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PART 53—LIVESTOCK, MEATS, PREPARED MEATS AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

Subpart B—Standards

STANDARDS FOR GRADES OF VEAL AND CALF CARCASSES; VEALERS AND SLAUGHTER CALVES

On August 7, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 14650) proposing to amend (1) the standards for grades of veal and calf carcasses (7 CFR 53.107–53.111), and (2) the standards for grades of vealers and slaughter calves (7 CFR 53.120–53.124). A 90-day period was provided within which interested persons could submit written data, views, or arguments concerning the proposal.

Statement of considerations. Nine comments on the proposed revision were received. Six favored and three opposed its adoption. Comments received favoring the proposal included one from the Western States Meat Packers Association in behalf of its members who slaughter vealers and calves, one from the National Livestock Producers Association, one from a State Department of Agriculture, two from university meat and animal scientists, and one was from a producer of "formula milk" fed calves. The three opposing comments were from individuals. These reflected essentially the same view—that the proposed reduction in the requirements for the various grades was not in the best interest of consumers. The Department believes, however, that the proposed change is in the overall interest of consumers. In this instance, definite changes have occurred in the production of veal and calf over a long period of time. As a result, only a small percentage now qualifies for the higher grades—Choice or Prime. The revision will make sufficient quantities eligible for the higher grades so that the grades can become useful in merchandising and also serve consumers as guides in their selection of veal and calf at retail.

A primary purpose of Federal grading is to provide a nationally uniform means for identifying differences in quality for use at all stages of marketing. Grading thus provides a means for reflecting consumers' preferences for different levels of quality back through the marketing channels to the producer. This enables producers to better plan their production and marketing programs to reflect consumers' preferences. It appears to the Department, therefore, that if the grades for veal and calf are to make a contribution to the efficient marketing of veal and calf, it is necessary that the standards be revised along the lines proposed.

Therefore, under the authority conferred by the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624), the Official U.S. Standards for Grades of Veal and Calf Carcasses; and the Official U.S. Standards for Grades of Vealers and Slaughter Calves appearing in 7 CFR 53.107, et seq. and 7 CFR 53.120, et seq. are revised as proposed (F.R. Doc. 71–11233), except for the following change:

Subparagraph (1) of § 53.124(d) is changed by deleting the fourth sentence "Standard grade calves tend to be low in quality."

It is not intended that this change should make any change in the application of the standards from that intended under the proposal. Therefore, in accordance with the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that further rulemaking procedure is unnecessary.

Accordingly the standards are changed as follows:

1. Sections 53.107, 53.108, 53.109, 53.110, and 53.111 are renumbered as §§ 53.108, 53.109, 53.110, 53.111, and 53.112, respectively.

2. A new § 53.107 is promulgated and renumbered §§ 53.108, 53.109, 53.110, 53.111, and 53.112 are revised, to read, respectively, as follows:

§ 53.107 Scope.

These standards for grades of veal and calf are applicable to the grading of carcasses, sides, hindsaddles, hindquarters, foresaddles, and forequarters, and to the following primal wholesale cuts—legs, loins, racks, and shoulders. However, throughout these standards wherever the words "carcass" or "carcasses" are used these are intended to also mean such parts of carcasses and primal wholesale cuts.

§ 53.108 Differentiation between veal, calf, and beef carcasses.

Differentiation between veal, calf, and beef carcasses is made primarily on the basis of the color of the lean, although such factors as texture of the lean; character of the fat; color, shape, size, and ossification of the bones and cartilages; and the general contour of the carcass are also given consideration. Typical veal carcasses have a grayish pink color of lean that is very smooth and velvety in texture and they also have a slightly soft, pliable character of fat and marrow, and very red rib bones. By contrast, typical calf carcasses have a grayish red color of lean, a flakier type of fat, and somewhat wider rib bones with less pronounced evidences of red color. Calf carcasses with maximum maturity for their class have lean flesh that is usually not more than moderately red in color, their rib bones usually have a small amount of red and only a slight tendency toward flatness, and such carcasses are not noticeably "spready" or barrelly" in contour. Such carcasses, when split, have cartilages on the ends of the chine bones that are entirely cartilaginous, there is cartilage in evidence on all vertebrae of the spinal column, and the sacral vertebrae show distinct separation. Carcasses with evidences of more advanced maturity than described in this paragraph are classified as beef. Carcasses not classified as beef but whose color of lean is not comparable with their other evidences of maturity shall be classed as veal or calf in accordance with the following:

(a) Carcasses whose indications of maturity other than color of lean are within the veal class but whose color of lean is darker than dark grayish pink shall be classed as calf.

(b) Carcasses whose evidences of maturity other than color of lean are within the range included in the calf class shall be classed as veal provided they have a correspondingly lighter color of lean within the darker one-half of the range of color included in the veal class. For example, a carcass whose evidences of maturity other than color of lean are midway within the range of the calf class shall be classed as veal if its color of lean is not darker than midway within the darker one-half of the range of color included in the veal class.

(c) Carcasses with color of lean within the lighter one-half of the veal class shall be classed as veal provided their other evidences of maturity do not exceed that associated with the juncture of the calf and beef classes.

§ 53.109 Classes of veal and calf carcasses.

Class determination is based on the apparent sex condition of the animal at time of slaughter. Hence, there are three classes of veal and calf carcasses—steers, heifers, and bulls. While recognition may sometimes be given to these different classes on the market, especially calf carcasses from bulls that are approaching beef in maturity, the characteristics of such carcasses are not sufficiently different from those of steers and heifers to warrant the development of separate standards for them. Therefore, the grade standards which follow are equally applicable to all classes of veal and calf carcasses.

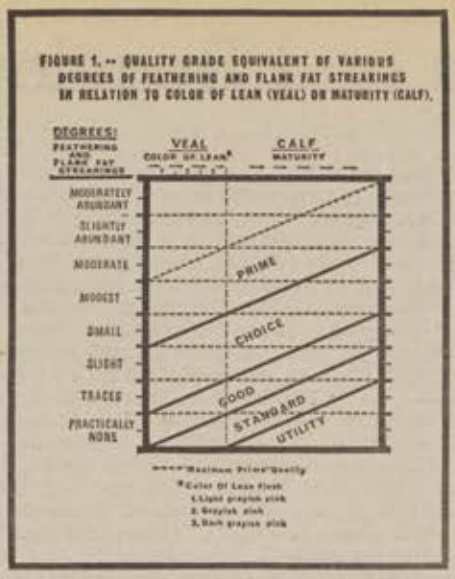
§ 53.110 Application of standards.

(a) Veal and calf carcasses are graded on a composite evaluation of two general grade factors—conformation and quality. These factors are concerned with the proportions of lean, fat, and bone in the carcass and the quality of the lean.

(b) Conformation is the manner of formation of the carcass. The conformation descriptions included in each of the grade specifications refer to the thickness and fullness of the carcass and its various parts. Conformation is evaluated by averaging the conformation of the various parts of the carcass, considering not only the proportion that each part is of the carcass but also the general value of each part as compared with other parts. Superior conformation implies a high proportion of meat to bone and a high proportion of the weight of the carcass in the more valuable parts. It is reflected in carcasses which are thickly fleshed and full and thick in relation to their length and which have a plump, well-rounded appearance. Inferior conformation implies a low proportion of meat to bone and a low proportion of the weight of the carcass in the more valuable parts. It is reflected in carcasses which are very thinly fleshed, and very narrow in relation to their length, and which have a very angular, thin, sunken appearance.

(c) Quality of lean—in all veal carcasses, all unribbed calf carcasses, and in ribbed calf carcasses in which their degree of marbling is not a consideration—usually can be evaluated with a high degree of accuracy by giving equal consideration to the following factors, as available: (1) The amount of feathering (fat intermingled within the lean between the ribs) and (2) the quantity of fat streakings within and upon the inside flank muscles. (In making these evaluations, the amounts of feathering and flank fat streakings are considered in relation to color (veal) and maturity (calf).) In addition, however, consideration also may be given to other factors if, in the opinion of the grader, this will result in a more accurate quality assessment. Examples of such other factors include firmness of the lean, the distribution of feathering, the amount of fat covering over the diaphragm or "skirt", and the amount and character of the external and kidney and pelvic fat. In making these evaluations, feathering and flank fat streakings are categorized in descending order of quantity as follows: extremely abundant, very abundant, abundant, moderately abundant, slightly abundant, moderate, modest, small, slight, traces, practically none, and none. Figure 1 depicts the quality grade equivalent of various degrees of feathering and flank fat streakings in relation to color of lean (veal) or maturity (calf). From this figure it can be seen, for example, that the degrees of feathering or fat streakings associated with minimum Choice quality for veal increase from minimum traces for carcasses having the lightest color of lean to maximum traces for carcasses with a dark grayish pink color of lean.

FIGURE 1.—QUALITY GRADE EQUIVALENT OF VARIOUS DEGREES OF FEATHERING AND FLANK FAT STREAKINGS IN RELATION TO COLOR OF LEAN (VEAL) OR MATURITY (CALF).



(d) When grading cuts and marbling is not a requirement and when neither feathering nor flank fat streakings are available, quality is based on the firmness of the lean. The requirements relating to firmness of the lean are described in the specifications for each grade and are based on the following degrees in descending order of firmness: extremely firm, very firm, firm, moderately firm, slightly firm, slightly soft, moderately soft, soft, very soft, and extremely soft. However, no credit is given to additional firmness of lean beyond "maximum slightly firm" in veal or beyond "maximum moderately firm" in calf.

(e) When grading ribbed calf carcasses or portions of such carcasses in which their degree of marbling is a consideration, the quality evaluation of the lean is based entirely on the characteristics of the lean as exposed in a cut surface. The official standards for grades of beef recognize nine different degrees of marbling. In descending order of amount these are as follows: abundant, moderately abundant, slightly abundant, moderate, modest, small, slight, traces, and practically devoid. Illustrations of the lower limits of eight of these nine degrees are available from the Department of Agriculture. These degrees of marbling and their illustrations also are used to describe and evaluate marbling in calf carcasses. Marbling requirements are included in each of the Prime, Choice, and Good grade specifications.

(f) To facilitate the application of the standards, no credit is given to degrees of feathering, flank fat streakings, or marbling beyond those associated with the quality grade equivalent of "Maximum Prime." "Maximum Prime" quality is represented by a development of each of these three factors which is two degrees greater than that specified as minimum for Prime.

(g) The quality indicating requirements referenced in the standards for each grade are based on their development in properly chilled carcasses and, when these relate to a cut surface of the lean, they are based on a cross section of the ribeye muscle between the 12th and 13th ribs. For legs and shoulders, these qualities shall be consistent with their normal development in relation to those specified for the ribeye muscle.

(h) The final grade of a carcass is based on a composite evaluation of its conformation and quality. Conformation and quality often are not developed to the same degree in a carcass and it is obvious that each grade will include various combinations of development of these two characteristics. Examples of how conformation and quality are combined into the final quality grade are included in each of the grade descriptions. However, the principles governing the compensations of variations in development of quality and conformation are as follows: In each of the grades a superior development of quality is permitted to compensate, without limit, for a deficient development of conformation. In this instance the rate of compensation in all grades is on an equal basis—a given degree of superior quality compensates for the same degree of deficient conformation. The reverse type of compensation—a superior development of conformation for an inferior development of quality—is not permitted in the Prime and Choice grades. In all other grades this type of compensation is permitted but only to the extent of one-third of a grade of deficient quality. The rate of this type of compensation is also on an equal basis—a given degree of superior conformation compensates for the same degree of deficient quality.

(i) The colors of lean referenced in the standards reflect only the colors as present in normally developed veal and calf carcasses. They are not intended to apply to colors of lean associated with so-called "dark cutting" veal or calf. This condition does not have the same significance in grading as do the darker shades of pink and red associated with advancing maturity. The dark color of the lean associated with "dark cutting" veal or calf is present in varying degrees from that which is barely evident to so-called "black cutters" in which the lean is actually nearly black in color and usually has a "gummy" texture. Dependent upon the degree to which this characteristic is developed, the final grade of carcasses which otherwise would qualify for the Prime, Choice, or Good grades may be reduced as much as one full grade. In veal or calf otherwise eligible for the Standard grade, the final grade may be reduced as much as one-half grade. In the Utility grade this condition is not considered.

(j) Carcasses qualifying for any particular grade may vary with respect to their relative development of the various grade factors and there will be carcasses which qualify for a particular grade, some of the characteristics of which may be typical of another grade. Because it is impractical to describe the nearly limitless number of such recognizable combinations of characteristics, the standards for each grade describe only a veal or calf carcass which has a relatively similar development of conformation and

quality and which also represents the lower limit of each grade.

§ 53.111 Specifications for official U.S. standards for grades of veal carcasses.

(a) *Prime.* (1) Veal carcasses with minimum Prime grade conformation tend to be moderately wide and thick in relation to their length. They are slightly thick-fleshed and have a slightly plump appearance. Legs are slightly thick and bulging. Loins and backs tend to be moderately full and plump. Shoulders and breasts tend to be moderately thick.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Prime quality for different colors of lean. The lean flesh is slightly firm, regardless of its color.

(3) A development of quality superior to that specified as minimum for the Prime grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Prime at an equal rate as indicated in the following example. A carcass which has midpoint Prime quality may have conformation equal to the midpoint of the Choice grade and remain eligible for Prime. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Prime grade, a carcass must have minimum Prime quality to be eligible for Prime.

(b) *Choice.* (1) Veal carcasses with minimum Choice grade conformation tend to be slightly wide and thick in relation to their length. They tend to be slightly thin-fleshed and have little or no evidence of plumpness. Loins, backs, and legs are slightly thin and nearly flat. Shoulders and breasts tend to be slightly thin.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Choice quality for different colors of lean. The lean flesh is slightly soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Choice grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Choice at an equal rate as indicated in the following example: A carcass which has midpoint Choice quality may have conformation equal to the midpoint of the Good grade and remain eligible for Choice. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Choice grade, a carcass must have minimum Choice quality to be eligible for Choice.

(c) *Good.* (1) Veal carcasses with minimum Good grade conformation are rangy, angular, and narrow in relation to their length. They are thinly fleshed. Legs are thin and tapering and slightly concave. Loins and back are depressed. Shoulders and breasts are thin.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Good quality for different colors of lean. The lean flesh is moderately soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Good grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Good at an equal rate as indicated in the following example: A carcass which has midpoint Good grade quality may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Good grade may qualify for Good with a development of quality equivalent to the lower limit of the upper third of the Standard grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(d) *Standard.* (1) Veal carcasses with minimum Standard grade conformation are very rangy and angular and very narrow in relation to their length. They are very thinly fleshed. Legs are very thin and moderately concave. Loins and backs are very depressed. Shoulders and breasts are very thin.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Standard quality for different colors of lean. The lean flesh is soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Standard grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Standard at an equal rate as indicated in the following example: A carcass which has midpoint Standard quality may have conformation equal to the midpoint of the Utility grade and remain eligibility for Standard. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Standard grade may qualify for Standard with a development of quality equal to the minimum of the upper third of the Utility grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(e) *Utility.* The Utility grade includes those veal carcasses whose characteristics are inferior to those specified as minimum for the Standard grade.

§ 53.112 Specifications for official United States standards for grades of calf carcasses.

(a) *Prime.* (1) Calf carcasses with minimum Prime grade conformation tend to be moderately wide and thick in relation to their length. They are moderately thick-fleshed and have a moderately plump appearance. Legs tend to be moderately thick and bulging. Loins and backs tend to be moderately full and plump. Shoulders and breasts tend to be moderately thick.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Prime quality. The degree of marbling required for minimum Prime quality increases from minimum practically devoid for the very youngest carcasses classified as calf to a maximum moderate amount for carcasses with maturity at the juncture of the calf and beef classes. The lean flesh is moderately firm regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Prime grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Prime at an equal rate as indicated in the following example: A carcass which has midpoint Prime quality may have conformation equal to the midpoint of the Choice grade and remain eligible for Prime. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Prime grade, a carcass must have minimum Prime quality to be eligible for Prime.

(b) *Choice.* (1) Calf carcasses with minimum Choice grade conformation tend to be slightly wide and thick in relation to their length. They tend to be slightly thick-fleshed and have a slightly plump appearance. Legs are slightly thick but have little evidence of plumpness. Loins and backs are very slightly full and plump. Shoulders and breasts are slightly thick.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Choice quality. The degree of marbling required for minimum Choice quality increases from minimum practically devoid for carcasses at midpoint calf maturity to a maximum slight amount for carcasses with maturity at the juncture of the calf and beef classes. Marbling is not required for Choice quality in carcasses which are less than midpoint calf in maturity. The lean flesh is slightly firm regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Choice grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Choice at an equal rate as indicated in the following example: A carcass which has midpoint Choice quality may have conformation equal to the midpoint of the Good grade and remain eligible for Choice. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Choice grade, a carcass must have minimum Choice quality to be eligible for Choice.

(c) *Good.* (1) Calf carcasses with minimum Good grade conformation tend to be rangy, angular, and narrow in relation to their length. They tend to be thinly fleshed. Legs are thin and tapering and very slightly concave. Loins and backs are slightly shallow and depressed. Shoulders and breasts are thin.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Good quality. The minimum degree of marbling required for Good quality decreases from typical traces for carcasses with maturity at the juncture of the calf and beef classes to minimum practically devoid for carcasses midway in maturity within the more mature half of the range

of maturity included in the calf class. In less mature carcasses, marbling is not required for Good quality. The lean flesh is moderately soft regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Good grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Good at an equal rate as indicated in the following example: A carcass which has midpoint Good grade quality may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Good grade may quality for Good with a development of quality equivalent to the lower limit of the upper third of the Standard grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(d) *Standard.* (1) Calf carcasses with minimum Standard grade conformation are rangy, angular, and very narrow in relation to their length. They are very thinly fleshed. Legs are very shallow and depressed. Shoulders and breasts are very thin.

(2) Figure 1 in § 53.110 depicts the degree of feathering and flank fat streakings associated with minimum Standard quality. The lean flesh is soft regardless of maturity.

(3) A development of quality which is superior to that specified as minimum for the Standard grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Standard at an equal rate as indicated in the following example: A carcass which has midpoint Standard quality may have conformation equal to the midpoint of the Utility grade and remain eligible for Standard. Also, a carcass which has conformation at least one-third grade superior to that specified for the minimum of the Standard grade may qualify for Standard with a development of quality equal to the lower limit of the upper third of the Utility grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(e) *Utility.* The Utility grade includes those calf carcasses whose characteristics are inferior to those specified as minimum for the Standard grade.

3. Section 53.120, 53.121, 53.122, 53.123, and 53.124 are revised to read, respectively, as follows:

§ 53.120 Differentiation between vealers and calves.

Young bovine animals are segregated for market purposes as vealers or calves and this differentiation is intended to reflect the kind of carcass (veal or calf) they will produce. The differentiation between veal and calf carcasses is based very largely on the color of their lean and this is determined almost entirely by the extent to which the animal's diet has consisted of milk or a milk replacer. Therefore, the differentiation between vealers and calves is based primarily on evidences of type of feeding and age. Vealers that have subsisted largely on milk usually are less than 3 months of age. However, animals that have been raised on milk replacer rations frequently will be considerably more mature. In no case, though, may such an animal be considered a vealer if its evidences of maturity indicate that it is too mature to be classed as calf. Since vealers have consumed little, if any, roughages, they have the characteristic trimness of middle associated with limited paunch development. Calves are usually between 3 and 8 months of age, have subsisted partially or entirely on feeds other than milk or milk replacers for a substantial period of time, and have developed the heavier middles and other physical characteristics associated with maturity beyond the vealer stage.

§ 53.121 Classes of vealers and calves.

There are three classes of vealers and calves, based on sex condition—steers, heifers, and bulls. While recognition may sometimes be given to these different classes on the market, especially bull calves approaching beef in maturity, the market desirability of all three classes is sufficiently similar to permit them to be graded on the same standards.

§ 53.122 Application of standards.

(a) The grade of a vealer or slaughter calf is determined by a composite evaluation of two general considerations which influence carcass excellence, (1) conformation and (2) fatness, maturity, and other factors responsible for differences in quality of the lean flesh.

(b) Conformation refers to the general body proportions of the animal and to the ratio of meat to bone. Although primarily determined by the inherent muscular and skeletal systems, it is also influenced by the degree of fatness. Excellent conformation in vealers and slaughter calves is denoted by a wide-topped, straight-lined, thick-fleshed individual that is deep and full in the twist.

(c) In grading vealers and slaughter calves, quality of the lean flesh must necessarily be evaluated indirectly from consideration, primarily, of the quantity, distribution, and type of fat or finish. Limited consideration is also given to such factors as the refinement of hair, hide, and bone and the smoothness and symmetry of the body. Finish is evaluated by noting variations in fullness in the brisket, flanks, and cod or udder and the apparent thickness of the fat covering over the back, loin, ribs, and legs.

(d) Since relatively few vealers or calves have an identical development of conformation and quality, it is obvious that each grade will include animals having various combinations of these two characteristics. Examples of how conformation and quality are combined into the final quality grade are included in each of the grade descriptions. However, the principles governing the compensation of variations in development of quality and conformation are as follows: In each of the grades superior quality is permitted to compensate for deficient conformation, without limit. The reverse type of compensation—superior conformation for inferior quality—is not permitted in the Prime and Choice grades. To qualify for one of these grades, a slaughter animal must have the minimum requirements specified for quality regardless of how much the conformation may exceed the minimum specified. In all other grades, such compensation is permitted but only to the extent of one-third of a grade of deficient quality. For both types of compensation, the rate of compensation is equal—a given degree of superior quality compensates for the same degree of deficient conformation and vice versa.

(e) Other factors—such as heredity and management—also may affect the development of grade-determining characteristics in vealers and calves. Although these factors do not lend themselves to descriptions in the standards, the use of factual information of this nature is justified in determining the grade of vealers and slaughter calves.

(f) Vealers or calves qualifying for any particular grade may vary with respect to the relative development of the individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more nearly typical of animals of another grade. Because it is impractical to describe the nearly infinite number of such recognizable combinations of characteristics, the standards describe only vealers and calves which have a relatively similar development of individual conformation and quality factors and which are also representative of the lower limits of each grade.

§ 53.123 Specifications for official United States standards for grades of vealers.

(a) *Prime.* (1) Vealers possessing minimum qualifications for the Prime grade tend to be moderately thick muscled throughout. They are moderately wide over the back and loin, and shoulders and hips are usually moderately neat and smoothly laid in, with only a slight tendency toward prominence. The loin, rump, and rounds appear almost flat, with little evidence of fullness. Prime grade vealers tend to have a very thin fat covering over the back, loin, and upper ribs. The brisket, rear flanks, and cod or udder are slightly full. Prime grade vealers usually present a moderately refined appearance.

(2) To qualify for the Prime grade, vealers must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Prime. However, quality superior to that specified as the minimum for the Prime grade may compensate, without limit, for conformation inferior to that specified as the minimum for Prime at the rate indicated in the following example: Vealers which have quality equivalent to the midpoint of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime.

(b) *Choice.* (1) Vealers possessing minimum qualifications for Choice tend

to be slightly thick muscled throughout. They are slightly wide over the back and loin, the shoulders and hips are slightly prominent, and the neck is slightly long and thin. The loin, rump, and rounds have a very slightly sunken or hollowed-out appearance. The fat covering is very limited and is discernible only over portions of the back and loin. The brisket, rear flanks, and cod or udder have small fat deposits but have no apparent fullness. Choice grade vealers are usually moderately smooth and slightly refined in appearance.

(2) To qualify for the Choice grade, vealers must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Choice. However, quality which is superior to that specified as the minimum for the Choice grade may compensate, without limit, for conformation which is inferior to that specified as the minimum for Choice at the rate indicated in the following example: Vealers which have quality equivalent to the midpoint of the Choice grade may have conformation equivalent to the midpoint of the Good grade and remain eligible for Choice.

(c) *Good.* (1) Vealers possessing minimum requirements for the Good grade tend to be thinly muscled throughout. They are narrow over the back, loin, and rump and shallow in the twist. They have a distinctly sunken or hollowed-out appearance over the back, loin, and rounds. Hips and shoulders appear moderately prominent. There is practically no fat covering on any part of the animal's body. Such vealers may show the heavy bones, thick hide, prominent hips and shoulders associated with coarseness, or they may show the small bones, tight hide, and angularity denoting overrefinement.

(2) Quality superior to that specified as the minimum for the Good grade may compensate, without limit, for conformation inferior to that specified as the minimum for Good at the rate indicated in the following example: Vealers with quality equivalent to the midpoint of the Good grade may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, vealers with conformation at least one-third of a grade superior to that specified as minimum for the Good grade may have quality equal to the lower limit of the upper third of the Standard grade and remain eligible for Good.

(d) *Standard.* (1) Vealers possessing minimum requirements for the Standard grade tend to be very thinly muscled throughout and tend to be very narrow over the back, loin, and rump and very shallow in the twist. Hips and shoulders are very prominent, and the crops, back, loin, rump, and rounds present a very sunken or hollowed-out appearance. They show no evidence of any fat covering. Standard vealers tend to be of low quality. The bones and joints are usually disproportionately large and the hide is either thick or tight and inelastic.

(2) Quality superior to that specified as minimum for the Standard grade may compensate, without limit, for conformation inferior to that specified as minimum for the Standard grade at the rate indicated in the following example: Vealers with quality equivalent to the midpoint of the Standard grade may have conformation equivalent to the midpoint of the Utility grade and remain eligible for Standard. Also, vealers with conformation at least one-third of a grade superior to that specified as minimum for the Standard grade may have quality equal to the lower limit of the upper third of the Utility grade and remain eligible for Standard.

(e) *Utility.* The Utility grade includes vealers whose characteristics are inferior to those specified as minimum for the Standard grade.

§ 53.124 Specifications for official United States standards for grades of slaughter calves.

(a) *Prime.* (1) Calves possessing minimum qualifications for the Prime grade tend to be moderately thick muscled throughout. They are moderately wide over the back and loin, and shoulders and hips are usually moderately neat and smoothly laid in. There is a slight fullness or plumpness over the crops, loin, rump, and rounds which contributes to a rather well-rounded appearance. Prime grade calves tend to have a slightly thick fat covering over the back, loin, rump, and upper ribs. The brisket, rear flanks, and cod or udder are moderately full. Prime grade calves usually present a moderately refined appearance.

(2) To qualify for the Prime grade, slaughter calves must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Prime. However, quality superior to that specified as the minimum for the Prime grade may compensate, without limit, for conformation inferior to that specified as the minimum for Prime at the rate indicated in the following example: Slaughter calves which have quality equivalent to the midpoint of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime.

(b) *Choice.* (1) Calves possessing minimum qualifications for the Choice grade tend to be slightly thick muscled throughout. They are slightly wide over the back and loin. The neck is slightly long and thin. The loin, rump, and rounds are almost flat and have little or no evidence of fullness. The shoulders and hips are moderately neat and smoothly laid in but may appear slightly prominent. There is a thin fat covering over the back, loin, and upper ribs. The brisket, rear flanks, and cod or udder tend to be slightly full. Choice grade calves are usually moderately smooth and slightly refined in appearance.

(2) To qualify for the Choice grade, slaughter calves must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Choice. However, quality which is superior to that specified as the minimum for the Choice grade may compensate, without limit, for conformation which is inferior to that specified as the minimum for Choice at the rate indicated in the following example: Slaughter calves which have quality equivalent to the midpoint of the Choice grade may have conformation equivalent to the midpoint of the Good grade and remain eligible for Choice.

(c) *Good.* (1) Calves possessing minimum requirements for the Good grade tend to be thinly muscled throughout. They are narrow over the back, loin, and rump and shallow in the twist and have a slightly sunken or hollowed-out appearance over the back, loin, and rounds. Hips and shoulders appear somewhat prominent. There is a very thin fat covering that is discernible only over the back and loin. Such calves may show the heavy bones, thick hide, prominent hips and shoulders associated with coarseness; or they may show the small bones, tight hide, and angularity denoting overrefinement.

(2) Quality superior to that specified as the minimum for the Good grade may compensate, without limit, for conformation inferior to that specified as the minimum for Good at the rate indicated in the following example: Calves with quality equivalent to the midpoint of the Good grade may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, calves with conformation at least one-third of a grade superior to that specified as minimum for the Good grade may have quality equal to the lower limit of the upper third of the Standard grade and remain eligible for Good.

(d) *Standard.* (1) Calves possessing minimum requirements for the Standard grade tend to be very thinly muscled throughout and are very narrow over the back, loin, and rump, and very shallow in the twist. Hips and shoulders are very prominent and the crops, back, loin, rump, and rounds present a very sunken or hollowed-out appearance. There is practically no fat on any part of the animal's body. The bones and joints are usually disproportionately large, and the hide is either thick or tight and inelastic.

(2) Quality superior to that specified as minimum for the Standard grade may compensate, without limit, for conformation inferior to that specified as minimum for the Standard grade at the rate indicated in the following example: Calves with quality equivalent to the midpoint of the Standard grade may have conformation equivalent to the midpoint of the Utility grade and remain eligible for Standard. Also, calves with conformation at least one-third of a grade superior to that specified as minimum for the Standard grade may have quality equal to the lower limit of the upper third of the Utility grade and remain eligible for Standard.

(e) *Utility.* The Utility grade includes slaughter calves whose characteristics

are inferior to those specified as minimum for the Standard grade.

The foregoing standards shall become effective January 1, 1972.

Done at Washington, D.C., this 18th day of November 1971.

GEORGE R. GRANGE,
Deputy Administrator,
Marketing Services.

[FR Doc.71-17120 Filed 11-23-71;8:46 am]

Chapter III—Animal and Plant Health Service, Department of Agriculture [1]

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Gypsy Moth and Browntail Moth

EXEMPTED ARTICLES

Under the authority of § 301.45-2 of the Gypsy Moth and Browntail Moth Quarantine regulations (7 CFR 301.45-2, as amended), a supplemental regulation exempting certain articles from specified requirements of the regulations, 7 CFR 301.45-2b, is hereby issued as set forth below. The Administrator of the Animal and Plant Health Service has found that facts exist as to the pest risk involved in the movement of such articles which make it safe to relieve the requirements as provided therein.

§ 301.45-2b Exempted articles.[2]

The following regulated articles are exempt from the certification and permit requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (a) through (i) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraphs:

(a) Trees and shrubs, and parts of such trees and shrubs, if grown in a greenhouse throughout the year and so labeled on the outside of each container.

(b) Cuttings and scions with stems no greater than one-half inch in diameter.

(c) Parts of trees and shrubs that have been dried, pressed, waxed, lacquered, varnished, or similarly surface treated.

(d) Christmas trees, if it has been determined by an inspector that they have not been exposed to infestation.

(e) Boughs and Christmas greenery.

(f) Lumber, if dressed or sawed four sides with ends clipped and free of surface bark; or if kiln dried: *Provided*, That such lumber is shipped directly after processing and the waybill or other shipping document is marked to show that the lumber was shipped immediately after processing.

(g) Wood products which have been manufactured, such as shingles, flooring, furniture, handles, etc.

(h) Shavings, sawdust, wood flour, excelsior, and cedar bedding, if not exposed to infestation in storage.

(i) Stone and quarry products, if processed by grinding or pulverizing.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 F.R. 16210, as amended; 7 CFR 301.45-2)

This list of exempted articles shall become effective upon publication in the FEDERAL REGISTER (11-24-71) when it shall supersede the list of exempted articles, § 301.45-2b, which became effective February 3, 1971.

The purpose of this revision is to add Christmas trees, if it has been determined by an inspector that they have not been exposed to infestation, and Christmas greenery to the list of exempted articles.

Inasmuch as this revision relieves certain restrictions presently imposed, it should be made effective promptly in order to be of benefit to the persons subject to the restrictions that are being relieved. Accordingly, it is found, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to this revision are unnecessary and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 18th day of November 1971.

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

[FR Doc.71-17155 Filed 11-23-71;8:50 am]

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

SUBCHAPTER I—DETERMINATION OF PRICES

[Amdt. 1]

PART 874—SUGARCANE; LOUISIANA

Fair and Reasonable Prices for 1971 Crop

Pursuant to the provisions of the Sugar Act of 1948, as amended, Part 874 of Chapter VIII of Title 7 of the Code of Federal Regulations, published October 20, 1971 (36 F.R. 20287), is amended by revising paragraphs (c), (d), and (e) of § 874.34 to read as follows:

§ 874.34 Definitions.

For the purpose of this section the term:

* * * * *

(c) (1) "Weekly average price of raw sugar" means the simple average of the daily prices of raw sugar for the week (Friday through the following Thursday), in which sugarcane is delivered, except that if the processor applies to the State committee and establishes that the weekly average price received for 1971-crop sugar sold on the basis of his individual ceiling price under the price freeze and prior to the establishment on October 22, 1971, of a ceiling price applicable to all raw sugar (8.68 cents per pound, duty paid, Gulf basis) was less than the weekly average quoted market price, he may use the price actually received, plus the applicable discount imposed by the purchaser, for the purpose of paying producers for sugarcane delivered during the week in which such sales were made.

(2) "Weekly average price of blackstrap molasses" means the simple average of the daily prices of blackstrap molasses for the week (Friday through the following Thursday), in which the sugarcane is delivered, except that if the processor sells 1971-crop blackstrap molasses during the period in which price controls are in effect, then for such period the price actually received by the processor may be used for the purpose of paying producers for sugarcane delivered during the week in which such sales are made.

(d) (1) "Season's average price of raw sugar" means the simple average of the weekly prices of raw sugar for the period October 8, 1971, through April 13, 1972, except that if the processor applies to the State committee and establishes that the weekly average price for either or both of the first 2 weeks of the period (the weeks beginning October 8, and October 15) for 1971-crop sugar sold on the basis of his individual ceiling price under the price freeze and prior to the establishment of a ceiling price applicable to all raw sugar was less than the weekly average quoted market price, he may use the price actually received (plus the applicable discount imposed by the purchaser) for such week(s).

(2) "Season's average price of blackstrap molasses" means the simple average of the weekly prices of blackstrap molasses for the period October 8, 1971, through April 13, 1972, except that for the 1971 crop the season's average price may be determined by weighting (i) the average price actually received by the processor by the quantity of blackstrap molasses sold during the period in which price controls are in effect; and (ii) the simple average of the weekly prices beginning the day after controls on blackstrap molasses prices are lifted by the quantity of blackstrap molasses sold subsequent to the control period.

(e) "Delivered average price" means the weighted average price of 1971-crop raw sugar determined by weighting (i) the simple average of the daily prices of raw sugar for the period October 8, 1971, through December 31, 1971, by the quantity of 1971-crop sugar, raw value, marketed under the processor's 1971 marketing allotment; and (ii) the simple average of the daily prices of raw sugar for the period January 1, 1972, through February 24, 1972, by the quantity of 1971-crop sugar, raw value, not marketed in 1971 under the processor's 1971 marketing allotment, except that if the processor applies to the State committee and establishes that the price received for 1971-crop sugar sold prior to October 22, 1971, on the basis of his individual ceiling price under the price freeze and prior to the establishment of a ceiling price applicable to all raw sugar was less than the

[1] The functions provided for in this subpart were transferred from the Agricultural Research Service to the Animal and Plant Health Service effective October 31, 1971.

[2] The articles hereby exempted remain subject to applicable restrictions under other quarantines.

quoted market price, he may use the price actually received (plus the applicable discount imposed by the purchaser) for the sugar sold during the 2 weeks period prior to October 22, 1971.

* * * * *

(Secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153)

STATEMENT OF BASES AND CONSIDERATIONS

Fair and reasonable prices for the 1971 crop of Louisiana sugarcane (Part 874) published in the FEDERAL REGISTER of October 20, 1971, provided alternatives for determining the bases for sugarcane payments to producers. At the time, ceiling prices on raw sugar applied to each seller of raw sugar. Since it was believed that such ceiling prices would be lower than the quotations of the Louisiana Sugar Exchange, Inc., alternative pricing bases were provided to fit such conditions.

On October 22, 1971, the Department, pursuant to supplemental price-freeze guidelines for sellers of raw sugar (Economic Stabilization Circular No. 21), announced a ceiling price of 8.71 cents per pound, duty paid, at New York basis (or 8.68 cents per pound, duty paid, at Gulf basis) for the sale of all raw sugar.

In order to adapt the sugarcane pricing methods to the new situation and to provide simpler settlement bases for sugarcane, this amendment provides pricing bases in line with those used in prior years, i.e., based on the average quotations of the Louisiana Sugar Exchange, Inc., but also provides any processor who might have sold sugar during the first 2 weeks of the pricing period the opportunity for relief under certain circumstances. If a processor sold sugar prior to October 22, 1971, on the basis of his individual ceiling price and applies to the State committee and provides data showing that the price received for sugar sold during such period was less than the average quoted market price, he may use the price actually received, plus the applicable discount imposed by the purchaser.

If the processor sold no 1971-crop sugar during the first 2 weeks of the pricing period, that processor will settle with producers for the entire crop on the basis of the Louisiana Sugar Exchange quotations.

Since ceiling prices for blackstrap molasses were not changed, the pricing bases for molasses payments remain as provided in Part 874 (36 F.R. 20287). However, separate definitions are provided for raw sugar and blackstrap molasses.

Accordingly, I hereby find and conclude that the foregoing amendment will effectuate the price provisions of the Sugar Act of 1948, as amended.

Effective date. As 1971 crop sugarcane is now being purchased and processed it is necessary that the provisions of this amendment become effective as soon as possible, and therefore it is hereby found and determined that compliance with the procedure and notice provisions of 5 U.S.C. 553 is impracticable and not in the public interest, and this amendment shall become effective when published in the FEDERAL REGISTER (11-24-71).

Signed at Washington, D.C., on November 19, 1971.

CARROLL G. BRUNTHAVER,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71-17157 Filed 11-23-71;8:50 am]

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

PART 982—FILBERTS GROWN IN OREGON AND WASHINGTON

Free and Restricted Percentages for 1971-72 Fiscal Year

Notice was published in the October 16, 1971, issue of the FEDERAL REGISTER (36 F.R. 20164) regarding a proposal to establish free and restricted percentages applicable to filberts grown in Oregon and Washington for the 1971-72 fiscal year beginning August 1, 1971. The percentages are based on recommendations of the Filbert Control Board and other available information in accordance with the applicable provisions of the marketing agreement, as amended, and Order No. 982, as amended (7 CFR Part 982), regulating the handling of filberts grown in Oregon and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons opportunity to submit written data, views, or arguments with respect to the proposal. One comment favored the proposed percentages. However, numerous other comments were received from producers and handlers opposing the proposed free (29 percent) and restricted (71 percent) percentages. Most of these comments contended that the proposed free percentage of 29 percent would unduly restrict the quantity of in-shell filberts available for domestic consumption and urged that the free and restricted percentages both be established at 50 percent.

The Filbert Control Board met on November 12, 1971, to reconsider their prior recommendations. Based on a reduced crop estimate (as of November 1, 1971), and other available information, the Board recommended a 45 percent free percentage and a 55 percent restricted percentage. Their revised recommendations are based on the following revised estimates for the 1971-72 fiscal year:

(1) Production of 11,560 tons;

(2) Total requirements for 1971 crop merchantable filberts of 4,151 tons which is the sum of an in-shell trade demand of 5,750 tons and provision for in-shell handler carryover on July 31, 1972, of 500 tons, less the in-shell handler carryover on August 1, 1971, of 2,099 tons not subject to regulation; and

(3) A total supply of merchantable filberts subject to regulation of 9,253 tons which is the estimated production of 11,560 tons, less 2,312 tons nonmerchantable production, plus 5 tons of carry-in subject to regulation.

After consideration of all relevant matter presented, including that in the notice, comments submitted pursuant to the notice, the information and recommendations submitted by the Board, and other available information, it is found that to establish free and restricted percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the free and restricted percentages for merchantable filberts during the 1971-72 fiscal year are established as follows:

§ 982.221 Free and restricted percentages for merchantable filberts during the 1971-72 fiscal year.

The following percentages are established for merchantable filberts for the fiscal year beginning August 1, 1971:

Free percentage	45
Restricted percentage	55

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said amended marketing agreement and this part require that free and restricted percentages designated for a particular fiscal year shall be applicable to all in-shell filberts handled during such year; and (2) the current fiscal year began on August 1, 1971, and the percentages established herein will automatically apply to all such filberts beginning with such date.

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

Dated: November 19, 1971.

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

[FR Doc.71-17158 Filed 11-23-71;8:49 am]

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

[Milk Order 94]

PART 1094—MILK IN THE NEW ORLEANS, LA., MARKETING AREA

Order Suspending Certain Provisions

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

It is hereby found and determined that for the month of November 1971, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1094.14(b), "during any month(s) of December and February through August"; and

2. § 1094.14, all of paragraph (c).

STATEMENT OF CONSIDERATION

This suspension will remove the present limitation on the amount of milk that may be diverted during the month of November by a handler or a cooperative association to nonpool plants as producer milk. These provisions were suspended during the month of October also.

Milk production in this market has been running substantially ahead of a year ago. Because of the limited manufacturing facilities of the pool plants, it has been necessary to divert substantial quantities of milk to nonpool manufacturing plants. The order sharply limits the amount of milk that may be diverted as producer milk during the months of September through November and January. If this limitation is not suspended for the month of November, there is a likelihood that handlers will be unable to pool all the milk of producers who regularly supply the market. This would work a severe hardship on those producers whose milk was affected.

This suspension was requested by Dairymen, Inc., a cooperative association which is the major source of supply for the market.

A proposal to ease the restrictions on diversions to nonpool plants was considered at a hearing held in New Orleans, La., on August 11 and 12, 1971. A recommended decision issued October 22, 1971, adopted the proposed increase in diversions presented at that hearing. A final decision on the record of that hearing is expected to be issued shortly.

The suspension action taken here will afford the necessary relief pending amendment of the order as a result of the aforementioned hearing.

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it will facilitate more economical and efficient disposal of surplus milk;

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

(c) A proposal to ease the restrictions on diversions was considered at a hearing held in New Orleans, La., on August 11 and 12, 1971. This proposal was adopted in a recommended decision issued October 22, 1971. The suspension action taken here will afford the necessary relief pending amendment of the order as a result of the aforementioned hearing.

Therefore, good cause exists for making this order effective November 1, 1971.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the month of November 1971.

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

Effective date: November 1, 1971.

Signed at Washington, D.C., on November 18, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-17121 Filed 11-23-71;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 410—DECEPTIVE ADVERTISING AS TO SIZES OF VIEWABLE PICTURES SHOWN BY TELEVISION RECEIVING SETS

Clarification of Size Descriptions

Correction

In F.R. Doc. 71-16161 appearing at page 21518 in the issue of Wednesday, November 10, 1971, the section heading as set forth below should be inserted between the third and fourth paragraphs:

§ 410.1 The Rule.

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter I—Commodity Exchange Authority (Including Commodity Exchange Commission), Department of Agriculture

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Recordkeeping

On September 23, 1971, there was published in the FEDERAL REGISTER (36 F.R. 18870) a notice of proposed revision of § 1.31 of the general regulations under the Commodity Exchange Act, as amended (17 CFR 1.31), relating to recordkeeping.

Interested persons were given 30 days in which to submit written data, views or arguments on the proposed revision. Pursuant to the authority vested in the Secretary of Agriculture under the Commodity Exchange Act, as amended, and after careful consideration of all written data, views and arguments presented by interested persons, and of all other relevant facts and information available, § 1.31 of the general regulations under said act is hereby revised to read as follows:

§ 1.31 Books and records; keeping and inspection.

(a) All books and records required to be kept by the Act or by these regulations shall be kept for a period of 5 years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the U.S. Department of Agriculture or the U.S. Department of Justice.

(b) Reproductions on microfilm may be substituted for hard copy as follows:

(1) Computer, accounting machine or business machine generated records may be immediately produced or reproduced on microfilm and kept in that form; other records may be immediately produced or reproduced on microfilm and kept in that form if prepared by any means from source documents which are retained in hard copy form for 2 years as provided in subparagraph (2) of this paragraph;

(2) For all other books and records, microfilm reproductions thereof may be substituted for the hard copy for the final 3 years of the 5-year period.

(c) If such microfilm substitution for hard copy is made, the person required to keep such records shall:

(1) At all times have available for examination of his records facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange, index and file the films in such a manner as to permit the immediate location of any particular record; and

(3) Be ready at all times to provide, and immediately provide, at the expense of the person required to keep such records, any facsimile enlargement of such records which any representative of the U.S. Department of Agriculture or U.S. Department of Justice may request.

The foregoing revision reflects a certain change in the proposal set forth in the notice of rule making published on September 23, 1971. This change was made in paragraph (b)(1) for the purpose of further liberalizing the requirements set forth in the proposal, and does not impose any new requirements in addition to what was set forth in the proposal. It does not appear that further notice and other public procedure with respect to this matter would make additional information available to the Department of Agriculture. Accordingly, it is found upon good cause that further notice and other public procedure is impracticable and unnecessary.

(Secs. 4, 4g, 4i, 5, 5a, 8a, as amended, 42 Stat. 999 et seq., 49 Stat. 1491 et seq., 69 Stat. 535, 82 Stat. 28 et seq., 7 U.S.C. 6, 6g, 6i, 7, 7a, 12a)

NOTE: The recordkeeping requirements herein have been approved by the Office of Management and Budget in accord with the Federal Reports Act of 1942 (44 U.S.C. Ch. 12).

This revision shall become effective thirty (30) days after publication in the FEDERAL REGISTER.

Issued: November 19, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71-17156 Filed 11-23-71;8:50 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Charcoal Briquettes and Other Forms of Charcoal; Confirmation of Effective Date

In the matter of declaring charcoal briquettes and other forms of charcoal in containers for retail sale and intended for cooking or heating to be hazardous substances within the meaning of section 3(a) of the Federal Hazardous Substances Act and requiring special labeling therefor under section 3(b) of said act:

Pursuant to provisions of said act (secs. 2 (f), (g), 3 (a), (b), 74 Stat. 372, 374–75, as amended; 15 U.S.C. 1261, 1262) and the Federal Food, Drug, and Cosmetic Act (sec. 710(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), 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 order in the above-identified matter published in the FEDERAL REGISTER of August 11, 1971 (36 F.R. 14729). Accordingly, the regulations issued thereby, §§ 191.5 and 191.7(b)(6), shall become effective August 1, 1972.

Dated: November 15, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-17107 Filed 11-23-71;8:45 am]

Title 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS

Limitation on Holdings

Section 315.10 and footnotes 4 and 5 of Department of the Treasury Circular No. 530, Ninth Revision, dated December 23, 1964, as amended (31 CFR Part 315), are hereby further amended to read, as follows:

§ 315.10 Annual limitations on holdings.

The amounts of savings bonds of each series, issued in any one calendar year,[4] which may be held by any one person at any one time, computed in accordance with the provisions of § 315.11, are limited, as follows:

(a) *Series E*—(1) *General limitation.* $5,000 (issue price) for each calendar year.[5]

(2) *Special limitations for employees' savings plans and savings and vacation plans.* $2,000 (face amount) multiplied by the highest number of participants in any employees' savings plan as described in Department Circular No. 653, current revision (Part 316 of this chapter). Qualified savings and vacation plans are also eligible for this special limitation.

(b) *Series H*—(1) *General limitation.* $5,000 (face amount) for each calendar year.[5]

(2) *Special limitation for gifts to exempt organizations under 26 CFR 1.501 (c)(3)–1.* $200,000 (face amount) for each calendar year for bonds received as gifts by an organization which at the time of purchase is an exempt organization under the terms of 26 CFR 1.501 (c)(3)–1.

The foregoing amendment is made for the purpose of having the limitations in the regulations governing savings bonds conform to the current limitations in 31 CFR 316.5 and 332.5, the offerings of Series E and Series H savings bonds, respectively. In view of the earlier publication of these limitations in 35 F.R. 703, January 17, 1970, and 35 F.R. 849, January 21, 1970, I find that notice and public procedures are unnecessary. This action is effected under the provisions of section 22 of the Second Liberty Bond Act, as amended (49 Stat. 21, as amended; 31 U.S.C. 757c), and 5 U.S.C. 301.

Dated: November 19, 1971.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.71-17151 Filed 11-23-71;8:49 am]

[4] The Ninth Revision of this circular contains information on prior annual limitations.

[5] Effective December 1, 1969. Investors who purchased less than $5,000 (issue price) of the Series E bonds or $5,000 (face amount) in the case of Series H bonds prior to the effective date of the limitations were entitled only to purchase enough to bring their totals for the year to those amounts. Investors whose purchases exceeded these limitations could not purchase additional bonds during the remainder of the calendar year.

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

PART 41—ADMINISTRATIVE DISCHARGES

Miscellaneous Amendments

The following miscellaneous amendments have been made to Part 41:

1. Section 41.2 is revised as follows:

§ 41.2 Applicability.

The policies, standards, and procedures prescribed in this part are applicable to the Army, the Navy, the Air Force, and the Marine Corps, and, by agreement with the Secretary of Transportation, to the Coast Guard, and to all Reserve components thereof.

2. Paragraph (k) of § 41.6 is amended as follows:

§ 41.6 Reasons for discharge.

* * * * *

(k) *Resignation or request for discharge for the good of the service.* Discharge by reason of resignation or request for discharge for the good of the service, with an undesirable discharge, where a member's conduct rendered him triable by court-martial under circumstances which could lead to a punitive discharge, subject to the procedures and safeguards specified elsewhere in this part.

3. Paragraph (d)(4) of § 41.7 is amended as follows:

§ 41.7 Procedures for discharge.

* * * * *

(d) *Undesirable discharge.* * * *

(4) A member beyond military control by reason of unauthorized absence:

(i) May be issued an undesirable discharge in absentia only under the following circumstances:

(*a*) When the prosecution of the member is apparently barred by Statute of Limitations (10 U.S.C. 843 (Art. 43) Uniform Code of Military Justice. In those cases, an undesirable discharge may be issued at any time after it is determined that prosecution is so barred provided that upon consideration of extenuating, mitigating and aggravating factors in each case the discharge authority determines that the best interest of the military service would be served by issuance of such discharge.

(*b*) When the Secretary of the military department concerned determines that the issuance of such discharge would serve the national interests.

(ii) Will be notified of the imminent discharge action and the effective date thereof by registered mail forwarded to the record address of the member or the next of kin, as appropriate.

(iii) Will be subject to the separation limitations of 10 U.S.C. 1163 if he is a member of the reserve components.

* * * * *

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

[FR Doc.71-17117 Filed 11-23-71;8:46 am]

Chapter VI—Department of the Navy

PART 714—OFFICER PERSONNEL

Sec.
714.1 Purpose, scope, and effect.
714.2 Cancellation, supersession, and effect upon other directives.
714.3 Definitions.
714.4 Resignation.
714.5 Dropping from the rolls.
714.6 Involuntary separation, reversion, and release from active duty.
714.7 Women officer separations.
714.8 Special provisions.

refers to its qualification by such de-

Sec.

AUTHORITY: The provisions of this Part 714 issued under 5 U.S.C. 301, 10 U.S.C. 5031, 6011. Interpret or apply 10 U.S.C. 6392, 6393, 1161, 1163, 651.

§ 714.1 Purpose, scope, and effect.

Various statutes exist which provide for the separation from the naval service, revocation of commissions, discharge, termination of appointments, and release from active duty of Navy and Marine Corps officers. The Chief of Naval Personnel, under the command of the Chief of Naval Operations, with respect to officers of the Regular and Reserve components of the Navy, and the Commandant of the Marine Corps, with respect to officers of the Regular and Reserve components of the Marine Corps, have primary responsibility for the administration and implementation of these statutes. This part provides procedures, regulations, and instructions for implementation of statutes which provide for the separation of officers from the Navy and Marine Corps, termination of appointments, revocation of commissions and/or discharge, release from active duty, or other changes in status because of misconduct, unsatisfactory or poor performance of duty, unsuitability, and conduct or conditions which, in the opinion of the Chief of Naval Personnel and Commandant of the Marine Corps, respectively render the continuation of an officer in his present status undesirable. The following discharges, terminations of appointments or releases from active duty which are dealt with in other manuals and directives, or by statute, are excepted from this part unless specifically provided for herein:

(a) Those effected in accordance with approved sentences of courts-martial.

(b) Those authorized by laws concerning retirement or discharge for physical disability.

(c) Those accomplished pursuant to the Military Personnel Security Program (SECNAVINST 5521.6A).

(d) Those required by operation of the promotion system established by law (e.g., failure of selection, report as unsatisfactory, failure of examination) and not needing implementing or supplementary regulations.

(e) Those directed by laws which are self-executing and do not authorize regulations.

§ 714.2 Cancellation, supersession, and effect upon other directives.

Dept. Nav. General Order No. 16 and SECNAVINST 1900.2 are superseded and canceled. The provisions of BUPERSMAN, Marine Corps Manual and MCOP-1900.16, MARCORPSEPMAN which are inconsistent with this instruction are held in abeyance pending their modification.

§ 714.3 Definitions.

The following definitions and rules of interpretation shall apply throughout these regulations:

(a) "The President" refers to the President of the United States and, except where otherwise indicated, includes the meaning, "the Secretary of the Navy acting for the President of the United States."

(b) "The Secretary," "the Appropriate Secretary," or "the Secretary of the military department concerned" each refers to the Secretary of the Navy. All of the foregoing terms, including "the Secretary of the Navy," refer to and authorize action on particular cases by the Secretary of the Navy, the Under Secretary of the Navy, or an Assistant Secretary of the Navy.

(c) "The Chief of Naval Personnel" or "The Commandant of the Marine Corps" refers generically to and authorizes action by all Deputy or Assistant Chiefs of Naval Personnel or to the Assistant Commandant, Chief of Staff, or Director of Personnel in Marine Corps Headquarters, in addition to the individual incumbents of the named offices.

(d) "Officer" means a member of the naval service serving in a commissioned or warrant officer grade, either permanent or temporary. The term "officer" does not include any midshipman at the Naval Academy; midshipman, U.S. Navy; midshipman, U.S. Naval Reserve; aviation cadet; or other person in an officer candidate status similar to any one or more of the foregoing.

(e) "Commissioned officer" means a member of the naval service serving in a grade, either permanent or temporary, above warrant officer, W–1.

(f) "Active list of the Navy" means the list of officers of the Regular Navy, other than retired officers, holding permanent appointments in grades above chief warrant officer, W–4. "Active list of the Marine Corps" means the list of officers of the Regular Marine Corps, other than retired officers, holding permanent appointments above chief warrant officer, W–4.

(g) "Commissioned service" includes all chronological service in active, inactive, or retired duty or status, in any grade or component or in any combination of grades, components, or both, of the Navy, or of the Marine Corps, of and above the grade of chief warrant officer, W–2.

(h) "Continuous" as used herein with reference to service means unbroken by any period in excess of 24 hours.

(i) "Dismissal" refers to a total separation of a commissioned officer, effected by sentence of a general court-martial, or in commutation of such a sentence, or, in time of war, by order of the President. It also refers to a total separation of a warrant officer, W–1, who is dismissed by order of the President in time of war. (Dismissal by order of the President in time of war may not be effected by the Secretary acting for the President.)

(j) "Discharge," notwithstanding the noncontractual nature of an officer's service, refers to the termination of an officer's obligation to render service and separation from service.

(k) "Characterization" of a discharge scriptive terms as "under honorable conditions" or "under conditions other than honorable."

(l) "Drop from the rolls" refers to a complete termination of service status effected pursuant to specific statutory authority.

(m) "Revocation of appointment" or "revocation of commission" or "termination of appointment" effects a complete termination of the service status of an officer.

(n) "Respondent" refers to an officer who is being afforded the opportunity to show cause why a change of status should not be effected in his case.

§ 714.4 Resignation.

A resignation may be utilized by an officer to terminate his naval service or status. If his resignation is accepted by the Secretary, he shall be totally separated from the service, unless the Secretary countermands his action prior to the effectuation of such separation. BUPERSMAN and MCO P1900.16, MARCORPSEPMAN contain instructions for submission of resignations. The Chief of Naval Personnel and Commandant of the Marine Corps need not forward to the Secretary resignations which are not considered in proper form or are not considered appropriate because of unresolved allegations of misconduct, poor performance, unsuitability, or prior misconduct. Such resignations may be denied by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, by direction of the Secretary.

§ 714.5 Dropping from the rolls.

(a) *Applicability.* The President or the Secretary, depending upon the applicable statute, may drop from the rolls of the armed force any officer, Regular or Reserve, (1) who has been absent without authority for at least 3 months, or (2) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(b) *Procedures.* Whenever it shall appear that an officer has either or both been absent without authority from his place of duty for a period of 3 months or more or has been found guilty by a civil authority of one or more offenses and has been finally sentenced to confinement in a Federal or State penitentiary or correctional institution, with or without suspension or probation, the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall make a finding to such effect and advise the Secretary of such finding. Dropping from the rolls of officers of Regular components will be accomplished by action of the President, this being a discretionary function which is not considered to be delegable under the applicable statute. Dropping from the rolls of officers of Reserve components, other than officers of flag grade, will normally be accomplished by action of the Secretary. Notification of such action will be addressed to the

finding made and of his having been dropped from the rolls. No certificate of discharge is issued upon separation by dropping from the rolls, and such a separation is not characterized.

(c) *Hearing and/or board proceedings.* Neither a hearing nor proceedings by a board of officers are required in order to drop an officer from the rolls.

§ 714.6 Involuntary separation, reversion and release from active duty.

(a) *Regular officers on the active list of Navy or Marine Corps—(1) Revocation of commission.* The Secretary may revoke the appointment of any officer on the active list of the Navy or Marine Corps who has less than 3 years of continuous service as an officer on the active list of the Navy or Marine Corps. Once a Regular officer has completed 3 years of continuous service on his active list, there is no authority, except in the case of certain women officers, to involuntarily separate him, except pursuant to selection board action, disability retirement or other means not within the purview of this instruction.

(2) *Medical Service Corps.* Any officer appointed in the Medical Service Corps pursuant to 10 U.S.C. 5579 who had a permanent status of warrant officer at the time of his appointment to the active list and whose appointment is revoked, may be reappointed, without examination, to his former permanent status with the same lineal position and all other rights and benefits he would have had or would have attained in due course if he had not been appointed in the Medical Service Corps.

(3) *Hearing and/or board proceedings.* Neither a hearing nor proceedings by a board of officers are required in the following situations:

(i) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer concerned has been ordered to undergo;

(ii) Repeated low-caliber or unsatisfactory performance of duty as evidenced by two or more official letters and/or reports submitted by no less than two reporting seniors under whom the officer in question has served; or

(iii) Unsuitability or unfitness for service by reason of a medically diagnosed condition or state other than a physical disability which entitles the officer to disability retirement or severance pay.

In all other situations, unless waived, revocation will be pursuant to board-of-officer proceedings, as provided in § 714.9.

(b) *Permanent warrant officers of regular components—(1) Termination.* The Secretary may terminate the warrant or the commission of any warrant or chief warrant officer of the Regular Navy or Marine Corps.

(2) *Hearing and/or board proceedings.* Warrant officers who, from the date when they accepted their original permanent appointment, have not completed 3 years of continuous service may, pursuant to 10 U.S.C. 1165, have their appointments terminated at any time without the benefit of a hearing or board proceedings. Those who have completed 3 years of continuous service from the date when they accepted their original permanent appointment may have their appointments terminated, pursuant to 10 U.S.C. 1166, as a result of the recommendation of a board of officers or a selection board. Those chief warrant officers whose names are reported by a selection board as being, in the opinion of the board of officers, unfit or unsatisfactory in their permanent regular grades, as established by their records and reports, shall be retired, enlisted or separated under 10 U.S.C. 1165 or 1166 without benefit of a hearing or further board proceedings. In situations other than previously provided, termination will be pursuant to board-of-officer proceedings, as provided in § 714.9.

(c) *Reserve officers—(1) Discharge.* The President or the Secretary, as prescribed by statute, may discharge Reserve officers regardless of length of service.

(2) *Hearing and/or board proceedings.* (i) Neither a hearing nor proceedings by a board of officers, in the case of officers with less than 3 years of commissioned service or, with respect to warrant officers, those who have not completed 3 years of continuous service since acceptance of their appointment, are required in the following situations:

(*a*) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer concerned has been ordered to undergo;

(*b*) Repeated low-caliber or unsatisfactory performance of duty as evidenced by two or more official letters and/or reports submitted by no less than two reporting seniors under whom the officer in question has served; or

(*c*) Unsuitability or unfitness for service by reason of a medically diagnosed condition or state other than a physical disability which entitles the officer to disability retirement or severance pay.

(ii) In situations other than previously provided, discharge will be pursuant to board-of-officers proceedings, as provided in § 714.9.

(3) *Release from active duty.* In the case of Reserve officers of the Navy and Marine Corps, the Chief of Naval Personnel or the Commandant of the Marine Corps, respectively, may at any time, for any reason, release a Reserve officer from active duty, except in the following situations:

(i) In time of war or national emergency declared by Congress or the President after January 1, 1953, a Reserve officer may be released from active duty (other than for training) only upon the recommendation of a board of officers approved by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, unless the officer waives the board or his release is otherwise authorized by law.

(ii) An officer serving on active duty, pursuant to an active-duty agreement executed in accordance with 10 U.S.C. 679, may not be released from active duty, without his consent, during the period of the agreement because of a reduction in personnel strength, unless his release is recommended by a board of officers. In such instances, a hearing is not required.

(iii) An officer serving on active duty, pursuant to an active-duty agreement executed in accordance with 10 U.S.C. 679, may not be released from active duty without his consent during the period of the agreement, unless his release is recommended by a board of officers before which he was afforded the opportunity for a hearing, except when he is dismissed by court-martial action, released because of unexplained absence without leave for at least 3 months, released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or released because he has been considered at least twice and has failed for promotion, under conditions that would require the release or separation of a Reserve officer who is not serving under such an agreement. In the excepted situations, no further action or hearing is necessary.

(iv) A Reserve officer who is on active duty and is within 2 years of becoming eligible for retired pay or retainer pay, under a purely military retirement system, may not be involuntarily released from duty before he becomes eligible for that pay, unless his release is approved by the Secretary.

(d) *Officers with temporary promotions or appointments (commissioned or warrant).* As prescribed by various statutes, the President or the Secretary may terminate the temporary promotion or appointment of any officer of the naval service, Navy or Marine Corps, without the requirement for a hearing or a board of officers. In some instances, the termination is automatic upon the occurrence of a contingency specified by statute. An individual whose temporary status is terminated, reverts to his permanent status. If he has no permanent status to revert to, or if his permanent status is simultaneously terminated, he shall be discharged.

§ 714.7 Women officer separations.

(a) Women officers of the Regular Navy and Marine Corps and Naval Reserve and Marine Corps Reserve are subject to release from active duty, reversion, termination, separation, discharge, revocation of commission and dropping from the rolls, under the same circumstances, procedures, and conditions and for the same reasons as male officers.

(b) In addition to the foregoing provisions of this part which apply to all officers, regardless of sex, all women officers, regardless of length of service, may be discharged, upon approval of the Secretary, whenever it is reported to the Secretary that the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, has determined that such officer:

(1) Is the parent, by birth or adoption, of a child under the age of 18 years; or

(2) Has personal custody of a child under the age of 18 years; or

(3) Is the stepparent of a child under the age of 18 years who is within the

household of the woman for a period of more than 30 days a year; or

(4) Is pregnant (however, if the pregnancy is terminated as a result of a spontaneous or therapeutic abortion or a still birth prior to separation from the service, the woman officer may submit a request for cancellation of her separation orders, together with the commanding officer's recommendation, to the Chief of Naval Personnel or the Commandant of the Marine Corps); or

(5) Has, while serving under her current appointment to warrant or commissioned grade in the naval service, given birth to a living child.

The determination of conditions in subparagraphs (1) through (5), of this paragraph, shall be in accordance with regulations prescribed by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, which may provide for retention, notwithstanding the foregoing conditions. Only those cases, in which discharge is considered appropriate, need be reported to the Secretary.

(c) *Hearing and/or board proceedings.* Neither a hearing nor proceedings by a board of officers are required to discharge, under the provisions of paragraph (b) of this section, women officers who have less than 3 years' commissioned service or, in the case of warrant officers, have not completed 3 years of continuous service since acceptance of their appointment. Otherwise, unless waived, a hearing before a board of officers is required.

§ 714.8 Special provisions.

(a) Except when he is dropped from the rolls, no officer shall be discharged under other than honorable conditions, pursuant to this instruction, without being afforded the opportunity to have his case heard before a board of officers.

(b) If proceedings by a board of officers are mandatory in order to release an officer from active duty or discharge him, such action will not be taken, except upon the approved recommendation of a board of officers.

(c) Although not otherwise required or provided for by this part, an officer who is being considered for administrative discharge or termination of his appointment because of misconduct, unsatisfactory performance of duty, or similar reasons, will be afforded the opportunity to have a hearing before a board of officers when he specifically requests a hearing, except in the following situations:

(1) When the action is based upon the results of a selection board;

(2) The officer is being dropped from the rolls;

(3) Those provided for in § 714.6(a)(3) and (c)(2); and

(4) Those cases in which the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, recommends that a hearing not be provided, although requested.

The recommendation of the board of officers will, in such circumstances, be only advisory in nature and will not preclude any contemplated action.

§ 714.9 Regulations and procedures concerning boards of officers.

In situations where it is necessary to afford an officer a hearing before a board of officers, as provided by previous sections of this part, or in situations where a hearing is not required, but is nevertheless afforded the officer, the procedures and requirements prescribed in this section shall apply. Hearings before boards of officers are not adversary proceedings. In most cases, the Chief of Naval Personnel or the Commandant of the Marine Corps will be contemplating a change in an officer's status because of the officer's misconduct, poor performance, unsuitability or similar reasons. The proceedings and hearing before a board of officers are intended to give the officer an opportunity to respond to, and rebut, the basis for the contemplated change of status after having been informed of the contemplated change and the reasons therefor. Although a board of officers may be required to make findings, opinions and recommendations, it is not intended that any issue shall be proved or disproved—but merely that a hearing before the board of officers shall provide a forum for a discussion of the contemplated action, reasons therefor, and reasons why the officer concerned thinks the contemplated action should not be taken. A failure to comply with any of the procedural provisions of this section, will not invalidate the results of any board of officers, except to the extent that may be required by a clear and affirmative showing, by the individual alleging error, of injury to a substantial right which was neither expressly nor impliedly waived.

(a) *Boards of officers before which hearings are conducted. Appointment and composition.* Hearings, when required or desired, will be conducted before boards of officers convened by the Commandant of the Marine Corps or the Chief of Naval Personnel; by a general court-martial convening authority, when requested by the Chief of Naval Personnel or the Commandant of the Marine Corps; by the Director of a Marine District; or by the Commanding General, 4th Marine Aircraft Wing/Marine Air Reserve Training Command.

(b) *Membership of boards of officers.* A board of officers shall consist of three or more officers. All officers of the naval service on active duty shall be eligible for membership on boards of officers, regardless of component, branch of the naval service, sex, or whether under the direct or indirect command of the authority convening the board. All officers comprising a particular board should be senior to the individual under consideration by that board, except to such extent as officers who are thus senior cannot be obtained by the authority convening the board without undue inconvenience, and with the exception of officers who may be placed on the board by reason of their possession of specialized knowledge or experience pertinent to the particular factual situation. If an individual under consideration by a particular board is a Reserve officer, at least a majority of the board shall be Reserve officers, unless otherwise authorized by the Secretary. A recorder may be appointed and will perform such duties for the board as it desires, but he shall have no vote and shall not participate in the deliberations of the board in closed session.

(c) *Notice to be afforded respondents.* (1) An officer being afforded the opportunity to appear before a board of officers shall:

(i) Be given advance notice that such proceedings are being initiated as to him. Such notice shall be sufficiently detailed, factual, and specific (consistent with security considerations and protection of sources of information) concerning the suspected acts, omissions, associations, or traits, on the part of the officer, to inform him of the contemplated action therefor and his rights in conjunction therewith.

(2) In the event the address or location of an individual is unknown or if deemed appropriate, notification may be made by letter addressed to him at any one of the following:

(i) The city, town, or community in which he has been last reputed to be residing, or the post office address apparently nearest his last reputed place of residence;

(ii) In case of any person whom the individual concerned has at any time designated as a beneficiary or as one to be notified in the event of his serious illness or death, at the mailing address which records of the activity originating the letter indicate as the most recent one furnished by the individual concerned for such person; or

(iii) Any institution in which the individual concerned has been reported to be hospitalized or confined.

Absence of indication of delivery, or return as undeliverable, of a letter addressed as outlined above is immaterial as respects its efficacy as notice to or notification of the individual concerned. It is the responsibility of each member of the naval service to assure that the records pertaining to him accurately and currently reflect a mailing address at which he can be reached.

(d) *Manner in which proceedings of boards of officers are to be conducted.* (1) The individual being considered by the board shall be afforded the opportunity to present matters in his own behalf. Subject to reasonable restrictions which may be imposed by the board as to relevance, competency, and materiality of matters presented, such matters must be considered by the board. Boards of officers are not courts-martial, and the rules of evidence do not apply. Oral or written matter will not be rejected because it would be inadmissible in a court of law. If an officer is suspected of an offense, he must be warned under Article 31, UCMJ, before testifying as a witness. It is not contemplated that proceedings under this part should be in the nature

of a formal fact-finding tribunal or judicial trial, but the proceedings should be conducted in a manner assuring an individual the opportunity to present his case.

(2) A respondent has the following rights:

(i) Prior to the hearing, upon his request, he will be furnished with a copy of all statements which it is anticipated will be considered by the board unless the information is classified. If classified information is to be considered, it will be summarized to the maximum extent possible so as to declassify the information. If it is anticipated that witnesses will appear before the board of officers, the respondent will be provided, in advance, with the names of the witnesses. Failure to provide any information, or the name of a witness, will not prevent the board from considering the information or hearing the witness, but the respondent shall have an opportunity to examine any statement presented, or talk with any witness presented, before the board considers the statement or hears the witness.

(ii) He may appear in person, with or without counsel, at all open proceedings of the board. Upon request by the respondent, the convening authority will appoint as the respondent's counsel a lawyer, within the meaning of 10 U.S.C. 827(b)(1), unless counsel having such qualifications cannot be obtained on account of physical conditions, military exigencies or within a reasonable period of time. If counsel having such qualifications cannot be obtained, the board shall proceed, but the convening authority shall make a detailed written statement, to be appended to the report, stating why counsel with such qualifications could not be obtained and setting forth the qualifications of the substituted counsel. The respondent may have military counsel of his own choice, provided proper authority determines the counsel requested is reasonably available. He may employ civilian counsel at his own expense.

(iii) Although he has no right to challenge, the respondent may submit to the convening authority for appropriate action, any relevant matter which, in his view, indicates that a particular member or members should not sit on his case.

(iv) The respondent may request from the convening authority, or board of officers, the appearance before the board of any witness whose testimony he believes to be pertinent to his case. He will specify in his request the type of information the witness can provide. The witness will be invited to attend, if it is considered that he is reasonably available and that his testimony can add materially to the case. Witnesses who are not within the immediate geographic area of the situs of the board, or are not under the command of the convening authority, are considered as not being reasonably available, and their statements or depositions will be utilized in lieu of their personal appearance. If a witness on active duty declines the invitation, the convening authority will make a decision whether action should be taken to obtain orders for the witness' appearance. Witnesses not on active duty must appear voluntarily and at no expense to the Government. Requests for witnesses may be summarily refused if not timely made. Once a board of officers has convened, requests for witnesses shall be submitted to the board. Final decision on the appearance of witnesses shall be by the convening authority. If the convening authority considers it important that a witness on active duty, who is not under his command or is otherwise not reasonably available, should appear as a witness in lieu of utilizing his statement or deposition, he may request the commanding officer of the witness to make him available.

(v) The respondent may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(vi) He may or may not submit to examination by the board.

(vii) The respondent and his counsel may question any witness who appears before the board. Testimony of witnesses shall be under oath or affirmation.

(viii) Failure of the respondent to invoke any of these rights cannot be considered as a bar to the board proceedings, findings, opinion, or recommendation.

(ix) The respondent, if he requests a copy prior to adjournment of the board, may be provided with a copy of the record of the proceedings in his case and may, upon his request, be informed of the findings, opinions and recommendations of the board. In cases involving classified matter, any record or information to be provided the respondent will be edited prior to delivery to him to remove classified material and to preserve its integrity.

(e) *Forms in which report of board of officers may be submitted. Record of proceeding.* (1) A separate report shall be submitted for each officer considered by the board. Such report may:

(i) Include findings, opinions, and recommendations in a narrative form, without separating them or identifying particular statements by such terms as "the board finds" or "the board is of the opinion"; or

(ii) Set forth findings, opinions, and recommendations in separate numbered paragraphs; or

(iii) Utilize any combination of the forms outlined in subdivisions (i) and (ii) of this subparagraph.

(2) The report of the board of officers shall include:

(i) A summary of the individual officer's service and background.

(ii) A summary of the acts, omission, or traits ascribed to the officer under consideration in allegations, reports, or other circumstances prompting consideration of his case by the board.

(iii) A summary of the position taken by the officer under consideration, with respect to the allegations, reports, or other circumstances in question and the acts, omissions, or traits ascribed to him therein.

(iv) Findings of the board concernings acts, omissions, or traits alleged.

(3) As has been previously stated herein, it is not mandatory that opinions expressed by boards of officers be separated from findings, nor is it ordinary essential that they be readily identifiable as opinions. In certain cases, if a finding or opinion of a board of officers is made to the effect that a respondent's conduct, act, or omission constitutes moral or professional dereliction, SECNAVINST 1900.7a of April 2, 1969. Provides that the individual is not entitled to severance pay. For purposes of aiding determinations of entitlement to various benefits, boards of officers which are recommending discharge shall include in their reports an expression of opinion, identified as such, as to whether the recommended discharge should be characterized as "under honorable conditions" or "under conditions other than honorable." The standards for discharges under honorable and other than honorable conditions, set forth in BUPERSMAN MCO P1900.16, MARCORPSEPMAN, shall be utilized by the board of officers in recommending the type of discharge to be awarded.

(4) It shall not be mandatory, under this part, that a board of officers make or maintain a verbatim or detailed transcript of its proceedings; however, a transcript of sufficient detail to show the basis for findings of fact shall be maintained. Authorities appointing boards of officers in particular situations may require that a record of a specified type be made, but in the absence of express requirement for more extensive material, a report as outlined above, accompanied by all correspondence and exhibits or descriptions thereof considered by the board, shall constitute an adequate record under these regulations.

(5) Recommendations made by a board of officers will be phrased according to the particular function the board is convened to perform. A board will not recommend a probationary status.

(6) The report of a board of officers shall be signed by all members of the board concurring therein and the statements which are concurred in by a majority of the members shall constitute the report of the board. Any member, or members, not concurring with the majority, shall sign and submit a separate minority report, or separate minority reports, setting forth the extent of his, or their, concurrence and nonconcurrence, the reasons therefor, and the variant findings, opinions, or recommendations, as appropriate, which are considered warranted. Each minority report thus submitted shall be attached to the report of the board, shall be considered by all authorities subsequently reviewing such report, and may be expressly noted in comments made upon the record by authorities reviewing or acting upon the case.

(f) *Preservice misconduct.* The character of discharge is to be determined solely by the officer's military record, including representations made in connection with obtaining his military status and information concerning his conduct

and performance while in service. Whenever evidence of preservice misconduct is presented to a board of officers, the board may consider it only for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence may not be used by the board in arriving at its opinion as to the type or character of separation; and the board, in its report, shall affirmatively state that such evidence was not so considered.

(g) *Review of reports of boards of officers.* The report of a board of officers under these regulations shall be reviewed, and indication of the extent of concurrence and nonconcurrence therein shall be made by the authority who appointed the board. Approval shall be specifically noted of the findings and recommendations in which the appointing authority concurs. Upon such review, the report may be returned to the board of officers for correction of errors, amplification, clarification, or reconsideration in the light of any specified factors which may not have been previously appreciated by the board. In the absence of perceived factors which may reasonably be deemed to have escaped full appreciation by the board members, however, a report shall not be returned to the board for reconsideration of findings, opinions, or recommendations going to the substantial merits of the case. The reports of all boards of officers under these regulations shall be reviewed by the Chief of Naval Personnel or by the Commandant of the Marine Corps, as appropriate. Upon such review, any case may be referred to a board of officers in the Bureau of Naval Personnel or in Headquarters, U.S. Marine Corps, for findings, opinions, and recommendations de novo. Although such a subsequent board of officers may consider the report or reports of any and all prior boards, it shall not be bound to return findings, opinions, or recommendations consistent with those rendered by a previous board. In any case involving termination of active service or discharge of an individual on the basis of alleged misconduct or inferior performance of duty, a finding, opinion, or recommendation of a subsequent board of officers which, if approved, would result in action less favorable to the individual than that which would result from a prior board, shall not be effectuated unless the report shows:

(1) That the individual has been afforded an opportunity to make representation (or to be heard if he had such opportunity before the prior board) and show why the less-favorable action should not be taken, and

(2) That any matter so presented has been considered by the subsequent board.

No discharge shall be less favorable than that recommended by the prior board, and in those instances where the prior board did not recommend discharge, only an honorable discharge may be awarded.

(h) *Active duty orders and expenses.* In no case shall the affording of a hearing to an officer, who is not otherwise in an active or training duty status at the time, place him or return him to such a status. There is no authority for the issuance of any form of initial orders to active or training duty for the sole purpose of facilitating appearance by an officer for hearing. There is no authority for the payment, or reimbursement, or any expenses which may be incurred by an officer, or by any person in his behalf, in connection with any administrative discharge proceeding under these regulations.

(i) *Statutes pertaining to officer separations not cited or discussed in this part.* In cases of existing or future statutes pertaining to separation of officers of the Navy, Marine Corps, or Reserve components of either, which are not specifically cited, quoted, or referred to herein, the regulations set forth in this part, applying to the most closely analogous situation (then-current or former), shall control, unless and until more specifically applicable regulations are adopted. In the event that existing or future statutes, which are not specifically treated herein, provide for separation under such regulations or rules as the Secretary of the Navy may prescribe, the regulations set forth herein, which apply to the most closely analogous situation, shall be held and considered for all purposes to have been prescribed under such statutory direction until such time as more specifically applicable rules or regulations are prescribed.

Effective date. This part shall be effective on October 14, 1971.

[SEAL] MERLIN H. STARING,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

[FR Doc.71-17104 Filed 11-23-71;8:47 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 71-83a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Black River, S.C.

This amendment changes the regulations for the South Carolina State Highway Department swing bridge across the Black River at Brown's Ferry near Rhems, to permit the draw to remain closed to the passage of vessels. This amendment was circulated as a public notice dated September 3, 1971, by the Commander, Seventh Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-83) on August 26, 1971 (36 F.R. 16937). One objection to the proposal was received and then subsequently withdrawn after further investigation. No other comments were received.

Accordingly, Part 117 of Title 33, Code of Federal Regulations is amended by revising § 117.245(g)(14) to read as follows:

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

* * * * *

(g) * * *

(14) Black River, S.C.:

(i) South Carolina State Highway Department bridge near Georgetown. The draw shall open on signal if at least 12 hours' notice has been given.

(ii) South Carolina State Highway Department bridge at Brown's Ferry near Rhems. The draw need not open for the passage of vessels and paragraphs (b) through (e) of this section shall not apply to this bridge.

* * * * *

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

Effective date. This revision shall become effective on January 7, 1972.

Dated: November 17, 1971.

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

[FR Doc.71-17163 Filed 11-23-71;8:50 am]

[CGFR 71-DB12]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Grant Line Canal, Calif.

This amendment changes the regulations for the San Joaquin County highway drawbridge across the Grant Line Canal to require 12 hours' notice at all times. This amendment was circulated as a public notice dated April 30, 1971, by the Commander, 12th Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-DB1) on April 15, 1971 (36 F.R. 7143). One comment was received but had no objection to the change.

Accordingly, Part 117 of Title 33, Code of Federal Regulations is amended by revising paragraph (j) of § 117.714 to read as follows:

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

* * * * *

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

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

Effective date. This revision shall become effective on December 24, 1971.

Dated: November 12, 1971.

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

[FR Doc.71-17165 Filed 11-23-71;8:50 am]

[CGFR 71-42a]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Nehalem River, Oreg.

This amendment changes the regulations for the Oregon State Highway bridge across the Nehalem River, mile 6.5, to permit the draw to remain closed at all times. This amendment was circulated as a public notice dated May 26, 1971, by the Commander, 13th Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 71-42) on May 22, 1971 (36 F.R. 9329).

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.735 to read as follows:

§ 117.735 Nehalem River, Oregon Highway Bridge, Mile 6.5.

The draw need not open for the passage of vessels. However, the draw shall be returned to operable condition within 6 months after notification from the Commandant, U.S. Coast Guard, to take such action.

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

Effective date. This revision shall become effective on January 1, 1972.

Dated: November 12, 1971.

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

[FR Doc.71-17164 Filed 11-23-71;8:50 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 9—Atomic Energy Commission

MISCELLANEOUS AMENDMENTS TO CHAPTER

These changes are being made in order to add AEC cost sharing policy to the policy on unsolicited proposals for research and development for other than educational institutions, to bring the AEC Procurement Regulations in line with current Federal Property Management Regulations and to reflect the new designation of Office of Management and Budget.

PART 9-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 9-4.52—Unsolicited Proposals for Research and Development Contracts Submitted by Individuals and Commercial and Not-for-Profit Organizations Other Than Educational Institutions

1. In Subpart 9-4.52—Unsolicited Proposals for Research and Development Contracts Submitted by Individuals and Commercial and Not-for-Profit Organizations Other than Educational Institutions, § 9-4.5202 *Policy*, a new paragraph (e) is added as follows:

§ 9-4.5202 Policy.

* * * * *

(e) It is the policy of AEC to encourage cost sharing by organizations which submit unsolicited proposals. (See Subpart 9-4.56.)

PART 9-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 9-5.52—Procurement of Special Items

2. In Subpart 9-5.52—Procurement of Special Items, § 9-5.5201-3 *Consolidated purchase of new vehicles by General Services Administration*, paragraph (b) is revised to read as follows:

§ 9-5.5201 Motor vehicles.

* * * * *

§ 9-5.5201-3 Consolidated purchase of new vehicles by General Services Administration.

* * * * *

(b) *Submission of purchase orders.* Except as determined necessary for internal accounting needs or purchasing records, orders should be made using GSA Form 1781 for vehicles covered by Federal Standard No. 122, Federal Standard No. 292, or Federal Standard No. 307. AEC Form 103 or contractors' purchase order forms should be used for vehicles not covered by Federal Standard No. 122, No. 292, or No. 307.

* * * * *

PART 9-51—REVIEW AND APPROVAL OF CONTRACT ACTIONS

3. Subpart 9-51.6 Contracts and Subcontracts Requiring Clearance With the Bureau of the Budget is rewritten as follows in order to change "Bureau of the Budget" and "BOB" to "Office of Management and Budget" and "OMB" wherever they appear.

Subpart 9-51.6 Contracts and Subcontracts Requiring Clearance With the Office of Management and Budget

Sec.
9-51.600 Scope of subpart.
9-51.601 Actions requiring clearance.
9-51.602 Procedure for obtaining clearance, extension of clearance, or exemption.

AUTHORITY: The provisions of this Subpart 9-51.6 issued under section 161 of the Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; section 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9-51.6 Contracts and Subcontracts Requiring Clearance With the Office of Management and Budget

§ 9-51.600 Scope of subpart.

This subpart sets forth requirements for the clearance of contracts and subcontracts with the Office of Management and Budget.

§ 9-51.601 Actions requiring clearance.

In accordance with the Federal Reports Act of 1942 and Office of Management and Budget Circular A-40, contracts and subcontracts which will result in the collection of information on identical items at the request of or for AEC by the contractor or subcontractor, from 10 or more respondents, require clearance from the Assistant Director of the Office of Management and Budget and inscribing thereon an approval number or notation.

§ 9-51.602 Procedure for obtaining clearance, extension of clearance, or exemption.

Requests for clearance of contracts and subcontracts or material revision or change in previously approved contracts or subcontracts, extension of clearance beyond scheduled expiration date, or exemption from clearance shall be submitted by Managers of Field Offices or Directors, Headquarters Divisions or Offices to the Director, Division of Contracts for coordination with and transmittal by the Controller to the Assistant Director of the Office of Management and Budget. Such requests shall be in the form and contain all of the pertinent information required by paragraphs 4, 5, 6, and 7 of OMB Circular A-40.

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER (11-24-71).

Dated at Germantown, Md., this 16th day of November 1971.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director, Division of Contracts.

[FR Doc.71-17102 Filed 11-23-71;8:45 am]

Chapter 114—Department of the Interior

PART 114-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Identification of Unneeded Federal Real Property

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301, and Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), a new Subpart 114-47.8 (as set forth below) is added to Chapter 114, Title 41 of the Code of Federal Regulations.

This new subpart contains the Department of Interior regulations and procedures for the identification of unneeded Federal real property. These regulations are presently published in 41 CFR 114–47.50 which is hereby superseded.

This subpart shall become effective on the date of its publication in the FEDERAL REGISTER (11–24–71).

WARREN F. BRECHT,
Deputy Assistant Secretary of the Interior.

NOVEMBER 15, 1971.

Subpart 114–47.8—Identification of Unneeded Federal Real Property

AUTHORITY: The provisions of this Subpart 114–47.8 issued under 5 U.S.C. 301, and section 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 114–47.8—Identification of Unneeded Federal Real Property

§ 114–47.800 Scope of subpart.

This subpart prescribes basic policies and procedures for periodic review of real property in the custody of Bureaus and Offices of the Department to identify that which is unneeded, is underutilized, or is not being put to its optimum use. It implements Bureau of the Budget Circular No. A–2, revised, dated August 30, 1971, and FPMR 101–47.8.

(a) The provisions of this subpart are applicable to the following Federal real property holdings in custody of this Department, wherever located:

(1) Land acquired by purchase, condemnation, donation, lease, or other methods, except lands exempted as provided in IPMR 114–47.800(b);

(2) Withdrawn public domain land, except that used for National Park, National Forest, or wildlife refuge purposes. Refer also to 603 DM 1 which establishes Departmental policy relating to the review and restoration, in whole or in part, of withdrawn land no longer used or required for the programs for which withdrawn; and

(3) Buildings, and other structures and facilities acquired by purchase condemnation, construction, donation, lease, or other methods, including Government-owned buildings, structures, and facilities located on:

(i) Withdrawn public domain land;

(ii) Lands exempted from the provisions of this subpart by IPMR 114–47.800(b); or

(iii) Other than Government-owned land.

(b) This subpart does not apply to the following properties:

(1) Unreserved public domain land administered by the Bureau of Land Management;

(2) Rights-of-way or easements granted to the Government;

(3) Indian tribal and trust properties;

(4) Oregon and California revested lands (43 U.S.C. 1181a);

(5) Reconveyed Coos Bay Wagon Road Land Grant lands (43 U.S.C. 1181a);

(6) Land administered by the National Park Service, other than administrative sites outside of the established boundaries of a national park;

(7) Land on Indian reservations within consolidation areas approved by the Secretary of the Interior;

(8) Land within the National Wildlife Refuge System;

(9) Bankhead-Jones lands administered under a land conservation and utilization program in accordance with the Taylor Grazing Act of 1934 (48 Stat. 1269);

(10) Land reserved or dedicated for national forest purposes; and

(11) Real property which is to be sold or otherwise disposed of and which was acquired through foreclosure, confiscation, or seizure in settlement of a claim of the Federal Government, or through conveyance to the Federal Government in connection with an indemnity or loan insurance or guarantee program.

§ 114–47.802 Procedures.

(a) *Annual review by Bureaus and Offices.* Each Bureau and Office having jurisdiction over real property in the categories referred to in IPMR 114–47.800(a) shall conduct a systematic annual review of all such property to identify that which is unneeded, is underutilized, or is not being put to its optimum use. Every effort shall be made to effect partial disposals of real property whenever circumstances will permit economic separate disposal of the unneeded portion.

(1) In conducting the annual review, Bureaus and Offices shall be guided by the standards and guidelines set forth in FPMR 101–47.801, in addition to the disposal criteria prescribed in IPMR 114–47.802–50.

(2) In addition to the written record of the review of each individual installation required by FPMR 101–47.802(a)(2), a written descriptive listing of all properties identified as unneeded, underutilized, or not being put to optimum use shall be maintained as provided in IPMR 114–47.802–53(b).

(3) The head of each Bureau or Office or his designee is authorized to make the determination contemplated by FPMR 101–47.802(a)(3)(i)(B).

(i) The requirement found in FPMR 101–47.802(a)(3)(i)(B) for obtaining the approval of the appropriate GSA regional office before issuing permits or out-leases authorizing others to use temporarily unutilized property does not apply to:

(*a*) Permits or leases involving real property which is not subject to the provisions of Office of Management and Budget Circular No. A–2 or this Subpart 114–47.8. (See IPMR 114–47.800(b)), or

(*b*) Permits authorizing other Interior Bureaus or Offices to use property temporarily not being used by the holding Bureau.

(ii) Where a Bureau or Office administers large numbers of program leases such as agricultural leases, or grazing leases or permits on withdrawn public domain land, the appropriate regional office of GSA should be requested to approve the overall leasing program, thus obviating the need to request approval of each individual lease or permit as issued.

(b) *GSA survey.* (1) Bureaus and Offices shall cooperate fully with GSA officials conducting surveys of real property holdings under their jurisdiction in order to facilitate the overall objectives of the real property review program.

(2) Notifications of GSA survey findings received in the Office of the Secretary from the GSA Central Office in accordance with FPMR 101–47.802(b)(5), will be forwarded to the Bureau or Office having custody of the property involved. Referrals to Bureaus and Offices will include a request for their comments and recommendations in any cases where GSA recommends that specific properties should be reported excess.

§ 114–47.802–50 Disposal criteria.

The disposal criteria set forth in this subsection are provided for the use and guidance of Bureaus and Offices in conducting the review of real property holdings and achieving effective and economical use of such property. These criteria are in addition to the standards and guidelines prescribed in FPMR 101–47.801.

(a) *Property not utilized—no future use.* Property not presently used in the Bureau's program for which acquired and for which there is no foreseeable future need should be disposed of promptly by:

(1) Intrabureau transfer, transfer to other Interior Bureaus, declaration to GSA as excess, or disposal as surplus pursuant to authority delegated in 205 DM 10, or

(2) Reporting to the Bureau of Land Management in the case of unneeded withdrawn public domain land. (See IPMR 114–47.201–3.)

(b) *Property not presently utilized—known future need.* Property not presently being used, but for which a definite future program need exists should be retained: *Provided,* That the property will be put to its optimum use when the future program is undertaken. Reasonable efforts should be made to put property in this category into productive use during the period it would otherwise remain vacant or idle (see IPMR 114–47.802(a)(3)), either by:

(1) Permitting another Interior Bureau or Federal agency to use the property on an interim basis, or

(2) Interim leasing to non-Federal entities: *Provided,* That the holding Bureau or Office has specific statutory authority to lease temporarily unused property. (See 15 CG 96.)

(c) *Property not presently utilized—possible future need.* This pertains to property not presently used in the Bureau's program, but for which a possible future need exists. The less certain or farther away this possible future need is, the greater consideration must be given to disposal, particularly if the property is not unique and replacement

property could be acquired later if the need materializes.

(d) *High value locations.* An essential Bureau activity being carried on at a valuable real estate site might not be using such site to its full economic advantage. For example, at the time of acquisition the site may have been in an outlying area, but may now be within the growing community. Such land is not unneeded or excess, since there is a continuing program need for the installation, but the present land could be sold for substantially more than the cost of suitable replacement facilities and the difference deposited in the Treasury.

(1) In these instances funds for replacement facilities must first be obtained through the normal budgetary processes, justified by the net gain to be realized.

(2) Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(e) *High cost facilities.* An essential Bureau activity may be performed in facilities which have such an unusually high annual operation and maintenance cost that replacement is justified. Some examples of this might be:

(1) The work is being performed at several separate locations, with a consequent loss of efficiency and higher costs.

(2) The work is being performed in several small buildings at the one site, and would significantly benefit from operations being consolidated in one building.

(3) The facility is unusually expensive to maintain, due to age or poor condition.

(4) The facility is so poorly planned or laid out, or so unsuitable for the particular type of activity being carried on, that excess costs are incurred.

(5) The facility is permanently underutilized, and is not susceptible to partial disposal through sharing, rental, sale, etc.

In all of subparagraphs (1) through (5) of this paragraph and in similar instances, if the anticipated savings would so warrant, funds for replacement should be sought through the normal budgetary processes, justified by the net savings. Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(f) *Property used by another Federal agency under permit.* Property for which a future need was anticipated may be utilized by another Federal agency by permit from the holding Bureau. If reexamination of the anticipated need discloses that such need will not materialize, the Bureau having basic custody of the property should convey the property to the permittee Bureau or agency by formal transfer of accountability.

(g) *Property leased to non-Federal entities.* Property for which a future need was anticipated may have been leased on an interim basis to a non-Federal entity. If reexamination of the anticipated need discloses that such need will not materialize, the property should be disposed of, subject to the provisions of the lease.

§ 114–47.802–51 Funds and statutory authority.

There may be cases where it will be necessary to secure additional funds or specific legislative authority before disposal of high-value locations or high-cost facilities can be made and the necessary replacement facilities acquired. However, this circumstance must not delay the making of necessary surveys in order to identify properties in these categories or the initiation of specific proposals looking toward replacement. Proposals should be supported by estimates of replacement costs and ultimate net savings. In seeking replacement facilities:

(a) Such action as can be taken without additional funds or statutory authority should be initiated at the earliest practicable time;

(b) Consideration should be given to obtaining available and excess property presently held by other Interior Bureaus and other Federal agencies; and

(c) The appropriate regional office of the General Services Administration should be contacted to determine whether suitable excess replacement facilities are available for transfer or expected to become available within a reasonable time.

§ 114–47.802–52 Bureau implementation.

In those Bureaus having large and varied real property holdings, the general instructions in this chapter require further development for effective application within the Bureau, particularly with respect to the following:

(a) *Retention criteria.* Bureau implementation should include, to the extent possible, uniform retention criteria for specific properties for the guidance of field personnel conducting the annual review required by IPMR 114–47.802. The following is an example of retention criteria which might be developed.

It may be determined that a certain amount of land is needed to accommodate a particular type or size of facility, such as an administrative site, boarding school, day school, etc. Where this determination can be made the needed acreage should be specified and any held for this purpose in excess of that amount should be considered for disposal.

(b) *Partial disposals.* Bureau instructions should make clear that it is not enough for a field office official to determine, for example, that a program using 1,000 acres of land will continue to be carried on, but a further determination should be made as to the need to retain the entire 1,000 acres and whether or not a part of the acreage can be made available for other utilization or disposal. It might still be necessary to provide employee housing, but 50 units might now be adequate and 10 units released. The units of property to be released must, of course, be of a nature or so located that they are susceptible of economic separate disposal.

(c) *Underutilization and uneconomical utilization.* These situations may be common or typical of certain phases of the Bureau's program at some locations, and further criteria are needed to show either how they may be overcome or else why they must be accepted as a temporary condition due to the program requirements.

(d) *Program utilization.* There is a definite need for Bureau particularization on what constitutes program utilization, as distinguished from non-program but authorized utilization. There are many legitimate and necessary instances of utilization of real property for nonprogram purposes, usually of a temporary nature, but such use does not give it a program status. One rule of thumb might be whether program funds would be expended to purchase land or construct buildings for present uses of existing real property.

(e) *Inspection and field review.* The Bureau headquarters and regional staff members responsible for this aspect of real property management shall include checking the effectiveness of compliance and understanding at the regional and installation level, of this program, particularly on the completeness of both regional and installation reports, and the development of adequate techniques for the survey at the installation level.

§ 114–47.802–53 Intrabureau records.

The head of each Bureau having jurisdiction over real property shall issue instructions to provide that each office responsible for conducting the prescribed annual review of real property holdings shall:

(a) Maintain a written record of the review of each individual installation, which record will contain comments relative to each of the guidelines set forth in FPMR 101–47.801(b).

(b) Maintain a written descriptive listing of all properties or portions of properties identified during each annual review as unneeded, underutilized, or not being put to optimum use, whether or not disposal action is going to be taken on the properties.

§ 114–47.802–54 Annual report to the Department.

The head of each Bureau or Office having jurisdiction over real property shall prepare an annual report, as of the end of each fiscal year, summarizing the actions taken by the Bureau or Office to implement the provisions of this Subpart 114–47.8. The report will:

(a) Include consolidated reports for the Bureau in the form of Appendices I, II, III of this subpart.[1] These Appendices illustrate the format and the order in which the requested data are to be reported and should be followed to facilitate processing by the Department and transmittal to the Office of Management and Budget.

(b) Include in the memorandum transmitting Appendices I, II, and III, the following:

(1) A narrative statement describing, in general the actions taken during the

[1] Filed as part of the original document.

fiscal year to comply with the provisions of this Subpart 114–47.8. The narrative shall include, but not necessarily be limited to:

(i) A description of the analytical methods used to determine that properties not listed in Appendices I and II are being put to optimum use.

(ii) Actions taken to strengthen procedures for meeting the objectives of the annual review program.

(iii) Actions taken by the head of the bureau and headquarters office staff to insure full compliance with Office of Management and Budget, General Services Administration, and Departmental regulations at all levels within the bureau.

(2) A description of any particular problems encountered by the Bureau in the management of real property.

(3) Recommendations as to actions which might be taken by the Property Review Board, the Office of Management and Budget, the General Services Administration, or the Department to improve the management of real property.

(c) Include, as attachments to the transmittal memorandum, two copies of new or revised manual or other instructions issued by the Bureau during the fiscal year. If none were issued, the report should so indicate.

(d) Be prepared, in duplicate, and transmitted to reach the Director of Management Operations by August 21 of each year.

[FR Doc.71-17127 Filed 11-23-71;8:47 am]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER G—EMERGENCY OPERATIONS

[General Order 82, 25th Rev.]

PART 309—VALUES FOR WAR RISK INSURANCE

Miscellaneous Amendments

Sections 309.1–309.101 of this part are hereby revised to read as follows:

FINDINGS AND SCOPE

AUTHORITY: §§ 309.1 through 309.101 issued under sec. 204, 49 Stat. 1987, as amended, sec. 1209, 64 Stat. 775, as amended, 70 Stat. 984; 46 U.S.C. 1114, 1289.

FINDINGS AND SCOPE

§ 309.1 Findings.

The Ship Valuation Committee, Maritime Administration, has found that the values provided in this part constitute just compensation for the vessels to which they apply, computed in accordance with subsection 902(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242), pursuant to section 1209(a), Merchant Marine Act, 1936, as amended (46 U.S.C. 1289(a)), and the authority delegated to the Assistant Secretary of Commerce for Maritime Affairs by the Secretary of Commerce in section 3 of (Commerce) Department Organization Order 10–8, 36 F.R. 1223, and redelegated to the Ship Valuation Committee.

§ 309.2 Scope.

(a) *Vessels included.* (1) This part establishes values for self-propelled oceangoing iron and steel vessels (other than vessels excluded pursuant to paragraph (b) of this section) for which war risk insurance is provided by the Maritime Administration pursuant to title XII, Merchant Marine Act, 1936, as amended (46 U.S.C. 1281–1294). The values established by §§ 309.1–309.101 represent the maximum amounts for which the Maritime Administration will provide war risk hull insurance for damage to or actual or constructive total loss of the vessel and for which claims for damage to or actual or constructive total loss of such insured vessels may be adjusted, compromised, settled, adjudged, or paid by the Maritime Administration with respect to insurance attaching during the period July 1, 1971, to December 31, 1971, inclusive, under the standard forms of war risk hull insurance interim binder or policy prescribed by §§ 308.106 and 308.107 of this chapter (General Order 75, 2d Rev., as amended): *Provided, however,* That if there is a substantial change in market values during said period, the Maritime Administration reserves the right to revise the values provided for herein or determined pursuant hereto at any time during said period.

(2) It is contemplated that the next revised values will be published as soon as practicable after January 1, 1972, to be effective with respect to insurance attaching during the period January 1, 1972, to June 30, 1972, inclusive.

(b) *Vessels excluded.* The values established pursuant to §§ 309.3 through 309.5 do not apply to passenger vessels, lumber schooners, car ferries, seatrains, cable ships, bulk cement, and ore carriers, vessels operated on the Great Lakes and inland waterways, fully refrigerated vessels, vessels of less than 1,500 gross tons, or any other vessels or class of vessels to which the Maritime Administration finds that the provisions of said sections would not be appropriate. Values for vessels excluded by this paragraph (b) shall be specifically determined by the Maritime Administration and set forth in § 309.101 as provided therein.

(c) *Fuel, stores, and supplies.* Values for fuel, stores, and supplies shall be determined in accordance with §§ 309.201 through 309.204 (General Order 100, 29 F.R. 2944, Mar. 4, 1964; 29 F.R. 3706, Mar. 25, 1964).

BASIC VALUES

§ 309.3 Vessels built during or after 1939.

(a) *Basic values.* The values of vessels built during or after 1939 shall be determined in accordance with this section, subject to the applicable adjustments provided in § 309.5.

(b) *War-built vessels.* (1) The values of the standard types of war-built vessels under U.S. flag listed in this subparagraph (1) which have the lawful right to engage in the coastwise trade of the United States (which are the current domestic market values of such vessels as determined by the Ship Valuation Committee) are as follows:

Standard-type vessel:	*Value*
EC2–S–C1	$60,000
EC2–S–AW1	62,500
VC2–S–AP2	195,000
C1–M–AV1	45,000
C1–A and B (steam)	120,000
C2–S–B1	200,000
C3–S–A2	280,000
C4–S–B5	550,000
T1–M–BT	75,000
T2–SE–A1	345,000
T3–S–BZ1	550,000
T3–S–A1	350,000

(2) The values of the standard types of war-built vessels under U.S. flag listed in this subparagraph (2) which do not have the lawful right to engage in the coastwise trade of the United States (which are the current domestic market values of such vessels as determined by the Ship Valuation Committee) are as follows:

Standard-type vessel:	*Value*
VC2–S–AP2	$180,000

(3) The values of the standard subtypes of war-built vessels listed in this subparagraph (3) shall be determined as follows:

(i) If the subtype vessel is under U.S. flag and has the lawful right to engage in the coastwise trade of the United States, by multiplying the basic value of the standard type vessel listed in subparagraph (1) of this paragraph by the factor shown opposite the subtype in the table set forth in this subparagraph (3), or

(ii) If the subtype vessel is under the U.S. flag but does not have the lawful right to engage in the coastwise trade of the United States, by multiplying the basic value of the standard type vessel listed in subparagraph (2) of this paragraph by the factor shown opposite the subtype in the table set forth in this subparagraph (3).

TABLE

Subtype:	Factor
VC2-S-AP3	100%—VC2-S-AP2
C2-S-AJ1	100%—C2-S-B1
C2-S-AJ3	100%—C2-S-B1
C2-S-AJ5	100%—C2-S-B1
C2-S-E1	102%—C2-S-B1
C2-S	100%—C2-S-B1
C3	95%—C3-S-A2
C3-S-A1	100%—C3-S-A2
C3-S-A3	76%—C3-S-A2
C3-S-A4	106%—C3-S-A2
C3-S-A5	106%—C3-S-A2
C3-S-BH1	100%—C3-S-A2
C3-S-BH2	100%—C3-S-A2
C4-S-A4	100%—C4-S-B5
T1-M-BT2	100%—T1-M-BT

(c) *Other vessels.* The value of a vessel built during or after 1939 which is not included in paragraph (b) of this section shall be the current domestic market value as determined by the Maritime Administration.

§ 309.4 Vessels built prior to 1939.

The values of vessels built prior to 1939 shall be specifically determined by the Maritime Administration and set forth in § 309.101.

GENERAL PROVISIONS

§ 309.5 Adjustments for condition, equipment, and other considerations.

The basic values provided in § 309.3 shall be adjusted for individual vessels to the extent provided in paragraphs (a) to (c) of this section.

(a) *Adjustment for a vessel of substandard condition.* If the Maritime Administration determined that a vessel is not in class or is in substandard condition for a vessel of her type or subtype and age, there will be subtracted from the basic value of such vessel, as determined pursuant to § 309.3, the amount estimated by the Maritime Administration as the cost of putting the vessel in class or the amount estimated by the Maritime Administration as the difference in value of the substandard vessel and a vessel in standard condition.

(b) *Special equipment.* For any special equipment of material utility in the handling of cargo or utilization of the vessel, not otherwise included in determining the basic value pursuant to § 309.3, if the depreciated reproduction cost less construction subsidy, if any, of all such special equipment is in excess of $50,000, an allowance in such amount as the Maritime Administration shall determine to be the fair and reasonable value of such equipment shall be added to the basic value.

(c) *Government installations.* The values provided by §§ 309.1–309.101 shall not include any allowance for any special installations or equipment to the extent that their cost was borne by the United States.

§ 309.6 Definitions.

(a) *Date vessel is built.* The date a vessel is built is the date upon which the vessel is delivered by the shipbuilder.

(b) *Deadweight tonnage.* The deadweight tonnage of a vessel means her deadweight capacity established in accordance with normal summer freeboard as assigned pursuant to the International Load Line Convention, 1966, and shall be her capacity (in tons of 2,240 pounds) for cargo, fuel, fresh water, spare parts, and stores, but exclusive of permanent ballast.

(c) *Speed of vessel.* The speed of a vessel means the speed determined in accordance with the formulae provided in Part 246 of this chapter (General Order 43, 3d Rev.).

(d) *Passenger vessel.* A passenger vessel is a ship which carries more than 12 passengers.

(e) *Vessel.* The stated valuation of a vessel in this part applies to a vessel in class A–1 American Bureau of Shipping or equivalent, with all required certificates, including but not limited to marine inspection certificates of the U.S. Coast Guard, Department of Transportation, with all outstanding requirements and recommendations necessary for retention of class accomplished, without regard to any grace period; and so far as due diligence can make her so, tight, staunch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, with clean swept holds and in all respects fit for service. A vessel in substandard condition is subject to § 309.5 (a). The stated valuation of a vessel provided in this part does not include vessel stores and supplies, which consist of (1) consumable stores, (2) subsistence stores, (3) slop chest, (4) bar stock, and (5) fuel, as defined in Maritime Administration Inventory Manual, Vessel Inventories, Part I, and Maritime Administration Inventory Books Forms MA–4736, A through K, which will be valued separately.

§ 309.7 Modifications.

The Maritime Administration reserves the right to exempt specific vessels from the scope of this part, or to amend, modify, or terminate the provisions hereof.

§ 309.8 Vessel data forms.

(a) *To accompany application for insurance.* Each application for war risk hull insurance submitted in accordance with § 308.101 of this chapter (General Order 75, 2d Rev., as amended) shall be accompanied by information relating to the vessel for use by the Maritime Administration in determining the value pursuant to this part. The information shall be submitted in duplicate on the applicable form prescribed in this section, copies of which may be obtained from the American War Risk Agency, 99 John Street, New York, NY 10038, or the Chief, Division of Insurance, Maritime Administration, Washington, D.C. 20235.

(b) *Vessels of 1,500 gross tons or more.* Vessel data for all vessels of 1,500 gross tons or more shall be submitted on Form MA–510.

(c) *Vessels under 1,500 gross tons.* Vessel data for all vessels under 1,500 gross tons shall be submitted on Form MA–511.

(d) *Modification to vessels.* Revised vessel data shall be submitted on the appropriate form prescribed above whenever a vessel undergoes a physical change which increases or decreases its value 5 percent or more.

VALUES FOR INDIVIDUAL VESSELS

§ 309.101 Values effective July 1, 1971.

(a) *Vessels covered by §§ 309.3 through 309.5.* (1) The Maritime Administration has found that the values established in accordance with §§ 309.3–309.5 constitute just compensation for the vessel to which they apply, computed as provided in sections 902(a) and 1209(a), Merchant Marine Act, 1936, as amended; and pursuant thereto has determined the values of the vessels covered by interim binders for war risk hull insurance, Form MA–184, prescribed by Part 308 of this chapter.

(2) The interim binders listed below shall be deemed to have been amended as of July 1, 1971, by inserting in the space provided therefor or in substitution for any value now appearing in such space the stated valuation of the vessels set forth below for the binders and vessels as designated. Such stated valuation shall apply with respect to insurance attaching during the period July 1, 1971, to December 31, 1971, inclusive: *Provided, however,* That if there is a substantial change in market values during said period, the Maritime Administration reserves the right to revise the values provided for herein or determined pursuant hereto at any time during said period: *And provided further,* That the assured shall have the right within 60 days after date of publication of these §§ 309.1–309.101 or within 60 days after the attachment of the insurance under said binder, whichever is later, to reject such valuation and proceed as authorized by section 1209(a)(2), Merchant Marine Act, 1936, as amended.

Binder No.	Name of vessel	Official No.	Stated valuation (in thousands)
870	Achilles	281702	$5,910
1660	Adabelle Lykes	291609	2,762
2144	Afoundria	244018	1,215
1426	African Comet	289281	3,285
720	African Crescent	250661	280
1683	African Dawn	291781	3,410
725	African Lightning	251451	280
1558	African Mercury	290143	3,357
1508	African Meteor	289792	3,310
726	African Moon	251175	280
1607	African Neptune	290485	3,357
730	African Planet	249860	280
732	African Star	249351	280
1656	African Sun	291026	3,410
1751	Aimee Lykes	292614	2,762
2501	Alaskan Mail	517120	6,500
2452	Albany	509957	991
1828	Allison Lykes	293817	2,762
1552	Alma Victory	248201	196
352	Aloha State	243297	280
567	American Accord	267275	5,316
572	American Ace	265143	5,316
568	American Alliance	266832	5,316
2812	American Apollo	529004	7,700
2809	American Aquarius	529099	7,700
571	American Archer	267444	5,316
566	American Argosy	266181	5,316
2583	American Astronaut	520694	7,000
1493	American Challenger	289699	3,357
1618	American Champion	290824	3,357
1557	American Charger	290089	3,357
1652	American Chieftain	291020	3,357
1972	American Condor	252347	280
1670	American Corsair	291629	3,357
1695	American Courier	290225	3,357
831	American Eagle	278327	4,365
1769	American Falcon	282824	280
1791	American Hawk	243969	280

Binder No.	Name of vessel	Official No.	Stated valuation (in thousands)
2446	American Lancer	514261	7,000
2550	American Lark	518444	7,000
570	American Leader	266256	5,316
569	American Legacy	268243	5,316
574	American Legend	267033	5,316
2466	American Legion	515155	7,000
2485	American Liberty	516464	7,000
2518	American Lynx	517450	7,000
2740	American Mail	521866	6,500
1688	American Oriole	252304	280
1924	American Racer	297001	4,242
1989	American Ranger	298279	4,242
2039	American Reliance	299371	4,242
1679	American Robin	242941	280
1902	American Trader	244855	2,980
2285	Amerigo	246798	200
2854	Amoco Connecticut	242851	1,185
2855	Amoco Delaware	245058	1,190
1768	Amoco Louisiana	244329	1,275
2857	Amoco Virginia	243518	1,275
641	Amtank	247968	550
2884	Andrew Jackson	247303	304
2212	Antinous	245079	204
678	Arizona	266534	1,971
1444	Arizona Standard	248736	345
2115	Arizpa	251597	1,215
1716	Ashley Lykes	292191	2,762
232	Atlantic Communicator	268196	2,700
233	Atlantic Endeavor	277623	3,900
1004	Atlantic Enterprise	276011	3,860
1848	Atlantic Heritage	293290	8,960
1006	Atlantic Navigator	261423	2,349
1569	Atlantic Prestige	289972	5,400
2209	Atlantic Trader	248007	1,270
1435	Austin	247455	1,670
2831	Austral Patriot	300539	4,242
2832	Austral Pilot	297353	4,242
210	Avila	267181	780
2839	Azalea City	243436	1,215
980	Barbara	249079	1,610
347	Barbara Jane	278103	4,340
1915	Beauregard	251508	1,215
2482	Bennington	242606	345
607	Bethflor	250334	1,118
608	Bethtex	255539	1,118
2840	Bienville	243438	1,215
1490	Brazos	247583	2,306
1414	Brinton Lykes	288899	2,762
2558	Buckeye Atlantic	239271	252
353	Buckeye State	244577	280
2567	Buckeye Victory	245244	195
1348	California	287232	3,626
425	California Bear	266977	1,971
19	Californian	243882	2,770
2642	Californian	249239	1,850
1949	Calmar	294756	3,000
1974	Canada Mail	297570	3,930
2390	Canterbury Falcon	247590	200
1370	Cantigny	247452	1,650
7	Carbide Seadrift	241851	1,350
8	Carbide Texas City	242332	1,350
2872	Carrier Dove	252478	280
506	Catawba Ford	245639	620
1600	C. E. Dant	280262	3,626
1931	Chancellorsville	244469	1,500
1753	Charlotte Lykes	292782	2,762
2574	Chatham	252493	200
243	Chena	242704	65
2825	Cherry Valley	242531	345
1408	China Bear	288604	4,130
1788	Christopher Lykes	293220	2,762
1813	Cities Service Baltimore	271866	3,965
1814	Cities Service Miami	272077	3,760
1815	Cities Service Norfolk	272839	3,835
2875	Citrus Packer	247321	280
2852	City of Alma	247592	204
2410	Claiborne	242378	200
2714	Colina	242775	345
2237	Colorado	245104	345
2478	Colorado	515976	5,525
2540	Columbia	247519	1,439
2377	Columbia Banker	248842	195
2561	Columbia Beaver	252443	200
2816	Columbia Mariner	247572	200
2817	Columbia Rose	248827	200
2582	Columbia Trader	247765	195
1907	Commander	245309	1,395
2227	Connecticut	277291	4,657
2628	Constitution State	251847	280
712	Copper State	244137	280
2795	Coral Gem	248815	200
2468	Cortland	244878	200
1395	Council Grove	247896	1,590
2549	C. V. Lightning	518063	4,883
2490	C. V. Sea Witch	680644	4,883
2626	C. V. Staghound	520743	4,883
2449	DaGama	249174	200
2705	David D. Irwin	242354	1,700
212	David E. Day	248880	1,200
2819	Defiance	519102	6,900
221	Delaware Getty	267997	2,494
165	Delaware Sun	264853	2,485
320	Del Mar	251452	227
322	Del Norte	259953	227
1225	Del Oro	286185	3,215
324	Del Rio	284680	3,215
327	Del Sol	285171	3,215
328	Del Sud	251453	227
2509	Delta Argentina	512953	3,668
2497	Delta Brasil	514758	3,668
2532	Delta Mexico	517540	3,668
2498	Delta Paraguay	515910	3,668
2499	Delta Uruguay	516690	3,668
329	Del Valle	245373	200
2885	De Soto	245398	204
376	Doctor Lykes	249063	280
2330	Dolly Turman	508378	4,106
2778	Eagle Charger	522864	10,295
700	Eagle Courier	277561	3,970
2698	Eagle Leader	520839	10,095
699	Eagle Transporter	277710	4,190
697	Eagle Traveler	278342	4,657
698	Eagle Voyager	278624	4,680
167	Eastern Sun	270025	2,680
2715	Eclipse	267144	2,305
378	Elizabeth Lykes	247822	200
2686	Elizabeth Lykes	500702	3,945
1917	Elizabethport	297001	3,064
2451	Ericson	246283	300
830	Erna Elizabeth	280193	4,535
2593	Esso Baltimore	282272	7,120
2594	Esso Bangor	264701	2,505
2595	Esso Boston	263784	7,255
2596	Esso Chester	264445	2,380
2597	Esso Dallas	259248	2,020
2598	Esso Florence	266855	2,540
2599	Esso Gettysburg	273362	4,700
2601	Esso Houston	297151	10,300
2602	Esso Huntington	269329	2,600
2603	Esso Jamestown	275519	5,000
2610	Esso Lexington	270270	5,085
2604	Esso Lima	259142	2,010
2611	Esso Miami	259357	2,050
2605	Esso Newark	264231	2,355
2606	Esso New Orleans	298216	10,505
2607	Esso New York	259610	2,055
1808	Esso Seattle	277035	4,305
2609	Esso Washington	273896	4,855
842	Exbrook	249173	213
849	Exchester	248120	213
850	Executor	248747	213
853	Exford	249454	213
858	Expeditor	251971	213
860	Export Adventurer	284024	2,605
861	Export Agent	283936	2,605
862	Export Aide	284516	2,605
863	Export Ambassador	283150	2,605
1296	Export Banner	280124	3,324
1354	Export Bay	286065	3,324
1372	Export Builder	287381	3,324
1401	Export Buyer	288076	3,324
1726	Export Challenger	292227	3,499
1771	Export Champion	292569	3,530
1712	Export Commerce	291731	3,480
1691	Export Courier	289947	3,410
854	Exporter	249062	213
2841	Fairland	242073	1,215
2576	Fanwood	252355	200
153	Floridian	282753	810
1469	Flying Clipper	252991	200
1480	Flying Cloud	247000	200
1479	Flying Endeavor	241026	184
1479	Flying Enterprise II	245734	200
1471	Flying Hawk	240632	184
584	Fort Fetterman	244035	1,270
1211	Fort Hoskins	248735	1,610
247	Fortuna	245880	60
189	Fort Worth	247276	2,655
2300	Frederick Lykes	506812	4,106
902	F. S. Bryant	250827	345
585	Gaines Mill	244464	1,200
2842	Gateway City	251506	1,215
2421	Genevieve Lykes	513140	4,275
355	Gopher State	244979	280
2820	Great Republic	521302	6,900
2707	Green Bay	248912	991
2408	Green Forest	508061	1,026
2710	Green Island	247079	455
2711	Green Lake	248700	991
2409	Green Port	510015	1,026
2712	Green Ridge	247322	280
2406	Green Springs	248701	1,026
2407	Green Wave	508060	1,026
1863	Gulf Banker	265249	2,865
790	Gulf Bear	247309	1,140
791	Gulfbeaver	243657	1,150
792	Gulforest	279334	4,090
793	Gulfdeer	245727	1,200
1849	Gulf Farmer	294625	2,865
794	Gulfjaguar	246972	1,200
795	Gulfking	275193	4,280
796	Gulfknight	277183	4,475
797	Gulflion	246990	1,205
808	Gulflube	254406	370
1952	Gulf Merchant	297329	3,000
798	Gulfoil	283424	4,160
799	Gulfpanther	246543	1,190
800	Gulfpride	279769	3,910
801	Gulfprince	276034	4,375
802	Gulfqueen	275583	4,339
805	Gulfseal	247557	1,275
811	Gulfservice	264224	725
1903	Gulf Shipper	296880	3,000
803	Gulfsolar	280223	3,960
806	Gulfspray	282818	4,102
1358	Gulfsupreme	287186	4,735
804	Gulftiger	247767	1,220
1888	Gulf Trader	296404	3,000
2779	Halcyon Panther	245922	195
646	Hampton Roads	248748	550
2423	Hans Isbrandtsen	277703	4,531
412	Harry Culbreath	247824	200
2577	Hastings	246617	204
1421	Hawaii	289119	3,626
2643	Hawaiian	249353	1,850
2645	Hawaiian Citizen	252149	2,430
2763	Hawaiian Enterprise	524219	19,250
2646	Hawaiian Farmer	245860	280
2648	Hawaiian Merchant	249845	280
2803	Hawaiian Progress	523400	19,250
2651	Hawaiian Rancher	249294	280
2652	Hawaiian Refiner	245594	280
1445	Hawaii Standard	248802	345
995	H. D. Collier	248737	345
873	Helen H	245020	1,462
634	Hess Bunker	243804	1,560
638	Hess Petrol	244735	1,560
1373	Hess Refiner	248244	1,585
639	Hess Trader	246104	1,543
1913	Hess Voyager	296863	8,620
901	Hillyer Brown	266233	787
431	Hong Kong Bear	264428	1,971
2622	Hong Kong Mail	520302	6,550
706	Hoosier State	247702	550
176	Houston	242636	1,749
2387	Houston	245542	3,185
2306	Howell Lykes	507344	4,106
2472	Hurricane	277202	280
2578	Iberville	248489	204
2534	Idaho	518434	5,623
968	Idaho Standard	245461	345
249	Illamna	246848	65
677	Illinois	264957	1,971
2538	Indian Mail	517717	6,500
1787	Inger	248011	2,043
387	James Lykes	280564	2,537
414	James McKay	247997	200
433	Japan Bear	270296	2,130
1418	Japan Mail	287976	3,558
1304	Jean Lykes	287103	2,660
1285	J. E. Dyer	274440	3,995
2516	Jeff Davis	248742	280
388	Jesse Lykes	247902	200
970	J. H. MacGaregill	248896	345
973	J. H. Tuttle	242955	380
967	J. L. Hanna	248531	345
2579	John B. Waterman	249234	204
389	John Lykes	282772	2,537
585	Julesburg	243523	1,395
415	Kenneth McKay	247581	200
508	Keystoner	266750	815
556	Keystone State	247753	550
599	Keytanker	265644	805
600	Keytrader	267905	833
434	Korea Bear	269038	2,130
2565	Korean Mail	518517	6,500
2886	Kyska	248654	204
2876	Lafayette	252476	280
2838	La Salle	257231	280
13	Leland I. Doan	284217	6,500
2864	Lash Italia	529258	12,925
2865	Lash Turkiye	530143	12,925
1352	Leslie Lykes	287416	2,660
2403	Letitia Lykes	512187	4,273
392	Lipscomb Lykes	2488071	280
2374	Lompoc	248653	345
207	Longview Victory	247077	195
1918	Los Angeles	241153	3,064
393	Louise Lykes	247582	200
2062	Louise Lykes	299038	3,945
2923	Louisiana Brimstone	247757	4,600
226	Louisiana Getty	246173	2,433
367	Louisiana Sulphur	242064	830
179	Lyons Creek	245450	553
2887	Madaket	246902	204
2089	Malden Creek	248908	204
2233	Mallory Lykes	504077	3,945
1356	Manhattan	287253	13,500
1809	Margaret Lykes	293555	2,762
2087	Marine Clipper	248655	345
15	Marine Dow Chem	267278	4,115
1510	Marine Electric	248675	1,565
2133	Marine Floridian	246836	4,725
1812	Marine Texan	247563	4,455
93	Marine Victory	247680	845
1513	Marjorie Lykes	293873	2,762
664	Maryland Trader	247178	1,285
1940	Marymar	294730	3,000
2260	Mason Lykes	505406	4,106
1789	Mayo Lykes	293224	2,762
1512	Meadowbrook	293879	1,885
909	M. E. Lombardi	240228	185
2543	Merrimac	245673	1,230
2030	Michigan	521550	5,625
587	Mill Spring	244468	1,320
2033	Missouri	248885	1,197
1530	M. M. Dant	289547	3,626
2716	Mobile Aero	278471	4,095

Binder No.	Name of vessel	Official No.	Stated valuation (in thousands)
2717	Mobil Fuel	274588	3,725
2718	Mobilgas	271449	3,220
2483	Mobillan	246388	280
2719	Mobil Lube	275051	3,590
2442	Mobil Meridian	286479	7,085
2720	Mobiloil	279064	4,145
2721	Mobil Power	274966	3,735
2405	Mohawk	248913	965
2495	Montana	517617	5,525
2707	Monticello Victory	286819	7,110
2708	Montpelier Victory	289745	8,125
2664	Mormacaltair	298329	3,881
2667	Mormacargo	296216	3,881
2665	Mormacbay	283541	3,095
2666	Mormaccape	284185	3,158
2668	Mormaccove	286749	3,225
2670	Mormacdraco	299008	3,881
2673	Mormacglen	285283	3,158
2676	Mormaclake	284802	3,158
2678	Mormaclynx	296047	3,881
2683	Mormacpride	282295	3,070
2684	Mormacrigel	297384	3,881
2687	Mormacsean	285890	3,158
2688	Mormactrade	287900	3,305
2689	Mormacvega	296932	3,881
2546	Morning Light	240590	280
2799	Mount Vernon Victory	284178	6,815
2800	Mount Washington	293097	8,495
2430	Mystic Mariner	248143	200
888	Naeco	244063	610
1343	Nancy Lykes	286050	2,660
648	Nashbulk	247307	550
1788	National Defender	279935	8,080
2084	Neches	244235	345
251	Nenana	247015	60
1441	Nevada Standard	247758	345
169	New Jersey Sun	265748	2,420
2038	New Yorker	283030	810
2278	New York Getty	267198	2,565
2877	Noonday	248844	280
309	Norman Lykes	249018	280
2119	Northfield	243353	1,500
2836	North Star State	295539	297
2014	Ogden Wabash	520728	10,005
2591	Ogden Willamette	518738	9,955
2545	Ogden Yukon	257115	1,870
1375	Orgeon	287875	3,626
435	Oregon Bear	264497	1,971
1947	Oregon Mail	296779	3,880
971	Oregon Standard	246773	345
2465	Overseas Alice	514928	9,540
2506	Overseas Audrey	517186	9,720
2344	Overseas Carrier	243503	1,330
24431	Overseas Daphne	248882	550
931	Overseas Evelyn	249217	550
1704	Overseas Explorer	297748	1,410
1	Overseas Joyce	284049	6,700
2352	Overseas Progress	244888	1,400
1905	Overseas Rebecca	281777	6,875
785	Overseas Rose	245023	280
2444	Overseas Suzanne	248884	550
2343	Overseas Traveler	289436	1,540
932	Overseas Ulla	280004	5,015
2537	Overseas Vivian	518125	9,855
181	Pasadena	248894	1,830
1272	P. C. Spencer	284003	2,140
2121	Pecos	243529	280
1892	Penn Carrier	246008	345
330	Penn Challenger	280318	4,620
2745	Penn Champion	523341	10,345
2837	Penn Leader	247468	1,530
1954	Pennmar	295108	3,000
1860	Penn Sailor	275391	1,200
171	Pennsylvania Sun	280202	7,000
881	Perryville	244644	1,525
1367	Philippine Bear	287683	4,130
1419	Philippine Mail	288986	3,555
2379	Pine Tree State	252346	280
1653	Pioneer Commander	290005	3,357
1750	Pioneer Contender	292572	3,357
1715	Pioneer Contractor	291968	3,357
1774	Pioneer Crusader	292930	3,357
1432	Pioneer Moon	289263	3,357
2122	Platte	248133	1,535
1953	Point Sur	243263	345
1909	Portmar	294731	3,000
1505	Potomac	248800	1,340
1300	Prairie Grove	246660	1,740
499	President Adams	266667	2,190
500	President Arthur	264704	2,190
501	President Buchanan	229017	2,100
502	President Coolidge	267733	2,190
2447	President Fillmore	513880	4,845
505	President Garfield	266662	2,190
2380	President Grant	511226	4,845
521	President Harding	248275	297
2148	President Harrison	502569	3,868
509	President Hayes	264446	2,190
506	President Hoover	248424	297
511	President Jackson	266060	2,190
514	President Lincoln	285511	4,373
517	President Madison	249083	297
2416	President McKinley	512593	4,845
2113	President Monroe	501712	3,868
519	President Pierce	248619	297
2084	President Polk	500484	3,795
2398	President Taft	511653	4,845
522	President Taylor	266927	2,190
1208	President Tyler	286232	4,373
2359	President Van Buren	505581	4,845
919	Producer	245888	1,462
238	Providence Getty	254689	75
2751	Prudential Oceanjet	504015	4,085
2752	Prudential Seajet	502726	4,085
2706	Pure Oil	248837	350
2341	Rachel V	248785	195
2450	Raleigh	249291	200
2843	Raphael Semmes	242074	1,215
2164	Rappahannock	253236	200
2821	Red Jacket	522650	6,900
417	Reuben Tipton	247830	200
2691	Robin Gray	252626	280
26921	Robin Hood	247255	280
2697	Robin Trent	254641	280
400	Ruth Lykes	247503	200
2102	Ruth Lykes	502928	3,945
2544	Sacramento	245497	1,385
428	Samoa Bear	269028	2,190
177	San Antonio	248716	2,495
1919	San Francisco	241220	3,064
1929	San Juan	242653	3,064
891	Santa Adela	242243	200
2295	Santa Alicia	252747	280
2259	Santa Ana	252746	280
2297	Santa Anita	252748	280
2370	Santa Barbara	509186	4,120
2296	Santa Clara	506249	4,120
2257	Santa Cruz	504681	4,120
2314	Santa Elena	507606	4,120
2287	Santa Eliana	251812	280
899	Santa Fe	246002	120
900	Santa Flavia	242702	200
2376	Santa Isabel	510570	4,120
2155	Santa Lucia	502774	4,120
1574	Santa Magdalena	290270	5,572
211	Santa Maria	253781	715
1756	Santa Maria	292838	5,572
1678	Santa Mariana	291811	5,215
1830	Santa Mercedes	293943	5,572
2863	Santa Moulea	257213	280
2286	Santa Regina	240548	252
893	Santa Victoria	245130	120
1970	Seamar	284729	3,000
2304	Seatrain Carolina	246066	4,816
2291	Seatrain Delaware	245582	3,087
2309	Seatrain Florida	503326	4,816
65	Seatrain Georgia	262558	736
66	Seatrain Louisiana	262835	736
2346	Seatrain Maine	504714	4,816
2329	Seatrain Maryland	245253	4,816
67	Seatrain New Jersey	226688	370
68	Seatrain New York	231905	218
2400	Seatrain Ohio	244610	4,816
2305	Seatrain Puerto Rico	246095	4,816
2279	Seatrain San Juan	245622	3,087
60	Seatrain Savannah	231916	218
70	Seatrain Texas	220549	370
2357	Seatrain Washington	247460	4,816
1510	Sheldon Lykes	290508	2,702
1428	Shirley Lykes	289283	2,702
2464	Silver Falcon	248065	180
1714	Sinclair Texas	291990	8,080
1266	Sister Katingo	277036	4,545
2722	Socony Vacuum	268801	2,650
982	Solon Turman	285889	2,600
2866	Sonoma	253413	280
2489	Spirit of Liberty	516521	9,680
1016	Steel Admiral	252403	280
439	Steel Advocate	245731	280
440	Steel Age	244161	280
441	Steel Apprentice	252408	280
442	Steel Architect	247168	280
443	Steel Artisan	247833	280
444	Steel Chemist	252037	280
445	Steel Designer	247832	280
446	Steel Director	244978	280
447	Steel Executive	248843	280
449	Steel Flyer	244831	280
450	Steel King	252409	280
451	Steel Maker	247221	280
452	Steel Navigator	248846	280
454	Steel Rover	252600	280
455	Steel Scientist	248730	280
456	Steel Seafarer	248738	280
457	Steel Surveyor	244068	280
458	Steel Traveler	247198	280
459	Steel Vendor	246464	280
460	Steel Voyager	252501	280
461	Steel Worker	247834	280
2248	Stella Lykes	504062	4,106
403	Sue Lykes	248145	200
2431	Susquehanna	248334	200
2723	Syosset	247458	350
1418	Tampico	246344	1,740
463	Texaco California	266910	1,020
465	Texaco Connecticut	265501	1,025
466	Texaco Florida	271820	1,125
1867	Texaco Georgia	263819	4,855
469	Texaco Illinois	246093	1,545
471	Texaco Kansas	244230	1,465
1823	Texaco Maryland	292735	4,745
1824	Texaco Massachusetts	290306	4,580
475	Texaco Minnesota	243202	1,720
476	Texaco Mississippi	245082	1,720
2028	Texaco Montana	298918	5,405
478	Texaco Nebraska	242845	1,505
480	Texaco New Jersey	245831	1,375
481	Texaco New York	265981	1,090
483	Texaco North Dakota	265006	995
1899	Texaco Rhode Island	296380	5,000
1270	Texaco Wisconsin	277805	4,290
489	Texaco Wyoming	243048	1,560
209	Texan	249352	740
174	Texas Sun	283897	7,395
497	The Cabins	246143	1,370
925	Thetis	279627	5,718
2096	Thomas A	260954	2,200
2412	Thomas M	266338	2,200
2823	Thomas Q	261167	2,315
602	Ticonderoga	242244	440
406	Tillie Lykes	248461	280
2888	Topa Topa	247006	204
231	Transeastern	279438	6,320
2391	Transerie	248959	1,150
2301	Transhuron	506349	1,165
2463	Transpanama	257381	1,835
2338	Transsuperior	508404	1,155
1492	Trinity	246600	2,535
2744	Trojan	247177	1,895
590	Tullahoma	246662	1,530
407	Tyson Lykes	248066	200
2437	U.S. Mate	252492	200
2438	U.S. Navigator	248781	195
966	Utah Standard	251140	345
498	V. A. Fogg	244971	1,335
2270	Valley Forge	505796	8,750
2339	Vantage Venture	242576	350
2354	Velma Lykes	509652	4,106
2853	Ventura	252633	280
666	Virginia Trader	244789	385
1786	Walter Rice	248203	2,045
1398	Washington	288603	3,626
437	Washington Bear	264652	1,971
1349	Washington Mail	287238	3,555
974	Washington Standard	246203	345
667	Washington Trader	245566	385
2640	Wellesley Victory	247564	195
1779	Western Clipper	268288	2,475
1780	Western Comet	266365	2,370
1302	Western Hunter	287156	8,669
1781	Western Planet	268078	2,465
175	Western Sun	268798	2,605
2235	Wild Ranger	240518	200
224	Wilmington Getty	246557	2,420
1609	Windsor Victory	247843	195
1511	Wingless Victory	247243	195
358	Wolverine State	248740	550
2568	Wyoming	519037	5,525
2889	Yaka	246335	204
2008	Yellowstone	248883	1,107
2030	Yorkmar	290261	3,000
2822	Young America	524416	6,900

(b) Vessels of less than 1,500 gross tons—as of July 1, 1971. (1) The Maritime Administration has determined for certain vessels of less than 1,500 gross tons the values which constitute just compensation for the vessels to which they apply, computed as provided in sections 902(a) and 1209(a), Merchant Marine Act, 1936, as amended; and pursuant thereto has determined the values of vessels covered by interim binders for war risk hull insurance, Form MA–184, prescribed in Part 308 of this chapter.

(2) The interim binders listed below shall be deemed to have been amended as of July 1, 1971, by inserting in the space provided therefore or in substitution for any value now appearing in such space the stated valuation of the vessels set forth below for the binders and vessels as designated. Such stated valuation shall apply with respect to insurance attaching during the period July 1, 1971, to December 31, 1971, inclusive: *Provided, however*, That if there is a substantial change in market values during said period, the Maritime Administration reserves the right to revise the values provided for herein or determined pursuant hereto at any time during said period:

And provided further, That the assured shall have the right within 60 days after date of publication of this section or within 60 days after the attachment of the insurance under said binder, whichever is later, to reject such valuation and proceed as authorized by section 1209(a)(2), Merchant Marine Act, 1936, as amended.

Binder No.	Name of vessel	Official No.	Stated valuation (in thousands)
752	A. H. Dumont	239224	$82
2486	Alison C	513704	925
2469	Apache	513045	830
1686	Atlantic	262007	135
1198	Barge 133		19
2045	Betty Moran	283323	760
2480	Blackhawk	515015	830
2331	Borinquen	506497	398
1153	Britton	119	16
2136	Cabo Rojo	297302	355
2137	Catano	298716	360
2298	El Morro	503562	371
2132	E. Whitney Olson, Jr	298925	560
2299	Fajardo	503563	371
2044	Gale B	292748	760
24	George S	282206	75
764	George Whitlock II	241390	93
1150	Habib	112	12
1151	Horne	115	13
1554	Lewis No. 8	244276	62
1702	Mohawk	254469	420
2350	New Haven	504920	371
742	Ocean Prince	276461	315
2065	Pacific Mariner	297090	960
2703	Perth Amboy No. 1	171776	185
2704	Perth Amboy No. 2	171686	155
1719	Ponce De Leon	244286	60
744	Port Jefferson	274512	306
1878	Puerto Nuevo	294841	349
1176	Qatif 7		51
1148	Sandy	114	13
2476	Seminole	514243	830
1263	Spartan	273815	348
2130	Starcrescent	284009	493
1152	Swigart	118	14
2552	Theresa F	516158	925
763	W. A. Weber	251302	58

NOTE: The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with 44 U.S.C. sections 3501–3511.

Dated: November 16, 1971.

E. SCOTT DILLON,
Chairman,
Ship Valuation Committee.

[FR Doc.71-17035 Filed 11-23-71;8:45 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-46; Amdts. 172-12, 173-56, 174-12, 177-19, 178-21]

PART 172—COMMODITY LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 170–189 OF THIS CHAPTER

Railway and Highway Fusees; Reclassification as Flammable Solids

Correction

In F.R. Doc. 71-16127 appearing at page 21201 in the issue of Thursday, November 4, 1971, the third entry in the first column of the table under § 172.5(a), now reading "Fusees (railway and highway)", should read "Fusees *(railway and highway)*".

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1033—CAR SERVICE

[S.O. 1085]

Burlington Northern Inc. Authorized To Operate Over Tracks of Decker Coal Co. Between Arno, Wyo., and Decker, Mont.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 15th day of November 1971.

It appearing, that the Burlington Northern Inc., has filed an application with the Commission, in Finance Docket No. 26848, for a certificate of public convenience and necessity authorizing operation over a newly constructed railroad, owned by the Decker Coal Co., between a point of connection near Burlington Northern Inc., Yellowstone Division milepost 690, west of Arno, Wyo., and a point in the vicinity of Decker, Mont., a distance of approximately 16.5 miles, together with the necessary connecting, loading, and other auxiliary tracks; that the Commission is of the opinion that there is immediate need for service over this line pending decision by the Commission in Finance Docket No. 26848, and that operation of this line by the Burlington Northern Inc. is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impractical and contrary to the public interest; and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1085 Service Order No. 1085.

(a) *Burlington Northern Inc., authorized to operate over tracks of Decker Coal Co. between Arno, Wyo., and Decker, Mont.* The Burlington Northern Inc., be, and it is hereby, authorized to operate over tracks owned by the Decker Coal Co. between a point of connection at Burlington Northern Inc., Yellowstone Division milepost 690 near Arno, Wyo., and a point in the vicinity of Decker, Mont., a distance of approximately 16.5 miles, together with the necessary connecting, loading, and auxiliary tracks.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date.* This order shall become effective at 11:59 p.m., November 15, 1971.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 30, 1972, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4), and 17(2))

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-17152 Filed 11-23-71;8:49 am]

SUBCHAPTER D—TARIFFS AND SCHEDULES

[Ex Parte No. 280]

PART 1311—SPECIAL PROCEDURES FOR TARIFF FILINGS UNDER THE WAGE AND PRICE STABILIZATION PROGRAM

At a General Session of the Interstate Commerce Commission held at its office in Washington, D.C. on the 19th day of November 1971.

The regulations of the Cost of Living Council, the Wage Board, and the Price Commission (6 CFR Parts 101, 201, and 300), issued pursuant to the Economic Stabilization Act of 1970, as amended, and Executive Order 11627, establish criteria applicable to price adjustments by carriers subject to regulation by the Interstate Commerce Commission. In order to give effect to such criteria, certain special procedures for the filing of tariffs are necessary, and must be made effective immediately.

This proceeding is, therefore, specifically directed to the adoption of appropriate rules and regulations to implement the provisions of the Economic Stabilization Act of 1970, as amended, Executive Order 11627, and the regulations of the Cost of Living Council, the Wage Board, and the Price Commission, hereinafter collectively referred to as the Wage and Price Stabilization Program. Such rules are set forth in the appendix to this order.

Since immediate implementation of the Wage and Price Stabilization Program is required, the Commission finds that notice and public procedure with respect to these regulations is impracticable and that good cause exists for making the regulations effective in less than 30 days.

It is ordered, That based upon the foregoing explanation, and good cause

appearing therefor, a proceeding be, and it is hereby, instituted under the authority of Parts I, II, III, and IV of the Interstate Commerce Act, and more specifically 49 U.S.C., sections 6(6), 317(a), 318 (a), 906(b), 906(e), and 1005(b), and the Administrative Procedure Act, for the purpose of promulgating rules prescribing special procedures for tariff filings under the Wage and Price Stabilization Program;

It is further ordered, That all carriers subject to Parts I, II, III, or IV of the Interstate Commerce Act be, and they are hereby, made respondents in this proceeding;

It is further ordered, That the rules attached as an appendix hereto shall be effective at 12:01 a.m. on the day following publication of this order in the FEDERAL REGISTER;

It is further ordered, That a copy of this order be posted in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and that a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER, as notice to all interested persons.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

Sec.

AUTHORITY: The provisions of this Part 1311 issued under sections 6(6), 217(a), 218(a), 306(b), 306(c), and 405(b) of the Interstate Commerce Act, 49 U.S.C. 6(6), 317(a), 318(a), 906(b), 906(c), and 1005(b) and the Economic Stabilization Act of 1970, as amended, Public Law 9-379, 84 Stat. 799; Public Law 91-588, 84 Stat. 1468, Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38, and Executive Order No. 11627, October 15, 1971, 36 F.R. 20139.

§ 1311.0 General provisions; applicability; definitions.

(a) These regulations are promulgated to give effect to the provisions of the Economic Stabilization Act of 1970 as amended of Executive Order 11627, and of the regulations of the Cost of Living Council, the Wage Board, and the Price Commission. They are effective on the date of publication in the FEDERAL REGISTER.

(b) These regulations are applicable to the tariff filings of all carriers subject to the Interstate Commerce Act, and will remain in effect for the duration of the Wage and Price Stabilization Program established under the Economic Stabilization Act of 1970 as amended. To the extent that the provisions of this part are inconsistent with other regulations of the Interstate Commerce Commission, such other regulations are suspended.

(c) For the purposes of this part, a "reportable increase" is defined as any proposed change in a published tariff which will result in an increase of 2 percent or more in the price for a carrier service paid by one or more identifiable user of such service. A reportable increase will not include any change affecting a rate or charge under which no traffic was transported or service performed during the 90 days immediately preceding the proposed change nor will it include a change affecting a rate or charge for a new service which was actively under consideration between a carrier and a shipper during the 90 days immediately preceding the proposed change. A reportable increase will not include rate adjustments made in the course of a bona fide republication of a tariff in compliance with the requirements of Ex Parte Nos. 265 and 267.

(d) For the purposes of this part, the Price Commission will be referred to as the "Price Commission" and the Interstate Commerce Commission as the "Commission."

§ 1311.1 Categories of carriers; Price Commission regulations.

(a) Carriers with gross annual revenues of $100 million or more are in the prenotification category. They must notify the Price Commission of any proposed increases in rates and charges. They must report any authorized increase to the Price Commission immediately.

(b) Carriers with gross annual revenues of $50 million or more but less than $100 million are in the reporting category. They may put into effect increases in rates or charges which comply with the guidelines established by the Cost of Living Council and the Price Commission without advance notification to the Price Commission. They must report any authorized increase to the Price Commission immediately.

(c) Increases in the rates or charges of carriers having gross annual revenues of less than $50 million will not be subject to either the prenotification or reporting requirements. However, such increases may be subject to examination by the Internal Revenue Service for compliance with the guidelines established by the Cost of Living Council and the Price Commission. These carriers should be on notice that they may be subject to penalties if it is found that increases in rates and charges violate these guidelines.

(d) This Commission will publish in the FEDERAL REGISTER, as soon as possible, the names of carriers falling into the prenotification and reporting categories.

§ 1311.2 Procedures governing the filing of all schedules filed on or after the effective date of this order.

(a) For carriers in the prenotification category:

(1) All schedules which include increases in rates or charges must be accompanied by a copy of the notification, and any supporting materials, submitted to the Price Commission. Such schedules, to the extent that they propose reportable increases, must also be accompanied by a justification containing the information described in 1311.3(a) of this part, unless such information is included in the notice submitted to the Price Commission.

(2) At the time of filing a schedule which includes an increase in a rate or charge, or as soon as possible thereafter, the carrier must inform this Commission, in writing, of the date upon which the Price Commission was notified of the proposed increase.

(3) If the Price Commission finds that proposed increases in rates or charges are unlawful, this Commission will enter an appropriate order suspending or requiring the cancellation of the schedules involved.

(4) A copy of the notification submitted to the Price Commission that a proposed increase has become effective, and of any other report filed with the Price Commission, must be filed simultaneously with this Commission.

(b) For carriers in the reporting category:

(1) All schedules which include increases in rates or charges must be accompanied by a supporting statment containing the information described in § 1311.3(b).

(2) A copy of the notification submitted to the Price Commission that a proposed increase has become effective, and of any other report filed with the Price Commission, must be filed simultaneously with this Commission.

(c) For all other carriers, all schedules which include increases in rates or charges must be accompanied by a supporting statement containing the information described in § 1311.3(b).

§ 1311.3 Supporting statements.

(a) For carriers in the prenotification category, all schedules proposing reportable increases must be accompanied by a supporting statement which must:

(1) Identify each change in the schedule which would result in a reportable increase.

(2) State the percentage of the proposed reportable increase.

(3) Provide cost justifications for the proposed reportable increase and explain the manner in which any productivity gain was taken into account.

(4) State the effect of the reportable increase on the carrier's pretax profit margin.

(b) For all other carriers, all schedules proposing reportable increases must be accompanied by a supporting statement which must:

(1) Identify each change in the schedule which would result in a reportable increase.

(2) State the percentage of the proposed reportable increase.

(c) All carriers should be prepared to submit upon request underlying data sufficient to establish the cost justification for any proposed increase in a rate or charge, to demonstrate that such increase will not result in an increase in

pretax profit margin, and to establish that the increase complies with the purposes of the Wage and Price Stabilization Program.

§ 1311.4 Form of tariffs to be published.

All agency tariffs to be subsequently published must be in a form and must contain information adequate to designate which of the participating carriers are in the prenotification and reporting categories, and to assure that those carriers will be in compliance with these regulations insofar as they participate in the published tariffs.

§ 1311.5 Procedures in pending proceedings.

(a) Proposed increases approved under statutory standards but required to be canceled or indefinitely postponed as in contravention of the price stabilization policy until the further order of the Commission will be reexamined to determine whether such increases are consistent with the goals of the Wage and Price Stabilization Program, and if necessary, will be reopened for the receipt of additional evidence by order of this Commission.

(b) Respondents in proceedings in which the records have been completed and decisions are pending, and those which have been instituted but in which records have not been completed, should be on notice that failure to establish that rate increases conform to the policies of the Wage and Price Stabilization Program will result in an order requiring the cancellation of proposed schedules. Respondents in such proceedings may tender additional evidence for this purpose, and if necessary, further procedures will be prescribed by order of this Commission.

[FR Doc.71-17262 Filed 11-23-71;8:51 am]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 10—MIGRATORY BIRDS

Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds

The provisions of § 10.7(b) presently require that all migratory game birds taken and exported in accordance with pertinent hunting laws and regulations and imported from Mexico or any other foreign country except Canada be dressed, drawn, and have the head and feet removed.

A method has been perfected by the U.S. Department of Agriculture whereby game birds can be brought into the United States from foreign countries and decontaminated without removing the plumage, head, and feet, without danger to poultry flocks in the United States. It has been determined that § 10.7(b) should be amended for the single purpose of permitting importation in accordance therewith, retaining the other prohibitions relating to bringing migratory game birds into the United States.

Accordingly, § 10.7(b) is amended to read as follows:

§ 10.7 Importations from foreign countries.

* * * * *

(b) All migratory game birds imported from Mexico or any other foreign country except Canada must be dressed, drawn, and have the head and feet removed, except legally taken, fully feathered migratory game birds consigned for mounting purposes to a taxidermist who holds a current taxidermist permit issued to him pursuant to § 16.12 of this chapter and who is also licensed by the U.S. Department of Agriculture to decontaminate such birds. Fully feathered birds imported pursuant to this subsection must be tagged as required in § 10.9: *Provided*, That each such bird imported from any foreign country including Canada must have one fully feathered wing attached so as to permit species identification, and such wing must remain attached while being transported between the port of entry and the personal abode of the possessor or between the port of entry and a commercial preservation facility.

* * * * *

Since this amendment relieves an existing restriction, it is determined that notice and public procedure thereon are unnecessary, impracticable, and contrary to the public interest and that this amendment is effective upon publication in the FEDERAL REGISTER.

(16 U.S.C. 703 et seq.; 40 Stat. 755)

Effective date: Upon publication in the FEDERAL REGISTER (11-24-71).

J. P. LINDUSKA,
Acting Director, Bureau of Sport Fisheries and Wildlife.

NOVEMBER 19, 1971.

[FR Doc.71-17108 Filed 11-23-71;8:45 am]

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 28—PUBLIC ACCESS, USE, AND RECREATION

Moosehorn National Wildlife Refuge, Maine

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-24-71).

§ 28.7 Operation of vehicles.

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Snowmobile use is limited to roads within the Baring Unit of the Moosehorn National Wildlife Refuge.

The operation of snowmobiles shall be subject to the following special conditions:

(1) Use restricted to the period December 1 through April 15.

(2) Operated only in such manner and at such a speed that no persons or property will be endangered.

(3) All persons must be in a snowmobile or in a trail vehicle that is fixed to the snowmobile by a rigid tongue.

(4) No firearms or archery equipment are to be carried on snowmobiles.

(5) No form of wildlife may be chased or harried by snowmobiles.

The Baring Unit, comprising 16,000 acres, is delineated on maps available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1972.

ROBERT V. WADE,
Refuge Manager, Moosehorn National Wildlife Refuge.

NOVEMBER 16, 1971.

[FR Doc.71-17129 Filed 11-23-71;8:47 am]

PART 33—SPORT FISHING

Moosehorn National Wildlife Refuge, Maine

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11-24-71).

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

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Sport fishing on the Moosehorn National Wildlife Refuge, Calais, Maine, is permitted on the areas designated by signs as open to fishing. These open areas, comprising 500 acres, are delineated on maps available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The use of boats without motors is permitted on Bearce, Conic, and Cranberry Lakes.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1972.

ROBERT V. WADE,
Refuge Manager, Moosehorn National Wildlife Refuge.

NOVEMBER 16, 1971.

[FR Doc.71-17128 Filed 11-23-71;8:47 am]

PART 33—SPORT FISHING

National Elk Refuge, Wyoming

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (11–24–71).

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

WYOMING

NATIONAL ELK REFUGE

Sport fishing on the National Elk Refuge, Wyo., is permitted only on the areas designated by State fishing orders as open to fishing. These open areas, comprising 327 acres, are delineated on maps available at refuge headquarters, Jackson, Wyo., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Sport fishing shall be in accordance with all applicable State regulations subject to the following special condition:

(1) Use of boats or other floating devices is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through October 31, 1972.

DON E. REDFEARN,
Refuge Manager, National Elk Refuge, Jackson, Wyo.

NOVEMBER 12, 1971.

[FR Doc.71–17111 Filed 11–23–71;8:46 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Advertising and Other Activities; Notice of Hearing on Proposed Regulations

Proposed regulations under sections 512(a) and 513 of the Internal Revenue Code of 1954, relating to advertising and other activities of exempt organizations, appear in the FEDERAL REGISTER for September 11, 1971 (36 F.R. 18316).

Written comments or suggestions pertaining to such proposed regulations were required to be submitted by October 11, 1971. The time for submission of written comments or suggestions pertaining to such proposed regulations has been extended to December 10, 1971.

A public hearing on the provisions of these proposed regulations will be held on Tuesday, January 18, 1972, at 10 a.m., e.s.t., in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202-964-3935. Under such § 601.601(a)(3), persons who have submitted written comments or suggestions within the time prescribed in the notice of proposed rule making and who desire to present oral comments should by January 4, 1972, submit an outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who desire a copy of such written comments or suggestions or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by January 11, 1972. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is twenty-five cents ($0.25) per page, subject to minimum change of $1.

RICHARD M. HAHN,
Acting Chief Counsel.

[FR Doc.71-17115 Filed 11-23-71;8:46 am]

[26 CFR Part 1]

INCOME TAX

Certain Sales of Low-Income Housing Projects

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by December 24, 1971. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by December 24, 1971. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 1039 of the Internal Revenue Code of 1954 (83 Stat. 718; 26 U.S.C. 1039) and section 7805 of the Internal Revenue Code of 1954 (68 Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 910(a) of the Tax Reform Act of 1969 (83 Stat. 718), the following new sections are added immediately after § 1.1038-2:

§ 1.1039 Statutory provisions; certain sales of low-income housing projects.

(a) *Nonrecognition of gain.*—If—

(1) A qualified housing project is sold or disposed of by the taxpayer in an approved disposition, and

(2) Within the reinvestment period the taxpayer constructs, reconstructs, or acquires another qualified housing project.

Then, at the election of the taxpayer, gain from such approved disposition shall be recognized only to the extent that the net amount realized on such approved disposition exceeds the cost of such other qualified housing project. An election under this subsection shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

(b) *Definitions.*— For purposes of this section—

(1) *Qualified housing project.*—The term "qualified housing project" means a project to provide rental or cooperative housing for lower income families—

(A) With respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, and

(B) With respect to which the owner is, under such sections or regulations issued thereunder—

(i) Limited as to the rate of return on his investment in the project, and

(ii) Limited as to rentals or occupancy charges for units in the project.

(2) *Approved disposition.*—The term "approved disposition" means a sale or other disposition of a qualified housing project to the tenants or occupants of units in such project, or to a cooperative or other nonprofit organization formed solely for the benefit of such tenants or occupants, which sale or disposition is approved by the Secretary of Housing and Urban Development under section 221(d)(3) or 236 of the National Housing Act or regulations issued under such sections.

(3) *Reinvestment period.*—The reinvestment period, with respect to an approved disposition of a qualified housing project, is the period beginning 1 year before the date of such approved disposition and ending—

(A) One year after the close of the first taxable year in which any part of the gain from such approved disposition is realized, or

(B) Subject to such terms and conditions as may be specified by the Secretary or his delegate, at the close of such later date as the Secretary or his delegate may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary or his delegate prescribes by regulations.

(4) *Net amount realized.*—The net amount realized on an approved disposition of a qualified housing project is the amount realized reduced by—

(A) The expenses paid or incurred which are directly connected with such approved disposition, and

(B) The amount of taxes (other than income taxes) paid or incurred which are attributable to such approved disposition.

(c) *Special rules.*—For purposes of applying subsection (a)(2) with respect to an approved disposition—

(1) No property acquired by the taxpayer before the date of the approved disposition shall be taken into account unless such property is held by the taxpayer on such date, and

(2) No property acquired by the taxpayer shall be taken into account unless, except as provided in subsection (d), the unadjusted basis of such property is its cost within the meaning of section 1012.

(d) *Basis of other qualified housing project.*—If the taxpayer makes an election under subsection (a) with respect to an approved disposition, the basis of the qualified housing project described in subsection (a)(2) shall be its cost reduced by an amount equal to the amount of gain not recognized by reason of the application of (a).

(e) *Assessment of deficiencies.*—(1) *Deficiency attributable to gain.*—If the taxpayer

has made an election under subsection (a) with respect to an approved disposition—

(A) The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such approved disposition is realized, attributable to the gain on such approved disposition shall not expire prior to the expiration of 3 years from the date the Secretary or his delegate is notified by the taxpayer (in such manner as the Secretary or his delegate may by regulations prescribe) of the construction, reconstruction, or acquisition of another qualified housing project or of the failure to construct, reconstruct, or acquire another qualified housing project, and

(B) Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provision of any other law or rule of law which would otherwise prevent such assessment.

(2) *Time for assessment of other deficiencies attributable to election.*—If a taxpayer has made an election under subsection (a) with respect to an approved disposition and another qualified housing project is constructed, reconstructed, or acquired before the beginning of the last taxable year in which any part of the gain upon such approved disposition is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

[Sec. 1039, as added by sec. 910(a), Tax Reform Act of 1969 (83 Stat. 718)]

§ 1.1039–1 Certain sales of low-income housing projects.

(a) *Nonrecognition of gain.* Section 1039 provides rules under which the taxpayer may elect not to recognize gain in certain cases where a qualified housing project is sold or disposed of after October 9, 1969, in an approved disposition and another such qualified housing project or projects (referred to as the "replacement project") is acquired, constructed, or reconstructed within a specified reinvestment period. If the requirements of section 1039 are met, and if the taxpayer makes an election in accordance with the provisions of paragraph (b)(4) of this section, then the gain realized upon the sale or disposition is recognized only to the extent that the net amount realized on such sale or disposition exceeds the cost of the replacement project. The terms "qualified housing project," "approved disposition," "reinvestment period," and "net amount realized" are defined in paragraph (c) of this section.

(b) *Rules of application*—(1) *In general.* The election under section 1039(a) may be made only by the taxpayer owning the qualified housing project disposed of. Thus, if the qualified housing project disposed of is owned by a partnership, the partnership must make the election. (See section 703(b).) Similarly, if the qualified housing project disposed of is owned by a corporation or trust, the corporation or trust must make the election. In addition, the reinvestment of the taxpayer must be in such a manner that the taxpayer would be entitled to a deduction for depreciation on the replacement project. Thus, if the qualified housing project disposed of is owned by individual A, the purchase by A of stock in a corporation owning such a project or of an interest in a partnership owning such a project will not be considered as the purchase by A of such a project.

(2) *Special rules.* (i) The cost of a replacement project acquired before the approved disposition of a qualified housing project shall be taken into account under section 1039 only if such property is held by the taxpayer on the date of the approved disposition.

(ii) Except as provided in section 1039(d), no property acquired by the taxpayer shall be taken into account for purposes of section 1039(a)(2) unless the unadjusted basis of such property is its cost within the meaning of section 1012. For example, if a qualified housing project is acquired in an exchange under section 1031, relating to exchange of property held for productive use or investment, such property will not be taken into account under section 1039(a)(2) because its basis is determined by reference to the basis of the property exchanged. (See section 1031(d).)

(3) *Cost of replacement project.* The taxpayer's cost for the replacement project includes only amounts constituting capital expenditures that are attributable to acquisition, construction, or reconstruction made within the reinvestment period (as defined in paragraph (c)(4) of this section). See section 263 for rules as to what constitutes capital expenditures. Thus, assume that a calendar year taxpayer realizes gain in 1970 upon the approved disposition of a qualified housing project occurring on January 1, 1970. If the taxpayer had begun construction of another qualified housing project on January 1, 1969, and completes such construction on June 1, 1972, only that portion of the cost attributable to the period before January 1, 1972, constitutes the cost of the replacement project for purposes of section 1039. For purposes of determining the cost of a replacement project attributable to a particular period, the total cost of the project may be allocated to such period on the basis of the portion of the total project actually constructed during such period.

(4) *Election.* (i) An election not to recognize the gain realized upon an approved disposition of a qualified housing project to the extent provided in section 1039(a) may be made by attaching a statement to the income tax return filed for the first taxable year in which any portion of the gain on such disposition is realized. Such a statement shall contain the information required by subdivision (iii) of this subparagraph. If the taxpayer does not file such a statement for the first taxable year in which any portion of the gain is realized, but fails to report a portion of the gain realized upon the approved disposition as income for such year or for any subsequent taxable year, then an election shall be deemed to be made under section 1039(a) with respect to that portion of the gain not reported as income.

(ii) An election may be made under section 1039(a) even though the replacement project has not been acquired or constructed at the time of election. However, if an election has been made and (*a*) a replacement project is not constructed, reconstructed, or acquired, (*b*) the cost of the replacement project is lower than the net amount realized from the approved disposition, or (*c*) a decision is made not to construct, reconstruct, or acquire a replacement project, then the tax liability for the year or years for which the election was made shall be recomputed and an amended return filed. An election may be made even though the taxpayer has filed his return and recognized gain upon the disposition provided that the period of limitation on filing claims for credit or refund prescribed by section 6511 has not expired. In such case, a statement containing the information required by subdivision (iii) of this subparagraph should be filed together with a claim for credit or refund for the taxable year or years in which gain was recognized.

(iii) The statement referred to in subdivisions (i) and (ii) of this subparagraph shall contain the following information:

(*a*) The date of the approved disposition;

(*b*) If a replacement project has been acquired, the date of acquisition and cost of the project;

(*c*) If a replacement project has been constructed or reconstructed by or for the taxpayer, the date construction was begun, the date construction was completed, and the percentage of construction completed within the reinvestment period;

(*d*) If no replacement project has been constructed, reconstructed, or acquired prior to the time of filing of the statement, the estimated cost of such construction, reconstruction, or acquisition;

(*e*) The adjusted basis of the project disposed of; and

(*f*) The amount realized upon the approved disposition and a description of the expenses directly connected with the disposition and the taxes (other than income taxes) attributable to the disposition.

(c) *Definitions*—(1) *General.* The definitions contained in subparagraphs (2) through (5) of this paragraph shall apply for purposes of this section.

(2) *Qualified housing project.* The term "qualified housing project" means a rental or cooperative housing project for lower income families that has been constructed, reconstructed, or rehabilitated pursuant to a mortgage which is insured under section 221(d)(3) or 236 of the National Housing Act, provided that with respect to the housing project disposed of and the replacement project constructed, reconstructed, or acquired, the owner of the project at the time of the approved disposition and prior to the close of the reinvestment period is, under such sections or regulations issued thereunder,

(i) Limited as to rate of return on his investment in the project, and

(ii) Limited as to rentals or occupancy charges for units in the project.

If the owner of the project is organized and operated as a nonprofit cooperative or other nonprofit organization, then such owner shall be considered to meet the requirement of subdivision (i) of this subparagraph.

(3) *Approved disposition.* The term "approved disposition" means a sale or other disposition of a qualified housing project to the tenants or occupants of units in such project, or to a nonprofit cooperative or other nonprofit organization formed and operated solely for the benefit of such tenants or occupants, provided that it is approved by the Secretary of Housing and Urban Development or his delegate under section 221 (d)(3) or 236 of the National Housing Act or regulations issued under such sections. Evidence of such approval should be attached to the tax return or statement in which the election under section 1039 is made.

(4) *Reinvestment period.* The term "reinvestment period" means the period beginning 1 year before the date of the disposition and ending 1 year after the close of the first taxable year in which any part of the gain from such disposition is realized, or at such later date as may be designated pursuant to an application made by the taxpayer. Such application shall be made before the expiration of 1 year after the close of the first taxable year in which any part of the gain from such disposition is realized, unless the taxpayer can show to the satisfaction of the district director that—

(i) Reasonable cause exists for not having filed the application within the required period, and

(ii) The filing of such application was made within a reasonable time after the expiration of the required period.

The application shall contain all the information required by paragraph (b)(4) of this section and shall be made to the district director for the internal revenue district in which the return is filed for the first taxable year in which any of the gain from the approved disposition is realized.

(5) *Net amount realized.* (i) The "net amount realized" from the approved disposition of a qualified housing project is the amount realized from such disposition, reduced by—

(*a*) The expenses paid or incurred by the taxpayer which are directly connected with the approved disposition, and

(*b*) The amount of taxes (other than income taxes) paid or incurred by the taxpayer which are attributable to the approved disposition.

(ii) Examples of expenses directly connected with an approved disposition of a qualified housing project include amounts paid for sales or other commissions, advertising, and for the preparation of a deed or other legal services in connection with the disposition. An amount paid for a repair to the building will be considered as an expense directly connected with the approved disposition under subdivision (i)(*a*) of this subparagraph only if such repair is required as a condition of sale, or is required by the Secretary of Housing and Urban Development or his delegate as a condition of approval of the disposition.

(iii) Examples of taxes that are attributable to the approved disposition include local property transfer taxes and stamp taxes. A local real property tax is not so attributable.

(d) *Basis and holding period of replacement project*—(1) *Basis.* If the taxpayer makes an election under section 1039, the basis of the replacement housing project shall be its cost (determined under paragraph (b)(3) of this section) reduced by the amount of gain not recognized under section 1039(a). If the replacement consists of more than one housing project, the basis determined under this subparagraph shall be allocated to the properties in proportion to their respective costs.

(2) *Holding period.* The holding period of the replacement housing project shall begin on the date the taxpayer first bears the burdens and enjoys the benefits of ownership of the project. (For special rule regarding the holding period of property for purposes of section 1250, see section 1250(e)(4).)

(e) *Assessment of deficiencies*—(1) *Deficiency attributable to gain.* If a taxpayer makes an election under section 1039(a) with respect to an approved disposition, any deficiency attributable to the gain on such disposition, for any taxable year in which any part of such gain is realized, may be assessed at any time before the expiration of 3 years after the date the district director or director of the regional service center with whom the return for such year has been filed is notified by the taxpayer of the acquisition or the completion of construction or reconstruction of the replacement qualified housing project or of the failure to acquire, construct, or reconstruct a replacement qualified housing project, as the case may be. Such a deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment. If replacement has been made, such notification shall contain the information required by paragraph (b)(4)(iii) of this section. Such notification shall be attached to the return filed for the taxable year or years in which the replacement occurs, or in which the period for the replacement expires, and a copy of such notification shall be filed with the district director or director of regional service center with whom the election under section 1039(a) was required to be filed, if the return is not filed with such director.

(2) *Deficiency attributable to election.* If gain upon an approved disposition is realized in two (or more) taxable years, and the replacement qualified housing project was acquired, constructed, or reconstructed before the beginning of the last such year, any deficiency, for any taxable year before such last year, which is attributable to an election by the taxpayer under section 1039(a) may be assessed at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed, notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any law or rule of law which would otherwise prevent such assessment. Thus, if gain upon an approved disposition is realized in 1971 and 1975, and if a replacement project is purchased in 1971, any deficiency for 1971 may be assessed within the period for assessing a deficiency for 1975.

[FR Doc.71-17114 Filed 11-23-71;8:46 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 993]

DRIED PRUNES PRODUCED IN CALIFORNIA

Decision and Referendum Order With Respect to the Proposed Amendment of the Marketing Agreement, as Amended, and Order, as Amended

Pursuant to the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held in San Francisco, California, on April 21, 1971, after notice thereof was published in the FEDERAL REGISTER (36 F.R. 5706) on proposals to amend the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California (hereinafter collectively referred to as the "order"). The order is effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), hereinafter referred to as the "act".

On the basis of the evidence adduced at the hearing, and the record thereof, the recommended decision in this proceeding was filed with the Hearing Clerk, U.S. Department of Agriculture. Notice thereof, affording opportunity to file written exceptions thereto, was published July 21, 1971, in the FEDERAL REGISTER (F.R. Doc. 71–10345; 36 F.R. 13397).

Material issues, findings and conclusions, rulings, and general findings. The material issues, findings and conclusions, rulings, and the general findings of the recommended decision set forth in the FEERAL REGISTER (F.R. Doc. 71–10345; 36 F.R. 13397) are hereby approved and adopted as the material issues, findings and conclusions, rulings, and the general findings of this decision as if set forth in full herein, except as they are modified by the rulings on the exceptions hereinafter set forth.

Rulings on exceptions. Exceptions to the recommended decision were filed, within the prescribed time, by Joseph Renelle, by J. Frank Bennett, manager of

the Prune Bargaining Association; by Andy Herman; and by Joseph A. Zanger and other prune growers in Santa Clara and San Benito Counties. These exceptions have been considered carefully and fully, in conjunction with the evidence in the record and the proposed findings and conclusions of the recommended decision, in arriving at the findings and conclusions set forth herein. To any extent that the findings and conclusions contained herein are at variance with any of the exceptions pertaining thereto, such exceptions are denied on the basis of the findings and conclusions relating to the issues to which the exceptions refer.

The exceptions, and the rulings thereon, are as follows:

An exceptor contended that (1) handlers should be subject to penalties if they have any undersized prunes in their packing plants other than those permitted by a tolerance, (2) a definite time limit should be established whereby all undersized prunes are returned by a handler to the producer at the producer's expense, and (3) handlers should be required to file a certificate with the U.S. Department of Agriculture showing the quantity of undersized and off-grade prunes they have on hand prior to the new crop. The recommended decision provides that in order to enable the Committee to properly administer the provisions of proposed paragraph (g) of § 993.50, the rules and regulations should prescribe a time limit for disposition, by a handler receiving undersized prunes from a producer or dehydrator, of a like quantity of such prunes in nonhuman consumption outlets. The recommended decision also provides that handlers be prohibited from shipping or otherwise disposing of such quantity for human consumption, but that they should be permitted to dispose of that quantity in nonhuman consumption outlets, such as for livestock feed. Moreover, it is recommended that the Committee have the authority to establish the outlets for disposition of such prunes and the conditions under which such dispositions are made. Thus, a basis is provided for establishment of a time limit and the permitted outlets for disposition of such prunes. Such outlets could include producers capable of utilizing undersized prunes for nonhuman consumption purposes, such as in their livestock feeding operations. However, if the producer is unable to so utilize undersized prunes, there would be no reason for the handler to return the prunes to the producer since the handler should not receive credit for such dispositions. In addition, the order currently provides ample authority for the Committee to request reports, including inventory reports, from handlers. Since the Committee is established under the order for program operations, submission of reports by handlers to the Department on inventories of undersized and off-grade prunes would serve no useful purpose. Accordingly, the exception is denied.

An exception was taken to the proposed method for the determination of undersized prunes; i.e., by a diameter measurement. The exceptor stated that prune industry practices of many years provide for size determinations by weight per pound, and these recognize that different lots of prunes have variables within their composition requiring a weight per pound classification in order to properly evaluate the worth of the prunes within the lot. It was contended that use of a new method of size determination at the producer level is not justified by the facts in the case. The various prune sizes are usually described numerically (15/20, 15/22, 18/24, 20/30, etc.) or by nomenclature (small, medium, large, etc.), which are all defined under the order in terms of the number of prunes contained in a pound. However, as provided in the recommended decision, handlers normally size-grade prunes by passing them over a series of metal plates perforated with uniform round holes to form a screen. Moreover, in normal size-grading practice, these holes may range from twenty thirty-seconds or twenty-two thirty-seconds inch in diameter at the start of the grading process to thirty-eight thirty-seconds to forty thirty-seconds inch in diameter at the end of the process.

The proposed definition of the term "undersized prunes", as hereinafter set forth, means prunes which pass freely through a round opening of a specified diameter. Thus, while the apparatus may differ, the principle for determining the quantity of "undersized prunes" in a lot received by a handler from a producer or a dehydrator is essentially the same as handlers' normal size-grading practices. Moreover, while the count per pound of undersized prunes could be determined readily, such a determination would serve no useful objective for purposes of the proposed size regulation with respect to undersized prunes. Therefore, the exception is denied.

A number of exceptions to the recommended decision were submitted because proposed paragraph (c) of § 993.49, providing for establishment of size regulation with respect to undersized prunes, did not provide for any maximum opening to be used in determining the quantity of undersized prunes in a lot received by a handler from a producer or dehydrator. Most of these exceptions were submitted by, or on behalf of, producers in Santa Clara or San Benito Counties. The exceptors from those counties contended that, under comparatively similar crop conditions statewide, Santa Clara and San Benito Counties historically produce prune crops in which the size count of the prunes average 15 to 20 points per pound more (i.e., the prunes are smaller) than prunes produced in other districts in the State of California. The exceptors also contended that prunes grown in these two counties have a greater density because of a higher sugar content and better pit-to-flesh ratio than prunes of equal diameter grown elsewhere in the State. Thus, it was alleged that prunes produced in these two counties and sized on the "Bird Cage grader" would have a count of 8 to 15 points per pound less than prunes grown elsewhere in the State and sized on the same screen. The exceptors also contended that Santa Clara and San Benito Counties will produce prune crops in which the prunes average 80 to 90 prunes per pound, even when crop yields are average to below average. On the other hand, it was alleged that other prune-producing districts in the State produce small-sized prunes when abnormally large cropping occurs in a given year. It therefore was contended that to reduce the supply of prunes by eliminating prunes of smaller sizes, without regard to quality, at the discretion of the Committee, would be arbitrary and discriminatory against Santa Clara and San Benito County prune producers, and would unfairly place the burden of restricting the prune supply on them. Moreover, it was contended that moving the screen size from twenty-three thirty-seconds of an inch to twenty-eight thirty-seconds of an inch could result in many producers not being able to sell any of their production and thus impose undue economic hardship on them. These producers therefore contended that the maximum opening to be included in any size regulation with respect to undersized prunes should be twenty-three thirty-seconds of an inch for French prunes and twenty-eight thirty-seconds of an inch for non-French prunes.

Another exceptor contended that the maximum opening for French prunes should be twenty-six thirty-seconds of an inch in diameter, but proposed no maximum opening for non-French prunes. The exceptor also stated that any prunes counting 110 or less per pound has long been recognized as marketable in its normal form as a prune. It was therefore contended that prunes counting 110 or less per pound should not be eliminated from the marketplace by the proposed size regulation. However, these exceptions are in conflict. As stated in the recommended decision, prunes size-graded in terms of a $^{25}/_{32}$-inch opening (after removal of the smaller sizes by $^{23}/_{32}$-inch and $^{24}/_{32}$-inch openings) would generally average 100 to 110 prunes per pound. Prunes passing through a $^{26}/_{32}$-inch opening would be larger in size than those passing through the $^{25}/_{32}$-inch opening, and hence larger than the 110 pound cut-off size urged by the exceptor.

The exceptions with respect to the establishment of maximum openings for French prunes and non-French prunes should be recognized, but only in part. As stated in the recommended decision, no evidence was presented at the hearing on the largest openings which would be employed under the regulation with respect to undersized prunes. The recommended decision also indicates that no evidence was presented at the hearing indicating the size of the openings for non-French prunes which would be comparable, respectively, to openings of twenty-four thirty-seconds and twenty-five thirty-seconds of an inch for French prunes. In view of the insufficiency of the evidence and the conflict in the views contained in the exceptions as to the maximum opening

for French prunes, any maximum openings for French prunes and non-French prunes designated in this decision for inclusion in the order would be arbitrary and unsupported by the evidence.

Thus, the proposed paragraph (c) of § 993.49 should remain unchanged. However, the eleventh paragraph in Material Issue (2) of the recommended decision (36 F.R. 13400) should be revised in part. That paragraph states, in part, that proposed paragraph (c) of § 993.49 should limit the size of the openings to those proposed in the notice of hearing (namely, twenty-three thirty-seconds of an inch for French prunes and twenty-eight thirty-seconds of an inch for non-French prunes), and that paragraph (c) should also permit larger openings to be prescribed at any time. The recommended decision also states that the Committee and the industry should conduct studies to determine the extent of the problems and hardships testified to at the hearing, on a district and county basis, the size openings for non-French prunes which would be comparable to $^{24}/_{32}$-inch and $^{25}/_{32}$-inch openings for French prunes, and the practicality of any openings larger than twenty-five thirty-seconds of an inch for French prunes (with comparable size openings for non-French prunes). The exceptions with respect to the establishment of maximum openings should be recognized by limiting initial size regulation with respect to undersized prunes to those openings set forth in proposed paragraph (c); namely, twenty-three thirty-seconds of an inch for French prunes and twenty-eight thirty-seconds of an inch for non-French prunes. Moreover, the studies recommended in the recommended decision to be made by the Committee and the industry should include a determination as to the feasibility of establishing maximum openings for French prunes and non-French prunes, and the size of such openings. Any such maximum openings should be established by the Secretary on the basis of a recommendation of the Committee pursuant to § 993.52. Accordingly, the 11th paragraph in Material Issue (2) of the recommended decision should be revised to read as follows:

"Therefore, proposed paragraph (c) of § 993.49 should limit the size of the openings to those proposed in the notice of hearing; namely; twenty-three thirty-seconds of an inch for French prunes and twenty-eight thirty-seconds of an inch for non-French prunes. The Committee and the industry should conduct studies to determine the extent of the problems and hardships testified to at the hearing, on a district and county basis, the size openings for non-French prunes which would be comparable to size openings for French prunes larger than twenty-three thirty-seconds of an inch, the feasibility of establishing maximum openings for French prunes and non-French prunes, and the size of any such maximum openings. Any recommendation for modification of the openings prescribed in proposed paragraph (c) of § 993.49 should be made by the Committee separate from, and well in advance of, any recommendation pursuant to that paragraph for a size regulation with respect to undersized prunes for a crop year. In conformity with existing authority in the order, any modification of the openings specified in § 993.49 (c) by the Secretary should be pursuant to § 993.52. However, to make it clear that such authority does exist, § 993.52 should be amended by inserting a comma after 'size regulations' and inserting immediately thereafter the words 'including the openings prescribed in § 993.49(c)'."

The remainder of the exceptions either duplicate matters presented at the hearing, are not germane to the material issues, or are commentaries which, as opposed to the evidence of record, do not provide a basis for revising either the findings or conclusions or the proposed provisions of the recommended decision.

Amendment of the amended marketing agreement and the amended order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Dried Prunes Produced in California" and "Order Amending the Order, as Amended, Regulating the Handling of Dried Prunes Produced in California", which have been decided upon as the appropriate and detailed means of effecting the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the aforesaid rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that a referendum be conducted among the producers who, during the period August 1, 1970, through July 31, 1971 (which period is hereby determined to be a representative period for the purpose of such referendum), have been engaged, in the State of California, in the growing of prune plums for drying or dehydrating into prunes for market, to determine whether such producers favor the issuance of the said annexed order amending the order, as amended, regulating the handling of dried prunes produced in California.

Dower T. Mohun, Martin J. Kelly, and James S. Miller, of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, are hereby designated referendum agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900).

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

Any producer entitled to vote in the referendum who does not receive a copy of the aforesaid annexed order, voting instructions, or a ballot, or other necessary information will be able to obtain the same from any appropriate County Director of Agricultural Extension, or from Dower T. Mohun, San Francisco Marketing Field Office, Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture, 630 Sansome Street, San Francisco, CA 94111.

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

Dated: November 19, 1971.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Order, as amended, Regulating the Handling of Dried Prunes Produced in California

§ 993.0 Findings and determinations.

(a) *Previous findings and determinations.* The findings and determinations hereinafter set forth are supplementary, and in addition, to the findings and determinations made in connection with the issuance of the order and each previously issued amendment thereof. Except the finding as to the base period for the parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed. (For prior findings and determinations see 14 F.R. 5254; 16 F.R. 8437; 19 F.R. 1301; 22 F.R. 8254; 26 F.R. 475; 30 F.R. 9797.)

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and the applicable rules of practice and procedure, as amended (7 CFR Part 900), a public hearing was held at San Francisco, California, on April 21, 1971, on a proposed amendment of the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California. On the basis of the evidence adduced at the hearing, and the record thereof, it is found that:

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

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

(2) The said order, as amended and as hereby further amended, regulates the handling of dried prunes produced in California in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) There are no differences in the production and marketing of dried prunes in the production area covered by the order, as amended and as hereby further amended, which require different terms applicable to different parts of such area;

(4) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act; and

(5) All handling of dried prunes produced in California is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of dried prunes produced in California, shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

1. Section 993.19 Size. is revised to read as follows:

§ 993.19a Size.

"Size" means either (a) the number of prunes contained in a pound and may be referred to in terms of size ranges, or (b) the diameter of a round opening, expressed in multiples of one thirty-second of an inch, through which prunes pass freely.

2. A new § 993.19b *Undersized prunes.* is added reading as follows:

§ 993.19b Undersized prunes.

"Undersized prunes" means prunes which pass freely through a round opening of a specified diameter.

3. Section 993.10 is revised by inserting ", other than pursuant to § 993.49(c)" immediately after "§ 993.49".

4. Section 993.12 is revised by inserting ", other than pursuant to § 993.49(c)," immediately after "§ 993.49".

5. Section 993.21c *Salable prunes.* is revised by inserting ", excluding the quantity of undersized prunes determined pursuant to § 993.49(c)," after "all prunes".

6. Section 993.36(h) is amended by revising "monthly statements" to "quarterly statements".

7. Section 993.41(a) is amended by revising "fourth Tuesday" to "first Tuesday".

8. Section 993.41(b) is revised by redesignating subparagraphs (9) through (14), inclusive, as (10) through (15), inclusive, and inserting a new subparagraph (9) reading as follows:

(9) The quantity of undersized prunes in the crop, itemized as to French prunes and non-French prunes;

9. The first sentence of § 993.49(a) is revised by inserting "and undersized prunes" after "other than substandard prunes" and after "including substandard prunes".

10. Section 993.49 is amended by deleting paragraph (c), including the provisions suspended from operation for the 1968–69 crop year and subsequent crop years by action published in the FEDERAL REGISTER August 24, 1968 (33 F.R. 12032).

11. A new paragraph (c) is added to § 993.49 reading as follows:

§ 993.49 Incoming regulation.

* * * * *

(c) The Secretary may establish a size regulation with respect to undersized prunes upon a recommendation of the Committee whenever it determines that supply conditions for a crop year warrant such regulation. Any such size regulation shall provide that the diameter of the round opening for French prunes shall be twenty-three thirty-seconds of an inch, and for non-French prunes twenty-eight thirty-seconds of an inch, or such larger openings as may be prescribed pursuant to § 993.52. The quantity of undersized prunes in each lot received by a handler from a producer or dehydrator shall be determined by the inspection service and entered on the applicable inspection certificate.

12. Paragraphs (c) and (d) of § 993.50 are revised and a new paragraph (g) is added to read as follows:

§ 993.50 Outgoing regulation.

* * * * *

(c) Non-French prunes: No handler shall ship or otherwise make final disposition of any lot of standard prunes or standard processed prunes of the non-French varieties or any lot which includes non-French prunes in excess of a tolerance to be prescribed by the Secretary on recommendation of the Committee, unless the average count of such non-French prunes contained in any such lot is 40 or less per pound. However, under safeguards to be established by the Committee, any lot containing non-French prunes with an average size count of more than 40 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. A tolerance as to the permitted deviation of sizes about the average count shall be prescribed by the Secretary, upon recommendation of the Committee.

(d) French prunes: No handler shall ship or otherwise make final disposition of any lot of French prunes for human consumption as prunes, or any lot of mixed dried fruit containing French prunes for human consumption as mixed dried fruit, unless the average count of French prunes contained in any such lot is $100 or less per pound. However, under safeguards to be established by the Committee, any lot containing French prunes with an average size count of more than 100 prunes per pound may be shipped to or disposed of in prune product outlets in which they lose their form and character as prunes by conversion prior to consumption. In determining whether any such lot conforms to this minimum size requirement, the following tolerance shall apply: In a sample of 100 ounces, the count per pound of 10 ounces of the smallest prunes shall not vary from the count per pound of 10 ounces of the largest prunes by more than 45 points. The Secretary may, upon the basis of the recommendation and information submitted by the Committee and other available information, modify this tolerance for uniformity of size.

* * * * *

(g) No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. However, such handler may, at the direction and under the supervision of the Committee, dispose of such quantity of prunes in nonhuman consumption outlets. Prunes so disposed of shall be of the same variety as, and reasonably comparable in size, to such undersized prunes. The handler shall cause the inspection service to make a determination whether the prunes disposed of by the handler in nonhuman consumption outlets meet such requirements. In making the determination with respect to comparability in size, the inspection service shall apply a tolerance permitting a deviation from the size of the applicable opening established pursuant to § 993.49(c). Any such tolerance, together with any rules and regulations to insure proper disposition of the prunes and that such prunes are reasonably comparable to the undersized prunes so received, shall be established by the Committee with the approval of the Secretary. The quantity of prunes determined pursuant to § 993.49(c) shall not be deemed to be within the handler's quota for salable prunes fixed by the Secretary within the meaning of section 8a(5) of the Act.

13. Section 993.52 is revised by inserting ", including the openings prescribed in § 993.49(c)," immediately after "size regulation".

14. In the second sentence of § 993.54, the phrase "the weight obligation of § 993.49(c)" is revised to read "the quantity of undersized prunes determined pursuant to § 993.49(c)".

15. In the first sentence of § 993.56, the phrase "the weight obligation of § 993.49(c)" is revised to read "the quantity of undersized prunes determined pursuant to § 993.49(c)".

16. Section 993.75 is revised to read as follows:

§ 993.75 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this subpart, the Secretary, and the Committee through its duly authorized agents, shall have access to any premises where prunes may be held by

any handler and at any time during reasonable business hours, shall be permitted to inspect any prunes so held by such handler and any and all records of such handler with respect to the holding or disposition of all prunes which may be held or which may have been disposed of by him.

[FR Doc.71-17119 Filed 11-23-71;8:49 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

CREAMED COTTAGE CHEESE

Defoaming Agents as Optional Ingredients

Notice is given that a petition has been filed by Stein, Hall and Co., Inc., 605 Third Avenue, New York, N.Y. 10016, proposing that the standard of identity for creamed cottage cheese (21 CFR 19.530) be amended to permit listing safe and suitable defoaming agents as optional ingredients in the creaming mixture. The petition further proposes that no greater quantity of defoaming agents be used than is necessary to provide the desired defoaming effect and that the presence of these optional ingredients be declared on the label when they are used in the manufacture of creamed cottage cheese.

Grounds set forth in the petition are that safe and suitable defoaming agents when added to the creaming mixture would eliminate the formation of foam both (1) in preparation of the creaming mixture and (2) during movement of the creamed cottage cheese before and during packaging. The presence of foam in the container creates difficulty in obtaining the correct fill; it also detracts from the appearance of the finished product.

Accordingly, it is proposed that § 19.530 be amended by adding a new subdivision (8) to paragraph (b) and by revising paragraph (d) (1), as follows:

§ 19.530 Creamed cottage cheese; identity; label statement of optional ingredients.

* * * * *

(b) * * *

(8) Safe and suitable defoaming agents in a quantity not greater than reasonably required to accomplish their intended effect.

* * * * *

(d) (1) When one or a mixture of two or more of the optional ingredients listed in paragraph (b) (2) (ii), (iii), and (iv), (5), (6) (i), and (8) of this section is used, the label shall bear the statement "_____ added" or "with added _____" the blank being filled in with the common name or names of the optional ingredients used: *Provided, however,* That the name "vegetable gum" may be used in lieu of the specific names for carob (locust) bean gum, guar gum, gum karaya, and gum tragacanth.

* * * * *

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), interested persons are invited to submit their views in writing (preferable in quintuplicate) regarding this proposal within 60 days after its date of FEDERAL REGISTER publication. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, and may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: November 10, 1971.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.71-17105 Filed 11-23-71;8:45 am]

Social Security Administration

[20 CFR Part 405]

[Reg. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED

Review and Hearing Under the Supplementary Medical Insurance Program

Correction

In F.R. Doc. 71-16744 appearing at page 21895 in the issue for Wednesday, November 17, 1971, make the following changes:

1. In § 405.802(b), line 2 preceding "XVIII" insert the word "title".

2. In § 405.822, line 4, after the word "in" insert "question. Any other person may be made a party if that person's".

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGFR 71-142]

NANTICOKE RIVER, DEL.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering revising the regulations for the Delaware Division of Highways bridge on State Route 13A across the Nanticoke River at Seaford, Del., to require at least 2 hours' notice at all times. The present regulations require that the draw open on signal. This action is being considered because of infrequent draw openings for the passage of vessels. In addition minor editorial changes are proposed regarding the Penn Central railroad bridge at Seaford.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23705. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Fifth Coast Guard District.

The Commander, Fifth Coast Guard District, will forward any comments received before December 24, 1971, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.245(f) (13-a) to read as follows:

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

* * * * *

(f) * * *

(13-a) Nanticoke River, Del.:

(i) *Penn Central railroad bridge at Seaford.* The draw shall open on signal from 8 a.m. to 8 p.m. from May 1 through September 30. From October 1 through April 30 the draw shall open on signal if at least 4 hours' notice has been given. The draw need not open from 8 p.m. to 8 a.m. from May 1 through September 30.

(ii) *Delaware Route 13A bridge at Seaford.* The draw shall open on signal if at least 2 hours' notice has been given.

* * * * *

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

Dated: November 12, 1971.

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

[FR Doc.71-17161 Filed 11-23-71;8:50 am]

[33 CFR Part 117]

[CGFR 71-149]

ARKANSAS AND WHITE RIVERS, ARK.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering revising the regulations for the Missouri

Pacific railroad bridge across the White River at mile 7.6, and for the bridges across the Arkansas River of the St. Louis and Southwestern (Rob Roy) railroad at mile 66.3, the Chicago, Rock Island and Pacific railroad at mile 116.2, the Missouri Pacific railroad at miles 116.7 and 117.6 and the St. Louis-San Francisco railroad at mile 295.1, to reflect the alteration of these bridges to automated or remote operation. The present regulations governing these bridges require that the Missouri Pacific bridge across the White River open on signal if at least 24 hours' notice has been given Monday through Friday, or 48 hours' notice on Saturdays and Sundays. The St. Louis and Southwestern (Rob Roy) bridge across the Arkansas River at mile 66.3, opens on signal if at least 24 hours' notice has been given. The Chicago, Rock Island and Pacific bridge across the Arkansas River, mile 116.2, opens on signal if at least 48 hours' notice has been given. The Missouri Pacific bridges across the Arkansas River at miles 116.7 and 117.6 open on signal at any time and the St. Louis and San Francisco bridge across the Arkansas River, mile 295.1 may remain closed to vessels at all times.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Second Coast Guard District, Federal Building, 1520 Market Street, St. Louis, MO 63103. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Second Coast Guard District.

The Commander, Second Coast Guard District, will forward any comments received before January 7, 1972, with his recommendations to the Chief, Office of Marine Environmental and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by:

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

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

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

* * * * *

(f) * * *

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

* * * * *

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

§ 117.556 Arkansas and White Rivers, automated railroad bridges.

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

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

(1) When a train approaches either bridge, amber lights attached to the bridge begin to flash and an audible signal on the bridge is sounded for 6 minutes. At the end of 6 minutes the amber light shall continue to flash, however, the audible signal shall stop and the draw shall lower and lock, if the photoelectric boat detection system detects nothing under the span. If the detection system detects an obstruction, the draw shall be raised to its full height until the obstruction is cleared.

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

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

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

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

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

(4) This signal shall be acknowledged when the draw is to open by changing the flashing white lights to continuous white lights, sounding one blast on a horn and raising the span to a maximum clearance of 52 feet. When the span is fully raised the navigation lights at midchannel shall change from red to green. If the draw cannot be opened flashing amber warning lights shall be started and 4 blasts will be sounded indicating that a train is approaching or that maintenance work is in progress. When the draw will be opened after the train has crossed the closed draw or when maintenance work permits the draw will signal with 1 blast. The vessel shall acknowledge with 1 blast and proceed through the draw.

(d) The railroad operators controlling these bridges shall monitor FM channel 16 (156.8 Mhz) for radiotelephone communications with vessels.

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

Dated November 12, 1971.

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

[FR Doc.71-17162 Filed 11-23-71;8:50 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 501]

SOLDER AND BRAZING ALLOYS

Proposed Exemption From Labeling Requirements for Consumer Commodities

Notice is given that the Federal Trade Commission, pursuant to the provisions of the Fair Packaging and Labeling Act (sections 5(b), 6(b), 80 Stat. 1298, 1300, 15 U.S.C. 1454, 1455) and under the Commission's procedures and rules of practice (16 CFR 1.15), proposes to exempt solder and brazing alloys containing precious metals from part of the net quantity statement requirements imposed by Part 500 of the regulations under section 4 of the Fair Packaging and Labeling Act.

The proposed exemption is based upon a request from industry which points out that it has been conventional to buy and sell alloys containing precious metals using the system of troy weight. To require net quantities to be stated in avoirdupois pound and ounce would be of doubtful assistance in making value comparisons and might even result in some confusion.

It is proposed that Part 501 be amended by adding thereto a new section as follows:

§ 501.8 Solder.

Solder and brazing alloys containing precious metals when packaged and labeled for retail sale are exempt from the net quantity statement requirements of Part 500 of this chapter which specify that all statements of weight shall be in terms of avoirdupois pound and ounce provided the net quantity declaration is stated in terms of the Troy pound and ounce and the term "Troy" is used in each declaration.

Any interested person may, within 60 days from the date of this publication in the FEDERAL REGISTER, file with the Secretary, Federal Trade Commission, Washington, D.C. 20580, written views on this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

By direction of the Commission dated November 16, 1971.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-17166 Filed 11-23-71;8:50 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-9388]

RESERVES AND RELATED MEASURES RESPECTING THE FINANCIAL RESPONSIBILITY OF BROKERS AND DEALERS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission had under consideration a proposal to adopt Rules 15c3-3 (17 CFR 240.15c3-3) and 15c3-4 (17 CFR 240.15c3-4) under the Securities Exchange Act of 1934 (the Exchange Act), and to amend Rules 8c-1 (17 CFR 240.8c-1) and 15c2-1 (17 CFR 240.15c2-1) thereunder, to provide for reserves and related measures respecting the financial responsibility of brokers and dealers in the public interest and for the protection of investors. The proposed rules and amendments are designed to implement the provisions of section 15(c)(3) of the Exchange Act which were added by section 7(d) of the Securities Investor Protection Act of 1970 (the SIPC Act).[1] The proposed rules and amendments would be adopted under sections 8(b), 8(c), 10(b), 15(c)(2), 15(c)(3), and 23(a) of the Exchange Act, as well as under sections 6(c)(2)(C)(iii) and 6(c)(2)(B) of the SIPC Act.

The SIPC Act which affords specified protection to customers of brokers and dealers,[2] also provides for backstop financing under certain contigencies by the Securities and Exchange Commission and the Secretary of the Treasury, to a maximum amount of $1 billion.[3] In that context, Congress was manifestly concerned that there be no recurrence of the unsafe and unsound practices in the industry which had placed securities and funds or customers in jeopardy and which prompted Congress to pass this legislation. Accordingly, in addition to directing the Commission to conduct a thorough study of such practices and to report on measures taken and recommended for their elimination,[4] Congress amended section 15(c)(3) of the Exchange Act to clothe the Commission with the authority to adopt rules providing for safeguards respecting the financial responsibility of brokers and dealers concerning the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances; and, in that connection, to require the maintenance of reserves.[5]

Upon the passage of the SIPC Act, the staff of the Commission began immediately to explore various possible methods for safeguarding the handling of customer property and for the establishment by the industry of reserves which would be amply protective of customers' funds and securities. In addition to evaluation of various methods proposed by the staff of the Commission, consideration of numerous proposals from other sources was undertaken. Each approach was weighed in terms of the extent to which it maximized investor protection in relation to its operational and economic impact upon the industry. From all of these expressions, the Commission has been able to evolve what it believes to be a program designed to accomplish the basic statutory objectives.

The proposed provisions for reserves are the subject of two separate proposed rules, Rules 15c3-3 and 15c3-4. Proposed Rule 15c3-3 requires the complete separation of customer funds from firm funds and provides for reserves designed to protect customer funds held by broker-dealers. Proposed Rule 15c3-4, concerned with customer protection in the area of custody and use of customers' securities, requires that the broker-dealer promptly obtain physical possession or control of customer securities and contains provisions for reserves against securities of customers which should be but are not in the physical possession or control of a broker-dealer. Supplementing proposed Rule 15c3-4 are proposed amendments to Rules 8c-1 and 15c2-1 under the Exchange Act (the hypothecation rules) which would, as regards securities carried for the accounts of customers which are loaned or borrowed by a broker-dealer, provide the same protections as are currently provided for by rules of the self-regulatory organizations with regard to the lending of securities as well as by the hypothecation rules with regard to rehypothecated securities.

PROPOSED RULE 15c3-3

Generally stated, proposed Rule 15c3-3 contains these basic provisions. First, there would be a requirement on the part of broker-dealers to maintain a "Special Account for the Exclusive Benefit of Customers" (the Special Account) in the nature of a trust fund through which a broker-dealer must effectuate all transactions with regard to all "funds carried for the account of any customer" (defined to include free credit balances, other credit balances and all deposits of customers on open transactions), as well as all cash proceeds of loans collateralized by securities carried for the accounts of customers and all cash remittances received by the broker-dealer from or on behalf of customers for any purpose whatsoever. Under the proposed rule, the broker-dealer may make withdrawals from the Special Account only for limited specified purposes, including the payment of obligations to customers, the settlement of transactions for and with customers, the depositing of cash with third persons from whom the broker or dealer has borrowed securities to make deliveries on behalf of customers, and the reimbursement to the broker-dealer for moneys loaned to customers, for disbursements made on behalf of customers, for commissions, interests, and other lawful charges to customers.

The operative features of the Special Account are designed to protect the integrity of customer-generated funds by insulating them against inroads from the broker-dealer's firm activities, whether they be underwriting, market making, other trading, investing or mere speculation in securities, meeting overhead or of any other nature whatever. The Special Account, therefore, should achieve a virtual 100 percent protection to customers with respect to "the carrying and use of customers' deposits or credit balances" which is mandated by section 7(d) of the SIPC Act. As additional protection, and in compliance with the objectives of that section for the establishment of reserves, proposed Rule 15c3-3 also provides in substance that, if there is any excess of the cash or cash equivalent accountabilities of a broker-dealer to his customers over specified accountabilities of customers to the broker-dealer, the broker-dealer shall deposit such excess in a "Cash Reserve Bank Account", such excess to be maintained at all times on such deposit. Computations to determine whether or not such excess exists would be required to be made on a daily basis at the opening of business with respect to the transactions of the previous business day; or, in the alternative, on a monthly basis. In the latter case, the deposit to be maintained would have to be 105 percent of the excess. The deposit may consist of any combination of cash and specified kinds of securities issued or guaranteed by the United States.

The net effect of the Special Account and Cash Reserve Bank Account requirements should be that, in no event, would customer credits and related cash accountabilities be able to be used to finance the obligations of a broker-dealer other than for the bona fide obligations of customers.

Also, as an integral element in proposed Rule 15c3-3 is a provision which would require a broker-dealer to establish and follow procedures and a system for following such procedures to verify and reconcile each of his bank statements within 2 weeks after he receives it from his bank.

PROPOSED RULE 15c3-4

On the subject of the acceptance of custody and use by a broker-dealer of the securities of customers, proposed Rule 15c3-4 provides in substance that,

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[1] 84 Stat. 1653; Public Law 91-598 sec. 7(d).

[2] Subject to the conditions delineated in the SIPC Act with respect to the initiation and pendency of special liquidation proceedings under the aegis of the Federal courts, SIPC covers, among other things, losses to customers resulting from the insolvency of a broker-dealer who carries a bona fide account of the customer, but such coverage may not exceed $50,000 for the claims of the customer based on securities and cash in such account, in any combination: *Provided*, That the coverage for cash may not exceed $20,000. SIPC Act sections 6(f)(1)(A) and (B).

[3] Idem at section 4 (f), (g), and (h).

[4] See SIPC Act section 11(h). The Commission must render its report by December 31, 1971.

[5] SIPC Act section 7(d); section 15(c)(3) of the Exchange Act, as amended.

as to fully paid and excess margin securities of customers left with the broker-dealer, such securities shall be in the physical possession or control of the broker-dealer; and it further provides that in the event of his inability to reduce them to such physical possession or control, he shall make and maintain on deposit an appropriate sum in a "Securities Reserve Bank Account" from which he may make withdrawal only to the extent that he reduces such securities to his physical possession or control. Moreover, in any transaction with or for a customer, to whom a broker-dealer sells a security to or purchases a security for a customer who has made full payment therefor, the broker-dealer would have to deposit the contract price in the Securities Reserve Bank Account if the broker-dealer is unable to reduce the security to his physical possession or control. If a broker-dealer as agent, for a customer, has purchased a security from another broker-dealer and, not having received timely delivery, enters the transaction on his books and records as a fail to receive, such purchasing broker-dealer would be required to make the deposit in the Securities Reserve Bank Account not later than 5 business days after settlement date. In the interim of course, the funds paid by the customer are required to be deposited in the Special Account provided for by proposed Rule 15c3–3. Similarly, in the absence of his failure to reduce to his physical possession or control excess margin securities of customers, a broker or dealer must make a deposit in an amount equal to the market value of such securities, pending his reducing them to his physical possession or control. In order to properly mark such excess margin securities to the market, a broker-dealer will be required to make periodic evaluations of them, at least once a month. He would then have 5 business days thereafter to make the required deposit.

The 5 business days interval, for the making of the deposit with respect to cash transactions for fully paid securities, in fail to receive as well as for excess margin securities, is intended to give effect to the following circumstances. In the context of the dynamics of the securities business, a broker-dealer would not at any given moment be apt to have in his physical possession or control all excess margin securities which, for example are in the process of being released from a bank lien, or fully paid securities which another broker-dealer has not made a timely delivery on settlement. Nevertheless, the broker-dealer may have in his physical possession or control other securities in excess of any requirement to maintain them in his physical possession or control. This 5 business days interval may be too long or possibly too brief to give effect to its purpose. Accordingly, the Commission anticipates specific comments on this point.

The deposits in the Securities Reserve Bank Account may consist of any combination of cash and specified kinds of securities issued or guaranteed by the United States.

Irrespective of the requirement to maintain the deposit in the Securities Reserve Bank Account in the appropriate amount for fully paid and excess margin securities, proposed Rule 15c3–4 has a buy-in provision to compel a broker-dealer to reduce such securities to physical possession or control in any event after designated periods. Under the proposed rule, the buy-in requirement is interrelated with the recently adopted Rule 17a–13 (17 CFR 240.17a–13) under the Exchange Act which provides, in general, that, after its effective date, each broker-dealer shall conduct a quarterly box count of securities for which he is accountable.[6] If at the time of the box count it is determined that securities of customers should be, but are not, in the physical possession and control of the broker-dealer, he must buy-in such securities and reduce them to his physical possession and control within 30 days thereafter. Taking into account the possibility of unusual and unforeseeable circumstances which could prevent a broker-dealer from effecting the buy-in within the 30-day period, the proposed rule provides that, upon a proper showing of exceptional circumstances, the committee of an appropriate national securities exchange or national securities association, or the Commission, depending upon the membership of the broker-dealer, may extend the time for such buy-in for one or more limited 5-day periods commensurate with the circumstances.

Exemptive Provisions

Both proposed Rules 15c3–3 and 15c3–4 contain provisions for the granting of an exemption by the Commission upon application of a broker-dealer who can demonstrate to the satisfaction of the Commission that he has a plan and procedures for the safeguarding of funds and securities of customers superior to the protection provided by those rules.

Specifically Identifiable Property of Cash Customers

Both Rules 15c3–3 and 15c3–4 contain provisions to the effect that the Special Account, Cash Reserve Bank Account, Securities Reserve Bank Account, and fully paid and excess margin securities held in accordance with Rule 15c3–4 shall constitute specifically identifiable property of the customers whose interests therein are reflected on the broker-dealers' books and records and that such customers shall be deemed cash customers within the meaning of the SIPC Act. Securities appropriated to customers on the books and records of a broker-dealer which are in his possession are similarly designated as specifically identifiable property of those customers. These provisions would be adopted under sections 6(c)(2)(C)(iii) and 6(c)(2)(B) of the SIPC Act.

Rules 8c–1 and 15c2–1

Consistent with the requirement of strict physical possession or control of fully paid and excess margin securities of customers would be a related prohibition, by way of amendment to the hypothecation rules (Rules 8c–1 and 15c2–1 under the Exchange Act), that a broker or dealer may not, directly or indirectly, borrow for himself or lend to a third person any such securities except upon adequate consideration and specific written authorization identifying the particular securities involved and specifying the terms and conditions of such authorization. Moreover, the proposed amendments would prohibit a broker or dealer from, directly or indirectly, lending or hypothecating more securities carried for the account of a customer than is fair and reasonable in light of the indebtedness of the customer on such securities.[7] Reasonableness in the case of hypothecations is defined as 140 percent of the debit balance in the account; and, in the case of the loans of a customer's securities, only 100 percent of the debit balance in his account.

Subject to certain exceptions and exemptions, Rule 8c–1 and 15c2–1 under the Exchange Act now contain three specific prohibitions as follows: (a) The commingling of the securities of one customer under the same lien with the securities of another customer without the written consent of both customers; (b) the commingling of the securities of customers with those of other persons (including the broker or dealer) under a lien for a loan made by the broker or dealer; and (c) the hypothecation of securities of customers to secure a loan for an amount which exceeds the aggregate indebtedness of customers in respect of securities carried for their accounts.

The proposal for the amendments of these rules lies in a very narrow but important area which represents an apparent gap in the regulatory scheme governing the hypothecation of securities. They are to the effect that the same prohibitions which apply to the hypothecation of the securities of customers by a broker or dealer should adhere with equal force in the case of securities of customers loaned or borrowed by a broker or dealer (e.g., with respect to margin securities which are not "excess margin" securities) in cases in which a broker or dealer may properly loan or borrow securities of customers. The loan of securities by one broker-dealer to another broker-dealer generally involves these steps. The borrowing broker or dealer will deposit with the lending broker or dealer an amount of cash equal to the market value of the borrowed securities; and, so long as the securities have not been returned, the cash amount is marked to the market. So far as concerns the customer of the lending broker, whose securities are the subject of the loan, the risk factor is no different than if the broker or dealer who loaned the securities had, instead, borrowed cash from the other broker or dealer and placed the customer's security as collateral for the return

[6] For the requirements of Rule 17a–13, see Securities Exchange Act Release No. 9376.

[7] These requirements are comparable with the New York Stock Exchange and NASD standards. See NYSE Rule 402; NASD Manual Art. III sec. 19, Rules of Fair Practice ¶2169.

of such cash. In brief, the lending of the securities of a customer exposes him to the very hazards against which the existing hypothecation rules are aimed. In fact, the customer's exposure is greater than in the normal rehypothecation situation. To the extent that broker-dealer may find it more difficult to repay in cash the deposit of 100 percent of the value of the securities he loans than it would be for him to repay the 70 to 80 percent of their cash value which he could have borrowed on them by rehypothecating them, the securities are correspondingly exposed to a greater risk when they are the subject of a loan than when they are rehypothecated for a cash borrowing.

These proposed amendments to the hypothecation rules would dovetail with the other proposed amendments to those rules which track New York Stock Exchange requirements prohibiting the loan of the securities of customers for an amount which is not fair and reasonable in light of the indebtedness of the customer to the broker or dealer.

EFFECT OF PROPOSED RULES

The purpose behind the proposed rules is to afford as complete protection as possible to customers by the establishment of reserve requirements and otherwise with respect to their funds and securities in accordance with the intent of Congress, without depriving the industry of necessary and legitimate means to carry on customer oriented business. Without freezing the liquid resources of the industry to a point at which it would no longer be viable, the proposed rules seek to accomplish virtually complete customer protection by providing the mechanisms through the medium of the Special Account and the Cash Reserve and Securities Reserve Accounts to give full effect to the obligations of broker-dealers to customers respecting their cash and securities. Further, it is the objective of these rules to afford customers of broker-dealers protection against broker-dealer liquidation in a more comprehensive manner than the $50,000–$20,000 protection afforded by the SIPC legislation.

It should be emphasized that the reserve provisions of proposed Rules 15c3–3 and 15c3–4 are designed exclusively to provide a means for computing and maintaining required reserves and that they would in no way purport to affect or diminish the rights of any customer under existing applicable law in his relationships with his broker-dealer with respect to his funds and securities.

The Commission appreciates that the attached proposals are so far reaching and pervasive as to require a substantial restructuring of operations within the broker-dealer industry. At the same time, the nature of these proposals call for their adoption as soon as practicable. Giving effect to these considerations, the Commission looks forward to the adoption of rules on the subject, modified as deemed necessary, effective April 1, 1972. It is hoped that brokers and dealers will use the intervening period to review their procedures so as to be prepared for the operational and financial impact of these rules.

TEXT OF THE PROPOSED RULES

The Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and more particularly sections 8(b), 8(c), 10(b), 15(c)(2), 15(c)(3) and 23(a) thereof, as well as under sections 6(c)(2)(C)(iii) and 6(c)(2)(B) of the Securities Investor Protection Act of 1970, proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adopting new §§ 240.15c3–3 and 240.15c3–4 and amending §§ 240.8c–1 and 240.15c 2–1 as follows:

§ 240.15c3–3 Customer protection accounts—cash.

(a) It shall be unlawful for any broker or dealer to accept or use any funds carried for the account of customers or to accept or use funds generated from the lending, hypothecation or other use of securities carried for the account of customers, except as provided for in this section.

(b) For the purposes of this section:

(1) The term "customer" shall be deemed to include any person with respect to whom a broker or dealer carries any account in which funds or securities are carried for the account of such person, but it shall not include a broker or dealer, or a general, special or limited partner, or director or officer of a broker or dealer, or any participant in any joint, group, or syndicate account with a broker or dealer or with any general, special or limited partner, or officer, or director of such broker or dealer: *Provided, however,* That if a member of a national securities exchange carries for a broker or dealer registered with the Commission under section 15 of the Act a "Special Omnibus Account" complying with the requirements of section 4(b) of Regulation T (12 CFR 220.4(b)) under the Act, such registered broker or dealer shall be deemed a "customer" of such member with respect to, but only with respect to, such special omnibus account.

(2) The term "qualified security" shall mean and include a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.

(3) The term "bank" shall include and mean a bank as defined in section 3(a)(6) of the Act.

(4) The term "free credit balances" shall mean liabilities of a broker or dealer to customers reflected on the books and records of the broker or dealer which are subject to immediate cash payment to customers whether resulting from sales of securities, dividends, interest, deposits for future purchases, or otherwise.

(5) The term "other credit balances" shall mean liabilities of a broker or dealer to customers reflected on the books and records of the broker or dealer, other than free credit balances, deposits on open transactions and amounts segregated in accordance with the Commodity Exchange Act and rules and regulations thereunder.

(6) The term "deposits on open transactions" shall mean cash payments by customers or application by bookkeeping entry of customers' free credit balances in payment for securities purchased, until such time as the securities are appropriated for the account of the customer.

(7) The term "funds carried for the account of any customer" shall mean and include (i) all free credit and other credit balances carried for the account of the customer and (ii) all deposits of the customer on open transactions.

(8) The term "securities carried for the account of customers" shall be deemed to mean (i) securities received by or on behalf of a broker or dealer for the account of any customers, (ii) securities sold and appropriated by a broker or dealer as principal to a customer, and (iii) securities sold, but not appropriated, by a broker or dealer as principal to a customer who has made any payment therefor, to the extent that such broker or dealer owns, or has borrowed, and has received delivery of securities of like kind.

(c) On and after the effective date of this section:

(1) All financial transactions and relations between a broker or dealer and his customers shall be effected through one or more bank accounts, each to be designated as, "Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer) ("hereinafter referred to collectively as the 'Special Account' ").

(2) Each broker or dealer shall deposit in the Special Account all funds carried for the account of any customer as well as all cash deposits received from others against loans by the broker or dealer of securities carried for the account of customers, all cash proceeds of loans collateralized by securities carried for the account of customers and all cash remittances received by the broker or dealer from or on behalf of customers for any purpose whatsoever.

(3) All funds deposited in the Special Account shall remain in such account, except that the broker or dealer may make withdrawals (i) to make payments to customers of any part of or all of their respective free credit balances, and to make payments of other money owed by the broker or dealer to his customers other than with regard to principal transactions between himself and his customers, (ii) to reimburse the broker or dealer for amounts loaned by him to customers in extending or maintaining credit on securities purchased or carried for the account of customers, (iii) to settle securities contracts or other securities transactions for and on behalf of customers, (iv) to deposit cash as required for securities borrowed by him to effectuate delivery of securities in consummation of the transactions of customers in securities, (v) to effect payment to himself (*a*) for amounts due him from customers for reimbursement of proper disbursement on securities

transactions on behalf of customers, as well as for commissions, interest, and other lawful charges by him to customers in light of the services performed for customers, and (*b*) for amounts deposited in such account which were not required by this section to be placed in such account, (vi) to make payments to banks and other lenders as may be required for the release from any proper lien placed on securities carried for the account of customers, and (vii) to transfer from the Special Account the sums for deposit in the "Cash Reserve Bank Account" under paragraph (e) of this section and in the "Securities Reserve Bank Account" pursuant to § 240.15c3–4.

(d) Each broker or dealer required to maintain the Special Account prescribed by paragraph (c) of this section shall obtain and preserve in accordance with § 240.17a–4 a written notification from each bank in which he has a Special Account that it was informed that the money and securities deposited therein are those of customers of the broker or dealer and are being held for their benefit in accordance with the regulations of the Securities and Exchange Commission, and are being kept separate from any other accounts maintained by the broker or dealer at that bank, and shall have a written contract with such bank that the funds deposited in accordance with paragraph (c) of this section shall be subject to no right, charge, or lien, or claim of any kind in favor of the bank or any person claiming through the bank and that they shall at no time be used directly or indirectly as security or for a loan to the broker or dealer by the bank.

(e) With respect to accounts carried by a broker or dealer in which there are funds carried for the account of any customers, the broker or dealer shall at all times have and maintain a customers' cash reserve fund in a "Cash Reserve Bank Account" to be maintained separately from the Special Account as well as from the "Securities Reserve Bank Account" provided for in § 240.15c3–4; and the broker or dealer shall make deposits of cash or qualified securities or any combination thereof in such "Cash Reserve Bank Account" having a market value equal to the sums computed in accordance with paragraph (f) of this section.

(f) A broker or dealer shall compute the amounts to be maintained on deposit in the Cash Reserve Bank Account as follows:

(1) He shall add the sums of all (i) funds carried for the account of all customers, (ii) moneys borrowed by him which are collateralized by securities carried for the account of customers, (iii) cash deposits received by him for loans made by him of securities carried for the account of customers and (iv) moneys received by him resulting from the delivery of margin securities as defined in § 240.15c3–4 pursuant to sales to third persons: *Provided, however,* For the purpose of this subparagraph (1) funds carried for the account of all customers shall not include credits in special cash accounts of customers not subject to withdrawal by customers and credits in accounts carried for customers representing proceeds of short sales of securities on behalf of such customers.

(2) From the total of all sums added pursuant to subparagraph (1) of this paragraph, he shall subtract the total of the sums of all (i) debits of customers in accounts carried for customers, other than unsecured debits in the accounts of customers, and (ii) amounts of cash deposited by the broker or dealer on securities he has borrowed to make deliveries for and on behalf of customers. For the purpose of this subparagraph (2) if a transaction in securities consists of the purchase by a broker or dealer for, or sale by him to, a customer for delivery against the full purchase price, the term "unsecured debits in the accounts of customers" shall include but not be limited to debits arising from such transactions until the delivery of the securities are accepted by or on behalf of the customer: *Provided,* That, to the extent the broker or dealer has paid for and received delivery from a third person of all or any part of such securities or holds all or any part of such securities pending delivery to the customer, the debit to that extent shall not be deemed unsecured.

(3) The computations specified in subparagraphs (1) and (2) of this paragraph shall be made daily at the end of each day, and the deposits required by paragraph (e) of this section, based on those computations, shall be made no later than 1 hour after the commencement of banking hours on the next business day, or, in the alternative, the computations shall be made by each broker or dealer monthly as at the end of each month not later than 5 business days after the end of each calendar month; and he shall make the deposits required by paragraph (e) of this section no later than 1 hour after the commencement of banking hours on the next banking day after the day on which the computation was made. If a broker or dealer uses the alternative monthly method of making such required computations he shall, in each such month, be required to have and maintain in the Cash Reserve Bank Account 105 percent of the amount of deposits prescribed.

(g) The amounts which a broker or dealer must have and maintain as deposits in the Cash Reserve Bank Account in accordance with this section shall consist of cash or qualified securities which shall be free and clear of any encumbrances and shall under no circumstances be used by the broker or dealer for any purposes whatever or withdrawn other than as set forth in paragraph (j) of this section.

(h) Each broker or dealer required to maintain the Cash Reserve Bank Account prescribed by paragraphs (e), (f), and (g) of this section shall obtain, and preserve in accordance with § 240.17a–4 a written notification from the depository that it was informed that the money and securities deposited therein are those of securities customers of the broker or dealer and are being held for their benefit in accordance with the regulations of the Securities and Exchange Commission, and are being kept separate from any other accounts maintained by the broker or dealer at that bank.

(i) Each broker or dealer required to maintain the deposits prescribed by paragraphs (e), (f), and (g) of this section shall have a written contract with the depository bank that the cash and qualified securities deposited in accordance therewith shall be subject to no right, charge, or lien, or claim of any kind in favor of the bank or any person claiming through the bank and that they shall at no time be used as security for a loan to the broker or dealer by the depository.

(j) With respect to the deposits required to be maintained by a broker or dealer in the Cash Reserve Bank Account pursuant to paragraphs (e), (f), and (g) of this section, he may make withdrawals from the account to the extent that at the time of any computation the amount remaining in the account is no less than the minimum balance required by this section. The broker or dealer shall maintain as well as preserve in accordance with § 240.17a–4, a statement of the broker or dealer's computations pursuant to paragraphs (e), (f), and (g) of the section and the minimum balance required by the section in accordance with such statement.

(k) Every broker or dealer shall establish and follow procedures and a system for applying such procedures to verify and reconcile his bank statements within 2 weeks after the receipt thereof.

(l) In the event of any deficiency on the part of a broker or dealer in an account required to be maintained under paragraphs (c), (e), (f), and (g) of this section, the broker or dealer shall immediately notify the Commission, the Securities Investor Protection Corporation, and the examining authority designated by the Securities Investor Protection Corporation, and shall promptly thereafter confirm such notification in writing.

(m) For the purposes of sections 6(c)(2)(A), (B), and (C) of the Securities Investor Protection Act of 1970, the cash and qualified securities on deposit in the Special Account and the Cash Reserve Bank Account of a broker or dealer shall be deemed to be specifically identifiable property of the customers of such broker or dealer to the extent that customers are entitled to the immediate withdrawal of cash as reflected on the books and records of the broker or dealer; and such customers shall be deemed to be cash customers within the meaning of section 6(c)(2)(A)(iii) of that Act. In the event the cash and qualified securities in such Cash Reserve Bank Account or Special Account do not equal the aggregate claims of cash customers, the cash and qualified securities in the Cash Reserve Bank Account and Special Account shall be prorated among such customers having such claims. In the event the cash and qualified securities in such accounts exceed the aggregate claims of cash customers, as defined in this paragraph, such excess shall be attributable to the

single and separate fund within the meaning of section 6(c)(2)(B) of the Securities Investor Protection Act of 1970.

(n) Upon written application by a broker or dealer, the Commission may exempt such broker or dealer from the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission finds that the broker or dealer has established safeguards for the protection of the funds and securities of customers comparable with those provided for by this section and that it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

§ 240.15c3–4 Customer protection account—securities.

(a) Definitions: For the purpose of this section:

(1) The term "customer" shall be deemed to include any person with respect to whom a broker or dealer carries any account in which funds or securities are carried for the account of such person, but it shall not include a broker or dealer, or a general, special, or limited partner, or director or officer of a broker or dealer, or any participant in any joint, group, or syndicate account with a broker or dealer or with any general, special or limited partner, or officer, or director of such broker or dealer.

(2) The term "securities carried for the account of a customer" shall be deemed to mean:

(i) Securities received by or on behalf of a broker or dealer for the account of any customer;

(ii) Securities sold to, or bought for, a customer by a broker or dealer and appropriated to such customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable; and

(iii) Securities sold to, or bought by a broker or dealer for a customer, who has made any payment therefor, but which have not been appropriated to such customer, to the extent that such broker or dealer owns, or has borrowed, and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable.

(3) For the purposes of subparagraphs (2) (ii) and (iii) of this paragraph, the release of a security from a lien shall be deemed to be "as promptly as practicable" if such release is effected before the lapse of one-half hour after the commencement of banking hours on the next banking day after the security has been sold to or bought for the customer by the broker or dealer.

(4) The term "fully-paid securities" shall include all securities carried for the account of a customer in a special cash account as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System (12 CFR 220.4) or in a custodial or similar account, as well as margin equity securities within the meaning of Regulation T (12 CFR 220.3) which are carried for the account of a customer in any other special account under Regulation T during any period when section 8 of Regulation T (12 CFR 220.8) specifies that margin equity securities shall have no loan value in a general account or special convertible debt security account and if all such margin equity securities in such account are fully paid for: *Provided, however,* That the term "fully-paid securities" shall not apply to any securities which were purchased in transactions for which the customer has not made full payment.

(5) The term "margin securities" shall mean those securities carried for the account of a customer in a general account as defined in Regulation T (12 CFR 220.2 (f)), as well as securities carried in any special account other than the securities referred to in subparagraph (4) of this paragraph.

(6) The term "excess-margin securities" shall mean those margin securities carried for the account of a customer the market value of which exceeds 140 percent of the debit balance in the general, special arbitrage, special subscription, special bond, special convertible debt security, and special equity funding account.

(7) The term "qualified security" shall mean and include a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.

(b) (1) All fully paid and excess margin securities carried by a broker or dealer for the account of a customer shall be physically in the possession of the broker or dealer or under the control of such broker or dealer. The books and records of the broker or dealer shall reflect on a current daily basis the respective interests of customers in the securities required to be physically in the possession or under the control of the broker or dealer.

(2) For the purpose of this section, securities shall be deemed to be in the physical possession or control of a broker or dealer if they are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank in accordance with a system for the central handling of securities complying with all of the conditions of §§ 240.8c–1(g) and 240.15c2–1(g).

(3) Securities which are the subject of bona fide items of transfer by a broker or dealer shall be deemed to be in the physical possession and control of the broker or dealer. Securities shall be deemed not to be the subject of bona fide items of transfer if, within 20 days after they have been transmitted for transfer by the broker or dealer to the issuer or its transfer agent, new certificates conforming to the instructions of the broker or dealer have not been received by him or he has not received within the 20-day period a written statement by the issuer or its transfer agent validating the transfer.

(c) This section shall not require the physical possession or control of securities carried for the account of any customer:

(1) By a broker or dealer subject to § 240.15c3–1, if the securities are the subject of a "satisfactory subordination agreement" as defined in § 240.15c3–1 (c)(1) under the Act; or

(2) By a broker or dealer exempted from § 240.15c3–1 by paragraph (b)(2) of that section, if the securities are subject to a subordination agreement submitted to and approved by a national securities exchange of which such broker or dealer is a member.

(d) (1) It shall be unlawful for any broker or dealer who sells a security to, or confirms the purchase of a security for, a customer, upon being fully paid for such security, to fail promptly to obtain and maintain physical possession or control of such security.

(2) If any fully paid and excess margin securities carried for the account of any customer by a broker or dealer registered with the Commission under section 15 of the Act are carried in a special omnibus account in the name of such registered broker or dealer by a member of a national securities exchange in compliance with the requirements of section 4(b) of Regulation T under the Act (12 CFR 220.4(b)), such securities shall be deemed to be in the physical possession or control of such registered broker or dealer if he has instructed such member to maintain and retain physical possession or control of them free of any charge, lien, or claim of any kind in favor of such member of any person claiming through such member and, if such member adheres to such instructions. In the event such member shall be unable to establish physical possession or control of such securities in accordance with such instructions, the member shall make and maintain deposits in the Securities Reserve Bank Account in the amounts prescribed in this paragraph and paragraph (e) of this section; and such registered broker or dealer shall be deemed a customer of such member with respect to such fully paid and excess margin securities as well as to such deposits.

(3) A broker or dealer who has sold a security to or confirmed the purchase thereof for a customer who has paid in full for such security and is unable to establish physical possession or control of such security in accordance with subparagraphs (1) and (2) of this paragraph shall, not later than 1 hour after the commencement of banking hours on the next banking day after settlement date, as originally fixed or lawfully extended, deposit in a "Securities Reserve Bank Account" an amount of cash or qualified securities, or both, equal in market value to 100 percent of the contract price of such security, and until he has obtained and maintains such security in his physical possession or control, he shall maintain such deposit;

Provided, however, That, to the extent the failure to obtain physical possession or control of a security attributable to a customer results from a fail to receive, the broker or dealer shall be obligated to make the required deposit not later than 5 business days after settlement date.

(4) Notwithstanding the maintenance of the deposit provided for by subparagraph (3) of this paragraph, a broker or dealer who has sold a security to, or confirmed the purchase of a security for, a customer who has paid in full therefor shall, in any event, obtain physical possession or control of such security, in compliance with subparagraph (1) or (2) of this paragraph through the application of a buy-in procedure or otherwise, within 30 days after the time prescribed by the Commission for the counting and verification of all securities in the possession or control of such broker or dealer if such count or verification reveals that such security is not at the time thereof in the possession or control of the broker or dealer. Upon effectuation of such physical possession or control the broker or dealer shall be relieved of the deposit requirement of subparagraph (3) of this paragraph.

(5) In exceptional cases, the thirty day period specified in subparagraph (4) of this paragraph may, on application of the broker or dealer, be extended for one or more additional limited five day periods commensurate with the circumstances (i) by any regularly constituted committee of a national securities exchange of which the broker or dealer is a member or on which the transaction in the security with the customer was effected, or (ii) if the transaction occurred otherwise than on a national securities exchange, by a committee of a registered securities association or, with respect to a broker or dealer who is not a member of such an exchange or association, by the Commission: *Provided,* That such committee or the Commission is satisfied that the broker or dealer is acting in good faith in making the application and that the circumstances are in fact exceptional and warrant such action.

(e) (1) As of the close of business at the end of each calendar month, a broker or dealer shall, within five business days thereafter, make a determination of all excess margin securities carried for the accounts of customers, and of all fully paid securities carried in such accounts other than securities within the terms of paragraph (d) of this section; and, with respect to any of such securities which are not at the time of such determination in the physical possession or control of the broker or dealer, he shall, within 5 business days after making the appropriate determination and computations, deposit in the Securities Reserve Bank Account an amount of cash or qualified securities, or both, equal in market value to 100 percent of the market value of such securities, to the extent that he has not reduced such securities to his physical possession or control prior to making such deposit.

(2) Notwithstanding the maintenance of the deposit provided for by subparagraph (1) of this paragraph, the broker or dealer shall in any event obtain physical possession or control of the securities referred to in subparagraph (1) of this paragraph in compliance with paragraph (b) of this section within 30 days after the time prescribed by the Commission for the counting and verification of all securities in the possession and control of such broker or dealer if such count or verification reveals that such security is not at the time thereof in the possession or control of the broker or dealer. Upon effectuation of such physical possession or control the broker or dealer shall be relieved of the deposit requirement specified in subparagraph (1) of this paragraph.

(f) Each broker or dealer required to maintain the Securities Reserve Bank Account prescribed by paragraphs (d) and (e) of this section shall obtain and preserve in accordance with § 240.17a–4 of this chapter a written notification from each bank in which he has such account that it was informed that the money and qualified securities deposited therein are those of customers of the broker or dealer for whom the broker or dealer is carrying securities in their accounts and that such deposits are being held for their benefit in accordance with the regulations of the Securities and Exchange Commission, for the sole and exclusive purpose of purchasing their securities for them and are being kept separate from any other accounts maintained by the broker or dealer at that bank, and shall have a written contract with such bank that the funds so deposited shall be subject to no right, charge, or lien, or claim of any kind in favor of the bank or any person claiming through the bank and that they shall at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank.

(g) With respect to the deposits required to be maintained by a broker or dealer pursuant to paragraphs (d) and (e) of this section, he may make withdrawals from the account to the extent that at the time of any computation the amount remaining in the account is no less than the minimum balance required by this section. On any business day on which a withdrawal is made, the broker or dealer shall make a record of the computation on the basis of which he makes such withdrawal, and he shall preserve such computation in accordance with § 240.17a–4.

(h) In the event of any deficiency on the part of a broker or dealer in an account required to be maintained under paragraphs (d) and (e) of this section, the broker or dealer shall immediately notify the Commission, the Securities Investor Protection Corporation, and the examining authority designated by the Securities Investor Protection Corporation and shall promptly thereafter confirm such notification in writing.

(i) For the purposes of section 6(c)(2)(A), (B), and (C) of the Securities Investor Protection Act of 1970 (1) those securities carried for the account of customers which are in the physical possession or control of a broker or dealer and which have been appropriated for customers in accordance with paragraph (b)(1) of this section shall be deemed to be specifically identifiable property of such customers, and (2) the cash and qualified securities on deposit in the Securities Reserve Bank Account of a broker or dealer shall be deemed to be specifically identifiable property of those customers of such broker or dealer with respect to whose securities the broker or dealer has failed to reduce to physical possession or control and has made deposits in accordance with this section, and all such customers shall be deemed to be cash customers within the meaning of section 6(c)(2)(A)(iii) of that Act. In the event the cash and qualified securities in such Securities Reserve Bank Account are insufficient to satisfy the claims of customers having claims against such account, the cash and qualified securities in such account shall be prorated among these customers. In the event the cash and qualified securities in the Securities Reserve Bank Account exceed the aggregate claims of these customers, such excess shall be attributable to any cash customers of the broker or dealer having unsatisfied cash claims.

(j) Upon written application by a broker or dealer, the Commission may exempt such broker or dealer from the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission finds that the broker or dealer has established safeguards for the protection of funds and securities of customers comparable with those provided for by this section and that it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

§ 240.8c–1 Hypothecation of customers' securities.

(a) General provisions: No member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of any such member shall, directly or indirectly, hypothecate, loan, borrow, or arrange for or permit the continued hypothecation or loan of any securities carried for the account of any customer under circumstances—

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation or loan;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such member, broker, or dealer under a lien for a loan made to or by such member, broker, or dealer; or

(3) That will permit securities carried for the account of customers to be loaned, hypothecated, or subjected to any lien or liens or claim or claims of the pledgee

or pledgees, for an aggregate sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day: *Provided*, That funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees or borrowers for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subjected as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such member, broker, or dealer are payable and, in any event, before such member, broker, or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(4) In which the loan or hypothecation includes more of such securities than is fair and reasonable in light of the indebtedness of the customer to such broker or dealer with respect to such securities. For the purposes of this section, any such lending or hypothecation shall be deemed to be unreasonable if the market value of the securities in any general or special account carried for a customer, in the case of hypothecation, exceeds 140 percent of the debit balance in such account, and, in the case of lending, exceeds 100 percent of the debit balance in such account; and, if such securities are hypothecated in part and loaned in part, the aggregate market value of all such securities shall not in combination exceed 140 percent of the part hypothecated plus 100 percent of the part loaned.

(5) In which the securities loaned, borrowed, or hypothecated are fully paid securities or excess margin securities, unless the broker or dealer shall first have obtained for fair adequate consideration the specific authorization of the customer in writing designating the particular securities to be loaned or borrowed and specifying the terms and conditions under which they may be loaned or borrowed, as the case may be.

(b) Definitions: For the purposes of this section—

(1) The term "customer" shall not be deemed to include any general or special partner or any director or officer of such member, broker, or dealer, or any participant, as such, in any joint, group or syndicate account with such member, broker, or dealer or with any partner, officer, or director thereof;

(2) The term "securities carried for the account of any customer" shall be deemed to mean:

(i) Securities received by or on behalf of such member, broker or dealer for the account of any customer;

(ii) Securities sold and appropriated by such member, broker or dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(iii) Securities sold, but not appropriated, by such member, broker or dealer to a customer who has made any payment therefor, to the extent that such member, broker, or dealer owns, or has borrowed, and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(3) "Aggregate indebtedness" shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(4) In computing the sum of the liens, claims or loans to which securities carried for the account of customers or a member, broker or dealer are subject, any rehypothecation of such securities by another member, broker, or dealer who is subject to this section or to § 240.15c2–1 shall be disregarded.

(5) The term "lien" shall include the possession of securities borrowed from a broker or dealer if the borrower has deposited cash with the broker or dealer to be returned to the borrower upon his return of the borrowed securities to the broker or dealer.

(c) Exemption for cash accounts: The provisions of paragraph (a)(1) of this section shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System (12 CFR 220.4(c)): *Provided*, That at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to, such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers, and, *Provided further*, That such securities shall be released from any lien within 1 business day after the customer has paid for the security. The term "the completion of the transaction" shall have the meaning given to such term by § 240.15c1–1(b).

(d) Exemption for clearing house liens: The provisions of paragraphs (a)(2) and (3) and (f) of this section shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department or association: *Provided, however*, That for the purpose of paragraph (a)(3) of this section, "aggregate indebtedness of all customers in respect of securities carried for their accounts" shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(e) Exemption for certain liens on securities of noncustomers: The provisions of paragraph (a)(2) of this section shall not be deemed to prevent such member, broker, or dealer from permitting securities not carried for the account of a customer to be subjected (1) to a lien for a loan made against securities carried for the account of customers, or (2) to a lien for a loan made and to be repaid on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be "made against securities carried for the account of customers" if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(f) Notice and certification requirements: No person subject to this section shall hypothecate or lend any security carried for the account of a customer unless at or prior to the time of each such hypothecation or loan he gives written notice to the pledgee or borrower that the security pledged or loaned is carried for the account of a customer and that such hypothecation or loan does not contravene any provision of this section, except that in the case of an omnibus account the member, broker, or dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such member, broker, or dealer will be securities carried for the account of his customers and that the hypothecation thereof by such member, broker, or dealer will not contravene any provision of this section. The provisions of this paragraph shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by paragraph (a) (1) or (2) of this section, whenever a participating member, broker or dealer hypothecates securities in accordance with such system: *Provided,*

however, That (1) any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure, or similar notice, or order, or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face effects such securities; (2) such systems shall have safeguards in the handling, transfer and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and (3) the provisions of this paragraph (g) shall not be effective with respect to any particular system unless the agreement required by (i) and the safeguards and provisions required by (ii) shall have been deemed adequate by the Commission for the protection of investors, and unless any subsequent amendments to such agreement, safeguards or provisions shall have been deemed adequate by the Commission for the protection of investors.

§ 240.15c2–1 Hypothecation of customer's securities.

(a) General provisions: The term "fraudulent, deceptive, or manipulative act or practice", as used in section 15(c)(2) of the Act, is hereby defined to include the direct or indirect hypothecation or loan or borrowing by a broker or dealer, or his arranging for or permitting, directly, or indirectly, the continued hypothecation or loan of any securities carried for the account of any customer under circumstances—

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation or loan;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to or by such broker or dealer; or

(3) That will permit securities carried for the account of customers to be loaned, hypothecated, or subjected to any lien or liens or claim or claims of the pledgee or pledgees, for an aggregate sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day: *Provided*, That funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees or borrowers for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subject as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker or dealer are payable, and, in any event, before such broker or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(4) In which the loan or hypothecation includes more of such securities than is fair and reasonable in light of the indebtedness of the customer to such broker or dealer with respect to such securities. For the purposes of this section, any such lending or hypothecation shall be deemed to be unreasonable if the market value of the securities in any general or special account carried for a customer, in the case of hypothecation, exceeds 140 percent of the debit balance in such account, and, in the case of lending, exceeds 100 percent of the debit balance in such account; and, if such securities are hypothecated in part and loaned in part, the aggregate market value of all such securities shall not in combination exceed 140 percent of the part hypothecated and 100 percent of the part loaned.

(5) In which the securities loaned, borrowed or hypothecated are fully paid securities or excess margin securities, unless the broker or dealer shall first have obtained for fair and adequate consideration the specific authorization of the customer in writing designating the particular securities to be loaned or borrowed and specifying the terms and conditions under which they may be loaned or borrowed, as the case may be.

(b) Definitions: For the purposes of this section—

(1) The term "customer" shall not be deemed to include any general or special partner or any director or officer of such broker or dealer, or any participant, as such, in any joint, group or syndicate account with such broker or dealer or with any partner, officer, or director thereof;

(2) The term "securities carried for the account of any customer" shall be deemed to mean:

(i) Securities received by or on behalf of such broker or dealer for the account of any customer;

(ii) Securities sold and appropriated by such broker or dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(iii) Securities sold, but not appropriated, by such broker or dealer to a customer who has made any payment therefor, to the extent that such broker or dealer owns, or has borrowed, and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they shall not be deemed to be "securities carried for the account of any customer" pending their release from such lien as promptly as practicable;

(3) "Aggregate indebtedness" shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(4) In computing the sum of the liens, claims, or loans to which securities carried for the account of customers of a broker or dealer are subject, any rehypothecation of such securities by another broker or dealer who is subject to this section or to § 240.8c–1 shall be disregarded.

(5) The term "lien" shall include the possession of securities borrowed from a broker or dealer if the borrower has deposited cash with the broker or dealer to be returned to the borrower upon his return of the borrowed securities to the broker or dealer.

(c) Exemption for cash accounts: The provisions of paragraph (a)(1) of this section shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System (12 CFR 220.4(c)): *Provided*, That at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to, such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers and, provided further that such securities shall be released from any lien within 1 business day after the customer has paid for the security. The term "the completion of the transaction" shall have the meaning given to such term by § 240.15c1–1(b).

(d) Exemption for clearing house liens. The provisions of paragraphs (a)(2) and (3) and (f) of this section shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association, for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department or association: *Provided, however*, That for the purpose of paragraph (a)(3) of this section, "aggregate indebtedness of all customers in respect of securities carried for their accounts" shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(e) Exemption for certain liens on securities of noncustomers. The provisions of paragraph (a)(2) of this section shall not be deemed to prevent such broker or dealer from permitting securities not carried for the account of a customer to be subjected (1) to a lien for a loan made against securities carried for the account of customers, or (2) to a lien for a loan made and to be repaid on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be "made against securities carried for the account of customers" if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(f) Notice and certification requirements. No person subject to this section shall hypothecate any security carried for the account of a customer unless, at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this section, except that in the case of an omnibus account the broker or dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such broker or dealer will be securities carried for the account of his customers and that the hypothecation thereof by such broker or dealer will not contravene any provision of this section. The provisions of this clause shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by paragraph (a) (1) or (2) of this section, whenever a participating member, broker or dealer hypothecates securities in accordance with such system: *Provided, however,* That (1) any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure or similar notice, or order, or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face affects such securities; (2) such systems shall have safeguards in the handling, transfer and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and (3) the provisions of this paragraph (g) shall not be effective with respect to any particular system unless the agreement required by (i) and the safeguards and provisions required by (ii) shall have been deemed adequate by the Commission for the protection of investors, and unless any subsequent amendments to such agreement, safeguards or provisions shall have been deemed adequate by the Commission for the protection of investors.

All interested persons are invited to submit their views and comments on these proposals in writing to Lee Pickard, Special Counsel to the Chairman, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549, on or before February 1, 1972. All such communications will be available for public inspection.

(Secs. 8(b), 8(c), 10(b), 15(c)(2), 15(c)(3), 23(a), 48 Stat. 888, 891, 895, 901, as amended, 49 Stat. 1379, 52 Stat. 1075, sec. 2, 84 Stat. 1653, sec. 7, 15 U.S.C. 78h, 78j, 78o, 78w)

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.71-17139 Filed 11-23-71;8:48 am]

Notices

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

Notice of Granting of Relief

Notice is hereby given that pursuant to 18 U.S.C. 925(c) the following named persons have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding 1 year.

It has been established to my satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public safety.

Altman, George Alan, 20 Water Street, Clinton, Mass., convicted on October 19, 1934, in the Providence County Superior Court, Providence, R.I.

Ash, Thomas Franklin, 203 Alexander Street, Twin Falls, Idaho, convicted on February 13, 1951, and on August 26, 1954, in the Twin Falls County District Court, 11th Judicial District, Idaho.

Barber, Arthur Donahue, 3320 Northeast Hammel, Salem, Oreg., convicted on May 31, 1955, and on September 9, 1964, in the Circuit Court of the State of Oregon for the County of Multnomah.

Bates, Arthur, Jr., 5335 St. Clair Street, Detroit, Mich., convicted on February 25, 1958, in the Circuit Court of Lenawee County, Mich.

Beamon, Lavert John, 19455 Lauder Street, Detroit, Mich., convicted on May 26, 1943, in the Circuit Court for Pulaski County, Ark.

Becker, Gerald James, 115 Vegas Court, Waterloo, Iowa, convicted on November 9, 1960, in the Black Hawk County District Court, Waterloo, Iowa; and on November 21, 1960, in the Webster County District Court, Fort Dodge, Iowa.

Bennett, Roger Dale, 3623½ Woodland Park North, Seattle, Wash., convicted on December 24, 1963, and on April 29, 1959, in the Circuit Court for Jackson County, Wash.

Bressert, James Richard, 21 Cindy Lane, Mystic, Conn., convicted on January 15, 1958, by a General Court Martial, United States Naval Receiving Station, Boston, Mass.

Brown, James Louis, 124 Haiti Street, Warrenton, Va., convicted on June 16, 1966, in the Prince William County, Va., Circuit Court.

Cappozola, Nicholas Joseph, 2762 Holland Avenue, Bronx, N.Y., convicted on June 1, 1944, by the U.S. District Court, in and for the Eastern District of New York.

Catchings, John Ellis, 4269 Larchmont Avenue, Detroit, Mich., convicted on November 16, 1966, in the U.S. District Court for the Eastern District of Michigan.

Glenney, John Wendell, 1732 East Tichenor, Des Moines, Iowa, convicted on July 17, 1964, in the Marshall County, Iowa, District Court.

Lotesto, Charles, 73-25 71st Street, Glendale, N.Y., convicted on April 11, 1956, in the Court of General Sessions, County of New York.

McKemie, Roy Lee, 8240 South Houston Avenue, Chicago, Ill., convicted on June 6, 1957, in the Circuit Court of Jackson County, Murphysboro, Ill.

Mark, Oscar Raymond, 152 North 40th Street, Council Bluffs, Iowa, convicted on September 10, 1940, in the District Court of Pottawattamie County, Council Bluffs, Iowa.

Morrow, Clyde Franklin, Route 8, Box 55, Shelby, N.C., convicted on March 19, 1940, May 13, 1946, October 15, 1962, and April 15, 1968, in the U.S. District Court, in and for the Western District of North Carolina, Shelby Division; November 3, 1946, in the Cleveland County Superior Court, N.C.; May 21, 1962, in the Cleveland County Recorder's Court, North Carolina; and October 2, 1962, in the U.S. District Court, in and for the Western District of South Carolina, Spastanburg Division, South Carolina.

Principe, Anthony, 108 Barnett Place, Bronx, N.Y., convicted on January 7, 1935, in the U.S. District Court, Brooklyn, N.Y.

Rorrer, William Walter, 644 Park Avenue, Eden, N.C., convicted on June 5, 1957, and on June 8, 1959, in the U.S. District Court for the Middle District of North Carolina.

Signed at Washington, D.C., this 16th day of November 1971.

[SEAL] REX D. DAVIS,
Director, Alcohol, Tobacco and Firearms Division.

[FR Doc.71-17113 Filed 11-23-71;8:46 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD Directive 5105.31 [1]]

DEFENSE NUCLEAR AGENCY (DNA)

Organization and Function

NOVEMBER 3, 1971.

The Deputy Secretary of Defense approved the following:

References: (a) DOD Directive 5105.31, "Defense Atomic Support Agency (DASA)," July 22, 1964 (hereby canceled).

(b) DOD Directive 4145.20, "Environmental Criteria and Design Standards for Atomic Weapons Storage and Maintenance Facilities," November 29, 1961 (hereby canceled).

(c) DOD Directive 5154.4, "The Department of Defense Explosives Safety Board," October 23, 1971.

(d) DOD Directive 5030.2, "Procedure for Handling Joint AEC-DOD Nuclear Weapons Development Projects," October 26, 1962.

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

I. *General.* Pursuant to the authority vested in the Secretary of Defense, the Defense Nuclear Agency (DNA) is established as a designated agency of the Department of Defense (DOD) under the direction, authority, and control of the Secretary of Defense.

II. *Organization.* DNA will consist of:

A. A Director, a Deputy Director (Operations and Administration), a Deputy Director (Science and Technology), and a headquarters establishment.

B. Such subordinate units, field activities, and facilities as are established by the Director, DNA, or are herein or hereafter assigned or attached specifically to DNA by the Secretary of Defense.

III. *Mission and responsibilities.* A. The mission of DNA is to provide support to the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, and other DOD Components, as appropriate, in matters concerning nuclear weapons as provided herein and such other aspects of the DOD nuclear program as may be directed by competent authority.

B. The Director, DNA, will be responsible for:

1. Consolidated management of the DOD nuclear weapons stockpile in accordance with the functions assigned herein.

2. Management of DOD nuclear weapons testing and nuclear weapons effects research programs. (This does not affect the basic Service responsibility for all aspects of specific weapons system development.)

3. Providing staff advice and assistance on nuclear weapons matters within his cognizance to the Secretary of Defense, the Military Departments, the Joint Chiefs of Staff, other DOD Components, and government agencies, as appropriate and when requested.

IV. *Supervision.* Staff supervision of DNA for the Secretary of Defense will be provided as follows:

A. The Joint Chiefs of Staff, acting through the Director, DNA, will exercise primary staff supervision over DNA activities, except as prescribed otherwise herein. Specifically, they will:

1. Exercise staff supervision over the military operational aspects of RNA activities, including: (a) Composition of the nuclear stockpile; (b) allocation and deployment of nuclear weapons; (c) military participation in and support of nuclear testing; (d) frequency of technical standardization inspections; and (e) requirements for technical publications.

2. Review and provide military advice on the adequacy of the DNA efforts in nuclear weapons testing and nuclear weapons effects research which is related directly to military systems considered in the Joint Strategic Objectives Plan, Joint Force Memorandum, and Nuclear Warhead Development Guidance.

B. The Director, Defense Research and Engineering (DDR&E) will exercise staff supervision through the Director, DNA, keeping the Director, Joint Staff, informed, of DNA activities associated with the DOD nuclear weapons effects research and nuclear weapons test programs.

C. The Assistant to the Secretary of Defense (Atomic Energy) will exercise staff supervision through the Director, DNA, keeping the Director, Joint Staff, informed, of DNA activities associated with: (1) Technical nuclear safety; (2) logistics aspects of nuclear weapon stockpile management; (3) the application of nuclear energy in other than the weapons field; (4) the transmission of information to the Joint Committee on Atomic Energy, as required by the Atomic Energy Act of 1954, as amended; and (5) agreements between the DOD and the Atomic Energy Commission (AEC) on appropriate nuclear matters. In his role as Chairman of the Military Liaison Committee (MLC), the ATSD(AE) will exercise staff supervision through the Director, DNA, of DNA activities associated with DNA support of the MLC.

V. *Functions.* Under its Director, and in accordance with the assignments of responsibility specified in Paragraph III., above, DNA will perform the following functions:

A. Maintain overall surveillance and provide guidance, coordination, advice, or assistance, as appropriate, for all nuclear weapons in DOD custody, including production, composition, allocation, deployment, movement, storage, maintenance, quality assurance and reliability assessment, reporting procedures and retirement.

B. Provide advice and assistance, as appropriate, to the Secretary of Defense, Military Departments, Joint Chiefs of Staff, Unified and Specified Commands, and other Government agencies on the effectiveness of nuclear weapons; the vulnerability of military forces, installations, and systems against nuclear weapons effects; and radiological defense activities. In this connection, when directed by the DDR&E, DNA will serve as DOD coordinator for work in selected technological areas related to nuclear vulnerability activities conducted by the Military Departments or other DOD Components.

C. Provide nuclear weapon stockpile information to the Joint Chiefs of Staff as required.

D. Provide nuclear warhead logistic information to authorized DOD organizations.

E. Plan, coordinate, and supervise the conduct of DOD nuclear weapons effects research and nuclear weapons testing, to include evaluation of the results of these programs.

F. Develop, coordinate, and maintain the national nuclear test readiness program jointly with the AEC and perform associated technical, operational, and safety planning.

G. Develop, coordinate, and conduct test exercises, overseas nuclear tests, and other nuclear-related operations, as directed. Arrange for mutual AEC–DOD support of AEC, DOD, or joint nuclear weapons tests.

H. Act as the central coordinating agency for the DOD with the AEC on nuclear weapon stockpile management, nuclear weapon testing, and nuclear weapons effects research within approved policies and programs and in consonance with the statutory provisions for the MLC and pertinent DOD–AEC agreements.

I. Conduct technical standardization inspections of units having responsibilities for assembling, maintaining or storing nuclear weapons, their associated components and ancillary equipment. Inspections will be performed on a selective sampling basis of nuclear capable units assigned to every major command in the Department of Defense. The Joint Chiefs of Staff will determine the frequency of such inspections. Inspection schedules will be coordinated with the major or component commands and the Service concerned.

J. Command the Armed Forces Radiobiology Research Institute (AFRRI).

K. Maintain and operate a Joint Nuclear Accident Coordinating Center (JNACC), in conjunction with the AEC.

L. Operate the Joint Atomic Information Exchange Group (JAIEG) in accordance with policy guidance furnished jointly by the ATSD(AE) for the DOD and the Assistant General Manager for Military Application for the AEC.

M. Perform for the DOD: (1) Integrated materiel management functions for all AEC special designed and quality controlled nuclear ordnance items and for Service designed and quality controlled nuclear ordnance items where such management is mutually agreed upon between DNA and the appropriate Service, or as directed by the Assistant Secretary of Defense (Installations and Logistics); (2) management of that portion of the Federal Cataloging Program pertaining to nuclear ordnance items including the maintenance of the central data bank and the publication of Federal Supply Catalogs and Handbooks for all nuclear ordnance items; (3) as the DOD assignee, the standardization of nuclear ordnance items in coordination with the appropriate Service; (4) management of the AEC–DOD loan account for nuclear materials; and (5) management of a technical logistics data and information program.

N. Perform technical analyses and studies for the Secretary of Defense, the Military Departments, and the Joint Chiefs of Staff of nuclear related problems; prepare and coordinate implementing directives and joint technical publications when requested. DNA will provide analysis and study results to Defense Components, as appropriate, when such results are pertinent to stated requirements.

O. In coordination with the AEC and the Military Departments, disseminate technological information of joint interest relating to nuclear technology, development, and weapons through laboratory liaison, technical reports, and nuclear weapons technical publications. Publications pertaining to specific weapons will be the responsibility of the lead Service for the weapon concerned.

P. Provide technical assistance and support to the Secretary of Defense, the Military Departments, and the Joint Chiefs of Staff in developing nuclear warhead safety requirements and reviewing and processing safety rules for nuclear weapons systems. When appropriate, coordination will be effected with the Department of Defense Explosives Safety Board. (See DOD Directive 5154.4 [1].)

Q. Within guidelines established by the Joint Chiefs of Staff, investigate and recommend DOD security and safety standards and operating procedures.

R. Develop, prepare, and publish, in coordination with the AEC, Military Departments, and the Department of Defense Explosives Safety Board, appropriate guidance, environmental criteria, and design standards for the construction of facilities to be used for the storage and maintenance of nuclear weapons.

S. Perform such other functions as may be assigned by the Secretary of Defense.

VI. *Authority.* The Director, DNA, is specifically delegated authority to:

A. Command the Defense Nuclear Agency.

B. Have access to and direct communications with all DOD Components and, after appropriate coordination, with other organizations.

C. Exercise the administrative authorities contained in Appendix A of this Directive.

VII. *Relationships.* A. In the performance of his function, the Director, DNA, will: (1) Coordinate actions as appropriate with other Components of the DOD and those departments and agencies of Government having related functions; (2) maintain appropriate liaison for the exchange of information and findings related to his assigned responsibilities; (3) make maximum use of established facilities, procedures, and channels for logistic support, procurement, accounting, disbursing, investigative, and related administrative operations; (4) obtain information from any Component of the DOD which is necessary for the performance of DNA functions; and (5) insure that the Military Departments, Joint Chiefs of Staff, and appropriate OSD staff elements are kept fully informed concerning DNA activities.

B. The Military Departments and other DOD Components will: (1) Provide assistance within their respective fields of responsibility to the Director, DNA, in carrying out his assigned responsibilities and functions; (2) coordinate with DNA all programs which include or are related to nuclear weapons effects research or nuclear weapons testing (this includes specifically keeping the Director, DNA, informed of systems response to nuclear weapon

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

effects); (3) keep the Director, DNA, informed as to the substance of their major actions being coordinated with other DOD Components, AEC and its laboratories, and other Government agencies which relate to DNA functions; and (4) provide the Director, DNA, with requirements for nuclear weapons effects research and nuclear weapons testing.

VIII. *Administration.* A. The Director, DNA, will be a lieutenant general or vice admiral appointed by the Secretary of Defense, upon recommendation of the Joint Chiefs of Staff. Normally, the position of Director will rotate among the Services.

B. The Deputy Directors will be appointed by the Secretary of Defense. When military officers, the Deputy Directors will be recommended by the Joint Chiefs of Staff and will normally be selected from Services different from that of the Director. Civilian Deputy Directors will be recommended by the DDR&E.

C. DNA will be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

D. The Military Departments will assign military personnel to DNA in accordance with approved Joint Manpower Program authorizations. Procedures for such assignments will be as agreed upon between the Director, DNA, and the individual Military Departments.

IX. *Effective date and cancellation.* This Directive is effective upon publication (11-24-71). References (a) and (b) are hereby superseded and canceled. DOD Directive 5030.2 [1] will be revised to reflect changed DNA functions.

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

APPENDIX A

DELEGATIONS OF AUTHORITY

Pursuant to the authority vested in the Secretary of Defense, the Director, DNA, or, in the absence of the Director, a person acting for him is hereby delegated, subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DOD policies, directives, and instructions, and pertinent OSD regulations, authority as required in the administration and operation of DNA to:

1. Exercise the powers vested in the Secretary of Defense by section 204 of the National Security Act of 1947, as amended (10 U.S.C. 1580) and section 12 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 302), pertaining to the employment, direction and general administration of DNA civilian personnel.

2. Fix rates of pay for wage board employees exempted from the Classification Act by 5 U.S.C. 5102(c)(7) on the basis of rates established under the Coordinated Federal Wage System. DNA, in fixing such rates, shall follow the wage schedules established by DOD Wage Fixing Authority.

3. Establish such advisory committees and employ such part-time advisors as approved by the Secretary of Defense for the performance of DNA functions pursuant to the provisions of 10 U.S.C. 173, 5 U.S.C. 3109(b), and the Agreement between the DOD and the Civil Service Commission on employment of experts and consultants, dated July 22, 1959.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with the provisions of the Act of June 26, 1943, as amended, 5 U.S.C. 2903(b), and designate in writing, as may be necessary, officers and employees of DNA to perform this function.

5. Establish a DNA Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government whose suggestions, inventions, superior accomplishment, or other personal efforts, including special acts or services, benefit or affect DNA or its subordinate activities in accordance with the provisions of the Act of September 1, 1954, as amended, 5 U.S.C. 4503, and Civil Service regulations.

6. In accordance with the provisions of the Act of August 26, 1950, as amended (5 U.S.C. 7532); Executive Order 10450, dated April 27, 1953, as amended; and DOD Directive 5210.7, dated September 2, 1966 (as revised) 32 CFR Part 156:

a. Designate any position in DNA as a "sensitive" position;

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the Agency for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Security Check, has not been completed; and

c. Authorize the suspension, but not to terminate the services of an employee in the interest of national security in positions within DNA.

7. Clear DNA personnel and such other individuals as may be appropriate for access to classified Defense material and information in accordance with the provisions of DOD Directive 5210.8,[1] dated February 15, 1962 (as revised), "Policy on Investigation and Clearance of Department of Defense Personnel for Access to Classified Defense Information" and of Executive Order 10501, dated November 5, 1953, as amended.

8. Act as agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, 26 U.S.C. 3122, and section 205 (p) (1) and (2) of the Social Security Act, as amended, 42 U.S.C., 405(p) (1) and (2), with respect to DNA employees.

9. Authorize and approve overtime work for DNA civilian officers and employees in accordance with the provisions of § 550.111 of the Civil Service regulations.

10. Authorize and approve:

a. Travel for DNA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2, Department of Defense, Civilian Personnel, dated July 1, 1965, as amended.

b. Temporary duty travel only for military personnel assigned or detailed to DNA in accordance with Joint Travel Regulations, Volume I, for Members of the Uniformed Services, dated November 1969, as amended.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or highly specialized technical services are required in a capacity that is directly related to or in connection with DNA activities, pursuant to the provisions of section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 5703).

11. Approve the expenditure of funds available for travel by military personnel assigned or detailed to DNA for expenses incident to attendance at meetings of technical, scientific, professional or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

12. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to the provisions of section 506(b) of the Federal Records Act of 1950, 44 U.S.C. 3102.

13. Enter into and administer contracts, directly or through a Military Department, a DOD contract administration services component, or other Government department or agency, as appropriate, for supplies, equipment and services required to accomplish the mission of the DNA. To the extent that any law or executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority will be exercised by the Assistant Secretary of Defense (Installations and Logistics).

14. Establish and use Imprest Funds for making small purchases of material and services other than personal for DNA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with the provisions of DOD Instruction 7280.1,[1] dated August 24, 1970, and the Joint Regulation of the General Services Administration—Treasury Department—General Accounting Office, entitled "For Small Purchases Utilizing Imprest Funds."

15. Authorize the publication of advertisements, notices, or proposals in public periodicals as required for the effective administration and operation of DNA (44 U.S.C. 3702).

16. a. Establish and maintain appropriate Property Accounts for DNA.

b. Appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DNA property contained in the authorized Property Accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

17. Promulgate the necessary security regulations for the protection of property and activities under the jurisdiction of the Director, DNA, pursuant to subsections III.A. and V.B. of DOD Directive 5200.8, dated August 20, 1954 (19 F.R. 5446).

18. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DOD Directive 5025.1,[1] dated March 7, 1961.

19. Enter into support and service agreements with the Military Departments, other DOD agencies, or other Government agencies as required for the effective performance of responsibilities and functions assigned to DNA.

20. Issue appropriate implementing documents and establish internal procedures to assure that the selection and acquisition of ADP resources are conducted within the policies contained in DOD Directive 4105.55,[1] dated January 21, 1971, the Federal Property Management Regulations and Armed Services Procurement Regulations.

The Director, DNA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

This delegation of authority is effective immediately and supersedes the Delegation

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

of Authority made to the Director, DASA, in Appendix A to DOD Directive 5105.31 dated July 22, 1964 (34 F.R. 12110).

[FR Doc.71-17116 Filed 11-23-71;8:46 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

POULTRY INSPECTION

Notice of Determinaiton Not To Designate Rhode Island Under the Poultry Products Inspection Act

On October 2, 1971, there was published in the FEDERAL REGISTER (36 F.R. 19324) a notice of Intended Designation of the State of Rhode Island under section 5(c) of the Poultry Products Inspection Act (21 U.S.C. 454(c)). This notice was based on information that Rhode Island had not developed and activated State poultry inspection requirements, with respect to operations and transactions wholly within the State, at least equal to those imposed under sections 1-4, 6-10, and 12-22 of the Act. Subsequently, it has been determined that the State of Rhode Island has now developed and activated the prescribed State poultry inspection requirements.

Accordingly, there is not now a basis for designation of the State of Rhode Island under section 5(c) of the Act.

Done at Washington, D.C., on November 18, 1971.

CLAYTON YEUTTER,
Administrator,
Consumer and Marketing Service.

[FR Doc.71-17159 Filed 11-23-71;8:50 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-272]

LYKES BROS. STEAMSHIP CO., INC.

Notice of Application

Notice is hereby given that Lykes Bros. Steamship Co., Inc., has applied for permission to increase its calls to Indonesia and Malaya (including Singapore) from 30 to 33 on its Line D freight service (Trade Route No. 22) from U.S. Gulf ports for calendar year 1971 only.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1175), should by the close of business on November 30, 1971, notify the Secretary, Maritime Subsidy Board in writing in triplicate, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service, served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry in such essential service is inadequate, and (2) whether in the accomplishment of the purpose and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

By Order of the Maritime Subsidy Board/Maritime Administration.

Dated: November 22, 1971.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.71-17299 Filed 11-23-71;9:33 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-269; Various NDA's]

NEW-DRUG APPLICATIONS

Notice of Withdrawal of Approval; Correction

In F.R. Doc. 71-11136 appearing at page 18885 in the FEDERAL REGISTER of September 23, 1971:

1. The docket number appearing in the fourth line of the heading is corrected to read "Docket No. FDC-D-269."

2. The alphabetical listing of new-drug applications being withdrawn is corrected by deleting the following entry:

Arlington Funk Labs, Division U.S. Vitamin & Pharmaceutical Corporation, 26 Vark Street, Yonkers, New York.
NDA's:
11-474, Prednyl Tablets.
11-475, Prednis-CVP Capsules.

Dated: November 15, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-17106 Filed 11-23-71;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-324, 50-325]

CAROLINA POWER & LIGHT CO

Suspension of Certain Construction Activities Pending Completion of NEPA Environmental Review

The Carolina Power & Light Co. (the licensee) is the holder of Construction Permits Nos. CPPR-67 and CPPR-68 (the construction permits), issued by the Atomic Energy Commission on February 7, 1970. The construction permits authorize the licensee to construct two boiling water nuclear reactors, designated as the Brunswick Steam Electric Plant Units 1 and 2, at a site located at Southport, N.C. Each reactor is designed for initial operation at approximately 2,436 megawatts (thermal).

In accordance with section E.3 of the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), Appendix D of 10 CFR Part 50 (Appendix D), the licensee has furnished to the Commission a written statement of reasons, with supporting factual submission, why the construction permits should not be suspended, in whole or in part, pending completion of the NEPA environmental review.

The Director of Regulation has considered the licensee's submission in light of the criteria set out in section E.2 of Appendix D and has determined, after considering and balancing the criteria in section E.2 of Appendix D, that construction activities involving the off-site portions of the discharge canal and the off-site transmission lines at the Brunswick Plant should be suspended pending completion of those portions of the NEPA environmental review. With respect to the construction of the intake canal and the onsite portions of the Brunswick Plant, we have balanced the environmental factors and concluded that these activities need not be suspended.

Further details of this determination are set forth in a document entitled, "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permits for the Brunswick Steam Electric Plant, Dockets Nos. 50-324 and 50-325."

In accordance with section E.4(a) of Appendix D, the Director of Regulation has served upon the licensee an order to show cause why the above-mentioned construction activities at the Brunswick Plant should not be suspended pending completion of the NEPA environmental review that relate to these matters. Among other things, the order to show cause provides that the licensee may, within thirty (30) days of the date of the order, file a written answer to the order under oath or affirmation, and informs the licensee of his right, within the same period, to demand a hearing.

Any person whose interest may be affected by this proceeding, other than the licensee, may file a request for a hearing within thirty (30) days after publication of this determination in the FEDERAL REGISTER. Such request shall set forth the matters, with reference to the factors set out in section E.2 of Appendix D, alleged to warrant a suspension determination other than that made by the Director of Regulation and shall set forth the factual basis for the request. If the Commission determines that the matters stated in such request warrant a hearing, a notice of hearing will be published in the FEDERAL REGISTER.

The licensee's statement of reasons, furnished pursuant to section E.3 of

Appendix D, as to why the construction permit should not be suspended pending completion of the NEPA environmental review, and the document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permits for the Brunswick Steam Electric Plant, Dockets Nos. 50-324 and 50-325" and the order to show cause are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, NC 28461. Copies of the "Discussion and Findings" document and the order to show cause may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 18th day of November 1971.

For the Atomic Energy Commission.

L. MANNING MUNTZING,
Director of Regulation.

[FR Doc.71-17124 Filed 11-23-71;8:47 am]

[Docket No. 50-247]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Order Extending Completion Date

Consolidated Edison Company of New York, Inc., has filed a request dated October 27, 1971, for an extension of the latest completion date granted by Atomic Energy Commission letter dated April 26, 1971, specified in Provisional Construction Permit No. CPPR-21, as amended, for construction of a 2,758 megawatt (thermal) pressurized water nuclear reactor, designated as the Indian Nuclear Generating Unit No. 2, at the applicant's site on the Hudson River in the village of Buchanan, Westchester County, N.Y. Good cause having been shown for extension of said date pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55 of the Commission's regulations:

It is hereby ordered that the latest completion date is extended from December 1, 1971 to March 1, 1972.

Date of issuance: November 17, 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-17110 Filed 11-23-71;8:45 am]

[Docket No. 50-219]

JERSEY CENTRAL POWER & LIGHT CO.

Amendment to Provisional Operating License

No request for hearing or petition to intervene having been filed following publication of a notice of proposed action in the FEDERAL REGISTER on June 12, 1971, at 36 F.R. 11473, the Atomic Energy Commission (the Commission) has issued Amendment No. 3 to Provisional Operating License No. DPR-16. The amendment authorizes Jersey Central Power & Light Company to operate the Oyster Creek Nuclear Power Plant Unit No. 1 (the facility) at steady state power levels up to a maximum of 1,930 megawatts (thermal). The amendment restates the license in its entirety to delete the record and reporting requirements that are now incorporated in the Technical Specifications as Change No. 7 and appended to Amendment No. 3.

The facility has been inspected by a representative of the Commission who has verified that the modification of the facility (involving the installation of a fifth relief valve and its controls) has been satisfactorily accomplished by Jersey Central.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

For further details with respect to this amendment, see (1) the application for license amendment dated December 31, 1970, and supplements thereto dated January 26, 1971 and June 4, 1971, (2) the amendment to Provisional Operating License No. DPR-16, (3) the report by the Advisory Committee on Reactor Safeguards dated June 18, 1971, and (4) the Safety Evaluation prepared by the Division of Reactor Licensing, which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Copies of items (2), (3), and (4) may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 5th day of November 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-17135 Filed 11-23-71;8:48 am]

[Docket No. 50-367A]

NORTHERN INDIANA PUBLIC SERVICE CO.

Notice of Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c. of the Atomic Energy Act of 1954, as amended (the Act), a letter of advice from the Attorney General of the United States, dated November 11, 1971, a copy of which is attached as Appendix A below.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's rules of practice, 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed within thirty (30) days after publication of this notice in the FEDERAL REGISTER, either (1) by delivery to the AEC Public Document Room at 1717 H Street, NW., Washington, DC, or (2) by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch.

For the Atomic Energy Commission.

LYALL JOHNSON,
Director, Division of
State and Licensee Relations.

APPENDIX A

NOVEMBER 11, 1971.

Northern Indiana Public Service Co., Bailly Generating Station, Unit I, AEC Docket No. 50-367A, Department of Justice File No. 60-415-35.

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act of 1954, as recently amended by Public Law 91-560 (December 19, 1970), in regard to the above cited application.

Introduction. The Bailly Generating Station—Nuclear I will be a 680 mw. unit located on Lake Michigan approximately 12 miles northeast of Gary, Ind., where the Applicant presently has three fossil fuel generating units. The total cost of the unit is estimated to be approximately $202,219,000 including the first nuclear fuel core. It is scheduled for commercial operation in June 1976.

The applicant. Northern Indiana Public Service Co. (NIPSCO) is a privately owned utility which supplies both electric power and natural gas to consumers in 30 counties in northern Indiana. NIPSCO's service area encompasses approximately 12,000 square miles and contains a population of approximately 2 million. In 1970 NIPSCO supplied electrical energy to 314,048 customers for which it received electric operating revenues of $124,513,000; and supplied natural gas to 427,530 customers for which it derived gas operating revenues of $175,272,164.

NIPCO's 1970 electric peak load was 1,444 mw. on July 1, 1970. NIPSCO owns and operates generating stations with a total capacity of approximately 1,386 mw. and in 1970 purchased approximately 400 mw. of firm power from neighboring utilities to reach a net dependable capacity of 1,786 mw. The largest generating unit presently operated by NIPSCO is a fossil fuel unit located at Bailly which has a generating capacity of approximately 404 mw.

Applicant's coordination and interconnections with other utilities. NIPSCO is not a member of any formal power pool which engages in joint generation and transmission planning or functions. However, NIPSCO is a party to an "Area Coordination Agreement," referred to as MIIO, with five other adjacent utilities: Consumers Power Co., Detroit Edison Co., Commonwealth Edison Co., Toledo Edison Co., and Indiana & Michigan

Electric Co. MIIO provides the framework within which the parties can achieve the benefits "to be effected through coordination in the operation and development of their respective systems." (Article I, MIIO Agreement). The agreement states that such benefits can be realized by various interconnection services and transactions, including the furnishing of mutual emergency and standby assistance, the interchange of electric power and energy, and the sale and purchase of short-term firm power. Actual coordination is carried out by means of separate bilateral agreements between the parties in MIIO, NIPSCO, for example, has entered into an emergency service agreement with the "Michigan Companies" (Consumers Power Co. and The Detroit Edison Co.). MIIO also has a Planning Committee, consisting of representatives of each of the members, which makes studies and investigations leading to mutually agreed upon recommendations to the parties concerning "adequacy of interconnection facilities, staggering of construction, and adequacy of generating reserve both individually and collectively." (Article 6, MIIO Agreement.)

NIPSCO's transmission system is interconnected with the systems of Commonwealth Edison Co., Indiana & Michigan Electric Co. (I&M), and Public Service Company of Indiana (PSI). These interconnections provide the means by which NIPSCO can receive emergency service from and interchange power with these other suppliers, thereby increasing the reliability of NIPSCO's service as well as lowering the amount of reserve capacity NIPSCO must maintain.

Applicant's interconnections with other large adjacent utilities have provided benefits to the company in planning its new generation facilities. NIPSCO does not have sufficient generating capacity to meet its own load. Consequently, it has entered into contracts to purchase firm power from I&M, PSI, and Commonwealth Edison Company of Indiana to supplement its own generating capacity. In the next 10 years NIPSCO plans to build five generating units, consisting of four fossil units with generating capacities of approximately 500 mw. each and Bailly Nuclear Unit I with a capacity of 680 mw. NIPSCO is able to build these large generating units, because it can vary the amount of power it purchases from neighboring utilities as these units come on line. For example, NIPSCO estimates that in 1975 it will be purchasing 514 mw. from neighboring utilities; whereas in 1976, after the Bailly Nuclear Unit commences operation, it can reduce its purchases to 290 mw.

The reserve sharing, coordinated development and power purchase arrangements in which NIPSCO has participated through MIIO and contracts with neighboring utilities have permitted NIPSCO to take advantage of economies of scale in bulk power supply, both in purchasing low cost power from neighboring utilities and in planning and building large economical generating units for its own system.

Applicant's competitors. There are several small municipal electric systems and rural electric cooperatives distributing electric power and energy within NIPSCO's service area who compete with NIPSCO for load growth at retail. None of these small systems own or operate any high voltage bulk power supply transmission or any subtransmission; they operate lines with voltages of 12.5 kv. or lower for distribution of power to ultimate consumers. Consequently, all of these systems, except one (Rennselaer, Ind., which is discussed below), are dependent upon NIPSCO for purchase and delivery of wholesale power.

1. *Municipally owned electric systems.* NIPSCO supplies all the wholesale power requirements to eight of the nine municipal electric systems in its service area. The ninth municipal system, in Rensselaer, Ind., operates an isolated generating plant which is not connected to NIPSCO's transmission system. Our investigation revealed that none of the municipals served by NIPSCO at wholesale have sought ownership participation in the Bailly Nuclear Unit.

2. *Rural electric cooperatives.* There are 12 rural electric cooperatives which operate within and adjacent to NIPSCO's service area. NIPSCO supplies the total wholesale requirements for seven of these coops; the other five receive part of their wholesale power from NIPSCO and part from I&M or PSI at other delivery points. NIPSCO delivers power to these coops at over 50 separate delivery points. The 12 coops are members of a nonprofit corporation named Wabash Valley Power Association, Inc. (Wabash), which consists of 22 rural electric cooperatives in northern Indiana. The members of Wabash which are not served by NIPSCO are supplied with power by either PSI or I&M.

The 17 rural electric cooperatives in southern Indiana outside of NIPSCO's service area are members of Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc. This year Hoosier Energy and the two privately owned electric utilities operating in southern Indiana, PSI and Southern Indiana Gas & Electric Co., which had initiated litigation concerning the operation of generation facilities by Hoosier, reached an agreement pursuant to which these coops will now receive power from a 230-mw. generating unit financed by the Rural Electrification Administration and owned and operated by Hoosier Energy.

The members of Wabash do not have access to any independent generation as do the members of Hoosier Energy, and thus they are solely dependent upon NIPSCO and the other privately owned utilities in Indiana for wholesale power. Furthermore, these coops do not own any bulk power supply transmission. Except for a negligible amount of subtransmission, they operate only distribution lines with voltages of 12.5 kv. or lower. Hence, they are dependent on NIPSCO and the other privately owned utilities for delivery of wholesale power.

Wabash was incorporated in Indiana in 1963. Beginning about 1966 and continuing up to the present time, representatives of Wabash have met at various times with officials of NIPSCO to discuss power supply arrangements. Wabash has sought to enter into one contract for all delivery points and to obtain a common termination date for the contracts NIPSCO has with the various members of Wabash. Wabash believes that if can act as the bulk power supplier for its distribution coop members, this will enhance its ability to obtain power from alternate sources, since there will be one large load to serve instead of small, fragmented loads at 50 different delivery points. Moreover, Wabash believes this would lower the cost of purchased power for the coops, because it would smooth out the peak loads of the now isolated delivery points, and such peak demands are utilized for billing purposes.

NIPSCO has indicated reluctance to contract with Wabash and has continued to contract separately with respect to each of the more than 50 delivery points at which it delivers power to the coop members of Wabash.[1]

[1]NIPSCO has recently agreed, however, to recognize and bargain with Indiana Statewide Rural Electric Cooperative, Inc. (Statewide), concerning NIPSCO's proposed 30 percent increase in wholesale rates for the 12 coops it serves. These coops had designated Statewide, not Wabash, as their bargaining agent in this matter.

Wabash also asserts that until recently NIPSCO has refused to agree to provisions in wholesale contracts allowing credit against the cost of wholesale power for substation facilities or transmission facilities installed and owned by the coops. Although in 1969 NIPSCO revised its wholesale contracts to include a credit for substation facilities installed by the coops, it has continued to refuse to allow a credit for transmission facilities, asserting that it has no basis for determining the proper amount of such a credit. Wabash states that this discourages the coops from developing any separate transmission system which might permit them to develop alternative generation, or to obtain power from suppliers other than NIPSCO, or to coordinate operations among themselves. Wabash also asserts that this gives Wabash no control over location of delivery points, keeps the loads of the coops fragmented and at low voltage, and prevents the coops from obtaining the advantages of load diversity and from serving large loads, all of which inhibit Wabash's competition with NIPSCO for retail load growth.

NIPSCO states that Wabash has never presented any specific proposal to construct transmission which had a proven benefit to NIPSCO. However, in order to eliminate any question on this aspect, NIPSCO has formally stated to the Department that henceforth it will allow a credit in situations where subtransmission constructed by a wholesale customer has a demonstrable benefit to NIPSCO. This commitment, contained in a letter to the Department dated November 5, 1971, a copy of which is attached hereto, reads as follows:

NIPSCO will recognize the principle of providing a credit to any wholesale customer that constructs, operates and maintains subtransmission (69 kv. or less) lines which have a resultant demonstrable benefit to NIPSCO. Any such credit would be subject to the approval of all regulatory bodies having jurisdiction in the subject matter.

In discussions with us, NIPSCO has indicated that this commitment contemplates that, if wholesale customers were to consider construction of transmission facilities, NIPSCO will consult with them at such planning stage, in advance of any construction of subtransmission facilities, to consider whether such proposed facilities will benefit NIPSCO, so that an appropriate credit can then be agreed upon. The circumstances in which subtransmission owned and operated by Wabash and/or its member cooperatives can have a demonstrable benefit to NIPSCO would include, but not be limited to, the following: where NIPSCO would avoid subtransmission costs that it would otherwise have to bear itself, or NIPSCO would achieve increased service reliability, or NIPSCO would utilize Wabash's lines for subtransmission of power intended for other customers of NIPSCO.

Wabash states that during the discussions between Wabash and NIPSCO which began in 1966 relating to power supply, it indicated a desire to participate with NIPSCO in ownership of generation facilities, but that NIPSCO consistently declined to discuss such matters. On September 2, 1971, Wabash wrote NIPSCO asking for an ownership participation of 200 mw. in the Bailly Nuclear Unit and for participation in transmission facilities to deliver that capacity to its members. On September 13, 1971, the President of NIPSCO replied by stating, "We will keep your request in mind."

In discussions with the Department, representatives of NIPSCO said that NIPSCO would have allowed Wabash to participate in the Bailly Nuclear Unit had Wabash made a timely request to do so. They noted that NIPSCO announced as early as 1967 that

it was planning to build a nuclear unit and that NIPSCO formally filed its application with AEC for the Bailly Unit in August 1970, 1 year before Wabash's request for participation. They asserted that participation at this late date by Wabash in the Bailly Unit would unduly complicate planning and financing of the unit, arrangements for which have already been made, and might unnecessarily delay construction and operation of the unit. In accordance with NIPSCO's position that, but for the lateness of Wabash's request, Wabash would have been permitted to participate in the Bailly Nuclear Unit, NIPSCO has indicated that it desires to eliminate any possibility of antitrust concern on the point of participation in the nuclear unit. To accomplish this, NIPSCO has proposed that since the plans for the Bailly Nuclear Unit are now firm, they not be disturbed, but rather, as a substitute for Wabash's participation in the Bailly Unit, that Wabash participate in NIPSCO's next nuclear unit, or NIPSCO's proposed Unit No. 15, a fossil fuel generating unit planned to commence commercial operation in 1978, whichever unit is first scheduled to be placed in commercial operation. This proposal, which appears to have merit, is reflected in an undertaking also contained in the November 5, 1971 letter to the Department from NIPSCO. The latter reads as follows:

Northern Indiana Public Service Company (NIPSCO) will permit reasonable participation by Wabash Valley Power Association (Wabash) in either its next nuclear fuel generating unit or Unit No. 15, a fossil fuel generating unit planned to commence commercial operation in 1978, whichever generating unit is the first scheduled to be placed in commercial operation, in the event a timely request is made by authorized representatives of Wabash. The terms for such participation shall be reasonable, mutually acceptable to the parties, and subject to the approval of all regulatory bodies having jurisdiction in the subject matter.

NIPSCO has indicated that this commitment contemplates that Wabash's participation in the next NIPSCO nuclear generating unit or NIPSCO Unit No. 15 will be in whatever reasonable amount Wabash believes is necessary to meet its power needs and that NIPSCO will be willing to make reasonable proposals for all ancillary arrangements with Wabash, including, for example, emergency backup and wheeling, necessary for efficient delivery and use of the power from the unit in which Wabash participates.

NIPSCO's willingness to deal with Wabash as an entity and to grant Wabash access to ownership of bulk power supply and to negotiate with Wabash for credits for subtransmission installed by Wabash and/or its members, should make possible greater coordinated operation among the cooperatives with potentially lower costs and improved competitive position.

Recommendation. When NIPSCO was informed that certain allegations of anticompetitive conduct were being made against it by Wabash, its immediate reaction was to deny that its conduct was designed to have, or has had, anticompetitive effect. At the same time, proposing that the problem be approached in a constructive manner so as to eliminate any basis for controversy about issuance of the requested nuclear license, NIPSCO has made the above quoted commitments with respect to its future relations with Wabash and has agreed that they be made conditions in any license which may be issued by the Commission with respect to the Bailly Nuclear Unit. For its part, Wabash has informed us that it regards NIPSCO's commitments as adequate to safeguard Wabash's interests with respect to the matters as to which it had felt particularly aggrieved. Wabash has further indicated that if it can be assured that NIPSCO will carry out its commitments, Wabash would regard an antitrust hearing to be unnecessary.

It appears to us that if NIPSCO's commitments were to be imposed as license conditions by the Commission, the question of accommodating antitrust policy with power needs in this case would be satisfactorily resolved. Accordingly, we recommend that the commitments proffered by NIPSCO be imposed by the Commission as license conditions, a procedure agreeable to NIPSCO. If this were done, there would appear to be no need for an antitrust hearing in this matter.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

JOSEPH J. SAUNDERS, Esq.,
Chief, Public Counsel & Legislative Section,
Anti-Trust Division,
Department of Justice,
Washington, D.C. 20530.

NOVEMBER 5, 1971.

DEAR MR. SAUNDERS: In connection with Northern Indiana Public Service Co.'s (NIPSCO's) application to the Atomic Energy Commission (AEC) for a license for NIPSCO's proposed nuclear fuel generating unit, Bailly N-I, you have informed us that in the course of your antitrust review, certain allegations of anticompetitive conduct on the part of NIPSCO have been made to the Department. You have indicated that the principal questions which have been raised relate to subtransmisison service and Wabash Valley Power Association, Inc.'s (Wabash's), request for participation in our proposed Bailly nuclear unit. You have inquired as to the facts concerning these allegations and have invited our comments.

First, NIPSCO has always complied with its Rural Electric Membership Corp. (REMC) customers' requests for additional capacity at the time and location desired. The need of the REMC's has always been considered in NIPSCO's planning for future capacity requirements. NIPSCO and its REMC customers conducted joint studies to provide the necessary information and planning for long-range supply.

No REMC customer has proposed construction, ownership and maintenance of a specific subtransmission line by such customer. However, in order to avoid any possible controversy on this point, NIPSCO would permit a credit for such construction, ownership and maintenance in the event there would be a demonstrable benefit to NIPSCO, as hereinafter described more fully.

NIPSCO has always served, and will continue to serve, its REMC customers efficiently and economically and will continue to meet all of its REMC customers' service requirements.

Second, as to participation by Wabash in Bailly N-I, NIPSCO on September 3, 1971, received a request dated September 2, 1971, from Donald Kaufman, president of Wabash, for participation in NIPSCO's proposed nuclear fuel generating unit, Bailly N-I.

The construction of Bailly N-I was announced originally in January 1967. NIPSCO had received no request for participation in Bailly N-I prior to September 3, 1971. This request was untimely and NIPSCO's plans, designs and forward progress precluded favorable consideration of the request.

NIPSCO is planning additional generating units and its plans for certain of these units are still flexible enough to permit favorable consideration for a request for participation as hereinafter described more fully.

NIPSCO has never engaged in any conduct, including the proposed construction of Bailly N-I, that would create or maintain a situation inconsistent with the antitrust laws of the United States. However, NIPSCO desires to avoid any controversy that would cause further delay in the construction or operation of Bailly N-I. Therefore, in order to eliminate any basis for a hearing before the AEC on antitrust issues relating to Bailly N-I, NIPSCO makes the following commitments which it is willing to have included as conditions in the license(s) issued by the AEC:

Northern Indiana Public Service Co. (NIPSCO) will permit reasonable participation by Wabash Valley Power Association (Wabash) in either its next nuclear fuel generating unit or Unit No. 15, a fossil fuel generating unit planned to commence commercial operation in 1978, whichever generating unit is the first scheduled to be placed in commercial operation, in the event a timely request is made by authorized representatives of Wabash. The terms for such participation shall be reasonable, mutually acceptable to the parties, and subject to the approval of all regulatory bodies having jurisdiction in the subject matter.

NIPSCO will recognize the principal of providing a credit to any wholesale customer that constructs, operates and maintains subtransmission (69 KV. or less) lines which have a resultant demonstrable benefit to NIPSCO. Any such credit would be subject to the approval of all regulatory bodies having jurisdiction in the subject matter.

Very truly yours,

DEAN H. MITCHELL,
Chairman.

[FR Doc.71-17112 Filed 11-23-71;8:46 am]

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Determination Not To Suspend Operation of Monticello Nuclear Generating Plant Pending Completion of NEPA Environmental Review

Northern States Power Co. (the licensee) is the holder of Provisional Operating License No. DPR-22 (the license), issued by the Atomic Energy Commission on September 8, 1970. The license authorizes the licensee to operate a boiling water nuclear power reactor designated as the Monticello Nuclear Generating Plant, at the licensee's site in Wright and Sherburne Counties, Minn. The facility is designed for initial operation at approximately 1,670 megawatts (thermal).

In accordance with section E.3 of the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), Appendix D of 10 CFR Part 50 (Appendix D), the licensee has furnished to the Commission a written statement of reasons, with supporting factual submission, why the license should not be suspended, in whole or in part, pending completion of the NEPA environmental review. This statement of reasons was furnished to the Commission on October 18, 1971.

The Director of Regulation has considered the licensees' submission in the light of the criteria set out in section E.2 of Appendix D, and has determined, after considering and balancing the criteria in section E.2 of Appendix D, that operation of the Monticello Nuclear Generating Plant authorized pursuant to DPR-22 should not be suspended pending completion of the NEPA environmental review.

Further details of this determination are set forth in a document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Facility Operating License for the Monticello Nuclear Generating Plant, Docket No. 50-263".

The determination herein and the discussion and findings herein referred to above do not preclude the Commission, as a result of its ongoing environmental review, from continuing, modifying or terminating the license or from appropriately conditioning the license to protect environmental values.

Any person whose interest may be affected by this proceeding, other than the licensee, may file a request for a hearing within thirty (30) days after publication of this determination in the FEDERAL REGISTER. Such a request shall set forth the matters, with reference to the factors set out in section E.2 of Appendix D, alleged to warrant a determination other than that made by the Director of Regulation and shall set forth the factual basis for the request. If the Commission determines that the matters stated in such request warrant a hearing, a notice of hearing will be published in the FEDERAL REGISTER.

The licensee's statement of reasons, furnished pursuant to section E.3 of Appendix D, as to why the licensee should not be suspended pending completion of the NEPA environmental review, and the document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Provisional Operating License for the Monticello Nuclear Generating Plant, Docket No. 50-263" are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Environmental Resource Center, Minneapolis Public Library, 1222 Southeast Fourth Street, Minneapolis, MN 55414. Copies of the "Discussion and Findings" document may be obtained upon request addressed to the Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 18th day of November 1971.

For the Atomic Energy Commission.

L. MANNING MUNTZING,
Director of Regulation.

[FR Doc.71-17268 Filed 11-23-71;8:51 am]

[Docket No. 50-267]

PUBLIC SERVICE COMPANY OF COLORADO

Determination Not To Suspend Construction Activities at Fort St. Vrain Nuclear Generating Station Pending Completion of NEPA Environmental Review

The Public Service Company of Colorado (the licensee) is the holder of Construction Permit No. CPPR-54 (the construction permit), issued by the Atomic Energy Commission on September 17, 1968. The construction permit authorizes the licensee to construct a high temperature gas-cooled nuclear reactor designated as the Fort St. Vrain Nuclear Generating Station, at a site in Weld County, Colo. The facility is designed for initial operation at approximately 842 megawatts (thermal).

In accordance with section E.3 of the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), Appendix D of 10 CFR Part 50 (Appendix D), the licensee has furnished to the Commission a written statement of reasons, with supporting factual submission, why the construction permit should not be suspended, in whole or in part, pending completion of the NEPA environmental review.

The Director of Regulation has considered the licensee's submission in the light of the criteria set out in section E.2 of Appendix D, and has determined, after considering and balancing the criteria in section E.2 of Appendix D, that construction activities at the Fort St. Vrain Nuclear Generating Station authorized pursuant to CPPR-54 should not be suspended pending completion of the NEPA environmental review.

Further details of this determination are set forth in a document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permit for the Fort St. Vrain Nuclear Generating Station, Docket No. 50-267."

Pending completion of the full NEPA review, the holder of Construction Permit No. CPPR-54 proceeds with construction at his own risk. The determination herein and the discussion and findings hereinabove referred to do not preclude the Commission, as a result of its ongoing environmental review, from continuing, modifying or terminating the construction permit or from appropriately conditioning the permit to protect environmental values.

Any person whose interest may be affected by this proceeding, other than the licensee, may file a request for a hearing within thirty (30) days after publication of this determination in the FEDERAL REGISTER. Such a request shall set forth the matters, with reference to the factors set out in section E.2 of Appendix D, alleged to warrant a determination other than made by the Director of Regulation and shall set forth the factual basis for the request. If the Commission determines that the matters stated in such request warrant a hearing, a notice of hearing will be published in the FEDERAL REGISTER.

The licensee's statement of reasons, furnished pursuant to section E.3 of Appendix D, as to why the construction permit should not be suspended pending completion of the NEPA environmental review, and the document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permit for the Fort St. Vrain Nuclear Generating Station, Docket No. 50-267," are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Greeley Public Library, City Complex Building, Greeley, Colo. 80631. Copies of the "Discussion and Findings" document may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 22d day of November 1971.

For the Atomic Energy Commission.

L. MANNING MUNTZING,
Director of Regulation.

[FR Doc.71-17269 Filed 11-23-71;8:51 am]

[Docket No. 50-59]

TEXAS A & M UNIVERSITY

Order Extending Construction Permit Completion Date

By application dated October 20, 1971, the Texas A & M University requested an extension of the latest completion date of Construction Permit No. CPRR-112. The permit authorizes relocation of the AGN-201, Serial No. 106, nuclear reactor from the Mechanical Engineering Shops Building to the new Engineering Center Building on the University's campus in College Station, Tex.

Good cause having been shown for the extension of the latest completion date of the permit pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and § 50.55 of 10 CFR Part 50 of the Commission's regulations: *It is hereby ordered*, That the latest completion date of Construction Permit No. CPRR-112 is extended from December 1, 1971 to February 15, 1972.

Date of issuance: November 10, 1971.

This order is effective as of its date of issuance.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-17130 Filed 11-23-71;8:47 am]

[Docket No. 50-280]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Hearing on a Facility Operating License

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, rules of practice, notice is hereby given that a hearing will be held at a time and place to be set in the future by an Atomic Safety and Licensing Board, in or in the vicinity of Surry County, Va., to consider the application

filed under section 104b. of the Act by the Virginia Electric and Power Co. (applicant) for a facility operating license which would authorize the operation of a pressurized water reactor (facility), identified as Surry Power Station Unit 1, at steady-state power levels up to a maximum of 2,441 megawatts thermal, at the applicant's site in Surry County, Va.

The hearing will be conducted by an Atomic Safety and Licensing Board (Board) designated by the Atomic Energy Commission (Commission). Notice of the Licensing Board's membership will be published in the FEDERAL REGISTER.

Construction of the facility was authorized by Provisional Construction Permit No. CPPR-43 issued by the Commission on June 25, 1968, following a public hearing.

A notice of consideration of issuance of an operating license for the facility was published by the Commission on May 28, 1971 (36 F.R. 9793). The notice provided that, within 30 days from the date of publication, any person whose interest may be affected by the issuance of a license could file a petition for leave to intervene in accordance with the requirements of 10 CFR Part 2, rules of practice. A petition for leave to intervene was thereafter filed by Henry E. Howell, Jr., a citizen of the State of Virginia and a member of its Senate representing the city of Norfolk. Answers to the petition were filed by the applicant and by the Atomic Energy Commission's regulatory staff.

As set forth in a memorandum and order on this matter dated November 18, 1971, the Commission has determined that a public hearing will be held and that Henry E. Howell, Jr., should be admitted as a party to the proceeding.

As to the matters to be considered in the ensuing proceeding, the Commission in its memorandum and order of November 18, 1971, provided that the issue for hearing consideration is as follows:

> Whether, with regard to the disputed welds and welding practices, there is reasonable assurance that the activities which would be authorized by an operating license can be conducted without endangering the health and safety of the public.

Depending on the resolution of that issue, authorization for issuance of the license may be granted or denied, or the license may be authorized as appropriately conditioned. An operating license would be issued only after appropriate findings are made by the Director of Regulation on the matters set forth below which are not embraced by the Board's decision (and upon compliance with the applicable provisions of Appendix D to 10 CFR Part 50, dealt with hereinafter):

1. Whether construction of the facility has been substantially completed in conformity with the construction permit and the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

2. Whether the facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

3. Whether there is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission.

4. Whether the applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations of the Commission.

5. Whether the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations have been satisfied.

6. Whether the issuance of the license will be inimical to the common defense and security or to the health and safety of the public.

A prehearing conference will be held by the Board at a date and place to be set by it to consider pertinent matters in accordance with the Commission's rules of practice, 10 CFR Part 2, including section II of Appendix A. The date and place of the hearing will be set by the Board at or after the prehearing conference. Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

The Commission has recently issued revised regulations for the implementation in its licensing proceedings of the National Environmental Policy Act of 1969 (NEPA). Appendix D to 10 CFR Part 50. The instant proceeding is covered by section D.1 of said Appendix D (the notice of opportunity for hearing was issued prior to October 31, 1971, but the requirements of sections A.1 through 9 of that appendix have not been completed for this application). In accordance with the provisions of section D.1, the Board will proceed expeditiously with consideration of the hearing issue set forth above pending compliance with the requirements specified in said Appendix D. The Commission will give further public notice regarding hearing consideration herein of matters covered by Appendix D.

While the matter of the full power operating license is pending before the Board, the applicant may make a motion in writing pursuant to § 50.57(c) of 10 CFR Part 50 for an operating license authorizing low power testing (operation at not more than one percent of full power for the purpose of testing the facility), and further operations short of full power operation. The Board may grant the motion upon a finding that the proposed licensing action will not have a significant, adverse impact on the quality of the environment and upon satisfaction of the requirements of § 50.57(c) of 10 CFR Part 50. In addition, the Board may grant a motion, pursuant to § 50.57(c) of 10 CFR Part 50, upon satisfaction of the requirements of that paragraph, after consideration and balancing of the following factors:

(a) Whether it is likely that limited operation during the prospective review period will give rise to a significant, adverse impact on the environment; the nature and extent of such impact, if any; and whether redress of any such adverse environmental impact can reasonably be effected should modification or termination of the limited license result from the ongoing NEPA environmental review.

(b) Whether limited operation during the prospective review period would foreclose subsequent adoption of alternatives in facility design or operation of the type that could result from the ongoing NEPA environmental review.

(c) The effect of delay in facility operation upon the public interest. Of primary importance under this criterion are the power needs to be served by the facility; the availability of alternative sources, if any, to meet those needs on a timely basis; and delay costs to the licensee and to consumers.

Operation beyond twenty percent (20%) of full power will not be authorized except on specific approval of the Commission, upon the Commission's finding that there exists an emergency situation or other situation requiring such operation in the public interest.

Prior to taking any action on a motion pursuant to § 50.57(c) of 10 CFR Part 50 which any party opposes, the Board shall, with respect to the contested activity sought to be authorized, make findings on the hearing issue specified above, and determine whether the proposed licensing action will have a significant, adverse impact on the quality of the environment or make findings on the factors specified in the paragraph preceding the one above, as appropriate, in the form of an initial decision. The licensing action will be taken by the Director of Regulation only after appropriate findings are made on items 1 through 6 above. If the license is one which requires the specific approval of the Commission, the Board will certify directly to the Commission for determination, without ruling thereon, the matter of whether operation beyond twenty percent (20%) of full power should be authorized.

Any license issued pursuant to the foregoing will be without prejudice to subsequent licensing action which may be taken by the Commission with regard to the environmental aspects of the facility, and any license issued will be conditioned to that effect.

The Surry Power Station Unit No. 1 is subject to the provisions of section E of Appendix D to 10 CFR Part 50, which sets forth procedures and criteria for determining, inter alia, whether construction should be suspended on facilities within specified categories pending completion of the NEPA environmental review provided for in Appendix D. No license will be issued in the instant proceeding in advance of or in conflict with the determination as to suspension vel non under said section E.

As they become available, the application, the proposed operating license,

the applicant's summary of the application, the report of the Commission's Advisory Committee on Reactor Safeguards (ACRS), the Safety Evaluation by the Commission's regulatory staff, the applicant's Environmental Report, the AEC's Detailed Statement on Environmental Considerations, and the transcripts of the prehearing conference and of the hearing, will be placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Swem Library, College of William and Mary, Williamsburg, Va., for inspection by members of the public between the hours of 8 a.m. to 12 midnight Monday through Friday, 8 a.m. to 5 p.m. on Saturday and from 2 p.m. to 12 midnight on Sunday. Copies of the proposed operating license, the ACRS report, the regulatory staff's Safety Evaluation, the applicant's Environmental Report, and the Commission's Detailed Statement on Environmental Considerations may be obtained, when available, by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who has not filed either a petition for leave to intervene or a request for a hearing as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the parties to the proceeding (other than the regulatory staff) not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 copies of each such paper with the Commission.

With respect to this proceeding, the Commission has delegated to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission has established the Appeal Board pursuant to 10 CFR 2.785 of the Commission's rules of practice, and has made the delegation pursuant to subparagraph (a)(1) of this section. The Appeal Board is composed of the Chairman and Vice-Chairman of the Atomic Safety and Licensing Board Panel and a third member who is technically qualified and designated by the Commission. The Commission has designated Dr. Lawrence Quarles, dean of the School of Engineering and Applied Science, the University of Virginia, as this third member.

Dated at Germantown, Md., this 18th day of November 1971.

UNITED STATES ATOMIC ENERGY COMMISSION,
W. B. McCOOL,
Secretary of the Commission.

[FR Doc.71-17125 Filed 11-23-71;8:47 am]

[Docket No. 50-302]

FLORIDA POWER CORP.

Determination Not To Suspend Construction Activities at Crystal River Unit 3 Nuclear Generatingg Plant Pending Completion of NEPA Environmental Review

The Florida Power Corp. (the licensee) is the holder of Construction Permit No. CPPR-51 (the construction permit), issued by the Atomic Energy Commission on September 25, 1968. The construction permit authorizes the licensee to construct a pressurized water nuclear reactor, designated as the Crystal River Unit 3 Nuclear Generating Plant, at a site in Citrus County, Fla., approximately 70 miles north of Tampa, Fla. The facility is designed for initial operation at approximately 2,452 megawatts (thermal).

In accordance with section E.3 of the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), appendix D of 10 CFR Part 50 (appendix D), the licensee has furnishd to the Commission a written statement of reasons, with supporting factual submission, why the construction permit should not be suspended, in whole or in part, pending completion of the NEPA environmental review.

The Director of Regulation has considered the licensee's submission in light of the criteria set out in section E.2 of appendix D, and has determined, after considering and balancing the criteria in section E.2 of appendix D, that construction activities at the Crystal River Unit 3 Nuclear Generating Plant authorized pursuant to CPPR-51 should not be suspended pending completion of the NEPA environmental review.

Further details of this determination are set forth in a document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permit for the Crystal River Unit 3 Nuclear Generating Plant, Docket No. 50-302, November 1971."

Pending completion of the full NEPA review, the holder of Construction Permit No. CPPR-51 proceeds with construction at its own risk. The determination herein and the discussion and findings referred to above do not preclude the Commission, as a result of its ongoing environmental review, from continuing, modifying or terminating the construction permit or from appropriately conditioning the permit to protect environmental values.

Any person whose interest may be affected by this proceeding, other than the licensee, may file a request for a hearing within thirty (30) days after publication of this determination in the FEDERAL REGISTER. Such a request shall set forth the matters, with reference to the factors set out in section E.2 of appendix D, alleged to warrant a determination other than that made by the Director of Regulation and shall set forth the factual basis for the request. If the Commission determines that the matters stated in such request warrant a hearing, a notice of hearing will be published in the FEDERAL REGISTER.

The licensee's statement of reasons, furnished pursuant to section E.3 of appendix D, as to why the construction permit should not be suspended pending completion of the NEPA environmental review, and the document entitled "Discussion and Findings by the Division of Reactor Licensing, U.S. Atomic Energy Commission Relating to Consideration of Suspension Pending NEPA Environmental Review of the Construction Permit for the Crystal River Unit 3 Nuclear Generating Plant, Docket No. 50-302 November 1971" are available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the Crystal River Public Library, Crystal River, Fla. 32629. Copies of the "Discussion and Fndings" document may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 20th day of November 1971.

For the Atomic Energy Commission.

L. MANNING MUNTZING,
Director of Regulation.

[FR Doc.71-17311 Filed 11-23-71;9:50 am]

CIVIL AERONAUTICS BOARD

[Order 71-11-74]

CERTAIN UNAUTHORIZED INDIRECT AIR CARRIERS

Order Granting Temporary Relief

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of November 1971.

From time to time, at the request of the Department of Defense (DOD), the Board has granted temporary relief from provisions of the Federal Aviation Act of 1958 (the Act) to permit 30 unauthorized indirect air carriers[1] to transport by air used household goods[2] of Department of Defense personnel. The relief will expire 180 days after the Board's decision in Docket 20812 becomes final or, as to each individual company named in the appendix to Order 71-10-56, upon Board disposition of such company's application for air freight forwarder and/or international air freight forwarder authority, whichever event shall occur first.[3]

By letter dated November 1, 1971, the Department of the Army, acting on behalf of DOD, stated that, in addition to the 30 carriers already exempted, it now has a requirement for the services of four additional unauthorized indirect air carriers and requests that these carriers be similarly relieved from the requirements of the Act. The carriers whose services are requested by DOD are listed in the appendix attached hereto.

In view of the foregoing circumstances, the Board finds that it is in the public interest to temporarily relieve from the provisions of the Act those carriers whose services have been requested by DOD to transport by air used household goods of personnel of DOD.

Accordingly, it is ordered,

1. That pursuant to sections 101(3) and 204 of the Federal Aviation Act of 1958, as amended, the carriers listed in the appendix hereto are hereby relieved from the provisions of title IV and section 610(a)(4) of the Act to the extent necessary to transport by air used household goods of personnel of DOD upon tender by that Department;

2. That the relief granted herein shall terminate 180 days after the Board's decision in Docket 20812 becomes final or, as to each individual company named in the appendix hereto, upon Board disposition of such company's application for air freight forwarder and/or international air freight forwarder authority, whichever event shall occur first;

3. That this order may be amended or revoked at any time in the discretion of the Board, without hearing; and

4. That copies of this order shall be served on the Military Traffic Management and Terminal Service, U.S. Army, and the companies listed in the appendix hereto.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

APPENDIX

Delcher Intercontinental Moving Service (DIMS), 262 Riverside Avenue, Post Office Box 507, Jacksonville, FL 32201.
Garrett Forwarding Co., 2055 Garrett Way, Post Office Box 4048, Pocatello, ID 83201.
Pyramid Van Lines, Inc., 479 South Airport Boulevard, South San Francisco, CA 94080.
Rocky Ford Moving Vans, Inc., 510 South Big Spring, Post Office Box 11, Midland, TX 79701.

[FR Doc.71-17142 Filed 11-23-71;8:48 am]

[1] American Ensign Van Service, Inc., Asiatic Forwarders, Inc., CTI—Container Transport International, Inc., Four Winds Forwarding, Inc., HC&D Moving & Storage, Imperial Household Shipping Co., Inc., International Sea Van, Inc., North American Van Lines, Inc., Aero Mayflower Transit Co., Inc., Allied Van Lines, Inc., Astron Forwarding Co., Davidson Forwarding Co., Fernstrom Storage and Van Co., Home-Pack Transport, Inc., King Van Lines, Inc., Richardson Transfer & Storage Co., Inc., Smyth Worldwide Movers, Inc., Air Van Lines, Inc., Burnham Van Service, Inc., Suddath Van Lines, Inc., United Van Lines, Inc., Von der Ahe Van Lines, Inc., Door to Door International, Inc., Republic Van & Storage Co., Inc., Trans-American Van Service, Inc., American Red Ball Transit Co., Getz Bros. and Co., U.S., Neptune Thru-Container Corp., Karevan, Inc., and DeWitt Freight Forwarding.

[2] The term "used household goods" means personal effects (including unaccompanied baggage) and property used or to be used in a dwelling, when a part of the equipment or the supply of such dwelling, but specifically excludes (1) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments, and (2) objects of art (other than personal effects), displays and exhibits.

[3] See Order 71-10-56, dated Oct. 13, 1971.

FEDERAL POWER COMMISSION

[Docket No. CS71-20 etc.]

HANSON OIL CORP. ET AL.

Findings and Order

NOVEMBER 15, 1971.

Findings and order after statutory hearing issuing small producer certificates of public convenience and necessity, amending certificate, terminating certificates, canceling FPC gas rate schedules, terminating rate proceedings, dismissing applications, making successor co-respondent, redesignating proceedings, and granting petition to intervene.

Each applicant herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for small producer certificates of public convenience and necessity authorizing sales of natural gas in interstate commerce, all as more fully set forth in the applications and appendix A, below.

Certain applicants are presently authorized to sell natural gas pursuant to FPC gas rate schedules on file with the Commission. The temporary and permanent certificates authorizing said sales will be terminated and the related rate schedules will be canceled. Some sales made pursuant to the certificates terminated herein and the canceled FPC gas rate schedules were made at rates in effect subject to refund. There are other rate increases which are suspended. Certain proceedings in which these increased rates are suspended or have been collected subject to refund by any of these applicants and were equal to or below area ceiling rates will be terminated.

Hanson Oil Corp., the small producer certificate holder listed below in appendix B has been granted a small producer certificate of public convenience and necessity authorizing sales of natural gas in interstate commerce. Hanson was theretofore authorized to sell natural gas pursuant to a FPC gas rate schedule on file with the Commission. The certificate authorizing the former sale, which is now made under the small producer certificate, will be terminated and the related FPC gas rate schedule will be canceled.

W. T. Fail, applicant in Docket No. CS71-1076, proposes to continue in part the sales of natural gas heretofore authorized in Docket No. G-11174 to be made pursuant to Gulf Oil Corp. FPC Gas Rate Schedule No. 98. Therefore, the certificate of public convenience and necessity heretofore issued to Gulf in Docket No. G-11174 will be amended by deleting therefrom authorization to make the sales of natural gas which will be continued by W. T. Fail.

Fair Operating Account, applicant in Docket No. CS71-759, proposes to continue the sales of natural gas heretofore authorized in Dockets Nos. G-6216 and G-6559 to be made pursuant to Ralph E. Fair, Inc., FPC Gas Rate Schedules Nos. 1 and 2, respectively. The rates at the time of the assignment were effective subject to refund in Dockets Nos. RI60-294 and RI60-295 for sales under Fair's FPC Gas Rate Schedule No. 1. Therefore, applicant will be made a co-respondent in said proceedings and the proceedings will be redesignated accordingly.

Thomas N. Berry & Co., applicant in Docket No. CS71-1083, proposes to continue the sales of natural gas heretofore authorized in Dockets Nos. G-18878, CI60-341, CI62-457 and CI64-1246 to be made pursuant to Thomas E. Berry FPC Gas Rate Schedules Nos. 2, 3, 6, and 10, respectively. The rates at the time of the assignments were effective subject to refund in Dockets Nos. RI67-143 and RI70-206 for sales under Berry's FPC Gas Rate Schedule No. 3; in Docket No. RI70-1372 for sales under Berry's FPC Gas Rate Schedule No. 2; and, in Docket No. RI70-1598 for sales under Berry's FPC Gas Rate Schedule No. 6. Therefore, applicant will be made a co-respondent in said proceedings and the proceedings will be redesignated accordingly.

After due notice by publication in the FEDERAL REGISTER, a petition for leave to intervene was filed on June 21, 1971, in Docket No. CS71-592 by Natural Gas

Pipeline Co. of America. No other petition to intervene or notice of intervention has been filed. On July 9, 1971, James M. Forgotson, Sr., filed a protest to the granting of the authorization sought by all applicants listed in our Notice of Small Producer Applications issued on June 29, 1971, in Docket No. CS69–19, et al., some of whom are included in the instant order.

The Commission's staff has reviewed the applications, and having considered the petition to intervene and the protest, recommends each action ordered as consistent with all substantive Commission policies and required by the public convenience and necessity.

At a hearing held on October 14, 1971, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds: (1) Each applicant is or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" or will be when the initial delivery is made, within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications herein, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by applicants are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) Each applicant is an independent producer of natural gas which is not affiliated with a natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with sales of affiliated producers, were not in excess of 10 million Mcf at 14.65 p.s.i.a. during the preceding calendar year.

(5) The sales of natural gas by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and small producer certificates of public convenience and necessity therefore should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the temporary and permanent certificates of public convenience and necessity heretofore issued to applicants should be terminated and that the related FPC gas rate schedules should be canceled.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate of public convenience and necessity heretofore issued to Gulf Oil Corp. in Docket No. G–11174 should be amended by deleting therefrom authorization to make sales of natural gas which will be continued by W. T. Fail.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Fair Operating Account should be made a co-respondent in the proceedings pending in Dockets Nos. RI60–294 and RI60–295 and that said proceedings should be redesignated accordingly.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Thomas N. Berry & Co. should be made a co-respondent in the proceedings pending in Dockets Nos. RI67–143, RI70–206, RI70–1372, and RI70–1598 and that said proceedings should be redesignated accordingly.

(10) The applications pending in Dockets Nos. CI60–117, CI63–260, CI71–461, and CI71–883 are moot.

(11) Participation by Natural Gas Pipeline Co. of America in the proceeding pending in Docket No. CS71–592 may be in the public interest.

The Commission orders: (A) Small producer certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing the sale for resale and delivery of natural gas in interstate commerce by applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission and particularly:

(1) The subject certificates shall be applicable only to all small producer sales as defined in § 157.40(a)(3) of the regulations under the Natural Gas Act; and

(2) Applicants shall file annual statements pursuant to § 154.104 of the regulations under the Natural Gas Act.

(C) The certificates granted in paragraph (A) above shall remain in effect for small producer sales until the Commission on its own motion or on application terminates said certificates because applicants no longer qualify as small producers or fail to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificates. Upon such termination, applicants will be required to file separate certificate applications and individual rate schedules for future sales. To the extent compliance with the terms of this order is observed, the small producer certificates will still be effective as to sales already included thereunder.

(D) The grant of the certificates in paragraph (A) above shall not be construed as a waiver of the requirements of section 7 of the Natural Gas Act or Part 157 of the regulations thereunder and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against applicants. Further, our action in this proceeding shall not foreclose any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved, shall not imply approval of all of the terms of the contracts, particularly as to the cessation of service upon the termination of said contracts as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales subject to said certificates.

(E) The temporary and permanent certificates heretofore issued to applicants for sales proposed to be continued under small producer certificates are terminated and the related FPC gas rate schedules are canceled as indicated in appendix A, below.

(F) The proceedings in which applicants' increased rates have not been made effective and certain proceedings in which increased rates have been made effective subject to refund and are equal to or below the applicable area base rate are terminated as indicated in appendix A, below.

(G) The certificate of public convenience and necessity heretofore issued to Hanson Oil Corp. for sales of natural gas to be continued under its small producer certificate is terminated and the related FPC gas rate schedule is canceled as indicated in appendix B, below.

(H) The certificate of public convenience and necessity heretofore issued to Gulf Oil Corp. in Docket No. G–11174 is amended by deleting therefrom authorization to make the sales of natural gas which will be continued by W. T. Fail.

(I) Fair Operating Account is made a co-respondent in the proceedings pending in Dockets Nos. RI60–294 and RI60–295 and said proceedings are redesignated accordingly.

(J) Thomas N. Berry & Co. is made a co-respondent in the proceedings pending in Dockets Nos. RI67–143, RI70–206, RI70–1372, and RI70–1598 and said proceedings are redesignated accordingly.

(K) The applications pending in Dockets Nos. CI60–117, CI63–260, CI71–461 and CI71–883 are dismissed.

(L) Natural Gas Pipeline Co. of America is permitted to intervene in the proceeding in Docket No. CS71–592 subject to the rules and regulations of the Commission: *Provided, however,* That participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition for leave to intervene: *And provided further,* That the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved

because of any order of the Commission entered in this proceeding.

(M) This order does not relieve any of the applicants herein of any responsibility imposed by, and is expressly 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), including such amendments as the Commission may require, and Executive Order No. 11615.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

Docket No. and filing date	Applicant	Canceled FPC gas rate schedule	Terminated certificate docket No.	Terminated rate increase docket No.
CS71-809, 4-29-71	L. E. Jones Production Co. et al.	[1] 1	CI70-786 [1]	
CS71-592, 4-30-71	William Graham Oil Co. et al.	5	G-13038	
	do	8	G-13038	G-19539.
	do	9	G-8382	
	do	10	CI63-1	
CS71-759, 5-3-71	Fair Operating Account et al.	[2] 1	G-6216 [2]	
	do	[2] 2	G-6559 [2]	
CS71-760, 5-3-71	Ralph E. Fair, Inc.	1	G-6216	
CS71-775, 5-3-71	Corbin J. Robertson	1	CI71-883 [4]	
CS71-828, 5-4-71	Estate of W. P. Prentiss	1	CI66-959	
CS71-860, 5-6-71	James A. Ford, d.b.a. Cypress Gas Co.	4	CI69-345	
CS71-862, 5-6-71	Moran Bros. Inc., et al.	1	G-12289	R168-379.
	do	2	G-9164	
	do	3	CI60-117 [4]	
	do	4	CI62-1554	
	do	5	CI67-77	
CS71-864, 5-6-71	Chaparral Oil & Gas Co.	1	CI71-232	
	do	2	CI71-232	
	do	3	CI71-232	
CS71-868, 5-6-71	Robert M. Hoover, Jr.	1	CI71-361	
CS71-869, 5-7-71	H. C. and Gertrude B. Andrewski	[3] 1	G-9229 [3]	
	do	[3] 2	CI61-1678 [3]	R166-272.
CS71-871, 5-7-71	S. R. Cobagan et al.	1	G-3192	
CS71-875, 5-4-71	Robert P. Evans et al.	1	CI66-818	
CS71-876, 5-4-71	Jones-O'Brien, Inc. et al.	3	G-7751	
	do	5	G-9418	
	do	7	CI71-461 [4]	
CS71-1076, 5-26-71	W. T. Fail			
CS71-1077, 5-27-71	D. H. Byrd et al.	1	CI61-374	
CS71-1079, 6-14-71	Estate of John V. Rowan			
CS71-1080, 6-14-71	Murchison Bros. & Denius	1	G-3043	
CS71-1082, 6-15-71	J. A. LaFortune	1	CI66-516	
	do	2	CI66-1140	
	do	3	CI70-1056	R171-498.

See footnotes at end of table.

Docket No. and filing date	Applicant	Canceled FPC gas rate schedule	Terminated certificate docket No.	Terminated rate increase docket No.
CS71-1083, 6-15-71	Thomas N. Berry & Co. et al.	1	G-14901	R164-647, R170-185.
	do	2	CI63-260 [4]	R167-284.
	do	4	CI65-182	R170-185.
	do	5	CI65-992	R170-1095.
	do	7	G-10843	R165-417, R170-949.
	do	8	CI66-1315	R168-365.
	do	9	CI67-839	R170-273.
	do	[5] 1	G-16971 [5]	R167-142, R170-205.
	do	[7] 2	G-18878 [7]	
	do	[7] 3	CI69-841 [7]	
	do	[7] 6	CI62-457 [7]	
	do	[7] 10	CI64-1246 [7]	
CS71-1112, 6-21-71	Baylor Van Meter			
CS71-1113, 6-23-71	Robert B. Peyton			
CS71-1114, 6-24-71	Otis Russell et al.	1	CI62-20	
	do	2	CI63-1546	
	do	3	CI69-853	
CS71-1116, 6-24-71	Calcasieu Venture N. V., Inc.			
CS71-1117, 6-24-71	Riddell Petroleum Corp.	1	G-16579	
	do	2	G-17828	
	do	3	G-18699	
	do	4	CI69-667	
CS71-1118, 6-24-71	J. S. Michael et al.	3	CI69-228	R164-779.
CS71-1139, 6-29-71	George P. Hill et al.	1	CI69-960	
	do	[8] 10	CI66-183 [8]	
	do	[8] 11	CI66-183 [8]	
CS71-1141, 6-30-71	The Atascosa Petroleum Co. et al.	1	G-18271	

[1] Certificate and rate schedule on file as Milford Corp.
[2] Certificate and rate schedule on file as Ralph E. Fair, Inc.
[3] Certificate and rate schedule on file as Ralph E. Fair.
[4] Temporary certificate.
[5] Certificate and rate schedule on file as H. C. Andrewski.
[6] Certificate and rate schedule on file as Thomas E. Berry, agent.
[7] Certificate and rate schedule on file as Thomas E. Berry.
[8] Certificate and rate schedule on file as George P. Hill, doing business as Hill & Hill.

APPENDIX B

Docket No.	Certificate holder	Canceled FPC gas rate schedule	Terminated certificate docket No.	Terminated rate increase docket No.
CS71-29	Hanson Oil Corp., et al.	1	CI71-605	

[FR Doc.71-16989 Filed 11-23-71;8:45 am]

FEDERAL RESERVE SYSTEM

ATLANTIC BANCORPORATION

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Atlantic Bancorporation, which is a bank holding company located in Jacksonville, Fla., for prior approval by the Board of Governors of the acquisition by Applicant of not less than 80 percent of the voting shares of The First State Bank and Trust Co., Eustis, Fla.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, November 17, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-17140 Filed 11-23-71;8:48 am]

FIRST CITY BANCORPORATION OF TEXAS, INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of First City Bancorporation of Texas, Inc., Houston, Tex., for approval of acquisition of 52 percent or more of the voting shares of Humble State Bank, Humble, Tex.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by First City Bancorporation of Texas, Inc., Houston, Tex., for the Board's prior approval of the acquisition of 52 percent or more of the voting shares of Humble State Bank, Humble, Tex. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Texas Commissioner of Banking and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on August 13, 1971 (36 F.R. 15141), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant controls five banks with aggregate deposits of approximately $1,142 million, representing 4.3 percent of total commercial bank deposits in Texas. (All banking data are as of December 31, 1970, and reflect holding company formations and acquisitions approved by the Board through August 31, 1971.) Applicant's acquisition of Bank (about $12 million in deposits) would not represent a significant increase in Applicant's share of total deposits in the State.

Applicant controls three banks in the Houston SMSA, with deposits aggregating about $1,128 million or 18.5 percent of commercial bank deposits in the area. Bank ranks 74th among the 140 banks in the Houston SMSA, the relevant banking market, and holds 0.2 percent of the commercial bank deposits in the market. The service area of Bank is considered to be Humble and the surrounding area. Although a small amount of the deposits of First City National Bank (FCNB), Applicant's lead bank, derives from the service area of Bank, FCNB (about $1 billion in deposits) is primarily a large wholesale bank (68.5 percent of whose deposits are in accounts each of which exceeds $100,000), while Bank is a small retail-oriented institution serving a suburban community. There appears to be no significant existing competition bteween Bank and any of Applicant's present subsidiaries; and on the facts of record, notably, the geographical separation of Bank from each of Applicant's subsidiaries, the number of banks in the intervening areas, Texas' laws prohibiting branching, and the differences in the types of business of FCNB and of Bank, it appears that significant future competition is not likely to develop. On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area nor have an adverse effect on any competing bank.

The financial and managerial resources and future prospects of Applicant, its present subsidiaries, and Bank are regarded as satisfactory and consistent with approval.

The community served by Bank has grown rapidly, and Bank has experienced rapid deposit growth. The construction of the Houston Intercontinental Airport, 3 miles west of Humble, apparently has led several national and international firms to locate nearby. Affiliation with Applicant should enable Bank to obtain additional capital funds and additional qualified personnel which are needed to meet the needs of its developing community. Considerations relating to the convenience and needs of the community to be served lend some weight for approval. It is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[1] November 18, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-17136 Filed 11-23-71;8:48 am]

FIRST TENNESSEE NATIONAL CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of First Tennessee National Corp. (formerly named First National Holding Corp.), Memphis, Tenn., for approval of acquisition of 100 percent of the voting shares of the successor by merger to Whites Creek Bank and Trust Co., Whites Creek, Tenn.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and §222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by First National Tennessee Corp. (formerly named First National Holding Corp.), Memphis, Tenn., a bank holding company, for the Board's prior approval of the acquisition of 100 percent of the voting shares of the successor by merger to Whites Creek Bank and Trust Co., Whites Creek, Tenn. (Bank).

The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of the shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Superintendent

[1] Voting for this action: Chairman Burns and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Governor Robertson.

of Banks of the State of Tennessee and requested his views and recommendation. The Superintendent offered no objection to consummation of the proposal.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 24, 1971 (36 F.R. 18980), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant, the largest bank holding company and second largest banking organization in Tennessee, has one subsidiary bank[1] with $738.7 million in deposits, representing approximately 9.9 percent of the total commercial bank deposits in the State. (All banking data are as of December 31, 1970, adjusted to reflect holding company formations and acquisitions approved by the Board through September 30, 1971.) Consummation of the proposal herein would increase applicant's share of deposits in the State to 10 percent and would make applicant the largest banking organization in the State measured by both total deposits and banking offices.

Bank ($5.5 million deposits) is the seventh largest of seven banking organizations located in the Nashville area. Applicant's present subsidiary bank is 200 miles from Bank and there exists no significant competition between the two institutions. Because of the State's restrictive branching law and other facts of record, substantial competition between applicant and Bank is unlikely to develop. Consummation of the proposal would have a procompetitive effect by enhancing Bank's ability to compete with the three largest banks competing in the Nashville banking market, which together hold approximately 94 percent of the total deposits held by commercial banks in the area. Based upon the foregoing, the Board concludes that consummation of the proposal would not have an adverse effect on competition in any relevant area.

The financial and managerial resources and future prospects of applicant, its subsidiary bank and Bank are satisfactory and consistent with approval. Although all major local banking needs are presently being served in the Nashville banking market, considerations relating to the convenience and needs of the communities to be served lend some weight toward approval, Bank's competitive ability should be strengthened by consummation of this proposal. Furthermore, applicant plans to expand Bank's trust services and to add international and automated customer services to those services presently offered by Bank.

It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of St. Louis pursuant to delegated authority.

It is further ordered, That upon the consummation of the proposed transaction, applicant shall not retain or acquire any nonbank shares or engage in any nonbanking activities to a greater extent or for a longer period than would apply in the case of a bank holding company which became such on the date of such consummation, except to the extent otherwise permitted in any regulation of the Board hereafter adopted specifically relating to the effect of the acquisition of an additional bank on the status of nonbank shares and activities of a one-bank holding company formed prior to 1971, or unless the Board fails to adopt any such regulation before the expiration of 2 years after the consummation of the proposed acquisition.

By order of the Board of Governors,[2] November 18, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-17137 Filed 11-23-71;8:48 am]

LINCOLN FIRST BANKS, INC.

Proposed Acquisition of Lincoln First/Baer Corp.

Lincoln First Banks, Inc., Rochester, N.Y., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(a)(8)) and § 222.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Lincoln/Baer Corp., New York, N.Y. Notice of the application was published on October 16, 1971, in The New York Times, a newspaper circulated in New York, N.Y.

Applicant states that the proposed subsidiary would perform the activities of a trust company. Such activities have been specified by the Board in § 222.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 222.4(b).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 17, 1971.

Board of Governors of the Federal Reserve System, November 17, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-17141 Filed 11-23-71;8:48 am]

MERCANTILE BANCORPORATION INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Mercantile Bancorporation Inc., St. Louis, MO, for approval of acquisition of up to 100 percent of the voting shares of Red Bridge Bank, Kansas City, MO.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Mercantile Bancorporation Inc., St. Louis, MO (Applicant) for the Board's prior approval of the acquisition of up to 100 percent of the voting shares of Red Bridge Bank, Kansas City, Mo. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Missouri Commissioner of Finance and requested his views and recommendation. The Commissioner offered no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on September 23, 1971 (36 F.R. 18910), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set

[1] The Board of Governors, on Nov. 9, 1971, approved applicant's acquisition of a second subsidiary bank, The Banking & Trust Co., Jonesboro, Tenn. (deposits $24.5 million). That Bank is located 300 miles east of Nashville.

[2] Voting for this action: Chairman Burns and Governors Robertson, Daane, and Maisel. Absent and not voting: Governors Mitchell, Brimmer, and Sherrill.

forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant controls four banks with deposits of $1,162 million, accounting for 10.1 percent of the State's total deposits. (All banking data are as of December 31, 1970, and reflect holding company formations and acquisitions approved to date.) Bank ($8.6 million in deposits) ranks 80th of 102 banks in the Kansas City market and is the smallest of five banks within its primary service area. Applicant's closest subsidiary, the Mercantile Bank and Trust Co., Kansas City, Mo., is located approximately 13 miles from Bank and is the eighth largest bank in the Kansas City area, controlling 2.1 percent of deposits in the area's commercial banks. The Mercantile Bank and Trust Co. ($68.6 million in deposits) is a relatively large bank in the downtown area, while Bank is a small bank serving a suburban community. No significant competition exists between Bank and the Mercantile Bank and Trust Co., and in view of the number of intervening banks, Missouri's restrictive branching law, and other facts of record, it appears unlikely that such competition would develop. Consummation of the proposal would therefore have no adverse effects on existing or potential competition.

The financial and managerial resources and future prospects of Applicant, its subsidiaries, and Bank are satisfactory and consistent with approval. Applicant plans to enable Bank to expand loan and retail depository services and to initiate trust, bond, and investment services to the extent necessary to meet the growing needs of its economically developing community. Accordingly, considerations relating to the convenience and needs of the communities to be served lend some weight toward approval. It is the Board's judgment that the proposed transaction would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of St. Louis pursuant to delegated authority.

By order of the Board of Governors,[1] November 18, 1971.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.71-17138 Filed 11-23-71;8:48 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Daane, and Maisel. Absent and not voting: Governors Mitchell, Brimmer, and Sherrill.

NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

STATE WORKMEN'S COMPENSATION LAWS

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the National Commission on State Workmen's Compensation Laws at Room 102E, 1776 Peachtree Street NE., Atlanta, GA, commencing at 10 a.m. on January 10, 1972, and continuing through January 11, 1972. At the hearing, interested parties may make oral or written presentations of data, views, and arguments relating to the general question of whether State workmen's compensation laws provide an adequate, prompt, and equitable system of compensation, and to possible methods which might be used by, and sources of information available to, the National Commission on State Workmen's Compensation Laws in making its study and preparing its report under section 27 of the Occupational Safety and Health Act of 1970 (84 Stat. 1616).

Interested persons shall, not later than fifteen (15) days prior to the commencement of the hearing, file with the Chairman, National Commission on State Workmen's Compensation Laws, 1825 K Street NW., Washington, DC 20006, a notice of intention to appear which shall contain the following information:

1. Name and address of the person appearing.
2. The subject matter or matters to be discussed.
3. If such person is appearing in a representative capacity, the name and address of the persons or organizations he is representing.
4. The date and approximate length of time requested for his presentation.

Interested persons may also file written data, views, or arguments with the Commission at the above address.

The oral proceedings shall be stenographically reported and transcripts will be available to interested persons on payment of fees therefor. The presiding officer shall regulate the proceedings, dispose of procedural requests, objections, and comparable matters, and confine the presentation to matters pertinent to the inquiry. He shall have discretion to keep the record open after the close of the hearing to permit any person who participated in the oral presentation to submit additional data, views, and arguments responsive to the oral presentations made by other persons.

Signed at Washington, D.C., this 18th day of November 1971.

JOHN F. BURTON, Jr.,
Chairman.

[FR Doc.71-17109 Filed 11-23-71;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[812-3062]

GUARDIAN INSURANCE & ANNUITY CO., INC. ET AL.

Notice of Application for Exemption from Provisions

NOVEMBER 17, 1971.

Notice is hereby given that the Guardian Insurance & Annuity Co., Inc. (Guardian), 201 Park Avenue South, New York, NY 10003, a stock life insurance company organized under the laws of Delaware, and the Guardian Variable Account 1 (Account 1), a separate account of Guardian registered as a unit investment trust under the Investment Company Act of 1940 (Act) and Glicoa Associates, Inc. (Glicoa), registered as a broker dealer under the Securities Exchange Act of 1934 and the principal underwriter of Account 1 (collectively called the "Applicants"), have filed an application pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of section 26(a)(2)(D) of the Act, to the extent noted below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Account 1 was established by Guardian in connection with the proposed sale of three types of individual variable annuity contracts which are qualified for special tax treatment under sections 401 or 403(b) of the Internal Revenue Code. A registration statement covering the proposed sale of these securities has been filed with the Commission.

The contracts will be sold by persons who are registered representatives of Glicoa and who also are insurance agents or brokers for Guardian. These persons generally will also be agents or brokers of the Guardian Life Insurance Co. of America (Guardian Life). Guardian and Glicoa are wholly-owned subsidiaries of Guardian Life. The assets of Account 1 will be exclusively invested in the shares of The Guardian Park Avenue Fund, Inc. (Fund).

Hartford National Bank Trust Co., Hartford, Conn., is the custodian for Account 1 and is also the custodian and transfer agent for the Fund.

The custody agreement for Account 1 provides, among other things, that all Fund shares and other securities and property acquired by or on behalf of Account 1 and all income upon, accretions to, and proceeds of such property and funds shall be in the possession of the custodian in safekeeping. However, the Fund maintains an open-account system through its transfer agent and, therefore, certificates for Fund shares normally are not issued unless specifically requested. The custody agreement for Account 1 provides that written confirmation from the Fund's transfer agent shall constitute "good and sufficient"

record of the number of Fund shares owned by Account 2.

Section 26(a)(2)(D) of the Act, in part, provides that the trustee or custodian shall have possession of all securities and other property in which the funds are invested and shall segregate and hold the same in trust until distribution thereof. The section has been interpreted to mean that the securities owned by the trust must be actually represented by share certificates maintained in the custody of the custodian. Accordingly, Applicants have requested an exemption from the provisions of section 26(a)(2)(D) to the extent necessary to permit the custodian to accept "book shares."

Applicants state that the primary purpose of section 26(a) is to provide for the safekeeping of assets of registered unit investment trusts. Applicants contend that to require the physical issue of share certificates would not significantly add to the safekeeping qualities of the custodian's operation and would result only in additional "unnecessary" expense in the administration of Account 1.

The application states that the assets of Account 1 will be exclusively invested in the Fund. Furthermore, the custodian, in its role as custodian for Fund, has physical possession of Fund's underlying assets. Thus, Applicants contend that physical issuance of shares of Fund would not significantly increase the protection of the underlying assets of Account 1. In this regard, Applicants point out that in the mutual fund industry it has become, in the interest of economy and inefficiency, a common practice to use book accounts in the case of individual investors for the issuance of shares rather than the actual physical issue of share certificates.

The application further states that in part due to this arrangement regarding book shares, no very large administrative detail is involved in the custodian's duties for Account 1. Consequently, the fee being charged is a "modest" one which is being paid directly by Guardian and is not charged against the assets of Account 1. The fee payable to the custodian is $10 per month in addition to reimbursement of the custodian for its out-of-pocket expenses.

Applicants have consented to the requested exemption being subject to the following conditions:

a. That the charges to the contract holders under the contracts for administrative services shall not exceed such reasonable amount as the Commission shall prescribe and that the Commission may reserve jurisdiction for such purpose;

b. That the payment of sums and charges out of the assets of Account 1 shall not be deemed to be exempted from regulation by the Commission by reason of this order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of the Account 1 other than charges for administrative services, and Applicants reserve the right, in any proceeding before the Commission or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges;

c. That there will be full disclosure in the prospectus of the terms of the custody agreement with regard to "book shares"; and

d. That the Fund, which will also have public shareholders, will not bear any of the custodial expenses which reasonably should have been charged to Account 1.

Section 6(c) authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 8, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-17131 Filed 11-23-71;8:47 am]

[812-3063]

GUARDIAN INSURANCE & ANNUITY COMPANY, INC., ET AL.

Notice of Application for Exemption From Provisions

NOVEMBER 17, 1971.

Notice is hereby given that The Guardian Insurance & Annuity Co., Inc. (Guardian), a stock Life Insurance Company organized under the laws of Delaware, and The Guardian Variable Account 2 (Account 2), a separate account of Guardian registered as a unit investment trust under the Investment Company Act of 1940 (Act), and Glicoa Associates, Inc. (Glicoa), registered as a broker dealer under the Securities Exchange Act of 1934 and the principal underwriter of Account 2 (collectively called the "Applicants"), have filed an application pursuant to section 6(c) of the Act for an order exempting Applicants from the provisions of section 26(a)(2)(D) of the Act, to the extent noted below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Account 2 was established by Guardian in connection with the proposed sale of three types of individual variable annuity contracts which are not qualified for special tax treatment under sections 401 or 403(b) of the Internal Revenue Code. A registration statement covering the proposed sale of these securities has been filed with the Commission.

The contracts will be sold by persons who are registered representatives of Glicoa and who also are insurance agents or brokers for Guardian. These persons generally will also be agents or brokers of The Guardian Life Insurance Company of America (Guardian Life). Guardian and Glicoa are both wholly owned subsidiaries of Guardian Life. The assets of Account 2 will be exclusively invested in the shares of The Guardian Park Avenue Fund, Inc. (Fund).

Hartford National Bank Trust Co., Hartford, Conn., is the custodian for Account 2 and is also the custodian and transfer agent for the Fund.

The custody agreement for Account 2 provides, among other things, that all Fund shares and other securities and property acquired by or on behalf of Account 2 and all income upon, accretions to, and proceeds of such property and funds shall be in the possession of the custodian in safekeeping. However, the Fund maintains an open account system through its transfer agent and, therefore, certificates for Fund shares normally are not issued unless specifically requested. The custody agreement for Account 2 provides that written confirmation from the Fund's transfer agent shall constitute "good and sufficient" record of the number of Fund shares owned by Account 2.

Section 26(a)(2)(D) of the Act, in part, provides that the trustee or custodian shall have possession of all securities and other property in which the funds are invested and shall segregate and hold the same in trust until distribution thereof. The section has been interpreted to mean that the securities owned by the trust must be actually represented by share certificates maintained in the custody of the custodian. Accordingly, Applicants have requested an exemption from the provisions of section 26(a)(2)(D) to the extent necessary to permit the custodian to accept "book shares".

Applicants state that the primary purpose of section 26(a) is to provide for the safekeeping of assets of registered unit investment trusts. Applicants contend that to require the physical issue of share certificates would not significantly add to the safekeeping qualities of the custodian's operation and would result only in additional "unnecessary" expense in the administration of Account 2.

The application states that the assets of Account 2 will be exclusively invested in the Fund. Furthermore, the custodian, in its role as custodian for Fund, has physical possession of Fund's underlying assets. Thus, Applicants contend that physical issuance of shares of Fund would not significantly increase the protection of the underlying assets of Account 2. In this regard, Applicants point out that in the mutual fund industry it has become a common practice, in the interest of economy and efficiency, to use book accounts in the case of individual investors for the issuance of shares rather than the actual physical issue of share certificates.

The application further states that in part due to this arrangement regarding book shares, no very large administrative detail is involved in the custodian's duties for Account 2. Consequently, the fee being charged is a "modest" one which is being paid directly by Guardian and is not charged against the assets of Account 2. The fee payable to the custodian is $10 per month in addition to reimbursement of the custodian for its out-of-pocket expenses.

Applicants have consented to the requested exemption being subject to the following conditions:

a. That the charges to contractholders under the contracts for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, and that the Commission may reserve jurisdiction for such purpose;

b. That the payment of sums and charges out of the assets of Account 2 shall not be deemed to be exempted from regulation by the Commission by reason of the order: *Provided*, That the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of Account 2 other than charges for administrative services, and Applicants reserve the right, in any proceeding before the Commission or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges;

c. That there will be full disclosure in the prospectus of the terms of the custody agreement with regard to "book shares"; and

d. That the Fund, which will also have public shareholders, will not bear any of the custodial expenses which reasonably should have been charged to Account 2.

Section 6(c) authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 8, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-17132 Filed 11-23-71;8:47 am]

[812-3028]

MANHATTAN FUND, INC., ET AL.

Notice of Application for Order of the Act Temporarily Exempting Applicants

NOVEMBER 19, 1971.

Notice is hereby given that Manhattan Fund, Inc., Hemisphere Fund, Inc., Fundex, Inc., Liberty Fund, and TMR Appreciation Fund, Inc. (Applicants), 245 Park Avenue, New York, NY 10017, registered investment companies under the Investment Company Act of 1940 (Act) have filed an application pursuant to section 6(c) of the Act for an order, effective from November 29, 1971 until Applicant's next scheduled shareholder meetings exempting Applicants from section 16(a) of the Act. Applicants currently expect to hold such shareholder meetings between March 22 and June 21, 1972. The Applicants plan to take a course of action at their respective board meetings on November 29, 1971, to conform with the Investment Company Amendments Act of 1970. It is contemplated that as a result of this action only 60 percent of the board (3 out of 5) will have been elected by shareholders.

Tsai Management & Research Corp. (Tsai) acts as investment adviser to all of the Applicants. It also acts as underwriter of the shares of Manhattan Fund, Inc., Liberty Fund, Inc., and TMR Appreciation Fund, Inc., and at one time acted as underwriter for Fundex, Inc., which does not presently distribute its shares to the public. The fifth Applicant, Hemisphere Fund, Inc., is a closed-end investment company, which has completed its primary distribution of securities.

The Board of Directors of each Applicant for efficiency and ease of administration is comprised of the same individuals. Only four out of the present five directors of each Applicant have been elected by the shareholders. The fifth director was elected by the respective Boards in August 1971, to fill an unexpected vacancy.

In order to comply with section 10(b)(2) of the Act, as amended, effective December 14, 1971, it will be necessary for an interested director, as that term is defined in section 2(a)(19) of the Act, as amended, of three of the Applicants, namely Manhattan Fund, Inc., Liberty Fund, Inc., and TMR Appreciation Fund, Inc., to voluntarily resign and for the Board of each Fund to elect a noninterested director to fill this vacancy. Fundex Inc. and Hemisphere Fund, Inc., will make the same change. The Applicants plan to make this change at their November 29, 1971, Board meetings, rather than hold special shareholder meetings.

Section 16(a) of the Act provides in relevant part that after filling a vacancy on the board of directors of a registered investment company without a shareholder vote "at least two-thirds of the directors when holding office shall have been elected to such office by the holders of the outstanding voting securities of the company." If the vacancy is filed by the Boards only 60 per centum of the directors will have been elected by stockholders. Thus, the percentage selected by stockholders will be below the statutory standard until the next shareholders meetings.

Section 6(c) permits the Commission, upon application, to exempt such a transaction if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 1, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and their issues, if any, of fact or law proposed to be controverted or he may request he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy

of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of attorney at law by certificate) shall be filed contemporaneously with the request. At any time later than said date as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the information stated in such application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GLADYS E. GREER,
Assistant Secretary.

[FR Doc.71–17160 Filed 11–23–71;8:50 am]

[70–5115]

SOUTHERN CO. ET AL.

Notice of Proposed Issue and Sale of Notes To Banks; Exception from Competitive Bidding; and Proposed Capital Contributions To Subsidiary Companies by Holding Company

NOVEMBER 18, 1971.

Notice is hereby given that The Southern Co. (Southern), a registered holding company, and four of its electric utility subsidiary companies, Alabama Power Co. (Alabama), Georgia Power Co. (Georgia), Gulf Power Co. (Gulf), and Mississippi Power Co. (Mississippi), have filed an application-declaration, and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 6(b), 7, and 12(f) of the Act and Rules 45 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern, Alabama, Georgia, Gulf, and Mississippi propose to issue and sell unsecured notes to banks and to dealers in commercial paper, from time to time prior to December 31, 1971, up to an aggregate principal amount of $145 million outstanding at any one time in the case of Southern and approximately $108 million, $159 million, $21 million, and $20 million respectively in the cases of Alabama, Georgia, Gulf, and Mississippi. The bank notes, to be dated as of the date of issue and to mature not more than one year thereafter in the case of Southern (but not later than Mar. 31, 1973) and 9 months in the cases of Alabama, Georgia, Gulf, and Mississippi, and will bear interest at the prime rate in effect at the lending bank. The notes may be prepaid, in whole or in part, without penalty or premium. Alabama, Georgia, Gulf, and Mississippi request that the exemption afforded by section 6(b) of the Act relating to the issuance of short-term notes be increased to permit issue and sale of the notes herein proposed.

Alabama, Georgia, Gulf, and Mississippi state their respective average daily operating balances with their local banks will be adequate to meet the compensating balance requirements of such banks. The applicants state that arrangements have not been completed with regard to nonterritorial bank borrowings and related compensating balance obligations, and that the effective interest cost of the borrowings assuming a 20 percent compensating balance requirement would be 7.2 percent.

Southern, Alabama, Georgia, Gulf, and Mississippi, also propose, from time to time prior to December 31, 1972, to issue and sell commercial paper in the form of short-term promissory notes to dealers in commercial paper ("dealers"). The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5 million with varying maturities not to exceed 270 days (but will not mature later than Mar. 31, 1973, in the case of Southern) and will not be prepayable prior to maturity. The commercial paper will be sold by the issuing company directly to the dealer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for prime commercial paper of comparable quality and of the particular maturity. No commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest costs at which the issuer could borrow from banks.

It is stated that except for a commission not to exceed one-eighth of 1 percent per annum payable to the dealer selling as agent, no commission or fee will be payable in connection with the issuance and sale of commercial paper. The dealers, as principal, will reoffer the commercial paper at a discount rate of one-eighth of 1 percent per annum less than the prevailing discount rate. The commercial paper of each company will be reoffered respectively, to not more than 200 customers of each dealer identified and designated for each company in a nonpublic list prepared in advance by the dealer. No additions will be made to such list of customers which is composed of institutional investors.

Southern proposes to use the proceeds of the proposed bank loans, and commercial paper sales, together with general treasury funds, to make equity investments in the form of capital contributions to Alabama, Georgia, Gulf, and Mississippi. The capital contributions proposed to be made in 1972 are as follows: $40 million in Alabama; $84 million in Georgia; $13 million in Gulf; and $14 million in Mississippi.

Alabama, Georgia, Gulf, and Mississippi will employ the proceeds of the short-term bank notes and commercial paper to finance their construction programs, to reimburse their treasuries for prior expenditures for their respective construction programs, and to pay at maturity bank notes and commercial paper notes incurred for such purposes. The total estimated construction expenses of Alabama, Georgia, Gulf, and Mississippi for 1972 are $198,962,000, $413,438,000, $64,651,000, and $57,889,000 respectively. The subsidiary companies state that part or all of the proceeds of any future long-term financing (except for refundings) will be applied to or reduce the principal amount of their bank notes and commercial paper. Unless otherwise authorized by the Commission, any bank notes or commercial paper notes outstanding for the four subsidiary companies after December 31, 1972, will be retired from internal cash resources or from the proceeds of debt or equity financing.

Southern states it will apply the net proceeds of any sale of its shares of common stock, prior to the maturity of its bank notes or commercial paper notes, to pay in full or reduce the principal of said notes which may then be outstanding, and that any bank notes or commercial paper outstanding after December 31, 1972, will be retired from internal cash resources or from the proceeds of equity financing, not later than the end of the first calendar quarter of 1973.

Applicants request an exception from the competitive bidding requirements of Rule 50 in connection with the sale of commercial paper notes pursuant to Clause (a)(5)(B) thereof. It is stated, in this connection, that (a) all commercial paper which Applicants propose to issue and sell will have a maturity not in excess of 270 days, (b) current rates for commercial paper for prime borrowers, such as Applicants, are published daily in financial publications, and (c) it is not practical to invite invitations for bids for commercial paper.

The filing states that no commissions have been or will be paid in connection with the proposed transactions. Fees and expenses paid or incurred, or to be paid or incurred, directly or indirectly, in connection with the proposed transactions are estimated as follows:

	Southern	Alabama	Georgia	Gulf	Mississippi	Total
Legal fees	$1,500	$500	$500	$500	$500	$3,500
Miscellaneous	700	300	300	200	200	1,700
Total	2,200	800	800	700	700	5,200

The issuance by Alabama of their notes has been expressly authorized by the Alabama Public Service Commission, and the issuance by Gulf of their notes will require the authorization of the Florida Public Service Commission; no

other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Applicants request authority to file a certificate of notification under Rule 24 in respect of sales of its commercial paper notes as herein proposed within 30 days after the end of each calendar quarter.

Notice is further given that any interested person may, not later than December 10, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.71-17133 Filed 11-23-71;8:47 am]

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5289]

COALITION SMALL BUSINESS INVESTMENT COMPANY CORP.

Notice of Issuance of License To Operate as a Minority Enterprise Small Business Investment Company

On October 29, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 20806) stating that Coalition Small Business Investment Company Corp., 131 East 23d Street, New York, NY 10010, had filed an application with the Small Business Administration, pursuant to § 107.102 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1971)) for a license to operate as a minority enterprise small business investment company (MESBIC).

Interested parties were given to the close of business November 13, 1971, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other pertinent information, SBA has issued License No. 02/02-5289 to Coalition Small Business Investment Company Corp., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

Dated: November 17, 1971.

STEPHEN H. BEDWELL,
Acting Associate Administrator for Operations and Investment.

[FR Doc.71-17103 Filed 11-23-71;8:45 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

NOVEMBER 19, 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 42125 Sub 1, Overland Express International, Inc., heard November 8, 1971, at Lansing, Mich., and continued to December 2, 1971, in Room 360, Seven Story State Office Building, Lansing, Mich.

MC 117465 Sub 17, Beaver Express, assigned January 24, 1972, at Santa Fe, N.Mex., postponed to February 7, 1972, at Amarillo, Tex.

MC 135497 Sub 1, I-5 Freightline, now assigned January 17, 1972, at Portland, Oreg., in the Auditorium, Blue Cross Building, 100 Southwest Market Street.

MC 107456 Sub 19, Harry L. Young and Sons, Inc., now being assigned January 31, 1972, at Salt Lake City, Utah, on February 7, 1972, at Los Angeles, Calif., on February 14, 1972, at San Francisco, Calif., in hearing rooms to be designated later.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-17150 Filed 11-23-71;8:49 am]

FOURTH SECTION APPLICATION FOR RELIEF

NOVEMBER 19, 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. 42309—*Scrap iron or steel articles from Louisville, Ky.* Filed by Traffic Executive Association—Eastern Railroads, Agent (E.R. No. 3010), for interested rail carriers. Rates on scrap iron or steel articles, in carloads, as described in the application, from Louisville, Ky., to Portsmouth and New Boston, Ohio.

Grounds for relief—Barge-truck competition.

Tariff—Supplement 64 to Traffic Executive Association—Eastern Railroads, agent, tariff ICC C-689. Rates are published to become effective on December 20, 1971.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.71-17149 Filed 11-23-71;8:49 am]

[S.O. No. 1079; Amdt. 2]

C. S. GREENE & CO., INC.

Authorization To Operate to Halifax, Nova Scotia, and Montreal, Quebec, Canada and Other Ports

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of November 1971.

Upon further consideration of Service Order No. 1079 (36 F.R. 19721, 20808), and good cause appearing therefor:

It is ordered, That pursuant to sections 1 (16) and 420 of the Interstate Commerce Act, 49 U.S.C. 1 (16) and 1020, Service Order No. 1079 be, and it is hereby, further amended by extending the expiration date thereof from 11:59 p.m., November 20, 1971, to 11:59 p.m., December 15, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

It is further ordered, That copy of this amendment shall be served upon C. S. Greene & Co., Inc., and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-17153 Filed 11-23-71;8:49 am]

[S. O. No. 1080; Amdt. 2]

NEW ENGLAND FORWARDING CO., INC.

Authorization To Operate Through Halifax, Nova Scotia, and Other Canadian Ports

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 17th day of November, 1971.

Upon further consideration of Service Order No. 1080 (36 F.R. 20467, 21239), and good cause appearing therefor:

It is ordered, That pursuant to sections 1(16) and 420 of the Interstate Commerce Act, 49 U.S.C. 1(16) and 1020, Service Order No. 1080 be, and it is hereby, further amended by extending the expiration rate thereof from 11:59 p.m., November 20, 1971, to 11:59 p.m., December 15, 1971, unless otherwise modified, changed, or suspended by order of the Commission.

It is further ordered, That copy of this amendment shall be served upon New England Forwarding Co., Inc., and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission, at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

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

[FR Doc.71-17154 Filed 11-23-71;8:49 am]

[Suspension Docket No. 8688; Sub No. 2]

STABILIZATION OF RATES AND CHARGES

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 19th day of November 1971.

It appearing, that solely to implement the provisions of Executive Order 11627 dated October 15, 1971, the Commission, by orders dated November 8, 1971, and November 19, 1971, suspended for an indefinite period the operation of certain schedules containing increased rates, fares and charges and rules, regulations and practices having the effect of increasing rates, fares and charges, applicable on interstate and foreign commerce;

It further appearing, that pursuant to the provisions of Executive Order 11627 the Price Commission has established guidelines and regulations applicable to carriers subject to the jurisdiction of this Commission.

And it further appearing, that certain of the schedules described above are in conformity with the said guidelines and regulations and that it is incumbent upon this Commission to provide an equitable and expeditious means to permit the effectiveness of such schedules and that such action will be consistent with the purposes of the Economic Stabilization Act of 1970, as amended; and good cause appearing therefor:

It is ordered, That the said orders of November 8, 1971, and November 19, 1971, be, and they are hereby, vacated and set aside insofar as they indefinitely suspended the operation of said schedules and that vacation of suspension be limited to and conditioned upon the following:

1. That supplements containing notice of indefinite suspension as required by said orders of November 8, 1971, and November 19, 1971, were or will be filed with this Commission.

2. That new supplements be filed with this Commission identifying specifically those increased rates, charges, rules, regulations, and practices now under indefinite suspension and which are believed to be in conformity with the said guidelines and regulations of the Price Commission and that a statement in compliance with the provisions in Appendix A so certifying be filed with or contained in such supplements.

3. That the new supplements so filed shall provide for the effectiveness of the identified provisions upon not less than 10 days notice (but in no event earlier than the published effective date of such provisions) to this Commission and to the public and shall direct the cancellation (in whole or in part) of the supplement(s) containing notice of indefinite suspension.

4. That supplements authorized under this order shall be filed with this Commission within 30 days of the date of publication of this order in the FEDERAL REGISTER.

It is further ordered, That except as provided above, the said orders of November 8, 1971, and November 19, 1971, shall remain in full force and effect and that carriers or their agents be, and they are hereby, directed to cancel all schedules continued under indefinite suspension beyond 30 days from the date that this order is published in the FEDERAL REGISTER by appropriate tariff publications filed upon not less than one (1) day's notice under authority of this order.

It is further ordered, That the provisions of this order are without prejudice to any other action which has been or may be taken by this Commission as to the schedules under suspension.

And it is further ordered, That a copy of this order be posted in the Office of the Secretary and in the section of Tariffs of the Interstate Commerce Commission and that a copy be delivered to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER, and that all carriers subject to the jurisdiction of the Interstate Commerce Commission be, and they are hereby, made respondents to this order.

By the Commission.

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

APPENDIX A

Information required to be shown in certified statements filed pursuant to this order:

a. For carriers which had gross revenues of $50 million or more during their most recent fiscal year, all schedules proposing reportable increases as defined in 49 CFR 1311.0(c) must be accompanied by a supporting statement which must—

1. Identify each change in the schedule which would result in a reportable increase.

2. State the percentage of the proposed reportable increase.

3. Provide cost justification for the proposed reportable increase and explain the manner in which any productivity gain was taken into account.

4. State the effect of the reportable increase on the carrier's pretax profit margin.

b. For all other carriers, all schedules proposing reportable increases as defined in 49 CFR 1311.0(c) must be accompanied by a supporting statement which must—

1. Identify each change in the schedule which would result in a reportable increase.

2. State the percentage of the proposed reportable increase.

[FR Doc.71-17263 Filed 11-23-71;8:51 am]

[Notice 37]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

NOVEMBER 19, 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 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-33641 (Deviation No. 26), IML FREIGHT, INC., Post Office Box 2277, Salt Lake City, UT 34110, filed November 9, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Wells, Nev., over U.S. Highway 93 to junction U.S. Highway 30 near Filer, Idaho, thence over U.S. Highway 30 to Twin Falls, Idaho, 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 Wells, Nev., over U.S. Highway 40 to Salt Lake City, Utah, thence over U.S. Highway 91 to Brigham City, Utah, thence over U.S. Highway 30S to Burley, Idaho, thence over U.S. Highway 30 to Twin Falls, Idaho, and return over the same route.

By the Commission.

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

[FR Doc.71-17145 Filed 11-23-71;8:48 am]

[Notice 92]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

NOVEMBER 19, 1971.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 23196 (Sub-No. 9) (Republication), filed May 5, 1970, published in the FEDERAL REGISTER issue of May 28, 1970, under the name of David Weiss and Murray Weiss, a partnership, doing business as Weiss Transportation Co., and republished this issue under substituted applicant's name this issue. Applicant: WEISS TRANSPORTATION COMPANY, a corporation, Richmond and Cambria Streets, Philadelphia, Pa. 19134. Applicant's representative: M. Mark Mendel, 1440 P.S.S.F. Building, Philadelphia, Pa. 19107. A report and order of the Commission, Division 1, Acting as an Appellate Division, decided October 12, 1971, and served October 20, 1971, finds; that the public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of household and commercial appliances from Philadelphia, Pa., to points in Delaware and that part of New Jersey south of New Jersey Highway 33; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate 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 a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135061 (Republication), filed October 29, 1970, published in the FEDERAL REGISTER issue of November 26, 1970, and republished this issue. Applicant: LABELLE EXPRESS LIMITEE, 10339 A St. Laurent, Montreal, PQ, Canada. A report and order of the Commission, Review Board Number 4, decided October 18, 1971, and served November 9, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in foreign commerce, as a common carrier by motor vehicle, over irregular routes, of objects of art, between ports of entry on the International Boundary line between the United States and Canada located in the United States, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii). Because it is possible that other persons, who have relied upon the notice of the application as published may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate 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 a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135655 (Republication), filed May 24, 1971, published in the FEDERAL REGISTER issue of June 24, 1971, and republished this issue. Applicant: STIDHAM TRUCKING, INC., 645 West Lennox Street, Yreka, CA 96097. Applicant's representative: John Paul Fischer, 140 Montgomery Street, San Francisco, CA 94104. An order of the Commission, Operating Rights Board, dated October 15, 1971, and served November 9, 1971, finds; that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of light weight aggregates, from the facilities of B.S.B. Cinder Co. in Siskiyou County, Calif., to points in Jackson and Josephine Counties, Oreg., under a continuing contract with B.S.B. Cinder Co. of Montague, Calif., will be consistent with the public interest and the national transportation policy. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority in the findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the permit in this processing 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 so prejudiced.

No. MC 76 (Notice of filing of petition for waiver of Rule 1.101(e), for reconsideration, and for modification of certificate), filed November 5, 1971. Petitioner: MAWSON & MAWSON, INC., Langhorne, Pa. Petitioner's representative: Paul F. Sullivan, Suite 711, Washington Building, 15th and New York Avenue NW., Washington, DC 20005. Petitioner states it holds authority in certificate No. MC 76, issued February 13, 1952, authorizing operations as a motor common carrier, as follows: "Irregular routes: *General commodities*, except those of unusual value and except 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, between points in Philadelphia, Pa. *Building materials*, between Philadelphia, Pa., on the one hand, and, on the other, points in New York, New Jersey, and Delaware. *Lumber, flooring, floor finishing materials*, and building materials, from Philadelphia, Pa., to points in Maryland, and return with no transportation for compensation except as otherwise authorized. *Steel, steel products, and heavy machinery*, between Philadelphia, Pa., and points in Pennsylvania within 150 miles of Philadelphia, on the one hand, and, on the other, points in New York, New Jersey, Delaware, and Maryland. *Contractors' supplies and equipment*, between Philadelphia, Pa., and points in Pennsylvania, within 150 miles of Philadelphia, on the one hand, and, on the other, points in New Jersey, Delaware, and the District of Columbia. *Prepared food products*, between Philadelphia, Pa., on the one hand, and, on the other, points in Delaware, Maryland, and New Jersey.

"*Wrought steel pipe and fittings*, in truckload lots, between Philadelphia, Pa., and points in Pennsylvania within 150 miles of Philadelphia, on the one hand, and, on the other, points in New Jersey and Delaware. *Magazines, periodicals, and papers*, between Philadelphia, Pa., and New York, N.Y. *Compressed gases*, in cylinders, from Philadelphia, Pa., to points in New Jersey and Delaware. *Empty cylinders for compressed gases*, from points in New Jersey and Delaware to Philadelphia, Pa. Any repetition in the statement of authority granted herein shall be construed as conferring only a single operating right." Petitioner states that various factors, now requiring modification of the subject petitioner's certificates, were not present at the time of their issuance, nor could they have been reasonably foreseen. Petitioner or its predecessors had no way of knowing when it was granted authority to transport "heavy machinery" that such authority would take on a different meaning throughout the years than envisaged in the Classification case, infra, and that such authority would be reduced in scope by interpretative decisions so that it would not allow the holder of such authority to perform a complete heavy-hauling service. Petitioner further states this petition is directed to its interstate operating authority, as contained in its certificate of public convenience and necessity No. MC-76, which authorizes, among other things, the transportation of:

"*Steel, steel products, and heavy machinery* between Philadelphia, Pa., and points in Pennsylvania within 150 miles of Philadelphia, on the one hand, and, on the other, points in New York, New Jersey, Delaware, and Maryland."

The subject petition concerns only a portion of petitioner's base certificate. It does not concern any of its other certificates. By the instant petition, Petitioner states it is here seeking similar relief, as accorded other heavy-specialized motor carriers in the past. Petitioner would have the involved commodity description in its base certificate modified so to read as follows: "Steel, steel products, and commodities, the transportation of which because of size or weight requires special handling or special equipment and related contractors' materials, supplies, and equipment, when the transportation by said carrier of commodities which by reason of size or weight require special handling or special equipment." in lieu of the present description which reads: "Steel, steel products, and heavy machinery." Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER. Any repetition in the statement of authority granted herein shall be construed as conferring only a single operating right.

No. MC 52709 (Sub-No. 64) (Notice of Filing of Petition for Amendment of Certificate), filed October 22, 1971. Petitioner: RINGSBY TRUCK LINES, INC., Denver, Colo. Petitioner's representative: Wayne E. Lucore, Post Office Box 192, Littleton, CO. By petition filed as indicated above, petitioner requests that a portion of its Certificate No. MC-52709 described hereinunder be amended under provisions of section 212(a) of the Interstate Commerce Act through the deletion of restrictions as set forth hereinafter. Petitioner states it is authorized to perform transportation service under MC 52709 Sub 64, which contains the following regular route authority: General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk other than salt, and commodities requiring special equipment, between Beatrice, Nebr., and St. Louis, Mo., serving the intermediate point of Kansas City, Mo., with service at said intermediate point and St. Louis, Mo., being restricted to traffic moving between Kansas City, Mo., and St. Louis, Mo., only, on the one hand, and, on the other, points authorized to be served by the carrier which are located west of Beatrice, Nebr.; from Beatrice over U.S. Highway 77 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction U.S. Highway 71, thence over U.S. Highway 71 to Kansas City, Mo., thence over U.S. Highway 40 to St. Louis, and return over the same route. Petitioner states it hereby alleges and believes:

(1) That it would be in the public interest to cancel or amend the phrase from the above authority reading "with service at said intermediate point and at St. Louis, Mo. being restricted to traffic moving between Kansas City, Mo. and St. Louis, Mo., only, on the one hand, and, on the other, points authorized to be served by the carrier which are located west of Beatrice, Nebr."; (2) that the restriction prevents petitioner from performing an efficient, complete service to and from its Kansas City and St. Louis terminals; (3) that petitioner may by reason of the restriction perform certain service by a more costly interline method which were it not for the restriction, it could perform direct; (4) that the restriction is administratively undesirable and could be subject to varying interpretations at various times; (5) that the need or compelling reason for the restriction has expired or is not sufficient to outweigh the public need for a complete service by petitioner; (6) that if a continuing restriction is deemed necessary, it be reworded in a positive manner to preclude the transportation of certain traffic which Ringsby may not handle. Any interested person or persons desiring to participate and to be heard in the matter 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 this publication in the FEDERAL REGISTER.

No. MC 113678 (Sub-No. 133) (Notice of Filing of Petition for Modification of Certificate), filed November 4, 1971. Petitioner: CURTIS, INC., Denver, Colo. Petitioner's representative: Richard A. Peterson, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Petitioner states it is a motor common carrier specializing in the transportation of perishable foodstuffs. On September 20, 1968, petitioner was issued a certificate in No. MC 113678 (Sub-No. 133), authorizing operations as follows: "Irregular routes: *Food products* (except liquids, in bulk), in vehicles equipped with mechanical refrigeration, from points in the New York, N.Y., commercial zone, as defined by the Commission, and points in Union County, N.J., to points in Colorado, Indiana, Illinois, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and West Virginia, with no transportation for compensation on return except as otherwise authorized. *Food products* (except frozen foods, and liquids, in bulk), in vehicles equipped with mechanical refrigeration, from points in the New York, N.Y., commercial zone, as defined by the Commission, and points in Union County, N.J., to points in Kansas, with no transportation for compensation on return except as otherwise authorized. *Food products* (except liquids, in bulk), from points in Union County, N.J., to points in Nebraska, with no transportation for compensation on return except as otherwise authorized. *Advertising materials, supplies, display materials, and premiums,* when moving at the same time and in the same vehicle with the commodities described hereinabove, from points in the origin territory described in the three paragraphs above, to their respective destination points, with no transportation for compensation on return except as otherwise authorized.

"Condition: At the close of each year for a period of 3 years from the date of issuance of this certificate, the above-named carrier shall file with the Commission's Bureau of Economics a 'Performance Report' required by the Decision and Order entered in this proceeding February 8, 1968. Such further terms, conditions, and limitations as the Commission in the future may find necessary to impose in order to insure that carrier's operations comport with the type of service the supporting shipper is shown to require on this record. The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be conferring more than one operating right." By the instant petition, petitioner requests modification of the above-described certificate by authorizing service thereunder from the terminal facilities of Curtis, Inc., located in Carlstadt, N.J. In support of its petition, petitioner states, as herein pertinent, that since the issuance of its Sub 133 certificate, it has been performing service thereunder. Included in that service was the transportation of shipments, primarily in LTL quantities, which were tendered to petitioner at its terminal by the shippers thereof or by other carriers. Petitioner transported these shipments to destination it was authorized to serve in its Sub 133; to destinations it could serve by tacking its Sub 133 with other authority held by Curtis; and to destinations not served directly by petitioner but which are served on a joint-line basis by interlining the traffic, usually at Denver, Colo., with delivering carriers. Petitioner terminal at which such traffic was received was located at 5455 Tonnelle Avenue, North Bergen, N.J., during the period from September 20, 1968 (the date the Sub 133 certificate was issued) until October 1, 1971. North Bergen, N.J. is located in the New York, N.Y., commercial zone, as defined by the Commission and was therefore a point at which Curtis was authorized to originate traffic.

On October 1, 1971, petitioner closed its North Bergen, N.J., terminal and moved into facilities which it had purchased in Carlstadt, N.J. Even though its new terminal at Carlstadt, N.J., is less than 5 miles from its former terminal in North Bergen, it is nevertheless not located in the New York, N.Y., commercial zone, nor is it in Union County, N.J. Petitioner does not have any terminal facilities in the States of New York or New Jersey except the terminal at Carlstadt, N.J. Because the Carlstadt terminal is not within the origin area it can serve under our Sub 133, petitioner is no longer authorized to accept shipments tendered to it at that terminal for delivery to points it can serve directly or by interlining. Petitioner requests the Commission make and enter an order modifying said certificate to read as follows: "Irregular routes: *Food products* (except liquids, in bulk), in vehicles equipped with mechanical refrigeration, from points in the New York, N.Y., commercial zone, as defined by the Commission, points in Union County, N.J., and the terminal facilities of Curtis, Inc., in Carlstadt, N.J., to points in Colorado, Indiana, Illinois, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and

West Virginia, with no transportation for compensation on return except as otherwise authorized. *Food products* (except frozen foods, and liquids in bulk) in vehicles equipped with mechanical refrigeration, from points in the New York, N.Y., commercial zone, as defined by the Commission, points in Union County, N.J., and the terminal facilities of Curtis, Inc., in Carlstadt, N.J., to points in Kansas, with no transportation for compensation on return except as otherwise authorized. *Food products* (except liquids, in bulk), from the terminal facilities of Curtis, Inc., in Carlstadt, N.J., and points in Union County, N.J., to points in Nebraska, 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 arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 125785 (Subs Nos. 2 and 4) (Notice of Filing of Petition To Add Contract of MIDWEST CORDAGE CO., INC.), filed October 29, 1971. Petitioner: SATURN EXPRESS, The Plaza 90 Building, Room 206, 90th and L Street, Omaha, NE. Petitioner states it holds authority as a motor contract carrier of property under various permits issued under MC 125785 and subs thereto. Petitioner states that as here pertinent it holds authority in its Sub 2 permit to transport sisal products from Philadelphia, Pa., to points in New Jersey, New York, and Pennsylvania, also under sub 2, Petitioner may transport sisal products from New Orleans, La., to points in Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Wisconsin, and Wyoming. Petitioner further states that under its Sub 4 permit it holds authority to transport sisal products from Houston, Tex., to points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Wisconsin, and Wyoming. Petitioner further states it is currently transporting sisal products under a continuing contract with Dan H. Shield Cordage Co., under the authority set forth in its subs 2 and 4 above. Petitioner is advised that the distribution patterns of Dan H. Shield Cordage Co., will be altered in the very near future due to the acquisition of that company by Victor M. Barredo, who is also president and general manager of Midwest Cordage Co., Inc. Midwest Cordage Co., Inc. has requested petitioner to perform the same kind and type of service as it is presently furnishing for Dan H. Shield Cordage Co. The purchase of Dan H. Shield Cordage Co., and its operation by Mr. Barredo means that shipments of sisal products consigned to both Dan H. Shield Cordage and Midwest Cordage will on occasion move on the same vehicle. This necessitated the petitioner's requests for an addition of Midwest Cordage Co., Inc. as a contracting shipper to the authority presently held in Petitioner's Subs 2 and 4. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 128860 (Notice of Filing of Petition for Modification of Permit To Add Additional Contracting Shipper), filed November 10, 1971. Petitioner: LARRY'S EXPRESS, INC., Tomah, Wis. Petitioner's representative: Edward Solie, Executive Building—Suite 100, 4513 Vernon Boulevard, Madison, WI 53705. Petitioner holds a permit in No. MC 128860 to conduct operations in interstate or foreign commerce, as a motor contract carrier, transporting, among other things: *Malt beverages and related advertising materials, and premiums, and malt beverage dispensing equipment* in mixed loads with malt beverages, from Denver, Colo., St. Louis, Mo., La Crosse, Wis., Chicago, Ill., South Bend, Ind., Detroit, Mich., New York, N.Y., and Newark, N.J., to Minneapolis, Minn., with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized above are limited to a transportation service to be performed under a continuing contract, or contracts, with Kuether Distributing Co., of Minneapolis, Minn. By the instant petition, petitioner seeks to enter into a continuing contract, or contracts with petitioner to authorize operations as a contract motor carrier, over irregular routes, transporting: Malt beverages and related advertising materials, and premiums, and malt beverage dispensing equipment, in mixed loads with malt beverages, from St. Louis, Mo., La Crosse, Wis., Chicago, Ill., Detroit, Mich., and Newark, N.J., to St. Paul, Minn. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 129080, MC 129080 Sub-No. 1 and MC 129080 Sub-No. 2 (Notice of filing of petition to modify permits by adding Kearny, N.J.) filed November 9, 1971. Petitioner: CHARLES CORBISHLEY, doing business as QUICKWAY, 24 West Airmount Road, Mahwah, N.J. 07438. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. By petition filed as indicated above, Petitioner states it holds authority as follows: "MC 129080, irregular routes: *Dresses* on hangers and *such commodities* as are dealt in or used by chain grocery or department stores, from Paramus, N.J., to points in Broome, Chemung, Cortland, Dutchess, Orange, and Rockland Counties, N.Y., and Fairfield, Hartford, and New Haven Counties, Conn., with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with the Grand Union Co. of East Paterson, N.J.; MC 129080 Sub 1, irregular routes: *Dresses on hangers, and such commodities* as are dealt in or used by chain grocery or department stores, from Paramus and Mahwah, N.J., to points in Albany and Clinton Counties, N.Y., Chester, and Northumberland Counties, Pa., and Chittenden County, Vt., and *Surplus and damaged merchandise*, from the above-named destination points, to Paramus and Mahwah, N.J. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Grand Union Co., East Paterson, N.J.; MC 129080 Sub 2, irregular routes: *Dresses* on hangers, and *such commodities* as are sold by grocery and department stores, from Paramus and Mahwah, N.J., to points in Oneida County, N.Y. and *Returned shipments* of the above-described commodities, from points in Oneida County, N.Y., to Paramus and Mahwah, N.J.

"Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Grand Union Co., of East Paterson, N.J." by the instant petition, petitioner states it seeks to amend the above-described permits by adding Kearny, N.J., as an origin point. If granted, the amendment would permit petitioner to originate traffic from Mahwah, Paramus, and Kearny, N.J., and a destination point for returned, surplus, or damaged merchandise, as shown as follows: "MC 129080, irregular routes: *Dresses on hangers* and *such commodities* as are dealt in or used by chain grocery or department stores, from Paramus, N.J., and Kearny, N.J., to points in Broome, Cheming, Cortland, Dutchess, Orange, and Rockland Counties, N.Y., and Fairfield, Hartford, and New Haven Counties, Conn., with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with the Grand Union Co. of East Paterson, N.J.; MC 129080 Sub 1, irregular routes: *Dresses on hangers*, and *such commodities* as are dealt in or used by chain grocery or department stores, from Paramus, Mahwah, and Kearny, N.J., to points in Albany and Clinton Counties, N.Y., Chester and Northumberland Counties, Pa., and Chittenden County, Vt., and *Surplus and damaged merchandise*, from the above-named destination points to Paramus, Mahwah, and Kearny, N.J. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Grand Union Co., East Paterson, N.J.; MC 129080 Sub 2, irregular routes: *Dresses on hangers*, and *such commodities* as are sold by grocery and department stores, from Paramus, Mahwah, and Kearny, N.J., to points in Oneida

County, N.Y. and *Returned shipments* of the above-described commodities, from points in Oneida County, N.Y. to Paramus, Mahwah, and Kearny, N.J. "Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Grand Union Co. of East Paterson, N.J." Petitioner states no duplicating authority is sought, and there would be no change in the contracting shipper or destination territory. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of this publication in the FEDERAL REGISTER.

No. MC 135056 (Notice of filing of petition for modification and amendment of existing permit), filed November 4, 1971. Petitioner: MJR ENTERPRISES, a corporation, 12500 Inglewood Avenue, Hawthorne, CA 90250. Petitioner's representative: Donald Murchison, Suite 400, Glendale Federal Building, 9454 Wilshire Boulevard, Beverly Hills, CA 90212. Petitioner states it presently holds authority as a motor contract carrier in permit No. MC 135056 issued September 9, 1971, authorizing operations as follows: "Irregular routes: *Such merchandise* as is usually dealt in by chain retail furniture stores, (1) between points in California; (2) between points in California, on the one hand, and, on the other, points in Arizona, Colorado, Idaho, Nevada, Oregon, Utah, and Washington; (3) from Salt Lake City and Ogden, Utah, to points in Idaho, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with McMahon Furniture Co., of Los Angeles, Calif. "By the instant petition, Petitioner seeks to modify and amend in part its permit No. MC 135056 by *first* adding the following territorial authorization in *lieu* of the authority described in (2) above to read: "Between points in California including ports of entry on the international boundary line between the United States and Mexico at or near Calexico and San Ysidro, on the one hand, and, on the other, points in the United States (except Hawaii)." *Secondly*, change existing commodity description by adding thereto "retail" furniture stores, so that the commodity to be transported will read: *Such merchandise* as is usually dealt in by retail and chain retail furniture stores. Petitioner further states that since modification and amendment sought in instant proposal, embraces, includes and thereby duplicates the commodities, and *in part* the scope-of-service now held by petitioner in MC–135056, petitioner presents the following plan for possible simplification: Upon (A) the grant of the modification and amendment sought and included in the issuance of a permit, and (B) the inclusion in said permit of the scope-of-service now held which is not subject to or part of instant petition (i.e., above items (1) and (3)) Petitioner requests the coincidental cancellation of permit MC–135056. Petitioner does not seek, need or desire duplicate rights. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments, in support of, or against the petition within 30 days from the date of this 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 97699 (Sub-No. 33), filed October 20, 1971. Applicant: BARBER TRANSPORTATION CO., a corporation, Post Office Drawer 2047, Rapid City, SD 57701. Applicant's representative: Marion F. Jones, 420 Denver Club Building, Denver, Colo. 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Belle Fourche, S. Dak., and Amidon, N. Dak., over U.S. Highway 85, with authority to serve intermediate points between Amidon, N. Dak., and Bowman, N. Dak., including Bowman, N. Dak. NOTE: This application is a matter directly related to MC–F–11546, published in the FEDERAL REGISTER issue of October 28, 1971. 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–10955. (Amendment) (GILPIN COUNTY EXPRESS AND TRUCK LINE, INC.—Purchase (Portion)—DENVER-CLIMAX TRUCK LINE, INC.), published in the September 30, 1970, issue of the FEDERAL REGISTER on page 15270. Amendment filed November 12, 1971, concurrently with petition seeking reconsideration of the order of the Board served August 17, 1971, accompanied by the amendment to the application substituting MOUNTAIN MOTORWAY, INC., as the purchaser in lieu of GILPIN COUNTY EXPRESS AND TRUCK LINE, INC. In the earlier publication in the FEDERAL REGISTER there were described operating rights to be purchased, as then proposed. Under the above-described petition and amendment, MOUNTAIN MOTORWAY, INC., 1546 Miner Street, Idaho Springs, CO 80452, the new transferee, seeks to purchase those rights. Application has been filed for temporary authority under section 210a(b). NOTE: MC–116722 Sub-18 is a matter directly related.

No. MC–F–11349. Authority sought for purchase by SALT CREEK FREIGHTWAYS, 3333 West Yellowstone, Casper, WY 82644, of a portion of the operating rights of HOUCH TRANSPORT COMPANY, Box 559, Glendive, MT 59330, and for acquisition by WILLIAM UTZINGER, WILLIAM D. UTZINGER AND C. E. OGDEN, all of Casper, Wyo. 82644, of control of such rights through the purchase. Applicants' attorneys: John R. Davidson, Room 805, Midland Bank Building, Billings, Mont. 59101, and Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60607. 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 irregular routes, between points in Crook County, Wyo., on the one hand, and, on the other, points in Lawrence and Butte Counties, S. Dak.; *feed and farm machinery*, from Rapid City and Belle Fourche, S. Dak., to points in Crook County, Wyo.; *livestock, wool, grain, lumber, and ties*, from points in Crook County, Wyo., to rail heads in Crook County. Vendee is authorized to operate as a *common carrier* in Montana, Wyoming, Colorado, and Nebraska. Application has been filed for temporary authority under section 210a(b). NOTE: MC–59856 Sub-44 is a matter directly related.

No. MC–F–11367. Authority sought for purchase by COOPER MOTOR LINES, INC., Post Office Box 4255, Park Place (301 Hammet Street), Greenville, SC 29608, of a portion of the operating rights STAR TRANSPORT CO., INC., 4710 Hollins Ferry Road, Baltimore, MD 21227, and for acquisition by CALHOUN LEMON, CHARLES F. COOPER, RICHARD L. FEW, and CHARLES J. PREZIOSO, all of Post Office Box 4255, Greenville, SC 29608, of control of such rights through the purchase. Applicants' attorney: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, DC 20004. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over irregular routes, between points in Cumberland and Salem Counties, N.J., on the one hand, and on the other, points in that part of Pennsylvania east of the Susquehanna River. Vendee is authorized to operate as a *common carrier* in South Carolina, Virginia, Maryland, Pennsylvania, New Jersey, New York, North Carolina, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11368. Authority sought for purchase by NEW PENN MOTOR EXPRESS, INC., 18 East Weidman Street, Lebanon, PA, of the operating rights of

POCONO MOTOR FREIGHT TERMINAL, INC., U.S. Route No. 209, Post Office Box 149, Stroudsburg, PA 18360, and for acquisition by HENRY R. ARNOLD, 18 East Weidman Street, Lebanon, PA, of control of such rights through the purchase. Applicants' attorney: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, as a *common carrier* over irregular routes, between points in a territory composed of Stroudsburg, East Stroudsburg, and Stroud Township, Monroe County, Pa., between points in a ritory composed of Stroudsburg, East Stroudsburg, and Stroud Township, Monroe County, Pa., on the one hand, and, on the other, points in that part of Pike County, Pa., on and south of a line extending along U.S. Highway 6 through Shohola Falls and Milford, Pa., points in that part of Monroe County, Pa., north of U.S. Highway 209, and points in that part of New Jersey within 25 miles of Stroudsburg, Pa., which are on and north of a line beginning at Belvidere, N.J., and extending along Warren County (N.J.) Highway 519 to junction U.S. Highway 46, thence along U.S. Highway 46 through Buttzville, Pequest, Townsburg, Great Meadows, Hackettstown, and Budd Lake, N.J., to Netcong, N.J., between Stroudsburg and East Stroudsburg, Pa., on the one hand, and, on the other, points in Pennsylvania within 35 miles of Stroudsburg and East Stroudsburg, thence over U.S. Highway 46 through Buttzville, Pequest, Townsburg, Great Meadows, Hackettstown, and Budd Lake, N.J., to Netcong, N.J., with restriction; and *machinery, materials and supplies* used in the maintenace of gold courses, and *parts of such machinery*, from Newark, N.J., and Stroudsburg, Pa., to points in New Jersey, points in Fairfield, New Haven, and Litchfield Counties, Conn., and points in that part of New York south of the boundary line between the United States and Canada, and on and east of a line beginning at Oswego, N.Y., and extending along New York Highway 57 to Syracuse, N.Y., and thence along U.S. Highway 11 to the New York-Pennsylvania State line. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Ohio, Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11369. Authority sought for purchase by ACME CARRIERS, INC., 216 Third Street, Brooklyn, NY 11215, of a portion of the operating rights of THRUWAY FREIGHT LINES, INC., 300 Van Riper Avenue, East Paterson, NJ 07407, and for acquisition by DON GRANT AND JULIUS HYMS, also of Brooklyn, N.Y. 11215, of control of such rights through the purchase. Applicants' attorney: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. 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 irregular routes, between points in Bergen, Passaic, Essex, Hudson, and Union Counties, N.J., on the one hand, and, on the other, New York, N.Y. Vendee is authorized to operate as a *common carrier* in New York and Illinois. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11370. Authority sought for purchase by BECKER & SONS, INC., 2643 West Central, El Dorado, KS 67042, of the operating rights of T. CLARENCE BRIDGE and HENRY W. BRIDGE, doing business as BRIDGE BROTHERS, Bridge and Anderson Streets, Post Office Box 929, Lamar, CO 81052, and for acquisition by FRANK X. BECKER, 1611 Rural, Emporia, KS, FRANK J. BECKER, 301 South Summitt, El Dorado, KS, and ROBERT H. BECKER, 801 East Clark, Emporia, KS, of control of such rights through the purchase. Applicants' attorneys: Erle W. Francis, Suite 719, 700 Kansas Avenue, Topeka, KS 66603 and C. Zimmerman, 413 Brown Building, Wichita, Kans. 67202. Operating rights sought to be transferred: *Numerous commodities*, specifically *petroleum products*, as a *common carrier*, over irregular routes, from, to and between specified points in the States of Colorado, Texas, Kansas, Oklahoma, Nebraska, New Mexico, Wyoming, Missouri, Idaho, Montana, South Dakota, Illinois, Iowa, North Dakota, Minnesota, Mississippi, Louisiana, Arkansas, Wisconsin, Indiana, and Michigan, with certain restriction, as more specifically described in Docket No. MC–50002 and Sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. Vendee is authorized to operate as a *common carrier* in Kansas, Missouri, Iowa, Nebraska, Oklahoma, and Illinois. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11371. Authority sought for control by AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040, of OKLAHOMA ARMORED CAR, INC., 1005 Southwest Second Street, Oklahoma City, OK 73125, and for acquisition by PUROLATOR, INC., and in turn, by PAUL A. CAMERON, both of 970 New Brunswick Avenue, Rahway, NJ 07065, of control of OKLAHOMA ARMORED CAR, INC., through the acquisition by AMERICAN COURIER CORPORATION. Applicants' attorneys: John M. Delany, 2 Nevada Drive, Lake Success, NY 11040, and Russell S. Bernhard, 1625 K Street NW., Washington, DC 20006. Operating rights sought to be controlled: In pending docket No. MC–135320 Sub-2 TA, radiopharmaceuticals, radioactive drugs and medical isotopes as a common carrier over irregular routes, between points in Oklahoma on traffic having an immediately prior or subsequent movement by air and in pending docket No. MC–129442 Sub-1 TA, banking items, including checks, deposit slips, accounting papers, statements, cash letters, and data processing reports, for the account of National Bank of Tulsa as a contract carrier, over irregular routes, between Tulsa, Okla., and certain specified counties in Missouri and Kansas. Armoured Courier Corp. is authorized to operate as a *common carrier* in Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, Pennsylvania, New York, Iowa, Illinois, Nebraska, Kentucky, Tennessee, Ohio, West Virginia, Rhode Island, Michigan, Indiana, Maryland, Virginia, Delaware, Wisconsin, Missouri, Minnesota, North Dakota, South Dakota, Kansas, North Carolina, Texas, Louisiana, Vermont, Alabama, Georgia, Arkansas, Mississippi, Oklahoma, Florida, South Carolina, California, and the District of Columbia, and as a *contract carrier* in New York, New Jersey, Connecticut, Pennsylvania, West Virginia, Massachusetts, Delaware, Maryland, Virginia, District of Columbia, Ohio, Rhode Island, Illinois, Iowa, Missouri, Indiana, Kentucky, Minnesota, Wisconsin, Maine, New Hampshire, Nebraska, Vermont, Michigan, North Dakota, South Dakota, North Carolina, Alabama, Georgia, Tennessee, South Carolina, Arkansas, Louisiana, Texas, Florida, Mississippi, and Oklahoma. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11372. Authority sought for control and merger by ROADWAY EXPRESS, INC., 1077 Gorge Boulevard, Post Office Box 471, Akron, OH 44309, of the operating rights and property of POOLE TRANSFER, INC., 807 East Fourth Street, Muscatine, IA 52761, and for acquisition by GALEN J. ROUSH, also of Akron, Ohio 44309, of control of such rights and property through the transaction. Applicants' attorneys and representative: William O. Turney, 2001 Massachusetts Avenue, NW., Washington, DC 20036, Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603, and Douglas W. Faris, 1077 Gorge Boulevard, Akron, OH 44309. Operating rights sought to be controlled and merged: *General commodities*, excepting among others, dangerous explosives commodities in bulk and household goods as a *common carrier* over regular routes, between Muscatine, Iowa, and Chicago, Ill., and Minneapolis, Minn.; *livestock*, from Muscatine, Iowa, to Chicago, Ill.; *canning factory machinery*, between Muscatine, Iowa, and Waukegan and Hoopeston, Ill.; *eggs, feed, seed, empty barrels, and empty drums*, between Nichols, Iowa, and Muscatine, Iowa; *egg case materials, egg cases, roofing, petroleum products*, in containers, *rubber tires and tubes, and agricultural implements and parts, feed and seed*, serving to and from all intermediate points; *malt beverages*, between Mankato and Minneapolis, Minn., and Fort Wayne, Ind., and Keota, Muscatine, and Clinton, Iowa, and Galesburg, Ill.,

and return with *empty containers*, serving the intermediate points of St. Paul, Minn., Davenport, Iowa, and Rock Island, Ill., and the off-route points of Princeton, Ill., and Burlington, Iowa; *glass*, from certain specified points in Illinois to Muscatine, Iowa; *wire and wire cloth and screen*, from Dixon over Alternate U.S. Highway 30 to Sterling, Ill., thence over Illinois Highway 2 to Moline, Ill., and thence over the above-specified routes to Muscatine;

Wallpaper, from Joliet over U.S. Highway 6 via Princeton, Ill., to junction Illinois Highway 80, thence over Illinois Highway 80 to Silvis, Ill., and thence over the above-specified routes to Muscatine; *silicate of soda*, from Utica over Illinois Highway 178 to junction U.S. Highway 6, thence over U.S. Highway 6 to Princeton, Ill., and thence over the above-specified routes to Muscatine; *empty returned barrels*, from Muscatine over the above-specified routes to Princeton, Ill., thence over U.S. Highway 6 to junction Illinois Highway 178, and thence over Illinois Highway 178 to Utica; *paper fiberboard and corrugated boxes*, from Rockford, Ill., to certain specified points in Illinois; *grain and seeds*, from St. Louis, Mo., to Columbus Junction, Iowa; *general commodities*, excepting among others, dangerous explosives, household goods, and commodities in bulk, over irregular routes, between Chicago, Ill., and Lincoln, Nebr., on the one hand, and, on the other certain specified points in Iowa; *canned or preserved foodstuffs*, from certain specified points in Iowa, to Omaha, Nebr., St. Louis, Mo., and points and places in that part of Minnesota on and south of U.S. Highway 12, and Duluth, Minn., and those in that part of Illinois on and north of U.S. Highway 40 between East St. Louis, Ill., and Effingham, Ill., and on and west of U.S. Highway 45 between Effingham and Chicago, Ill., from points and places in that part of Minnesota on and east of U.S. Highway 169, and on and south of U.S. Highway 12 to certain specified points in Iowa and Rock Island, Ill., from certain specified points in Illinois to Davenport, Iowa, from Alton, Ill., to Muscatine, Iowa; *canned goods*, from Indianapolis, Ind., to certain specified points in Iowa; *clam shells*, from points and places in that part of Indiana within 40 miles of the St. Joseph and Wabash Rivers, those in Illinois within 40 miles of the Fox, Kankakee, and Illinois Rivers, and those in Minnesota within 40 miles of the Mississippi River, to Muscatine, Iowa; *Grit*, from Muscatine, Iowa, to Van Orin, and Princeton, Ill., and points and places in that part of Minnesota on and east of U.S. Highway 71 between the Iowa-Minnesota State line and Olivia, Minn., on and south of U.S. Highway 212 between Olivia and Minneapolis, Minn., and on and south of U.S. Highway 12 between Minneapolis and the Minnesota-Wisconsin State line; *crushed shells*, from Muscatine, Iowa, to points and places in that part of Minnesota on and east of U.S. Highway 71 between the Iowa-Minnesota State line and Olivia, Minn., on and south of U.S. Highway 212 between Olivia and Minneapolis, Minn., and on and south of U.S. Highway 12 between Minneapolis and the Minnesota-Wisconsin State line, from Muscatine, Iowa, to points and places in that part of Illinois east and north of a line beginning at Moline, Ill., and extending along U.S. Highway 150 to Danville, Ill., thence along Illinois Highway 10 to the Illinois-Indiana State line, including points and places on the indicated portions of the highways specified; *flour, feed, and other grain mill products*, from Calumet City and Hammond, Ind., and Nebraska City and Omaha, Nebr., to Muscatine, Iowa; *flour, mill feed, and tankage*, from Calumet City and Chicago, Ill., and Nebraska City, Nebr., to Muscatine, Iowa; *feed*, from Chicago and Forest Park, Ill., to Lone Tree, Iowa; *stationery*, from Davenport, Iowa, to Minneapolis and St. Paul, Minn.; *sash and millwork*, from Muscatine, Iowa, to certain specified points in Illinois; *fruits and vegetables*, from points and places in Muscatine County, Iowa, to certain specified points in Minnesota and Chicago, Ill., from points and places in Freeborne County, Minn., to Muscatine, Iowa; *grain*, from points and places in Louisa County, Iowa to Peoria, Ill.; *coal*, from certain specified points in Illinois to points and places in Louisa County, Iowa; *farm machinery and implements*, from certain specified points in Illinois to points and places in Muscatine and Louisa County, Iowa;

Batteries and parts, hardware, signs, display racks, advertising matter, wire, motors, rectifiers, lumber, soap, and silicate of soda, between Minneapolis and St. Paul, Minn., on the one hand, and, on the other, certain specified points in Iowa, and Illinois, St. Louis, Mo., and Omaha, Nebr., between Omaha, Nebr., and Des Moines, Iowa; *household goods*, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, between Muscatine, Iowa, and points and places in Iowa within 40 miles of Muscatine, on the one hand, and, on the other, points and places in Illinois and Minnesota; *empty bottles and cooperage*, between Omaha, Nebr., St. Louis, Mo., and Duluth, Minn., on the one hand, and, on the other, Muscatine, Iowa; livestock, between points and places in Iowa to certain specified points in Iowa, on the one hand, and, on the other, points and places in Illinois and Indiana; *construction machinery*, between points and places in Iowa, on the one hand, and, on the other, points and places in Illinois, from Omaha, Nebr., to points and places in Iowa. ROADWAY EXPRESS, INC., is authorized to operate as a *common carrier* in Ohio, Texas, Oklahoma, Connecticut, Michigan, Missouri, Indiana, Massachusetts, Pennsylvania, Kansas, Illinois, Kentucky, Rhode Island, Alabama, Georgia, North Carolina, Tennessee, South Carolina, New Jersey, New York, Virginia, Delaware, Maryland, West Virginia, Wisconsin, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11373. Authority sought for purchase by H. C. GABLER, INC., Rural Delivery No. 3, Chambersburg, PA 17201, of the operating rights and property of JOHN M. RUDISILL & SONS, INC., Seven Valleys, Pa. 17360, and for acquisition by HAROLD C. GABLER, Montgomery Avenue Extended, Chambersburg, Pa. 17201, of control of such rights and property through the purchase. Applicants' attorney: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Operating rights sought to be transferred: *Eggs, poultry, rabbits, and dressed calves*, from Gettysburg, Pa., as a *common carrier* over irregular routes, Westminster, Md., Coatesville and Seven Valleys, Pa., and points in Pennsylvania and Maryland within 20 miles of Seven Valleys, to Newark, Paterson, and Irvington, N.J., New York, N.Y., and points in the New York, N.Y., commercial zone as defined by the Commission; and *machinery, fiberboard, chocolate products and groceries*, from New York, N.Y., and points in New York and New Jersey within 10 miles of New York, N.Y., to York and Harrisburg, Pa., Baltimore, Md., and Washington, D.C. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Maryland, Virgina, West Virgina, New Jersey, New York, Iowa, Kentucky, Massachusetts, Michigan, Missouri, New Hampshire, Rhode Island, Vermont, Maine, Connecticut, Delaware, Ohio, Indiana, Illinois, North Carolina, Alabama, Mississippi, Louisiana, Tennessee, Wisconsin, South Carolina, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

MOTOR CARRIER OF PASSENGERS

No. MC-F-11374. Authority sought for control by THE GRAY LINE, INC., 25 Webber Street, Roxbury, Mass. 02119, of DuFOUR BROTHERS, INC., 343 Pecks Road, Pittsfield, MA 01201, and for acquisition by LEONARD CAPLAN, 7 Chilton Street, Brookline, MA, of control of DuFOUR BROTHERS, INC., through the acquisition by THE GRAY LINE, INC. Applicants' attorney: Charles W. Singer, 33 North Dearborn Street, Chicago, IL 60602. Operating rights sought to be controlled: Passengers and their baggage and express and newspapers in the same vehicle with passengers, as a *common carrier* over regular routes, between Pittsfield, Mass., and Chatham, N.Y., between North Adams, Mass., and Stamford, Va., serving all intermediate points; passengers and their baggage, in special round-trip operations, over irregular routes, beginning and at Great Barrington, Stockbridge, Lenox, Pittsfield, North Adams, Adams, and Cheshire, Mass., and extending to New Lebanon, N.Y., with restriction; passengers and their baggage, in the same vehicle with passengers, restricted to traffic originating at the points indicated immediately below, in charter operations, from Pittsfield, Mass., and points within 10 miles thereof, to points in New York, Connecticut, and Vermont; passengers and their baggage, in the same vehicle with passengers, in special operations, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver

thereof and not including children under 10 years of age who do not occupy a separate seat or seats, between points in Berkshire County, Mass., on the one hand, and, on the other, New York, N.Y.; and passengers and their baggage, in special operations, in round-trip sightseeing and pleasure tours, beginning and ending at points in Berkshire County, Mass., and extending to points in Maine, Vermont, New Hampshire, Connecticut, New York, Pennsylvania, Virginia, Florida, and the District of Columbia, with restriction. THE GRAY LINE, INC., is authorized to operate as a *common carrier* of passenger in all States in the United States (including Alaska but excluding Hawaii; and as a *common carrier* of property in Massachusetts, Connecticut, Rhode Island, New Hampshire, Maine, New York, and New Jersey. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.71-17146 Filed 11-23-71;8:49 am]

[Notice 787]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 19, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73247. By order of November 8, 1971, the Motor Carrier Board approved the transfer to Robco Trucking Co., Inc., Huntington Park, Calif., of the operating rights in Certificate No. MC-42473, issued May 19, 1970, to Aall Quote Industries, Inc., 9602 East Beverly Road, Pico Rivera, CA 90660, authorizing the transportation of general commodities, with usual exceptions and also except livestock, automobiles, cotton, lumber, and cigarettes, between Los Angeles Harbor and Long Beach, Calif., on the one hand, and, on the other, Maywood, Huntington Park, Vernon, Los Angeles, Alhambra, Pasadena, and Beverly Hills, Calif. Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027, registered practitioner for transferee.

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

[FR Doc.71-17147 Filed 11-23-71;8:49 am]

[Notice 787-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 19, 1971.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-73319. By application filed November 16, 1971, CANADIAN AMERICAN TRANSFER LIMITED, 525 Hill Street, Windsor, ON, Canada, seeks temporary authority to lease the operating rights of PARENT CARTAGE LIMITED, 525 Hill Street, Windsor, ON, Canada, under section 210a(b). The transfer to CANADIAN AMERICAN TRANSFER LIMITED, of the operating rights of PARENT CARTAGE LIMITED, is presently pending.

By the Commission.

ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-17148 Filed 11-23-71;8:49 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

NOVEMBER 19, 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 application are goverened 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 hearing 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. B-30 (Sub-No. 44), filed October 1, 1971. Applicant: SOUTHERN COACH COMPANY, 1300 East Pettigrew Street, Durham, NC. Applicant's representative: Clarence H. Noah, 1425 Park Drive, Raleigh, NC 27605. Certificate of public convenience and necessity sought to operate a service as follows: The transportation of *Passengers, their baggage, mail, and light express,* in the same vehicle with passengers, as a common carrier by motor vehicle, from Raleigh, N.C., to intersection of North Carolina 54 and North Carolina 55, viz: North Carolina Highway 54 to junction with Interstate Highway 40, thence over Interstate Highway 40 to junction North Carolina Highway 54 near Nelson, thence over North Carolina Highway 54, to North Carolina Highway 55 near Lowes Grove and return over the same route, serving intermediate points. The foregoing description of operations is identical to that being sought from the North Carolina Utilities Commission. Both intrastate and interstate authority sought.

HEARING: Thursday, December 16, 1971, 2 p.m. in North Carolina Utilities Commission Hearing Room, Ruffin Building, Raleigh, N.C. Requests for procedural information including the time for filing protests concerning this application should be addressed to the State of North Carolina Utilities Commission, Post Office Box 991, Raleigh, NC 27602, and should not be directed to the Interstate Commerce Commission.

State Docket No. MC 2668 (Sub-No. 4), filed October 22, 1971. Applicant: HOHENWALD TRUCK LINES, INC., 107 Mill Street, Hohenwald, TN 38462. Applicant's representative: A. O. Buck, 500 Court Square Building, Nashville, Tenn. 37201. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* except household goods, classes A and B explosives, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading. Route descriptions: Route 1: Between Hohenwald, Tenn., and Linden, Tenn., serving all intermediate points: From Hohenwald over Tennessee Highway 48 to its junction with Tennessee Highway 13, thence over Tennessee Highway 13 to Linden and return over the same route. Route 2: Between Lobelville, Tenn., and Buffalo, Tenn., serving all intermediate points: From Lobelville over Tennessee Highway 13 to Buffalo and return over the same route. Applicant proposes to utilize the above sought authority in conjunction with all of its present authority and seeks corresponding interstate authority. Both intrastate and interstate authority sought.

HEARING: January 6, 1972, in Commission's Court Room, C-1-110, Cordell Hull Building, Nashville, Tenn., 9:30 a.m. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. 37219 and should not be directed to the Interstate Commerce Commission.

State Docket No. 25297-Extension, filed October 19, 1971. Applicant: NORTHGLENN SUBURBAN COMPANY, 2822 West 28th Avenue, Apt. 308, Denver, CO 80211. Applicant's representative: John P. Thompson, 450 Capitol Life Building, Denver, Colo. 80203. Certificate of public convenience and necessity sought to operate a service as follows: Transportation, in charter operations, in interstate and foreign commerce, of *passengers and their baggage and equipment* moving with them, (1) between points within 12 miles of the intersection of Colfax Avenue and Broadway in Denver, Colorado; and (2) between points within 12 miles of the intersection of Colfax Avenue and

Broadway in Denver, Colo., on the one hand, and, on the other hand, points in Colorado. Restriction: All of said charter operations shall be performed in buses having a capacity of 25 or more persons. Both intrastate and interstate authority sought.

HEARING: 10 a.m., January 20, 1972, at 500 Columbine Building, 1845 Sherman Street, Denver, CO. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission of the State of Colorado, 500 Columbine Building, 1845 Sherman Street, Denver, CO 80208, and should not be directed to the Interstate Commerce Commission.

State Docket No. A 52975, filed November 2, 1971. Applicant: HEAVY TRANSPORT, INC., 6242 Paramount Boulevard, Long Beach, CA 90801. Applicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *heavy machinery, etc.*, as presently authorized, to traverse those portions of U.S. Highway 101 and U.S. Highway 99 (Interstate 5) for operating convenience only, and without service to any points thereon along said highways, between San Martin and King City, Calif., on U.S. Highway 101 and Madera and Merced, Calif., on U.S. Highway 99 (Interstate 5). By the instant application, applicant does not seek to extend its presently authorized commodities, nor does it seek to extend its authority from the territorial or service standpoint. Applicant merely seeks alternate route authority to traverse the said portions of said highways in connection with its present authority for operating convenience only, and without service to the points all as hereinabove specified. Both intrastate and interstate authority sought.

HEARING: Date, time and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-17144 Filed 11-23-71;8:48 am]

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