulings; different filing address.

(a) At any time after the filing of an application by an operator, the Chairman, with the concurrence of two other members of the Board, may designate a member of the Board to rule on preliminary matters related to the conducting of any hearing in that case, including motions for the taking of depositions, requests for the production of documents, requests for pretrial conferences, and the granting of continuances.

(b) If the Board believes that proceedings will be expedited, it may designate an address for the filing of documents different from that set out in § 400.4(a).

§ 400.40 Evidence and official notice.

(a) Any relevant evidence may be received in a hearing; however, the Board in its discretion may exclude evidence which is unreliable or unduly repetitious.

(b) The Board shall not make or cause to be made any inspection of a mine for the purpose of determining any pending application for review; however, the Board may require or receive evidence in addition to that offered by the parties. Such evidence must be presented at a public hearing in the particular case in which it is to be considered and all parties shall be given a chance to cross-examine or rebut such evidence.

(c) Any party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full disclosure of the facts.

(d) Official notice may be taken of any matter of which courts take judicial notice or any matter which is of general knowledge within a mining industry or trade or profession thereof and such general matter as is capable of being readily verified.

(e) The Board shall not be bound by any previous findings of fact by the respondent. If the respondent claims that imminent danger or violation of a mandatory safety standard, as set out in such order, existed at the time of the filing of the application, the burden of proving the then existence of such danger or violation shall be upon the respondent, and the respondent shall present his evidence first to prove the then existence of such danger or volation. Following presentation of respondent's evidence, the applicant may present his evidence, and thereupon the respondent may present evidence to rebut the applicant's evidence.

§ 400.41 Consolidation of proceedings.

The Board may at any time, with the concurrence of the parties, order a proceeding described in these rules consolidated with any other such proceeding then pending before the Board which involves the same applicant or similar issues of law or fact.

§ 400.42 Waiver of hearing upon the stipulation of the parties.

A hearing may be waived and the case submitted to the Board for decision upon the record, including any stipulation of facts entered into by the parties; however, if the Board determines that the case presents factual issues which require a hearing, the case will again be set for a hearing.

§ 400.43 Summary decision.

At any time prior to a hearing on the merits, a party may file a written motion for a summary decision disposing of all or part of a pending case. Such motion must clearly show that there is no issue of fact for the Board to decide and the Board's decision shall be based on the entire record of the case, including any documents filed with such motion and any that may be filed with a statement in opposition to the motion.

Subpart D—Operation of the Board and the Making of Final Orders

§ 400.53 Principal office.

The principal office of the Board shall be at 1875 Connecticut Avenue NW., Suite 707, Washington, DC 20009. Whenever the Board deems that the convenience of the public or of the parties may be promoted or delay or expenses may be minimized, it may hold hearings or conduct proceedings at any other place.

§ 400.54 Members and staff.

(a) The Board consists of a Chairman and four (4) other members appointed by the President with the advice and consent of the Senate.

(b) The staff of the Board shall consist of an Executive Secretary and such

legal counsel and other personnel the Board deems necessary in exercising its powers and duties.

§ 400.55 Quorum; convening; records.

(a) Three members of the Board shall constitute a quorum, and official actions of the Board shall be taken on the affirmative vote of at least three members.

(b) The Board shall convene with such frequency and at such time and place as is required to efficiently handle the cases before it. The Chairman of the Board will convene the Board, and, when present, will preside at all proceedings or appoint another member to do so. The Chairman will convene the Board at a time and place that a quorum may be assembled and on such notice, if any, he believes the exigencies of the situation permit. Notice of the time, place, and purpose of convening will be given promptly to all members of the Board by the Executive Secretary pursuant to instructions from the Chairman. When any two members call for a meeting of the Board, the Chairman will attempt to convene the Board as herein described.

(c) Except for the purpose of making such findings and orders as are described in subsections 11(f) and 11(g) of the act (30 U.S.C. 730(f), 730(g)), or for the holding of a hearing, the Chairman may convene the Board via telephone by placing a long distance conference call to all members of the Board. At least a quorum of the Board must be in simultaneous communication for the Board to be convened and meetings will be conducted similarly to those when the members are in each other's physical presence.

(d) Every official act of the Board shall be entered of record, and its records shall be open to the public.

§ 400.56 Executive secretary.

The Executive Secretary of the Board:

(a) Shall keep custody of, and an adequate index system for, the case files and other records of the Board.

(b) Shall keep the members of the Board informed of the pending business before the Board as such is filed.

(c) May:

(1) Fix the time and/or place for hearings,

(2) Rule on motions for the taking of depositions or production of documents and make any order necessary to effectuate such ruling,

(3) Order parties to appear at preliminary conferences prior to hearing,

(4) Sign and/or issue subpoenas.

The above powers shall be exercised only pursuant to instructions from the Board, but the Executive Secretary may consult with individual members of the Board concerning matters necessary for scheduling or relating to personal availability for a hearing date.

(d) Shall answer correspondence.

(e) Shall take custody of the official seal of the Board and perform such administrative or clerical functions as are necessary for the operation of the Board. The foregoing powers and duties shall be exercised by an alternate designated by the Board when the Executive Secretary is unavailable to exercise them.

§ 400.57 Findings; orders and opinions.

(a) The Board in any proceedings before it may make such findings and orders as are described in subsections 11(f) and 11(g) of the act (30 U.S.C. 730(f), 730(g)). Each finding and order made by the Board shall be in writing. It shall show the date on which it is made, and shall bear the signatures of the members of the Board who concur therein. Upon making a finding and order, the Board shall cause a true copy thereof to be sent by registered mail to all parties or their attorneys of record. The Board shall cause each such finding and order to be entered on its official record, together with any written opinion prepared by any members in support of, or dissenting from, any such finding or order.

(b) Before reaching a final decision, the Board in its discretion may submit a tentative decision to the parties for comment, request filing of briefs and/or oral argument, or may order that further hearings be held.

(c) Unless the Board orders otherwise, the filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

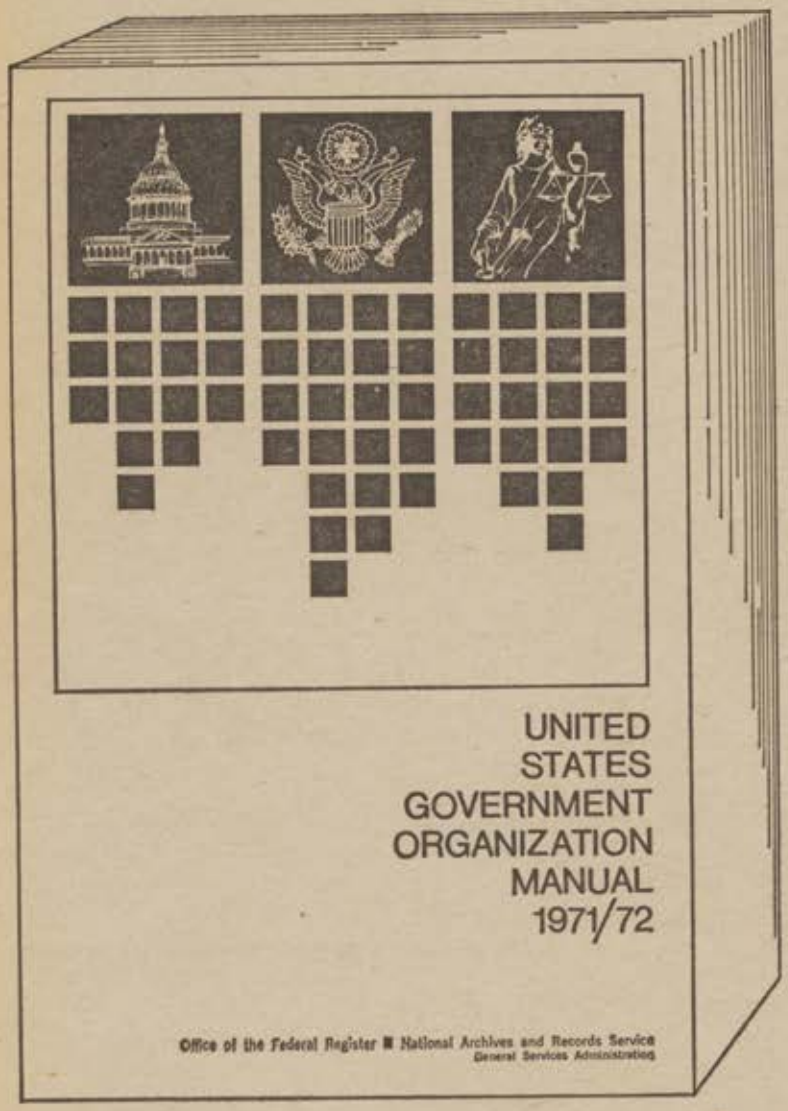
Subpart E—Appeals

§ 400.70 Appeals.

Any final order issued by the Board shall be subject to judicial review by the U.S. Court of Appeals for the circuit in which the mine affected is located, upon the filing in such court of a notice of appeal by the Secretary or the operator aggrieved by such final order within 30 days from the date of the making of such final order. The procedure for making such appeal is set forth in section 12 of the act (30 U.S.C. 731).

[FR Doc.71-15649 Filed 10-27-71;8:49 am]

Know your Government...



The Manual describes the creation and authority, organization, and functions of the agencies in the legislative, judicial, and executive branches.

Most agency statements include new "Sources of Information" listings which tell you what offices to contact for information on such matters as:

- Consumer activities
- Environmental programs
- Government contracts
- Employment
- Services to small businesses
- Availability of speakers and films for educational and civic groups

This handbook is an indispensable reference tool for teachers, students, librarians, researchers, businessmen, and lawyers who need current official information about the U.S. Government.

Order from
SUPERINTENDENT OF DOCUMENTS
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402

$3.00 per copy.
Paperbound, with charts