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PART I

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HIGHLIGHTS OF THIS ISSUE

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Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to reflect the following title changes: from private secretary to the Assistant to the Secretary of Defense (Legislative Affairs) to private secretary to the Assistant Secretary of Defense (Legislative Affairs) and from special assistant to the Assistant to the Assistant to the Secretary of Defense (Legislative Affairs) to special assistant to the Assistant Secretary of Defense (Legislative Affairs).

Effective May 7, 1973, paragraph (a) (2) is amended, paragraph (a)(9) is revoked, and paragraph (a)(10) is amended under § 213.3306 as set out below.

§ 213.3306 Department of Defense.

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

(2) One private secretary to the Deputy Secretary of Defense and one private secretary to each of the following: the Director of Defense Research and Engineering; the Principal Deputy Director of Defense Research and Engineering; the Deputy Directors of Defense Research and Engineering (Tactical Warfare Programs), (Strategic Systems), (Research and Technology), (Electronics and Information Systems); the Director, Advanced Research Projects Agency; the Assistant Secretaries of Defense (Manpower and Reserve Affairs), (International Security Affairs), (Public Affairs), (Installations and Logistics), (Comptroller), (Systems Analysis), (Intelligence), (Telecommunications), and (Legislative Affairs); the General Counsel; the Deputy General Counsel; the Assistant to the Secretary of Defense (Atomic Energy); and the Military Assistants to the Secretary of Defense.

* * * * *

(9) [Revoked]

(10) One special assistant to the Assistant Secretary of Defense (Legislative Affairs).

* * * * *

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

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

[FR Doc.73-8906 Filed 5-4-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of personal and confidential assistant to the Assistant Secretary of Defense (Legislative Affairs) is excepted under schedule C.

Effective May 7, 1973, § 213.3306(a) (52) is added as set out below.

§ 213.3306 Department of Defense.

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

(52) One personal and confidential assistant to the Assistant Secretary of Defense (Legislative Affairs).

* * * * *

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

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

[FR Doc.73-8905 Filed 5-4-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3315 is amended to reflect the following title changes: from three assistants to the Special Assistant to the Secretary, Office of Legislative Liaison, to three assistants to the Special Assistant to the Secretary for Legislative Affairs, from confidential assistant to the Special Assistant to the Secretary, Office of Legislative Liaison, to assistant to the Special Assistant to the Secretary for Legislative Affairs, and from staff assistant to the Special Assistant to the Secretary, Office of Legislative Liaison, to staff assistant to the Special Assistant to the Secretary for Legislative Affairs.

Effective May 7, 1973, paragraph (a) (8) is amended, paragraph (a)(17) is revoked, and paragraph (a)(29) is amended under § 213.3315 as set out below.

§ 213.3315 Department of Labor.

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

(8) Four assistants to the Special Assistant to the Secretary for Legislative Affairs.

* * * * *

(17) [Revoked]

* * * * *

(29) One staff assistant to the Special Assistant to the Secretary for Legislative Affairs.

* * * * *

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

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

[FR Doc.73-8808 Filed 5-4-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3315 is amended to show that one position of special assistant to the Counselor to the Secretary is excepted under schedule C.

Effective on publication in the FEDERAL REGISTER, § 213.3315(a)(32) is added as set out below.

§ 213.3315 Department of Labor.

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

(32) One special assistant to the Counselor to the Secretary.

* * * * *

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

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

[FR Doc.73-8907 Filed 5-4-73;8:45 am]

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

PART 534—PAY UNDER OTHER SYSTEMS

Exclusions and Stipends

Section 511.201(b) is amended to show exclusion from part 511 and from classification under the general schedule of positions of student family nurse practitioner, Department of Health, Education, and Welfare. Section 534.202(b) is amended to show additional maximum stipends prescribed for position of student family nurse practitioner, Department of Health, Education, and Welfare, as set out below.

1. Effective April 1, 1973, the following items are added to paragraph (b) of § 511.201.

§ 511.201 Coverage of and exclusions from the general schedule.

* * * * *

(b) *Exclusions.* * * *

Student family nurse practitioner, Department of Health, Education, and Welfare, approved training after attainment of bachelor's degree and a minimum of 2 years community nursing experience; first and second

year approved postgraduate academic and clinical training.

(5 U.S.C. sec. 5102.)

2. Effective April 1, 1973, the following items are added to paragraph (b) of § 534.202.

§ 534.202 Maximum stipends.

* * * * *

(b) * * *

Student family nurse practitioner, Department of Health, Education, and Welfare, approved training after attainment of bachelor's degree and a minimum of 2 years community nursing experience:

First year approved postgraduate academic training	L-5
Second year approved postgraduate academic training	L-6

(5 U.S.C. secs. 5102, 5351, 5352, 5541.)

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

[FR Doc.73-8909 Filed 5-4-73;8:45 am]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Certification of Households for Food Stamp Program

Notice of proposed rulemaking was published in the FEDERAL REGISTER on September 12, 1972 (37 FR 18469), setting forth a proposal to amend two sections of the regulations governing the food stamp program (7 CFR part 271) to provide for the integration of program verification of nonpublic assistance household social security benefits into the Social Security Administration—Social and Rehabilitation Service operated automated data processing system. Interested persons were given 30 days in which to submit comments, suggestions, or objections to the proposed amendments. Responses to the proposed amendments were received from 14 interested persons and organizations. After careful consideration of all comments received, the Department has decided to alter the wording of the amendment to § 271.4(a)(2) as originally proposed, to allow for optional rather than mandatory State agency implementation of nonpublic assistance social security benefit verification through the automated data processing system. In view of this alteration, the amendment to § 271.1(s)(1) requiring each State agency possessing the necessary automatic data processing capability, to implement nonpublic assistance household social security benefit verification through the automated data processing system within a 1-calendar year period, has been deleted.

Section 271.4(a)(2) is amended by adding two sentences to paragraph (a)(2)(iii). As amended, paragraph (a)(2)(iii) reads as follows:

§ 271.4 Certification of households.

(a) Household certification. * * *

(2) Certification of other households. * * *

(iii) Verification of income upon initial certification and, if the amount of household income has changed substantially or if the source of the income has changed, upon recertification. Verification is required for other factors of eligibility only to the extent that the information furnished by the applicant is unclear, incomplete, or inconsistent or otherwise raises doubt concerning any factor affecting eligibility or the basis of coupon issuance. In any case where a household indicates that it has income so low that there is a likelihood that a change must occur in order for the household to continue to subsist as an economic unit, verification of factors necessary to substantiate the facts of eligibility is required unless expenditures and income are so stable as to indicate that the household could maintain this level of existence for an extended period of time. At least one collateral contact is mandatory in cases of this type. Certification may be made for 30 days without verification of eligibility factors with respect only to households which report an income so low that they have no purchase requirement and which appear, on the basis of other information furnished, to be eligible for participation. With respect only to households which report receipt of social security benefits, each State agency, at its option, may obtain verification of reported social security benefits through the use of the automated data processing system jointly administered by the Social Security Administration and the Social and Rehabilitation, Service, U.S. Department of Health, Education, and Welfare. State agencies electing to use this option shall use the amount of social security benefits reported by such households for certification purposes pending receipt by the local certifying agency of the automated data processing system verification, provided all other household income is verified in accordance with this section.

* * * * *

(78 Stat. 703, as amended; 7 U.S.C. 2011-2025.)

Effective date.—This amendment shall become effective on May 7, 1973.

Dated May 2, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-8926 Filed 5-4-73;8:45 am]

CHAPTER VII—AGRICULTURE STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 12]

PART 730—RICE

Subpart—Regulations for Determination of Acreage Allotments for 1969 and Subsequent Crops of Rice

NATURAL DISASTER TRANSFERS

Basis and purpose.—(a) This amendment is to implement the provisions of Public Law 93-27, 93d Congress, approved April 27, 1973. This amendatory legislation provides that if the Secretary determines for 1973 that because of a natural disaster a portion of the farm rice acreage allotments in a county cannot be timely planted or replanted in 1973, he may authorize the transfer of all or a part of the 1973 rice allotment for any farm in the county so affected to another farm in the county or in an adjoining county on which one or more of the producers on the farm from which the transfer is to be made will be engaged in and share in the proceeds from the rice crop.

The legislation further provides that the farm from which the transfer is made shall be deemed to have released the allotment for the purpose of acreage history credits under subsection (e) of section 353, and section 377 of the Agricultural Adjustment Act of 1938, as amended. Further, notwithstanding the provisions of subsection (e) of section 353, the transfer of any farm allotment under this subsection shall operate to make the farm from which the allotment was transferred eligible for an allotment as having rice planted thereon for the 1973 crop year.

(b) Since planting of the 1973 crop of rice is well underway in areas where weather has permitted, it is of utmost importance that farmers in flooded areas be notified of this transfer provision for 1973 as soon as possible. Therefore, it is determined that compliance with the notice, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, this amendment shall become effective on May 2, 1973.

(c) The subpart—Regulations for Determination of Acreage Allotments for 1969 and Subsequent Crops of Rice is amended by adding after § 730.84 a new § 730.84a to read as follows:

§ 730.84a Transfer of farm rice acreage allotment affected by a natural disaster.

(a) *General authority.*—The Deputy Administrator shall determine for the 1973 crop year those counties in a farm State or farm administrative area affected by a natural disaster, within the

meaning of section 353(g) of the act which prevents the timely planting or replanting of a portion of the farm rice acreage allotments in the county. The county committee shall post in the county office a notice of any such determination affecting the county and, to the extent practicable, shall give general publicity in the county to such determination.

(b) *Application for transfer.*—The owner or operator of a farm in a county designated for the 1973 crop year under paragraph (a) of this section may file a written application for transfer of rice acreage within the farm rice acreage allotment for such year to another farm in the same county or in an adjoining county in the same or another farm State or administrative area, if such acreage cannot be timely planted or replanted because of the natural disaster. The application shall be filed with the county committee for the county in which the farm affected by such disaster is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.*—The acreage to be transferred shall not exceed the smaller of (1) the 1973 farm allotment established under this subpart less such acreage planted to rice and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

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

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

(2) One or more producers of rice on the farm from which the acreage is to be transferred will be a bona fide producer engaged in the production of rice on the farm to which the acreage is to be transferred and will share in the crop or in the proceeds of the rice. Such sharing shall be in the manner customary in the area in order to establish the status of such producer as a bona fide producer on the farm to which the acreage is to be transferred.

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

(f) *Acreage history credits and eligibility as an old rice farm.*—Any acreage transferred under this section shall be deemed planted on the farm from which transferred for purposes of acreage history credit and of determining eligibility as an old rice farm, whether or not such acreage was actually planted.

(g) *Closing dates.*—The closing date for filing applications for transfers with the county committee shall be the end of the normal planting period as determined by the State committee. Notwithstanding such closing date requirement, the county committee may accept applications filed after the closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

(Secs. 353, 355, 375, 377, 52 Stat. 61, as amended, 62, as amended, 66, as amended, 70 Stat. 206, as amended; 7 U.S.C. 1353, 1355, 1375, 1377.)

Effective date.—May 2, 1973.

Signed at Washington, D.C., May 2, 1973.

GLENN A. WEIR,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.73-8972 Filed 5-2-73;4:30 pm]

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 30]

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

Order Terminating Certain Provisions

This order of termination 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 Chicago Regional marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 9025) concerning a proposed suspension or termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

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

1. In § 1030.60 that part of paragraph (b)(5) which reads "plus 5 cents".
2. In § 1030.71 paragraph (d).
3. In § 1030.84 that part of paragraph (b)(2) which reads "plus 5 cents".
4. Sections 1030.100 through 1030.112.

This action terminates the operation of the producers' advertising and promotion program under the order with respect to milk marketed on and after April 1, 1973. This program provides for an assessment of 5 cents per hundredweight against all marketings of producer milk pooled under the order. Funds so deducted, except for reserves withheld to cover refunds and administrative costs incurred by the market administrator, are turned over to and expended by an agency organized by producers and producers' cooperative associations. The producers' agency is responsible for establishment of research, advertising, and other programs, designed to improve the domestic marketing and consumption of milk and its products.

Any producer not wishing to support the program may request refund of the portion of the assessment made against his marketings of milk. Refund procedure provides that such requests be made on a quarterly basis. The program became effective with respect to marketings on and after October 1, 1972. For the October–December 1972 quarter about 40 percent of the producers requested a refund. A slightly lower proportion asked for refunds the second quarter of operation (January–March 1973), but for marketings during April–June 1973 about 40 percent of the producers again ask that a refund be made.

Central Milk Producers Cooperative (CMPC), which petitioned for the hearing to incorporate the program under the order, adopted a resolution on March 29, 1973, requesting suspension of the program effective April 1, 1973, provided that all funds collected pursuant to the program through March 1973 be made available to fund agency commitments. CMPC is a common marketing agency for cooperative associations whose member producers supply a substantial majority of the milk for the market.

Certain cooperatives filed views opposed to suspension or termination of the program. They contend it should be maintained under the order at least through June 30, 1973, to facilitate producer groups' making arrangements for the continued financial support of the promotion programs that they choose to continue.

Other cooperatives and several producers individually filed views supporting suspension or termination of the program. They contend that because of the great number of producers requesting refunds the program has resulted in inequities and conflicts among producers and groups of producers.

One of the major reasons producer organizations supported adoption of the program was to encourage broader financial support among producers for the milk promotion activities carried out by producers and their organizations. Such programs had been supported in this market by Central Milk Producers Cooperative and the solicitation of contributions from producers individually. The program under the order offered the potential of an assessment on all milk in the market. Also, it had the potential of obtaining funds at a lesser administrative cost by making one computation each month as opposed to handlers' making a separate deduction (authorized by the producer) with respect to the volume of milk marketed by each producer. The program has not achieved and does not promise to achieve these results in the present market situation.

Opposition to the 5-cent assessment on marketings has developed on an organized basis among certain producer groups and is creating shifts in membership with adverse impact on established marketing outlets for some producers and potentially for others. Under present circumstances the advertising and promotion program thus has become a disturbing factor in the marketing process and does not contribute to orderly marketing.

The failure of the program to encourage broad producer support is substantiated by the proportion of the producers requesting refunds. In addition, the major producer organizations in the market now oppose it. Consequently, considering the opposition on the part of producers individually and the opposition of producer cooperatives, it is clear that a majority of the producers in the market no longer support the program. Moreover, there is no indication that support for the program would improve significantly if the program were continued, since certain producer organizations that were major supporters of the program at its outset are now among those who urge that it be discontinued.

Discontinuance of the 5-cent assessment against marketings effective with the April 1973 pool computation to be made May 14, 1973, will avoid the administrative costs of making refunds for any marketings during the April-June quarter.

The producers' agency has about $317,000 available for budgeting and expenditure. Such amount represents about 1½ month's contributions by participating producers. Use of such balance of agency funds to continue funding promotion programs would tend to provide time for producer groups to arrange for other methods of providing financial support of any promotional activities they may wish to continue.

In view of the above considerations, it is concluded that the provision for the 5-cent assessment against marketings and the corollary 5-cent adjustment in the obligation on other source milk allocated to class I use should be discontinued effective with marketings on and after April 1, 1973. The provisions pertaining to the producers' agency should remain in operation through the quarterly budgeting period April–June 1973 pending final disposition of accumulated funds.

No purpose would be served in suspending the provisions rather than terminating them, since in all likelihood the agency will have exhausted its funds by the end of June 1973. It is clear that a substantially modified order program would have to be promulgated in order to receive general producer support.

Complete liquidation of the program cannot be accomplished until all of the refund checks have been cancelled. Refunds for the January–March quarter are expected to be mailed about June 5, 1973. Accordingly, § 1030.112, which provides for liquidation of uncommitted funds through the producer-settlement fund, should remain in effect through September 30, 1973, in order that the market administrator may appropriately liquidate any funds under the program in his possession including reserves held to make refunds and payment of administrative costs.

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

(a) Such termination is necessary to maintain orderly marketing in that the program is adversely affecting normal marketing processes;

(b) Termination of such provisions does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this termination.

Therefore, good cause exists for terminating the provisions for deducting 5 cents per hundredweight from pool funds for the program, effective with respect to marketings on and after April 1, 1973, and for terminating the remaining provisions thereof on the dates specified herein below.

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

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

Effective dates.—1. May 7, 1973, with respect to the uniform price computations for marketings on and after April 1, 1973, as provided: (1) In § 1030.60 that part of paragraph (b)(5) which reads "plus 5 cents"; (2) in § 1030.71 paragraph (d); and (3) in § 1030.81 that part of paragraph (b)(2) which reads "plus 5 cents".

2. June 30, 1973, with respect to §§ 1030.100 through 1030.111.

3. September 30, 1973, with respect to § 1030.112.

Signed at Washington, D.C., on May 2, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-8924 Filed 5-4-73;8:45 am]

[Milk Order No. 121; Docket No. AO-364-A6]

PART 1121—MILK IN THE SOUTH TEXAS MARKETING AREA

Order Amending Order

Correction

In FR Doc. 73-8210 appearing at page 10454 in the issue of Friday, April 27, 1973, make the following changes: In column 3 on page 10454, the date reading "May 27, 1973" should read "April 27, 1973" in the third line of paragraph (b) and in the 15th line of the paragraph immediately following paragraph (b).

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

Application

CFR Correction

In § 245.2 appearing on page 108 of title 8, revised as of January 1, 1973, an amendment to paragraph (b)(1), published at 35 FR 18582, December 8, 1970, was inadvertently incorporated into paragraph (a)(1).

Paragraph (a)(1) of § 245.2 should read as follows:

§ 245.2 Application.

(a) *General.*—(1) *Jurisdiction.*—An application for adjustment of status under section 245 of the act or section 1 of the act of November 2, 1966, by an alien after he has been served with an order to show cause or warrant of arrest shall be made and considered only in proceedings under part 242 of this chapter. In any other case, an alien who believes that he meets the eligibility requirements of section 245 of the act or section 1 of the act of November 2, 1966, and § 245.1, shall apply to the district director having jurisdiction over his place of residence.

* * * * *

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 72-CE-30-AD; Amdt. 39-1632]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 18 Series Airplanes

An amendment to paragraph D of Airworthiness Directive (AD) 72-20-5, amendment 39-1526, was adopted on April 23, 1973, and made effective immediately by personal service to all known owners of Beech Model 18 series airplanes by airmail letter. This amendment was issued because of undetected fatigue cracks at wing stations 73 and 81. Failure to detect these cracks by X-ray and visual/magnetic or penetrant methods permits an undetected crack to lead to complete failure of the front spar lower cap and results in wing separation. In order to prevent this condition the amendment requires a special inspection at wing stations 73 and 81 within 25 hours' time in service and thereafter at intervals not to exceed 100 hours' time in service. It also requires within 48 hours after the effective date of the amendment transmission of copies of X-rays of the two most recent inspections taken in accordance with AD 72-20-5 or predecessor ADs to the FAA for evaluation. The amendment further provides that within

600 hours' time in service wing stations 73 and 81 must be modified in accordance with applicable Beech Kits and within 2,000 hours', but not later than May 1, 1975, wing stations 32, 57, and 64 must be modified in accordance with applicbe modified in accordance with applicable Beech Kits.

Since it was found that immediate corrective action was required, notice and public procedure hereon was impracticable and contrary to the public interest and good cause existed for making the amendment effective immediately to the owners of Beech Model 18 series airplanes by individual air mail letters dated April 24, 1973. These conditions still exist and the amendment to paragraph D of AD 72-20-5, amendment 39-1526, is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 FR 13697) § 39.13 of part 39 of the Federal Aviation Regulations, amendment 39-1526, AD 72-20-5, is being amended as follows:

Paragraph D of AD 72-20-5, amendment 39-1526, is amended so that it now reads as follows:

(D) 1. A special inspection at wing station 73 and 81 is required within 25 hours' time in service after the effective date of this amendment regardless of previous time in service since last inspection and thereafter at intervals not to exceed 100 hours' time in service. Visual and either magnetic particle or penetrant methods must be used while the wing is simultaneously flexed.

2. Within 48 hours after the effective date of this amendment, transmit by most rapid means copies of X-rays of the two most recent inspections taken in accordance with AD 72-20-5 or predecessor ADs to DOT/FAA, Engineering and Manufacturing Branch, Hangar No. 10, Wichita Municipal Airport, Wichita, Kans. 67209. Evaluation of inspection facility's findings will be transmitted to sender as soon as possible.

3. Within 600 hours' time in service after the effective date of this amendment, modify wing stations 73 and 81 in accordance with Beech Aircraft Corp. kits 18-4024, 792 or any equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

4. Within 2,000 hours' time in service after the effective date of this amendment, but not later than May 1, 1975, modify wing stations 32, 57 and 64 in accordance with Beech Aircraft Corp. kits 18-4024 and 791, or any equivalent approved by Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective May 7, 1973, to all persons except those to whom it was made effective by letter dated April 24, 1973.

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

Issued in Kansas City, Mo., on April 27, 1973.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.73-8931 Filed 5-4-73;8:45 am]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER J—RIGHT-OF-WAY AND ENVIRONMENT

PART 305—SECONDARY ROAD PLAN

PART 720—LAND ACQUISITION

This amendment adds new parts, part 305 and part 720, subpart E, to the regulations of the Federal Highway Administration.

Part 305 sets forth policies and procedures for providing Federal aid to projects on the Federal-aid secondary system described in 23 U.S.C. 103(c). It implements 23 U.S.C. 117 and codifies polices and procedures previously contained in Federal Highway Administration Policy and Procedure Memorandum 20-5.

23 U.S.C. 117 allows a State greater flexibility in complying with Federal requirements on secondary road projects than is allowed in complying with Federal requirements on other Federal-aid systems.

Part 720, subpart E prescribes the Federal Highway Administration policies, procedures, and standards to be applied to the use of airspace on the Federal-aid Highway System for such non-highway purposes as public parks, recreation, beautification, parking of motor vehicles, and other similar purposes.

In consideration of the foregoing, effective May 7, 1973, chapter I of title 23, Code of Federal Regulations is amended by adding new Part 305—Secondary Road Plan and Part 720—Land Acquisition, Subpart E—Use of Airspace.

Sec.

AUTHORITY: 23 U.S.C. 117, 23 U.S.C. 315, and 49 CFR 1.48.

§ 305.1 Purpose.

The purpose of this part is to prescribe policies and procedures for administering Federal-aid secondary highway projects in accordance with the Secondary Road Plan.

§ 305.2 Definitions.

As used in this part—

(a) The Secondary Road Plan is the plan which may be used for administering Federal-aid secondary projects, pursuant to a Secondary Road Plan Agreement. (The term "Secondary Road Plan" is hereinafter referred to as the "Plan.")

(b) A Secondary Road Plan Agreement is a written statement prepared by a State highway department and approved by the Federal Highway Administrator, setting forth the procedures and standards the State highway department will use, or cause to be used, in the administration of projects under the Plan.

§ 305.3 Policy.

(a) Based upon the provisions of 23 U.S.C. 117, and its legislative history, it is the policy of the Federal Highway Administration (FHWA) to extend to State highway departments maximum flexibility and simplicity in procedures, operations, and standards under the Plan and to encourage maximum State-local initiative and cooperation in selecting and developing projects under the Plan.

(b) The State highway departments shall follow sound engineering, administrative, and managerial practices to assure economy, efficiency, and honesty in the expenditure of Federal, State, and local matching funds, as well as comply with all Federal and State laws.

(c) Except as noted below, Federal Highway Administration regulations and other unpublished directives do not apply to projects administered under the Plan unless the State chooses to adopt them.

§ 305.4 Applicability.

The Plan shall apply, in those States which have adopted it, to all projects financed with regular and rural Federal-aid secondary (FAS) funds on the approved Federal-aid secondary system, including FAS projects on urban extensions of the secondary system. By mutual agreement between the State and FHWA, Defense Access Road and Appalachian Local Access Road projects on the approved FAS system may also be administered in whole or in part under the terms of the State's Secondary Road Plan Agreement.

§ 305.5 Secondary Road Plan Agreement.

The Secondary Road Plan Agreement shall include the following:

(a) A positive statement that projects administered under the Plan will comply with all Federal laws, Executive orders, and the provisions of the Federal-aid regulations in 23 CFR Part 1 applicable to the Plan. By such statement, the Federal laws, Executive orders, and regulations so applicable are incorporated by reference.

(b) A clear and concise statement that the State will follow, as a minimum, the procedures in § 305.7 of this part.

(c) A brief description of the State highway department organization which will administer Federal-aid secondary projects. This is to include a description of the secondary road unit prescribed in 23 U.S.C. 302(a).

(d) A brief description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements on projects constructed under the plan when such local governments accomplish any phase of work (e.g., acquire right-of-way, prepare PS&E or supervise construction). Examples of methods are: a State directives system for counties, periodic meetings with responsible local officials,

plans-in-hand inspections, construction inspections, etc.

(e) A brief description of how FAS funds are distributed between State and local roads and between the local governments within the State.

(f) A statement that all projects constructed under the Plan, as well as documents thereof, are subject to inspection by FHWA personnel at any time during project development and for the 3-year period after FHWA payment of the final voucher.

(g) A statement of the minimum geometric and structural design standards, as well as noise and air quality standards, that will apply to the design of Federal-aid secondary projects for the varying conditions that may be encountered.

§ 305.6 Requests to revise or amend Plan Agreements.

A State may request to revise or amend its Plan Agreement by letter, signed by the chief administrative officer of the State highway department. The request shall include the revised or amended procedures and/or standards which the State proposes to follow, or have followed, to accomplish projects under the Plan.

§ 305.7 State-Federal administrative procedures.

Procedures to be used in the implementation of Federal-aid Secondary Road Plan projects are as follows:

(a) The Federal-aid secondary system shall be selected in accordance with 23 U.S.C. 103(c) and 23 CFR 1.6. Each route on the system shall be appropriately numbered and described. Requests to change the system shall be in writing and accompanied by supporting information.

(b) Not less than 50 percent of the Federal-aid secondary funds apportioned to a State, after deduction of the highway planning survey funds, shall first be made available to the appropriate local road officials and shall remain available for at least 1 year for roads not on the State highway portion of the Federal-aid secondary system. However, in a State that has full financial responsibility for the construction and maintenance of a very substantial percentage of the total local highway mileage, Federal-aid secondary funds in excess of 50 percent may be applied to those highways for which the State is responsible that are included in the Federal-aid secondary system.

(c) Projects shall be programed in accordance with 23 U.S.C. 105 and 23 CFR 1.8.

(d) Proposals for construction projects shall be submitted for review and comment to State, regional, and/or metropolitan clearinghouses as designated by the Federal Office of Management and Budget's Circular A-95, as amended. Comments received as a result of this action shall be given due consideration before an during project development.

(e) The division engineer shall notify the State in writing when the program is approved and when the State is authorized to take actions necessary to advance the work as programmed. Work performed prior to authorization is not eligible for Federal participation.

(f) Relocation payments and assistance shall be provided and right-of-way shall be acquired in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 on each project in which there is to be Federal participation in any phase thereof. No individual or family shall be displaced until decent, safe, and sanitary replacement housing is available to the relocatees for immediate occupancy.

(g) Public hearings shall be held, or the opportunity for public hearings shall be afforded, in accordance with 23 U.S.C. 128. In addition, hearings should be held, or the opportunity therefor afforded, for all projects to which there is known opposition. Throughout the location and design stages of every project, the most directly responsible highway agency should furnish information on all facets of the project upon request of any interested person or party. Comments and suggestions should be heard and duly considered before final plans are developed. Recordings or transcripts of hearings, along with any required reports and certifications, are to be retained by the State and furnished FHWA only upon request.

(h) The human environment shall be carefully considered and national environmental goals met on all federally financed highway improvements in accordance with 42 U.S.C. 4332(2)(C), 49 U.S.C. 1653(f), 16 U.S.C. 470(f), and 42 U.S.C. 1857(h). Environmental impact statements shall be prepared for each project which will have a significant effect on the quality of the human environment. Drafts of these statements are to be prepared and their availability is to be publicized to permit review and comment by all interested individuals or parties well in advance of any public hearing for the project and/or before the highway agency is committed to a particular course of action on the project. A sufficient number of copies of each such draft are to be furnished FHWA for processing. After sufficient time has elapsed to permit receipt and due consideration of all comments on the draft, a final environmental impact statement shall be prepared and a sufficient number of copies furnished FHWA for processing. For projects having no significant effect on the environment, a written statement (negative declaration), including a description of the proposed work and an explanation of why there will be no significant effect, shall be furnished FHWA. After receiving the applicable statement, the FHWA shall advise the State in writing if there may or may not be Federal participation in the project; if Federal participation cannot be allowed the project shall be withdrawn. The State's action plan for assuring full consideration of the economic, social and environmental effects of Federal-aid projects shall include procedures for projects administered under the secondary road plan.

(i) Any project that will substantially change the quality of the historical, architectural, archeological, or cultural character of a property listed in the National Register of Historic Places will require special consideration in addition to that listed in § 305.7(j). Such projects shall be coordinated with preservation interests in accord with guidelines promulgated pursuant to 16 U.S.C. 470(f).

(j) Construction contracts shall include provisions which describe the contractor's responsibilities for assuring equal employment opportunity, providing nonsegregated facilities, paying predetermined minimum wages, furnishing payroll information and certificates, assuring safe construction practices, and posting warnings against false statements.

(k) The State shall notify FHWA when a project is complete and/or ready for final inspection by FHWA, and certify that the project has been completed as programed and in accordance with the State's approved Secondary Road Plan Agreement.

§ 305.8 FHWA review and inspection of projects.

(a) Upon receipt of program documents from the State highway department, FHWA shall determine that each project can and will be constructed in accordance with the State's Secondary Road Plan Agreement.

(c) FHWA shall make a physical inspection of each project upon its completion. The purpose of this inspection is to ascertain that the project has been built as programed and in apparent conformance with standards contained or referenced in the State's approved Secondary Road Plan Agreement.

§ 305.9 FHWA evaluation of State's operation under the Secondary Road Plan.

FHWA will periodically evaluate the State's operation under the Plan. This evaluation will include an inspection of all phases of the State's administration of FAS projects, including maintenance. The evaluation may be made all in 1 year or over a period not to exceed 5 years.

§ 305.10 Exceptions.

Exceptions to the agreed procedures and standards in the Secondary Road Plan Agreement may be made in unusual circumstances when approved by FHWA.

Subparts A–D [Reserved]

Subpart E—Use of Airspace

Sec.

AUTHORITY: 23 U.S.C. 315; delegation of authority in 49 CFR 1.48(b).

§ 720.501 Purpose.

To prescribe the Federal Highway Administration's policies, procedures, and standards relating to the use of airspace on Federal-aid highway systems for nonhighway purposes.

§ 720.502 Definition.

Airspace is defined as that space located above and/or below the highway's established gradeline, lying within the horizontal limits of the approved right-of-way boundaries.

§ 720.503 Applicability.

(a) The policies and procedures set forth in this subject are applicable where such airspace is not presently required for the construction, safe operation, and maintenance of a highway facility.

(b) The provisions of this subpart do not apply to railroads or other public utilities which cross or otherwise occupy the Federal-aid highway's right-of-way.

(c) Disposition of income received from the authorized use of airspace shall be the State's responsibility and credit to the Federal interest is not required.

§ 720.504. Applications for use.

(a) Any individual, company, organization, or public agency desiring to use the airspace above or below the established gradeline of the highway shall submit an application to the State highway department.

(b) The State shall forward the application, including a proposed airspace agreement, to the Federal Highway Administration with recommendations and necessary supplemental information.

§ 720.505 Airspace agreements.

(a) Use of airspace shall be covered by a legal agreement.

(b) The agreement shall contain a detailed three-dimensional description of the space to be used, or when the surface area beneath an elevated highway structure is to be used for recreation, public park, beautification, parking of motor vehicles, and other similar purposes, a metes-and-bounds description of the surface area, together with plans or cross sections defining the vertical use limits.

(c) An agreement shall be revoked if the facility is abandoned or ceases to be used for a prescribed period. The agreement shall provide that, in the event authority for use of airspace is revoked, removal of the facility shall be accomplished by the grantee or lessee in a manner prescribed by the State.

(d) Agreements shall require the grantee to provide adequate insurance for the payment of any damages which may occur during or after construction of the facilities and save the State harmless. Exception to the insurance requirements may be made when the proposals are for public use, administered by a public or quasipublic agency and when such agency authorized by the State to use the airspace is assigned specific responsibility for payment of any related damages occurring to the highway facility and to the public for personal injury, loss of life, and property damage.

(e) Agreements, including all renewals, shall contain appropriate provisions of Appendix C of the State's assurances in respect to the Civil Rights Act of 1964, and 49 CFR 21.

§ 720.506 Changes and assignments.

(a) Any revision in the design or construction of a facility shall receive prior review and approval by the State subject to concurrence by the FHWA.

(b) Any change in the authorized use of airspace shall receive prior approval by the State subject to concurrence by the FHWA.

(c) An authorized use of airspace shall not be transferred, assigned, or conveyed to another party without prior State approval subject to concurrence by the FHWA.

§ 720.507 Inventory.

(a) The State highway department shall maintain an inventory of all agreements. This inventory shall include but not be limited to the following items for each authorized use of airspace:

(1) Location by project, survey station, or other appropriate method.

(2) Identification of the lessee.

(3) A three-dimensional or a metes-and-bounds description as appropriate.

(4) As-built construction plans of the highway facility at the location where the use of airspace was authorized.

(5) Pertinent construction plans of the facility authorized to occupy the airspace.

(6) A copy of the executed lease agreement.

§ 720.508 Airspace controls and safety provisions.

(a) The following controls and safety provisions shall govern the use of airspace:

(1) Use of airspace beneath the established gradeline of the highway shall provide sufficient vertical and horizontal clearances for the construction, operation, maintenance, ventilation, and safety of the highway facility.

(2) Use of airspace above the established gradeline of the highway shall not, at any point within 15 feet of the outside edges of the geometric section of the highway, extend below a horizontal plane which is at least 16 feet 4 inches above the gradeline of the highway, or the minimum vertical clearance plus 4 inches as approved for the State, except as necessary for columns, foundations, or other support structures. Where control and directional signs needed for the highway are to be installed beneath an overhead structure, vertical clearance will be at least 20 feet from the gradeline of the highway to the lowest point of the soffit of the overhead structure. Exceptions to the lateral limits set forth above when justified by the State highway department may be considered on an individual basis by the Federal Highway Administrator.

(3) Permission shall not be granted for any use of airspace that will require piers, columns, or any other portion of the airspace structure to be erected in a location which will interfere with visibility or reduce the sight distance or in any other way interfere with the safety and free flow of traffic on the highway facility.

(4) The structural supports for the airspace facility shall be located to clear all horizontal and vertical dimensions established by the State highway department. On all Federal-aid highways, supports shall be clear of the shoulder or safety walks of the outer roadways. However, supports may be located in the median or outer separation when the State determines and the FHWA concurs that such medians and outer separations are of sufficient width. All supports are to be back of or flush with the face of any wall at the same location. Supports shall be adequately protected by means acceptable to the State and the FHWA. No supports shall be located in the vicinity of ramps, or in a position as to interfere with the signing necessary for the proper use of the ramps.

(5) The use of airspace above and/or below the established gradeline of the highway shall insure that either the highway or nonhighway users will not be unduly exposed to hazardous conditions because of highway location, design, maintenance, and operation features.

(6) Appropriate safety precautions and features necessary to minimize the possibility of injury to users of either the highway facility or airspace due to traffic accidents occurring on the highway shall be provided. Such precautions shall include, but not be limited to, consideration of protective barriers or continuous guardrail with impact attenuation proper to prevent penetration by heavy vehicles, installation of fire hydrants, drainage arrangements adequate to safely handle accidentally released hazardous liquids, warning signs, reflectors and lights, speed controls, and, where deemed necessary, limitations on the use of the highway facility by vehicles carrying hazardous materials. Airspace facilities shall not be approved for construction over and/or under Federal-aid highways unless the plans therefor contain adequate provisions, acceptable to the State and FHWA, for evacuation of the structures or facilities in case of a major accident endangering the occupants of such structures or facilities.

(7) Any airspace facility proposed for construction above and/or below the gradeline of the highway shall be fire resistant in accordance with the provisions of the local applicable building codes found to be acceptable by the State and the FHWA. Such airspace facility shall not be used for the manufacture or storage of flammable, explosive, or hazardous material or for any occupation which is deemed by the State highway department or FHWA to be a hazard to highway or nonhighway users. Proposals involving the construction of improvements in airspace should be approved by the State fire marshal, or the State authority responsible for fire protection standards. In the absence of

modern building codes or in cases where the State highway department or the FHWA questions the acceptability of the existing code, conformance with the Uniform Building Code or the National Building Code will be required.

(8) No structure or structures built over a highway facility shall occupy more length of the highway than will permit adequate natural ventilation of the enclosed section for the conditions at the location, assuming a volume of traffic equal to capacity. Furthermore, each such covered length shall be preceded and followed by uncovered lengths of highway that will safely effect natural ventilation. The State highway department shall determine such lengths for each particular case subject to FHWA concurrence. Exceptions may be considered when complete tunnel ventilation is provided.

(9) Unless tunnel ventilation is provided, structures over highways shall be so designed and constructed as to facilitate natural ventilation of the highway. To this end the underside and any supports for such structures shall have smooth and easily cleanable surfaces. Supports for such structures shall leave as much open space on the sides of the highway as feasible. Such space shall be appropriately graded where deemed necessary or desirable by the State highway department.

(10) The design, occupancy, and use of any structure over and/or under a highway facility shall be such that neither the use, safety, appearance, nor the enjoyment of the highway will be adversely affected by fumes, vapors, odors, drippings, droppings, or discharges of any kind therefrom.

(11) On-premises signs, displays, or devices may be erected on structures occupying highway airspace, but shall be restricted to those indicating ownership and type of on-premises activities and shall be subject to regulation by the State and FHWA with respect to number, size, location, and design.

(12) Construction of any structure above and/or below a highway facility shall not require any permanent change in alinement or profile of an existing Federal-aid highway. Any temporary change in alinement or profile of the existing highway shall receive prior approval by the FHWA.

(13) The facility to occupy the airspace shall be properly maintained in such a manner as to cause no unreasonable interference with traffic and to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance. In the event the owner of the facility occupying the airspace fails his maintenance obligations, provision should be made for the State highway department to enter the premises to perform such work.

(14) The airspace shall not be used for any purpose other than that originally agreed upon by the user and the State highway department, without prior approval by the State with FHWA concurrence.

(15) Where the proposed use of airspace above and/or below the established gradeline of a Federal-aid highway facility requires additional highway facilities for the proper operation and maintenance of the highway, in the opinion of either the State or the FHWA, such facilities shall be provided without cost of Federal funds except where the proposed use is for a highway-related or other public or quasipublic use which would assist in integrating the highway into the local environment and enhance other publicly supported programs. This section is not intended to expand existing limitations upon expenditures from the highway trust fund.

(16) Proposed airspace facilities shall be designed and constructed in a manner which will permit access to the highway facility for the purpose of inspection, maintenance, and reconstruction when necessary. The agreement for use of airspace shall specifically provide for retention of authority by the State highway department to enter the leased premises to perform the aforementioned work.

(17) Permission shall not be granted for any use of airspace which does not conform with the provisions of the current, appropriate Federal Aviation Agency's regulations.

(18) Approval for the use and occupancy of Federal-aid highway right-of-way for the parking of motor vehicles shall not be granted if proper consideration has not been given to the need for the following:

(i) Change in parking design or arrangement to assure orderly and functional parking.

(ii) Additional plantings or other screening measures to improve the esthetics and appearance of the area.

(iii) Additional surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.

(iv) Access for fire protection and fire fighting equipment.

(19) The space required to accommodate any foreseeable future expansion of the highway facility shall be excluded from an airspace proposal.

R. R. BARTLESMEYER,
Acting Federal Highway Administrator.

[FR Doc.73-8885 Filed 5-4-73;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7274]

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

Requirements for Making and Signing Returns and Declarations

These amendments update the regulations to conform with Rev. Rul. 65-248, C.B. 1965-2, 432, and Rev. Rul. 70-216, C.B. 1970-1, 265. These revenue rulings recognize methods for taxpayers to authorize agents to make and sign returns and declarations for them other than the methods which are provided for in the old regulations (§ 1.6012-1(a)(5), with respect to tax returns, and § 1.6015(a)-1(f), with respect to declarations of estimated income). Under the amendments, a spouse of a physically incapacitated person may sign for both parties to a joint return. In addition, form 2848 or other power of attorney may be used in place of the now obsolete form 935, relating to the granting of a power of attorney for the purpose of making or signing a tax return or declaration of estimated income.

In order to clarify the conditions under which a person may sign a return or declaration as agent for another, the Income Tax Regulations (26 CFR part 1) under sections 6012, 6013, and 6015 of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Paragraph (a)(5) of § 1.6012-1 is amended to read as follows:

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident.*—(1) *In general.* * * *

(5) *Returns made by agents.*—The return of income may be made by an agent if, by reason of disease or injury, the person liable for the making of the return is unable to make it. The return may also be made by an agent if the taxpayer is unable to make the return by reason of continuous absence from the United States (including Puerto Rico as if a part of the United States) for a period of at least 60 days prior to the date prescribed by law for making the return. In addition, a return may be made by an agent if the taxpayer requests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the return, and such district director determines that good cause exists for permitting the return to be so made. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the return. A form 2848, when properly completed, is sufficient. In addition, where one spouse is physically unable by reason of disease or injury to sign a joint return, the other spouse may, with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place on the return followed by the words "By _____ _____ Husband (or Wife)," and by the signature of the signing spouse in his own right, provided that a dated statement signed by the spouse who is signing the return is attached to and made a part of the return stating—

(i) The name of the return being filed,

(ii) The taxable year,

(iii) The reason for the inability of the spouse who is incapacitated to sign the return, and

(iv) That the spouse who is incapacitated consented to the signing of the return.

The taxpayer and his agent, if any, are responsible for the return as made and incur liability for the penalties provided for erroneous, false, or fraudulent returns. * * *

PAR. 2. Paragraph (a)(2) of § 1.6013–1 is amended to read as follows:

§ 1.6013–1 Joint returns.

(a) *In general.* * * *

(2) A joint return of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of paragraph (a)(5) of § 1.6012–1, relating to returns made by agents, shall apply where one spouse signs a return as agent for the other, or where a third party signs a return as agent for one or both spouses.

* * * * *

PAR. 3. Paragraph (f) of § 1.6015(a)–1 is amended to read as follows:

§ 1.6015(a)–1 Declaration of estimated income tax by individuals.

* * * * *

(f) *Declarations made by agents.*—The declaration of income may be made by an agent if, by reason of disease or injury, the person liable for the making of the declaration is unable to make it. The declaration may also be made by an agent if the taxpayer is unable to make the declaration by reason of continuous absence from the United States (including Puerto Rico as if a part of the United States) for a period of at least 60 days prior to the date prescribed by law for making the declaration. In addition, a declaration may be made by an agent if the taxpayer requests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the declaration, and such district director determines that good cause exists for permitting the declaration to be so made. However, assistance in the preparation of the declaration may be rendered under any circumstances. Whenever a declaration is made by an agent it must be accompanied by a power of attorney (or copy thereof) authorizing him to represent his principal in making, executing, or filing the declaration. A form 2848, when properly completed, is sufficient. In addition, where one spouse is physically unable by reason of disease or injury to sign a joint declaration, the other spouse may, with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place in the declaration followed by the words "By ---------- Husband (or Wife)", and by the signature of the signing spouse in his own right, provided that a dated statement signed by the spouse who is signing the declaration is attached to and made a part of the declaration stating—

(1) The name of the declaration being filed,

(2) The taxable year,

(3) The reason for the inability of the spouse who is incapacitated to sign the declaration, and

(4) That the spouse who is incapacitated consented to the signing of the declaration.

The taxpayer and his agent, if any, are responsible for the declaration as made and incur liability for the penalties provided for erroneous, false, or fraudulent declarations.

PAR. 4. Paragraph (d) of § 1.6015(b)–1 is amended to read as follows:

§ 1.6015(b)–1 Joint declaration by husband and wife.

* * * * *

(d) *Signing of declaration.*—A joint declaration of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of paragraph (f) of § 1.6015(a)–1, relating to returns made by agents, shall apply where one spouse signs a declaration as agent for the other, or where a third party signs a declaration as agent for one or both spouses.

Because the amendments contained in this Treasury decision are concerned with procedural matters, it is found unnecessary to issue it with notice and public procedure thereon under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of subsection (d) of that section.

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

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

Approved: April 30, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.73–8978 Filed 5–4–73;8:45 am]

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 7276]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Filing of Consolidated Returns With Respect to Railroad Retirement Taxes

This document contains an amendment to the Employment Tax Regulations (26 CFR part 31) to permit the filing of consolidated returns by employers with respect to taxes imposed by the Railroad Retirement Tax Act, if authorized by the Commissioner of Internal Revenue. Prior to this amendment, the regulations provided that consolidated returns of employment taxes of two or more employers were not permitted.

The use of this method of reporting will reduce the number of forms CT–1 filed and simplify reporting requirements for the taxpayers concerned.

In order to permit the filing of consolidated returns with respect to railroad retirement taxes under procedures authorized by the Commissioner of Internal Revenue, paragraph (a) of § 31.6011(a)–7 of the Employment Tax Regulations (26 CFR part 31) is amended to read as follows:

§ 31.6011(a)–7 Execution of returns.

(a) *In general.*—Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the district director and if such return includes all taxes required to be reported by such person on such return for the period covered by the return. Only one return on any one prescribed form for a return period shall be filed by or for a taxpayer. Any supplemental return made on such form in accordance with § 31.6205–1 shall constitute a part of the return which it supplements. Except as may be provided under procedures authorized by the Commissioner with respect to taxes imposed by the Railroad Retirement Tax Act, consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation. For provisions relating to the filing of returns of the taxes imposed by the Federal Insurance Contributions Act and of income tax withheld under section 3402 in the case of governmental employers, see §§ 31.3122 and 31.3404–1.

* * * * *

Because this Treasury decision will not be detrimental to any taxpayer, it is hereby found unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. section 553(b), or subject to the effective date limitation of 5 U.S.C. section 553(d).

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

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

Approved April 30, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.73–8980 Filed 5–4–73;8:45 am]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7275]

PART 301—PROCEDURE AND ADMINISTRATION

Miscellaneous Amendments

The regulations on procedure and administration (26 CFR part 301) under sections 6039, 6052, and 6163(b) of the Internal Revenue Code of 1954 are amended by this document to conform to sections 204(c)(1), 221(b)(1), and 240(a) of the Revenue Act of 1964 (78 Stat. 37, 73, and 129).

The regulations adopted by this Treasury decision are not substantive in nature but merely set forth the statutory provisions of the Internal Revenue Code of 1954 amended or added by the abovementioned sections of the Revenue Act of 1964 and, where necessary, provide cross references to substantive regulations.

The regulations on procedure and administration (26 CFR part 301) are amended as follows:

PARAGRAPH 1. There are inserted immediately after § 301.6038–1 the following new sections:

§ 301.6039 Statutory provisions; information required in connection with certain options.

SEC. 6039.—*Information required in connection with certain options*—(a) *Requirement of reporting.*—Every corporation—

(1) Which in any calendar year transfers a share of stock to any person pursuant to such person's exercise of a qualified stock option or a restricted stock option, or

(2) Which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock—

(A) Acquired by the transferor pursuant to his exercise of an option described in section 423(c) (relating to special rule where option price is between 85 and 100 percent of value of stock), or

(B) Acquired by the transferor pursuant to his exercise of a restricted stock option described in section 424(c)(1) (relating to options under which option price is between 85 and 95 percent of value of stock), shall, for such calendar year, make a return at such time and in such manner, and setting forth such information, as the Secretary or his delegate may by regulations prescribe. For purposes of the preceding sentence, any option which a corporation treats as a qualified stock option, a restricted stock option, or an option granted under an employee stock purchase plan, shall be deemed to be such an option. A return is required by reason of a transfer described in paragraph (2) of a share only with respect to the first transfer of such share by the person who exercised the option.

(b) *Statements to be furnished to persons with respect to whom information is furnished.*—Every corporation making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement setting forth such information as the Secretary or his delegate may by regulations prescribe. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) *Identification of stock.*—Any corporation which transfers any share of stock pursuant to the exercise of an option described in subsection (a)(2) shall identify such stock in a manner adequate to carry out the purposes of this section.

(d) *Cross references.*—For definition of—

(1) The term "qualified stock option," see section 422(b).

(2) The term "employee stock purchase plan," see section 423(b).

(3) The term "restricted stock option," see section 424(b).

(Sec. 6039 as added by sec. 221(b)(1), Rev. Act. 1964 (78 Stat. 73).)

§ 301.6039–1 Information returns and statements required in connection with certain options.

For provisions relating to information returns and statements required in connection with certain options, see §§ 1.6039–1 and 1.6039–2 of this chapter (Income Tax Regulations).

PAR. 2. There are inserted immediately after § 301.6051–1 the following new sections:

§ 301.6052 Statutory provisions; returns regarding payment of wages in the form of group-term life insurance.

SEC. 6052. *Returns regarding payment of wages in the form of group-term life insurance*—(a) *Requirement of reporting.*—Every employer who during any calendar year provides group-term life insurance on the life of an employee during part or all of such calendar year under a policy (or policies) carried directly or indirectly by such employer shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the cost of such insurance and the name and address of the employee on whose life such insurance is provided, but only to the extent that the cost of such insurance is includible in the employee's gross income under section 79(a). For purposes of this section, the extent to which the cost of group-term life insurance is includible in the employee's gross income under section 79(a) shall be determined as if the employer were the only employer paying such employee remuneration in the form of such insurance.

(b) *Statements to be furnished to employees with respect to whom information is furnished.*—Every employer making a return under subsection (a) shall furnish to each employee whose name is set forth in such return a written statement showing the cost of the group-term life insurance shown on such return. The written statement required under the preceding sentence shall be furnished to the employee on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(Sec. 6052 as added by sec. 204(c)(1), Rev. Act. 1964 (78 Stat. 37).)

§ 301.6052–1 Information returns and statements regarding payment of wages in the form of group-term life insurance.

For provisions relating to information returns and statements required in connection with the payment of wages in the form of group-term life insurance, see §§ 1.6052–1 and 1.6052–2 of this chapter (income tax regulations).

PAR. 3. Section 301.6163 is amended by revising section 6163(b) and the historical note to read as follows:

§ 301.6163 Statutory provisions; extension of time for payment of estate tax on value of reversionary or remainder interest in property.

SEC. 6163. *Extension of time for payment of estate tax on value of reversionary or remainder interest in property.* * * *

(b) *Extension to prevent undue hardship.*—If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in subsection (a) would result in undue hardship to the estate, he may extend the time for payment for a reasonable period or periods not in excess of 3 years from the expiration of such period of postponement.

* * * * *

(Sec. 6163 as amended by sec. 66(b)(1), Technical Amendments Act 1958 (72 Stat. 1658); sec. 240(a), Rev. Act 1964 (78 Stat. 129).)

Because this Treasury decision merely sets forth statutory provisions and cross references, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of subsection (d) of such section.

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

JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

Approved April 30, 1973.

FREDERIC W. HICKMAN,
Assistant Secretary of the Treasury.

[FR Doc.73–8979 Filed 5–4–73;8:45 am]

Title 35—Panama Canal

CHAPTER I—CANAL ZONE REGULATIONS

PART 111—RULES FOR PREVENTION OF COLLISIONS

Steering and Sailing Rules

This document revises the regulation governing the speed and maneuvering of vessels in conditions of restricted visibility in Canal Zone waters. The purpose of the revision is to enable the Canal authorities to permit specially equipped vessels, or vessels assisted by specially equipped Panama Canal Company vessels, to navigate when visibility is less than 1000 feet.

Section 111.161 is amended by revising paragraph (d) and by adding a paragraph (e) as follows:

§ 111.161 Speed and maneuvering of vessels in fog, mist, etc.

* * * * *

(d) Except as provided in paragraph (e) of this section, vessels moored or at anchor shall not get underway when, because of atmospheric conditions, visibility is less than 1,000 feet and vessels underway in such conditions shall anchor or moor as soon as practicable and report immediately to the port captain by radio or other available means.

(e) Vessels specially equipped to navigate under conditions restricting visibility and which have a pilot aboard, and vessels which are assisted by Panama Canal Company vessels which are specially equipped to navigate under such conditions, and which have a pilot aboard, may, at the discretion of the Canal authorities, be navigated when visibility is less than 1,000 feet.

Effective date.—This amendment is effective July 1, 1973.

(2 C.Z.C. 1331, 76A Stat. 46; 35 CFR 3.1(a).)

Dated April 25, 1973.

ROBERT F. FROEHLKE,
Secretary of the Army.

[FR Doc.73–8957 Filed 5–4–73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Colorado 17528]

[Public Land Order 5344]

COLORADO

Withdrawal of Lands for Atomic Energy Commission

Correction

In FR Doc. 73-8389 appearing on page 10457 of the issue for Friday, April 27, 1973, the signature reading "John Kvl" should read "John Kyl".

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket 72-24; Notice 2]

PART 575—CONSUMER INFORMATION

Special Vehicles

This notice amends 49 CFR 575, Consumer Information, to require manufacturers to identify specially configured vehicles not available for purchase by the general public as special vehicles in the information submitted to the NHTSA under § 575.6(c).

A notice of proposed rulemaking to this effect was published on November 8, 1972 (37 FR 23732). As noted in that proposal, inclusion of these vehicles in compilations or rankings published by this agency as consumer information serves no beneficial purpose, and could confuse the consumer.

No comments opposed the proposal. General Motors Corp. commented that the amendment should more clearly indicate that the special vehicle identification requirements only apply to the information supplied to NHTSA under § 575.6(c). The new section reflects this suggestion.

Ford Motor Co. agreed with GM that the special vehicle identification is useful in information supplied to NHTSA. Ford also suggested, however, that consumer information on special vehicles need not be included at all in the information supplied on location to prospective purchasers in accordance with § 575.6(b). The NHTSA does not have information at present to support or repudiate this suggestion, which is beyond the scope of the proposal. If Ford or any other person wishes to petition for rulemaking on this subject, the agency will consider it for possible future rulemaking.

In response to an implied question by Truck Body and Equipment Association, Inc., the amendment does not change the applicability of the Consumer Information regulations, as set forth in subpart B of part 575.

In consideration of the foregoing, 49 CFR Part 575, Consumer Information, is amended by adding a new § 575.7 to read as follows:

§ 575.7 Special vehicles.

A manufacturer who produces vehicles having a configuration not available for purchase by the general public shall identify those vehicles when furnishing the information required by § 575.6(c).

Effective date.—June 11, 1973.

(Secs. 112, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.51.)

Issued on May 1, 1973.

JAMES E. WILSON,
Acting Administrator.

[FR Doc.73-8975 Filed 5-4-73;8:45 am]

Title 12—Banks and Banking

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 722—ADVISORY COMMITTEE PROCEDURES

Miscellaneous Amendments

On February 14, 1973, notice of proposed rulemaking concerning the advisory committee procedures of the National Credit Union Administration was published in the FEDERAL REGISTER (38 FR 4415).

This regulation implements the provisions of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770, effective January 5, 1973, and is applicable to the National Credit Union Board and to any other advisory committee subsequently established to assist the National Credit Union Administration. The regulation deals with the meetings of the National Credit Union Board, procedures to be followed by both the Board and the public, procedures for gaining access to the records to the Board, and administrative relief for denials of requests for records.

After reviewing all comments submitted by interested persons, the proposed regulation is hereby adopted, subject to the following changes:

1. In paragraph (d) of § 722.1, line 2, change the word "desigee" to read "designee".

2. In paragraph (b) of § 722.2, insert the word "general" after the word "a" in line 6.

3. In paragraph (b)(2) of § 722.3, line 6, following the period after the word "meeting", add the following sentence: "Statements may be filed with the Chairman, National Credit Union Board, National Credit Union Administration, Washington, D.C. 20456."

Effective date.—This regulation is effective May 31, 1973.

HERMAN NICKERSON, Jr.,
Administrator.

MAY 1, 1973.

[FR Doc.73-8889 Filed 5-4-73;8:45 am]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 141]

GENERAL FOREST REGULATIONS

Notice of Proposed Rulemaking

Correction

In FR Doc. 73-8318 appearing at page 9828 in the issue of Friday, April 20, 1973, the title following the signature should read "For the Assistant to the Secretary of the Interior".

Geological Survey

[30 CFR Parts 211, 216]

COAL MINING OPERATING REGULATIONS

Proposed Revision

Correction

In FR Doc. 8318 appearing at page 10685 of the issue for Monday, April 30, 1973, in the 11th and 12th lines of the fourth paragraph, the date "June 29, 1933" should read "June 29, 1973".

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

PROCESSED FRUITS AND VEGETABLES AND RELATED PRODUCTS

Regulations Governing Inspection and Certification

Notice is hereby given that the U.S. Department of Agriculture is revising the regulations governing inspection and certification of processed fruits and vegetables and related products (7 CFR 52.1-52.87) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (sec. 205, 60 Stat. 1087, et seq., as amended; 7 U.S.C. 1621 et seq.).

The Agricultural Marketing Act of 1946 provides for the issuance of official U.S. grades to designate different quality levels for the voluntary use of producers, buyers, and consumers. Official grading services are also provided for under this act upon request and payment of the fee to cover the cost of such services.

Interested persons desiring to submit written data, views, or arguments for consideration in connection with the proposal should file the same, in duplicate, not later than July 5, 1973, with the Hearing Clerk, U.S. Department of Agriculture, room 112, Administration Building, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public review at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)).

NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Statement of consideration leading to the amendment of the regulations.—The proposed amendments to the regulations governing inspection and certification include:

(1) Revised and expanded definitions of terms;

(2) Revised sampling plans;

(3) Fees and charges for inplant inspection services;

(4) An approved grademark for use in approved plants not operating under continuous inspection service;

(5) A section on debarment of service; and

(6) Adoption of the Federal Food and Drug Administration's good manufacing practices.

Over the years new terms have been incorporated into instructions and inspection contracts, or old words have taken on new meanings. To clarify the text of the regulations, and contracts, terms such as "case," "inspection service," "subordinate inspector," "lot," "plant," "approved plant" will be added or revised.

There is an increasing trend toward packing products in large bulk containers. The current sampling plan tables were not designed to handle such containers. As a result, there is a great risk of sampling error or of missing pockets of inferior production. The proposed sampling tables will effectively increase the sample size on both large and bulk containers so that much more consideration will be given to the amount of product in a lot rather than to the number of containers in the lot.

Under the proposed sampling plans, the size of a lot will be limited. Lots of unlimited size are not normally from one production run, and large lots often lack homogeneity. Thus, when lots become extremely large—with a relatively small sample taken—there is, again, a great risk of sampling error. The proposed sampling plans provide for smaller sample sizes for product produced under on-line inspection. The smaller sample is practical because the on-line inspection provides for a greater knowledge of the product from raw material through to the finished product.

The proposed revision provides for on-line sampling plans based upon a time interval rather than lot size. Time sampling would be at the option of the inspection service to better adjust to plant operating conditions and product evaluations including but not limited to situations where:

(1) It is difficult during production to make a reasonable estimate of lot size for the shift; and

(2) The product is produced in batches of uniform quality or is homogeneous and controllable at time of production.

Fees for in-plant contract inspection services will be included in the regulations for the first time. This will permit future adjustments to such fees by amendment to the regulations rather than preparation and signing of amendments to individual contracts.

The use and application of the Department's official grade and inspection marks has always been limited to plants that operate under USDA's continuous inspection service contracts. One form of official grade mark—the printed statement, "U.S. Grade A" or "U.S. Fancy" (or "U.S. Grade B"—"U.S. Choice")—would be permitted to be used on product that is inspected and certified on a lot basis, provided it was processed in a USDA approved plant. The proposal further provides that those plants operating under contract in-plant (other than continuous) inspection which requires a resident inspector may use the U.S. Grade A or U.S. Grade B statement within the shield.

A new paragraph added to the section dealing with official marks, states the prohibited uses of approved USDA grade and inspection marks. The prohibited uses are consistent with departmental policy and existing continuous inspection service contracts.

The procedural machinery for the debarment of (inspection) service has long been available for use within the USDA. To better publicize their existence, a proposed change to the regulations will specifically reference the debarment regulations and list the most common reasons for which debarment of service proceedings could be instituted.

The plant sanitation portion of the regulations governing inspection (§§ 52.81-52.87) has, in essence, been recently supplanted by new regulations issued under the Federal Food, Drug, and Cosmetic Act. Because the Food and Drug regulations—human foods; good manufacturing practice (sanitation) in manufacture, practice, packing, or holding (21 CFR part 128) (also more commonly known as "GMP's")—and the regulations governing inspection are so nearly identical, it has been determined to be in the best interest of all concerned to adopt the Food and Drug GMP's criteria for the purpose of these regulations.

The proposed revisions are as follows:

Section 52.2 is revised as follows:

§ 52.2 Terms defined.

* * * * *

Case or shipping case. Case or shipping case means a unit consisting of a given number of primary containers of the same size, the number and arrangement per unit conforming to customary trade practice. For products not physically assembled into a shipping case (i.e., stacked bright) "case" means simulating the containers in such lot into a unit consisting of the same number of primary containers corresponding to customary trade practice (or corresponding to the unit as defined above).

* * * * *

Certificate of sampling. * * *

Class. See "Grade".

* * * * *

Deviation. * * *

Grade or class. "Grade" or "class" designates a level or rank of quality.

Grader. See "Inspector".

Inspection service. Heading and text of (d) is changed to read:

Inspection service, general.

* * * * *

(d) Performance by an inspector of any related services such as observing the preparation of the product from its raw state through each step in the entire process; observing conditions under which the product is prepared, processed, and packed; or observing plant sanitation as a prerequisite to the inspection of the processed product, either on a continuous or periodic basis, or check-loading the inspected processed product in connection with the distribution or marketing thereof.

Inspection service; types of.—(a) "Lot inspection" means the inspection and grading of specific lots of processed fruits and vegetables which are located in plant warehouses, commercial storage, railway cars, trucks, or any other conveyance or storage facility. Generally under "lot inspection" the inspector does not have knowledge of conditions and practices under which the product is packed and his grading is limited to examination of the finished processed product only.

(b) "Continuous inspection" is the conduct of inspection and grading services in an approved plant whereby one or more inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products under contract and to assure compliance with sanitary requirements.

(c) "Pack certification" is the conduct of inspection and grading services in an approved plant whereby one or more inspector(s) perform inspection and grading services on designated lots. The inspector(s) may make in-process checks on the preparation and processing of products under contract but is not required to be present at all times the plant is in operation.

Inspector or grader.—"Inspector" or "grader" means * * *

Inspector in charge. * * *

Inspector, subordinate.—A "subordinate inspector" means any inspector assigned to a plant or field office to work under the direction of the inspector-in-charge.

"Inspector's aide" means any employee of the Department authorized to perform a limited number and type of duties under the close supervision of an inspector.

* * * * *

Lot.—"Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same warehouse or conveyance, or which, under in-plant (in-process) inspection, results from consecutive production within a plant, and which is available for inspection service at any one time: *Provided,* That the number of containers comprising a lot may not exceed the maximum number specified for a sample size of 60 as outlined in the sampling plans in § 52.38: *And further provided,* That (a) if the applicant requests a separate inspection certificate covering a specific portion of a lot, such portion must be separately marked or otherwise identified in such a manner as to permit sampling, inspection, and certification of such portion as a separate lot; and (b) under in-plant (in-process) inspection, the inspector is authorized to limit the number of containers of a processed product that may be included in a lot to the production of a single working shift when such production is not in compliance with specified requirements.

* * * * *

Plant.—"Plant" means the premises, buildings, structure, and equipment (including, but not being limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of fruits and vegetables, or the processed products thereof.

Plant, approved.—"Approved plant" means any plant in which the facilities, sanitation, and methods of operation have been surveyed and approved by the Administrator as suitable and adequate for inspection or grading service in accordance with this part.

* * * * *

Sample unit.—"Sample unit" means a container and/or its entire contents, a portion of the contents of one or more containers or other unit of commodity, or a composite mixture of a product to be used for inspection.

* * * * *

Section 52.4 is revised to read:

§ 52.4 Where inspection service is offered.

Inspection service may be furnished wherever any inspector or licensed sampler is available and the facilities and conditions are satisfactory for the conduct of such service. All services provided under these regulations shall be conducted without discrimination because of race, color, sex, creed, or national origin.

§ 52.11 [Amended]

In § 52.11, the reference to § 52.48 is changed to § 52.42.

§ 52.25 [Amended]

In § 52.25, the reference to § 52.48 is changed to § 52.42.

Section 52.38 is revised to read:

§ 52.38 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and useless otherwise approved by the Administrator, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable sampling plans: *Provided,* That at the discretion of the inspection service of the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirements) in the sample does not exceed the acceptance number prescribed for the sample size, the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size, the lot fails the requirement.

(c) If in the conduct of on-line in-plant inspection of a product covered by a grade standard which does not contain sampling plans, the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot, but does not equal any of the prescribed larger sample sizes, the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size, the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size, additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample exceeds the acceptance number prescribed for the next larger sample size, the lot fails the requirement.

(d) In the conduct of on-line in-plant inspection, sampling may be performed on a time interval basis. The sampling frequency shall be specified in an applicable grade standard or other procedural

instruction approved by the Administrator.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in tables I, II, III, IV, and V and (g) (1) and (2) of this section which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container, size and amount of product to be sampled.

(g) (1) *Sampling plan for dried figs.*—For each 10,000 lb (or fraction of 10,000 lb) of product—six sample units accumulated into one composite (at least 200 figs). A sample unit is approximately 35 figs. Each composite will be examined separately, and all must meet.

(2) *Sampling plan for dried fruits other than dates and figs.*—For each 15,000 lb (or fraction of 15,000 lb) of product—six sample units accumulated into one composite. A sample unit is approximately 16 oz of product. Each composite will be examined separately and all must meet.

SAMPLING PLANS AND ACCEPTANCE LEVELS

TABLE I—CANNED OR SIMILARLY PROCESSED FRUITS, VEGETABLES, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers) [1]							
Group 1, any type of container of a volume not exceeding that of a No. 303 size can.	3,000 [2]	3,001 to 12,000	12,001 to 20,000	20,001 to 84,000	84,001 to 145,000	145,001 to 228,000	228,001 to 336,000	336,001 to 480,000
Group 2, any type of container of a volume exceeding that of a No. 303 size can but not exceeding that of a No. 3 cylinder size can.	1,500 [2]	1,501 to 6,000	6,001 to 19,500	19,501 to 42,000	42,001 to 72,500	72,501 to 114,000	114,001 to 168,000	168,001 to 240,000
Group 3, any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can.	750 [2]	751 to 3,000	3,001 to 9,750	9,751 to 21,000	21,001 to 36,250	36,251 to 57,000	57,001 to 84,000	84,001 to 120,000
Group 4, any type of container of a volume exceeding that of a No. 12 size can.	Convert to equivalent No. 10's based on net weights							
Lot Inspection: Sample size (number of sample units). [3]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7
On-line in-plant inspection: Sample size (number of sample units). [3]	3	6	6	13	21	29	38	48
Acceptance number	0	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a 5 percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Or less.
[3] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents, group 4 approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

TABLE II—FROZEN OR SIMILARLY PROCESSED FRUITS, VEGETABLES, AND PRODUCTS THEREOF CONTAINING UNITS OF SUCH SIZE AND CHARACTER AS TO BE READILY SEPARABLE

Container size group	Lot size (number of containers) [4]							
Group 1, any type of container of 1 pound or less net weight.	[2] 2,400	2,401 to 9,600	9,601 to 31,200	31,201 to 67,200	67,201 to 116,000	116,001 to 182,400	182,401 to 268,800	268,801 to 384,000
Group 2, any type of container over 1 pound but not over 2½ pounds net weight.	[2] 1,200	1,201 to 4,800	4,801 to 15,600	15,601 to 33,600	33,601 to 58,000	58,001 to 91,200	91,201 to 134,400	134,401 to 192,000
Group 3, any type of container over 2½ pounds.	Convert to equivalent number of 2½-pound containers and use group 2							
Lot inspection: Sample size (number of sample units). [3]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7
On-line in-plant inspection: Sample size (number of sample units). [3]	3	6	6	13	21	29	38	48
Acceptance number	0	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a 5-percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Or less.
[3] The sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit of 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

TABLE III—CANNED, FROZEN, OR OTHERWISE PROCESSED FRUITS, VEGETABLES, RELATED PRODUCTS THEREOF OF A COMMINUTED, FLUID OR HOMOGENEOUS STATE

Container size group	Lot size (number of containers) [1]							
Group 1, any type of container of 1 pound or less.	4,500 [2]	4,501 to 18,000	18,001 to 58,500	58,501 to 126,000	126,001 to 217,000	217,001 to 342,000	342,001 to 504,000	504,001 to 720,000
Group 2, any type of container exceeding 1 pound but not exceeding 3 pounds.	3,000 [2]	3,001 to 12,000	12,001 to 39,000	39,001 to 84,000	84,001 to 145,000	145,001 to 228,000	228,001 to 336,000	336,001 to 480,000
Group 3, any type of container exceeding 3 pounds but not exceeding 10 pounds.	1,500 [2]	1,501 to 6,000	6,001 to 19,500	19,501 to 42,000	42,001 to 72,500	72,501 to 114,000	114,001 to 168,000	168,001 to 240,000
Group 4, any type of container exceeding 10 pounds.	Convert to equivalent number of No. 10's based on net weight for canned products and use group 3. Convert to equivalent number of 6-pound units on frozen products and use group 3.							
Lot inspection: Sample size (Number of sample units). [3]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7
On-line in-plant inspection: Sample size (Number of sample units). [3]	3	6	6	13	21	29	38	48
Acceptance number	0	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a 5-percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Or less.
[3] The sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Group 4—approximately 16 ounces of product. When determined by the inspector that a 16 ounce sample unit is inadequate, a larger sample unit may be substituted.

TABLE IV —DEHYDRATED (LOW-MOISTURE) FRUITS AND VEGETABLES

Container size group	Lot size (Number of containers) [1]							
Group 1, any type of container of 1 pound or less net weight.	1,800 [2]	1,801 to 7,200	7,201 to 23,400	23,401 to 50,400	50,401 to 87,000	87,001 to 130,800	130,801 to 201,600	201,601 to 288,00
Group 2, any type of container over 1 pound but not over 6 pounds net weight.	600 [2]	601 to 2,400	2,401 to 7,800	7,801 to 16,800	16,801 to 29,000	29,001 to 45,600	45,601 to 67,200	67,201 to 96,000
Group 3, any type of container over 6 pounds.	Convert to equivalent No. of 5-pound containers and use group 2							
Sample size [3]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7

[1] Under on-line in-plant inspection, a 5 percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Or less.
[3] The sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2 and 3—1 container and its entire contents for a smaller sample unit when determined by the inspector to be adequate.

TABLE V—DATES

Container size group	Lot size (number of containers) [1]							
Group 1, any type of container of 1 pound or less net weight.	2,400 [2]	2,401 to 9,600	9,601 to 31,200	31,201 to 67,200	67,201 to 116,000	116,001 to 182,400	182,401 to 268,800	268,801 to 384,000
Group 2, any type of container over 1 pound but not over 5-pounds net weight.	800 [2]	801 to 3,200	3,201 to 10,400	10,401 to 22,400	22,401 to 38,667	38,668 to 60,800	60,801 to 89,600	89,601 to 128,000
Group 3, any type of container over 5 pounds.	Convert to equivalent number of 5-pound containers and use group 2							
Sample size [3]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7

[1] Under in-line in-plant inspection, a 5 per cent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Or less.
[3] Samples consist of 25 ounce sample units, each of which may be a composite of product from a sufficient number of individual containers from 1 case to make up the weight. When previous inspection results from a particular source so indicate, 1 composite sample of 25 ounces of product may be formed from the 3 sample units in the smallest sample size, and 2 composite samples of 25 ounces each may be formed from the 6 sample units in the next to smallest sample size. Sample units in larger sample sizes may not be further composited.

Section 52.52 is amended to read as follows:

§ 52.52 Charges for inspection services on a contract basis.

(a) Irrespective of fees and charges prescribed in foregoing sections, or in this section, the Administrator may enter into contracts with applicants to perform continuous inspection services or other types of inspection services pursuant to the regulations in this part and other requirements as prescribed by the Administrator in such contract, and the charges for such inspection service provided in such contracts shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service including an appropriate overhead charge to cover as nearly as practicable administrative overhead expenses as may be determined by the Administrator.

(b) Irrespective of fees and charges prescribed in the foregoing sections, or in this section, the Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing agreement or a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service including an appropriate overhead charge to cover as nearly as practicable administrative overhead expenses as may be determined by the Administrator. Likewise, the Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with an administration of a similar program operated pursuant to the laws of any State.

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours worked with a minimum of 40 hours per week, holiday pay and night differential for each inspector and inspector's aide assigned to perform the inspection services in accordance with the following schedules:

(1) For personnel assigned on a year-round basis:

	Per hour
Inspector(s) in charge	$9.65
Subordinate inspector(s)	7.00
Inspector's aide(s)	5.30

(2) For personnel assigned on less than a year-round basis:

	Per hour
Inspector(s) in charge	$10.50
Subordinate inspector(s)	7.70
Inspector's aide(s)	5.30

(3) Travel expense: Since travel time and other travel costs in reporting to an assignment under this type agreement are covered in the hourly rate, no additional reporting charges will be made.

(4) Holiday pay: Eight hours will be charged each holiday for each person assigned, whether or not work is performed. A 50 percent additional charge will be made for each hour worked up to 8 hours. For each hour worked above 8 hours the regular hourly rate will be charged.

(5) Night differential: A 10 percent night differential charge will be made for all work performed between the hours of 6 p.m. and 6 a.m.

(6) Overtime: All overtime hours will be charged at the regular rates specified herein rather than at an increased rate.

(d) Charges for less than year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours with a minimum of 40 hours per week, holiday pay and night differential for each inspector and inspector's aide assigned to perform the inspection services in accordance with the following schedules:

(1) Each inspector assigned—first 280 hours—$15; each inspector assigned—in excess of 280 hours—411 per hour; each inspector's aide—all hours—$5.30 per hour.

(2) Travel expense: The above rates apply to hours worked on the assignment. The salary for inspectors en route and other travel expenses including per diem will not be billed for inspectors assigned on this contract.

(3) Holiday pay: In addition to the above charges, 8 hours will be charged for each person assigned each holiday whether or not work is performed. An additional 50 percent, not to exceed $5.50 per hour, will be charged for each hour worked up to 8 hours. The regular rate will be charged for all hours worked over 8 hours.

(4) Night differential: A 10 percent differential, not to exceed $1.10 per hour, will be charged for all work performed between the hours of 6 p.m. and 6 a.m.

(5) Overtime: All overtime hours will be charged at the regular rates specified herein rather than at an increased rate.

(e) No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of any contract provided for in this section or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such contract if made with a corporation for its general benefit, and shall not extend to any benefits that may accrue from the contract to a Member of, or Delegate to Congress, or a Resident Commissioner in his capacity as a farmer.

Section 52.53 is revised to read:

§ 52.53 Approved identification.

(a) *General.*—Use of the approved identification marks described and illustrated in this section is restricted to processed products that:

(1) Are clean, safe, and wholesome;

(2) Have been produced in an approved plant;

(3) Are truthfully and accurately labeled;

(4) Meet applicable fill weight, drained weight, and condition of container criteria;

(5) Meet the quality requirements for U.S. Grade C or better;

(6) Have been certified, or have been inspected and are eligible for certification, by an inspector; and, in addition, meet the specific requirements stated in paragraphs (b), (c), and (d) of this section.

(b) *Contract in-plant (continuous) inspection grade and inspection marks.*—The grade and inspection marks approved for use by plants operating under USDA continuous inspection service contracts shall be similar in form and design to the examples in figures 1 through 9 of this section.

FIGURE 1.

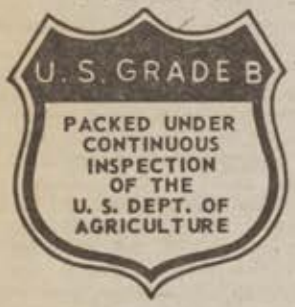


FIGURE 2.

Statement enclosed within a shield.

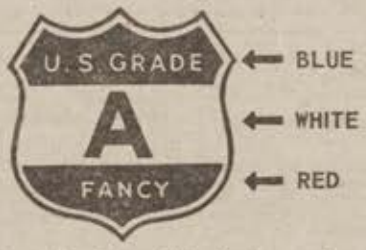
FIGURE 3.

PACKED UNDER CONTINUOUS INSPECTION OF THE U. S. DEPT. OF AGRICULTURE

Statement without the use of the shield.

FIGURE 4.

(c) *Contract inplant (other than continuous) inspection grademarks.*—The grademarks approved for use by plants operating under any type of USDA contract inspection service requiring a resident inspector shall be similar in form and design to the examples in figures 5 through 9 of this section.



Shield using red, white, and blue background or other colors appropriate for label.

FIGURE 5.

Shield with plain background.

FIGURE 6.

Shield with plain background.

FIGURE 7.

(d) *Approved plant-lot inspection grademark.*—Processed products that are produced in an approved plant and inspected and certified by an inspection of a lot basis may be labeled with the official mark illustrated in figure 8. Failure to have all lots, bearing such official marks, inspected and certified shall be cause for the debarment of services and such other actions as provided for in the Agricultural Marketing Act of 1946.

U. S. GRADE A

U. S. CHOICE

Statement without the use of the shield.

FIGURE 8.

(e) *Products not eligible for approved identification.*—Processed products which have not been packed under inspection as provided for in this section shall not be identified by approved grade or inspection marks (except honey and maple sirup which may bear such grade marks), but such products may be inspected as provided in this part and at the option of the Department may be identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) with an officially drawn sample mark similar in form and design to the example in figure 9 of this section: *Provided*, That the stamp will not be placed on shipping cases where any grade marks are on the cases or packages unless the product meets such grades.

FIGURE 9.

(f) *Removal of labels bearing approved identification.*—(1) At the time a lot of processed products, bearing approved identification, is found to be mislabeled, the processor shall separate and retain such lot for relabeling. Removal and replacement of labels shall be done, under the supervision of a USDA inspector within 10 consecutive calendar days or within such period of time as may be mutually agreed by the processor and USDA.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products have been properly labeled.

(3) Clearance for the release of the relabeled product shall be obtained, by the processor, from the inspector.

(g) *Licensing and identification of certain official devices.*—The Administrator may issue licenses permitting the manufacture, identification, and sale of any official device designated as a USDA color standard, defect guide or other similar aid under such terms and conditions as may be specified by the Administrator. Licenses shall be available to all persons meeting conditions prescribed by the Administrator, shall be nonexclusive, and shall be recoverable for cause. No person shall manufacture, identify, distribute, or sell any such official device except at the direction of or under license from the Administrator. Such official devices may be marked, tagged or otherwise designated with the prefix "USDA" together with other identifying words or symbols, as prescribed by the license.

(h) *Prohibited uses of approved identification.*—Except as specified in this section, no label or advertising material used upon, or in conjunction with, a processed product, as defined by these regulations, shall bear a brand name, trademark, product name, company name, or any other descriptive material that incorporates, resembles, simulates, or alludes to, any official U.S. Department of Agriculture certificate of quality or loading, grade mark, grade statement, continuous inspection mark, continuous inspection statement, sampling mark or sampling statement, or combinations of one or more thereof.

Section 52.54(a) is revised to read as follows:

§ 52.54 Debarment of service.

(a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the act for a specified period. The rules of practice governing withdrawal of inspection and grading services set forth in part 50 of this chapter shall be applicable to such debarment action.

(1) *Fraud or misrepresentation.*—Any misrepresentation or deceptive or fraudulent practice or act found to be made or committed in connection with:

(i) The making or filing of an application for any inspection service;

(ii) The submission of samples for inspection;

(iii) The use of any inspection report or any inspection certificate, or appeal inspection certificate issued under the regulations in this part;

(iv) The use of the words "Packed under continuous inspection of the U.S. Department of Agriculture," any legend signifying that the product has been officially inspected, any statement of grade or words of similar import in the labeling or advertising of any processed product;

(v) The use of a facsimile form which simulates in whole or in part any official U.S. certificate for the purpose of purporting to evidence the U.S. grade of any processed product.

(2) *Willful violation of the regulations in this subpart.*—Willful violation of the provisions of this part or the act.

(3) *Interfering with an inspector, inspector's aide, or licensed sampler.*—Any interference with, obstruction of, or attempted interference with, or attempted obstruction of any inspector, inspector's aide, or licensed sampler in the performance of his duties by intimidation, threat, assault, bribery, or any other means—real or imagined.

* * * * *

§ 52.56 [Revoked]

Section 52.56 is revoked.

Sections 52.81 through 52.83 are revised to read as follows:

REQUIREMENTS FOR PLANTS USING CONTRACT INSPECTION SERVICES[7]

§ 52.81 Plant survey.

Prior to the inauguration of inspection services, and at such intervals as may be deemed necessary or appropriate, the Administrator will make, or cause to be made, a survey and inspection of the plant where such inspection services are to be performed to determine whether the plant and methods of operation are suitable and adequate for the performance of such services in accordance with:

(a) The regulations in this part, including, but not limited to, the requirements contained in §§ 52.81 through 52.83; and

(b) The terms and provisions of any contract pursuant to which the service is to be performed.

§ 52.82 Basis of survey and plant inspection.

The plant survey and inspection will be based on the regulations issued under the Federal Food, Drug, and Cosmetic Act—human foods; good manufacturing practice (sanitation) in manufacture, processing, packing, or holding (21 CFR 128)—as may be modified or augmented by the Federal Food and Drug Administration, U.S. Department of Health, Education, and Welfare or the Administrator of the Agricultural Marketing Service.

§ 52.83 Reporting results of the plant survey and inauguration of inspection services.

(a) Results of the plant survey shall be reported in writing to a designated plant official.

(b) When the plant meets the requirements for the survey, inspection services may be inaugurated at a time mutually satisfactory to the plant management and USDA.

(c) When the plant fails the requirements of the survey, contract services shall be withheld until corrective action is completed to the satisfaction of the USDA.

Dated April 27, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-8643 Filed 5-4-73;8:45 am]

[7] Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

[7 CFR Part 52]

STANDARDS FOR GRADES OF CANNED LEAFY GREENS[1]

Classification of Defects; Correction

In the notice of proposed rulemaking for amendment to the U.S. Standards for Grades of Canned Leafy Greens published in the FEDERAL REGISTER of April 13, 1973 (38 FR 9302) the following correction is made:

In § 52.6090, table III appearing on page 9303 under the quality factor "Extraneous Plant Material" and following the defect description "Root Crown: Any significant portion of the solid area of the plant between the root and attached leaves" classification of the defect now reading as scoreable under minor is changed to read as scoreable under major.

Dated May 1, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-8922 Filed 5-4-73;8:45 am]

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

[7 CFR Part 953]

IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Notice of Proposed Expenses and Rate of Assessment

Notice is hereby given of a proposal regarding expenses and rate of assessment of the Southeastern Potato Committee for the 1973 crop-year pursuant to Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR pt. 953). This marketing order program regulates the handling of Irish potatoes grown in certain designated counties of Virginia and North Carolina effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The committee unanimously recommended a budget of $11,125 for the fiscal period ending March 31, 1974. An assessment rate of one-fourth c/cwt was also unanimously recommended to provide sufficient funds for proposed expenditures. Expenses in that amount and the

assessment rate are specified in the proposal hereinafter set forth.

All persons who desire to submit written data, views, or arguments in connection with this proposal should file the same, in quadruplicate, with the Hearing Clerk, room 112-A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 14, 1973. All written submissions made pursuant to this notice will be made available for public inspection at the office of the hearing clerk during regular business hours (7 CFR 1.27(b)). The proposal is as follows:

§ 953.210 Expenses and rate of assessment.

(a) The expenses the Secretary finds may be necessary to be incurred by the Southeastern Potato Committee, established pursuant to Marketing Agreement No. 104, as amended and this part, to enable such committee to carry out its functions pursuant to provisions of the aforesaid amended marketing agreement and order, during the fiscal period ending March 31, 1974, will amount to $11,125.

(b) The rate of assessment to be paid by each handler in accordance with the amended Marketing Agreement and this part shall be one-fourth c/cwt of potatoes handled by him as the first handler thereof during the said fiscal period: *Provided*, That potatoes for canning, freezing, and other processing shall be exempt.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve.

(d) Terms used in this section shall have the same meaning as when used in the said amended marketing agreement and this part.

Dated May 1, 1973.

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

[FR Doc.73-8921 Filed 5-4-73;8:45 am]

[7 CFR Part 1006]

MILK IN UPPER FLORIDA MARKETING AREA

Termination of Proceeding on Proposed Suspension of the Order

Notice is hereby given pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), of termination of proceeding on proposed suspension of the order regulating the handling of milk in the Upper Florida marketing area. The notice of proposed suspension was issued March 21, 1973 (38 FR 7810). Interested parties were invited to submit views, data, or arguments to the hearing clerk not later than April 2, 1973.

Statement of consideration.—Suspension of the order was requested by the Upper Florida Milk Producers Association, whose members constitute a majority of the producers on the market. Subsequent to the issuance of the notice of proposed suspension, the cooperative advised the Department that it no longer desires that the order be suspended.

It therefore is found and determined that the proposed suspension of the Upper Florida order should not be effectuated; and the proceeding begun in this matter on March 21, 1973, should be and is hereby terminated.

Signed at Washington, D.C., May 2, 1973.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.73-8973 Filed 5-4-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 273]

BIOLOGICAL PRODUCTS

Proposed Requirements Regarding Temperatures During Shipment of Live Measles, Mumps, and Rubella Virus Vaccines

Correction

In FR Doc. 73-6391 appearing on page 8600 in the issue of Wednesday, April 4, 1973, in the table in § 273.505 the fourth item in the right-hand column, reading "20° C. or colder" should read "10° C. or colder".

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-GL-8]

FEDERAL AIRWAY SEGMENTS

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to part 71 of the Federal Aviation regulations that would designate VOR Federal airways from Bemidji, Minn., to Roseau, Minn., and also from Grand Forks, N. Dak., to Roseau, Minn.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon, Des Plaines, Ill. 60018. All communications received on or before June 6, 1973, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The airspace action proposed in this docket would:

a. Extend V-171 from Grand Forks, N. Dak., direct to Roseau, Minn.

b. Designate V-254 from Bemidji, Minn., direct to Roseau, Minn.

This action would extend en route service to Roseau from Grand Forks and Bemidji.

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

Issued in Washington, D.C., on April 30, 1973.

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

[FR Doc.73-8933 Filed 5-4-73;8:45 am]

[14 CFR Part 101]

[Docket No. 12800; Notice No. 73-15]

OBJECTS DROPPED FROM AIRCRAFT

Notice of Proposed Rulemaking

The Federal Aviation Administration is considering amending part 101 of the Federal Aviation regulations to include a provision governing the dropping of objects from aircraft under that part and to make certain other amendments.

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, attention: Rules docket, AGC-24, 800 Independence Avenue SW., Washington, D.C. 20591. All communications received on or before July 23, 1973, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments, in the rules docket for examination by interested persons.

Presently, § 91.13 regulates the dropping of objects from aircraft operating under part 91, but there is no specific provision governing the dropping of objects during operations conducted under part 101. Considering the increasing number of operations involving objects dropped from moored balloons, kites, unmanned rockets, and unmanned free balloons, the FAA believes that these activities should now be regulated. It is believed that users of the navigable airspace, and that persons and property on the ground, should enjoy the same degree of safety with respect to objects dropped during part 101 operations as they enjoy with respect to objects dropped from part 91 aircraft. Therefore, it is proposed to include within part 101 a provision governing the dropping of

objects during operations conducted under that part.

Also, it is proposed to amend part 101 by eliminating all reference to "night" and "day" in pertinent sections and substituting references to "sunset" and "sunrise." The use of the words "night" and "day" makes compliance with the rules under this part unnecessarily difficult. Generally, Federal Aviation Regulations use the terms "sunset" and "sunrise" to specify those periods for which lighting is required. This makes compliance less difficult since "sunset/sunrise" tables are distributed to all ATC facilities and the information is readily accessible to airspace users.

This proposal would promote consistency within the regulations, clarify intent, and enhance compliance without creating any additional burden on airspace users.

In addition, it is proposed to amend § 101.35(b) to clarify its intent. In part, the present rule requires that no person may operate an unmanned free balloon between sunset and sunrise unless the balloon and its attachments and payload are lighted so as to be visible for at least 5 miles. It is not intended to require that the balloon, its attachments and payload themselves be visible for at least 5 miles, but to require lights attached thereto to be visible for at least 5 miles. Further, it is proposed to require that the lights have a flash frequency between 40 and 100 cycles per minute (c/m).

(Secs. 307, 313(a), Federal Aviation Act of 1958, 49 U.S.C. 1348, 1354(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c).)

In consideration of the foregoing, it is proposed that part 101 of the Federal Aviation regulations be amended as follows:

1. Section 101.7 would be amended by designating the present provisions as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 101.7 Hazardous operations.

* * * * *

(b) No person operating any moored balloon, kite, unmanned rocket, or unmanned free balloon may allow an object to be dropped therefrom, if such action creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

§ 101.17 [Amended]

2. Section 101.17(a) would be amended by striking out the words " during the night" and inserting the words "between sunset and sunrise" in place thereof.

3. Section 101.17(b) would be amended by striking out words "by day" and inserting the words "between sunrise and sunset" in place thereof.

§ 101.23 [Amended]

4. Section 101.23(h) would be amended by striking out the words "at night" and insetring the words "between sunset and sunrise" in place thereof.

§ 101.35 [Amended]

5. Section 101.35(b) would be amended to read as follows:

(b) No person may operate an unmanned free balloon below 60,000 feet standard pressure altitude between sunset and sunrise (as corrected to the altitude of operation) unless the balloon and its attachments and payload, whether or not they become separated during the operation, are equipped with lights that are visible for at least 5 miles and have a flash frequency of at least 40 and not more than 100 c/m.

6. Section 101.35(d) would be amended by striking out the words "during the day" and inserting the words "between sunrise and sunset" in place thereof.

Issued in Washington, D.C., on April 27, 1973.

RAYMOND G. BELANGER,
Acting Director,
Air Traffic Service, AT-1.

[FR Doc.73-8932 Filed 5-4-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 50]

NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

Proposed Sulfur Oxides Secondary Standard

National ambient air quality standards established by the Environmental Protection Agency (EPA) pursuant to section 109 of the Clean Air Act include primary and secondary standards for sulfur oxides (sulfur dioxide), as set forth at 40 CFR 50.4 and 50.5, respectively. The secondary standards include an annual arithmetic mean concentration of sulfur dioxide (i.e., annual standard) and a maximum 3-hour concentration (3-hour standard) not to be exceeded more than once per year. Under section 109, national ambient air quality standards must be based on air quality criteria issued pursuant to section 108. Air quality criteria for sulfur oxides was issued in January 1969.

Based on considerations described below, the Administrator has concluded that the secondary annual standard is not justified by the air quality criteria document. Accordingly, notice is hereby given that the Administrator is proposing to revise the secondary standards by revoking the annual standard. It is emphasized that this proposal does not affect the primary (health-related) ambient air quality standards for sulfur dioxide or the secondary 3-hour standard. The primary standards include an annual arithmetic mean of 80 micrograms per cubic meter (0.03 part per million) and a maximum 24-hour concentration not to be exceeded more than once per year of 365 micrograms per cubic meter (0.14 part per million). The secondary annual standard, which is the only portion affected by this proposed revocation, is an annual arithmetic mean of 60 micrograms per cubic meter (0.02 part per million). The secondary 3-hour standard is 1,300 micrograms per cubic meter (0.5 part per million) not to be exceeded more than once per year.

Comments on this proposal to withdraw the secondary annual standard are invited. Interested persons may participate in this rulemaking proceeding by submitting written comments in triplicate to the Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, N.C. 27711. All relevant comments received not later than 45 days after publication of this proposal will be considered. All comments will be made available for public inspection at the Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460.

Final regulations, modified as the Administrator deems appropriate after consideration of comments, will be promulgated as soon as practicable after such consideration, but in no event later than 90 days after the date of this proposal.

Explanatory statement.—Section 109 of the Clean Air Act, 42 U.S.C. section 1857c-4, requires that each secondary ambient air quality standard shall specify, for the pollutant involved, a level of air quality "the attainment and maintenance of which, in the judgment of the Administrator, based on air quality criteria issued under section 108 is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air." The term "public welfare" is defined by section 302 (h), 42 U.S.C. section 1857h(h), to include "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

Although there is some evidence that sulfur dioxide has adverse effects on public welfare parameters other than vegetation, the data now available are insufficient as a basis for development of air quality criteria which would accurately reflect the relationship between ambient air concentrations of sulfur dioxide and adverse effects on such other parameters. Accordingly, the secondary sulfur oxides standards were based on information on adverse effects on vegetation, as set forth in the air quality criteria document.

More specifically, the existing annual standard is based primarily on a study conducted by Linzon,[1] which is discussed in the criteria document at pages 65 and 160. It assessed the effect on white pine growth of sulfur dioxide concentrations present during a growing season. Further analysis of Linzon's data in the light of other scientific literature now available indicates that it cannot properly be concluded that the injury reported in

[1] Linzon, S. N., "The Influence of Smelter Fumes on the Growth of White Pine in the Sudbury Region," Ontario Department of Lands and Forest, Ontario Department of Mines, Toronto, 1958.

that study resulted from the average sulfur dioxide concentration over the entire growing season, as distinguished from the individual short-term peak concentrations.

In addition, reports on other studies, many of which were published after completion of the criteria documents, suggest that short-term peak concentrations of sulfur dioxide may be more important as a cause of injury to vegetation than is the annual average concentration. There is some question as to whether such injury to vegetation may result from short-term exposure to sulfur dioxide concentrations which do not exceed the 3-hour standard currently in effect under 40 CFR 50.5. Accordingly, EPA has been evaluating the results of these studies for the purpose of determining whether they provide an adequate and appropriate basis for revision of that portion of the sulfur oxides criteria document which deals with adverse effects on vegetation. A determination on this question will be made as soon as practicable.

It should be emphasized that the proposed revocation of the annual standard does not affect the 3-hour standard, which would remain in effect and would have to be attained and maintained to the same extent as all other national ambient air quality standards. Where State plans for implementation of the national primary and secondary ambient air quality standards for sulfur oxides have been approved by the Administrator, their status is not affected by the proposed revocation of the annual standard. Several States have been granted an extension of time for submittal of State plans for implementation of the secondary standards; the Administrator will provide, in the near future, guidance on appropriate action with respect to formulation of these State plans.

This notice of proposed rulemaking is issued under authority of sections 109 (a)2, 109(b)2, and 301(a) of the Clean Air Act as amended (42 U.S.C. section 1857C-4 (a)(2) and (b)2 and 1857g (a)).

It is proposed to amend part 50, title 40, Code of Federal Regulations, by revising § 50.5 as follows:

§ 50.5 National secondary ambient air quality standard for sulfur oxides (sulfur dioxide).

The national secondary ambient air quality standards for sulfur oxides measured as sulfur dioxide for the reference method described in appedix A to this part, or by an equivalent method are (a) 1,300 micrograms per cubic meter (0.5 p.p.m.)—maximum 3-hour concentration not to be exceeded more than once per year.

Dated May 3, 1973.

ROBERT W. FRI,
Acting Administrator.

[FR Doc.73-9041 Filed 5-4-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-27]

SHIPPING COORDINATING COMMITTEE

Notice of Meeting

A meeting of the Shipping Coordinating Committee will be held at 9:30 a.m. on Wednesday, May 23, 1973, in room 10330, Coast Guard Headquarters, 400 Seventh Street SW., Washington, D.C. The meeting will be open to the public.

The meeting will consider the preparations for the 30th session of the Intergovernmental Maritime Consultative Organization (IMCO) Council, scheduled to meet in London, June 4–8, 1973.

For further information on the subject matter of the meeting, contact Mr. Richard K. Bank, Executive Secretary, Shipping Coordinating Committee, Department of State, Washington, D.C. 20520, telephone (area code 202) 632–0704.

Dated April 26, 1973.

RONALD A. WEBB,
Chairman,
Shipping Coordinating Committee.

[FR Doc.73-8919 Filed 5-4-73;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Order No. 67 (Rev. 10)]

SIGNING THE COMMISSIONER'S NAME OR ON HIS BEHALF

Delegation Order

Effective 12:01 a.m., e.d.t., May 1, 1973, all outstanding authorizations to sign the name of, or on behalf of, Johnnie M. Walters, Commissioner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Raymond F. Harless, Acting Commissioner of Internal Revenue.

This order supersedes Delegation Order No. 67 (Rev. 9) issued August 6, 1971.

Date of issue May 1, 1973.

Effective date May 1, 1973.

[SEAL] RAYMOND F. HARLESS,
Acting Commissioner.

[FR Doc.73-8935: Filed 5-4-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD COMMITTEES

Notice of Meetings

APRIL 30, 1973.

The Munitions-Armament Panel will hold closed meetings on May 9 and 10, 1973, from 8 a.m. until 4 p.m., at the Pentagon, Washington, D.C., room 4E-343.

The Panel will receive classified briefings.

The Electronics Systems Division Advisory Group will hold a closed meeting on May 10, 1973, from 8:30 a.m. until 5 p.m., at Hanscom Field, Bedford, Mass.

The agenda of the meeting will be a review of various classified ESD programs.

The ad hoc committee on engine development will hold closed meetings on May 14, 1973, from 8:30 a.m., until 5 p.m., and on May 15, 1973, from 8:30 a.m. until 4 p.m., at Wright-Patterson Air Force Base, Ohio.

The committee will receive classified briefings on topics pertinent to Air Force engine development programs.

For additional information on these meetings, telephone 202–697–4648.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-8886 Filed 5-4-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Oil and Gas

NATIONAL PETROLEUM COUNCIL

Notice of Meeting

Pursuant to Executive Order No. 11686, notice is hereby given of the following meeting:

National Petroleum Council meeting, May 10, 1973, 9 a.m., Department of the Interior Auditorium, Washington, D.C. The agenda will include reports on the U.S. energy outlook, emergency preparedness, petroleum resources under the ocean floor, and factors affecting U.S. petroleum refining.

The purpose of the National Petroleum Council is solely to advise, inform, and make recommendations to the Secretary of the Interior on any matter relating to petroleum or the petroleum industry.

Dated May 30, 1973.

DUKE R. LIGON,
Director.

[FR Doc.73-8904 Filed 5-4-73;8:45 am]

Office of the Secretary

COLORADO RIVER INDIAN RESERVATION—ARIZONA—CALIFORNIA

Ordinance Legalizing the Introduction, Sale, or Possession of Intoxicants

In accordance with authority delegated by the Secretary of the Interior to the Assistant to the Secretary for Indian Affairs in Amendment 2 to Secretary Order 2950, and in accordance with the act of August 15, 1953, Public Law 277, 83d Congress, 1st Session (67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian Liquor Laws on the Colorado River Indian Reservation, Arizona and California, was adopted on April 15, 1954, by the Colorado River Tribal Council, which has jurisdiction over the area of Indian country included in the ordinance, reading as follows:

ORDINANCE NO. 11

Relative to making legal the sale, possession, et cetera, of intoxicating beverages within that portion of the Colorado River Reservation lying in California.

This ordinance is the result of a popular referendum held by the Colorado River Tribes April 9 and 10, 1954, during which a total of 170 votes were cast by qualified voters, of which 99 votes were in favor and 71 against. Out of a total of 441 eligible voters this represents more than 30 percent as having voted, hence meeting the requirements of article IX of the constitution and by-laws of the Colorado River Indian Tribes relating to referendum procedures.

Be it enacted by the Tribal Council of the Colorado River Indian Tribes as follows:

1. That all tribal laws, codes, and ordinances, including but not limited to section 21 of chapter 5 of the Tribal Law and Order code, which prohibit or penalize the possession, sale, trade, transportation, or manufacture of intoxicating beverages be and hereby are repealed and made inoperative in respect of every part of the Colorado River Indian Reservation which is in California.

2. That the introduction, sale, and possession of intoxicating beverages shall be lawful in every part of the Colorado River Indian Reservation which is in California to the extent permitted by laws of California.

Ordinance No. 11 was previously published on page 3630 of the June 18, 1954, FEDERAL REGISTER (19 FR 3630). The introduction, sale, and possession of intoxicating beverages on the Colorado River Indian Reservation was legalized on the date of publication (June 18, 1954) and the legalization is still in effect. Ordinance No. 11 is being recertified and republished at the request of the Colorado River Indian Tribes.

WILLIAM L. ROGERS,
Deputy Assistant Secretary of the Interior.

MAY 1, 1973.

[FR Doc.73-8903 Filed 5-4-73;8:45 am]

WILLIAM A. DAVIS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and

Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of April 20, 1973.

Dated April 20, 1973.

WILLIAM ANGOS DAVIS.

[FR Doc.73-8950 Filed 5-4-73;8:45 am]

EDWARD GLASS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of April 12, 1973.

Dated April 12, 1973.

E. C. GLASS.

[FR Doc.73-8951 Filed 5-4-73;8:45 am]

DONALD B. GREGG

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of April 14, 1973.

Dated April 14, 1973.

DONALD B. GREGG.

[FR Doc.73-8952 Filed 5-4-73;8:45 am]

ERNEST H. HILL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of April 19, 1973.

Dated April 19, 1973.

ERNEST H. HILL.

[FR Doc.73-8953 Filed 5-4-73;8:45 am]

EVAN W. JAMES

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) Crown Zellerbach — common stock. United States Steel—common stock.
(3) No change.
(4) No change.

This statement is made as of April 10, 1973.

Dated April 10, 1973.

EVAN W. JAMES.

[FR Doc.73-8954 Filed 5-4-73;8:45 am]

NICHOLAS A. RICCI

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) Delete: Standard Oil of California; Texaco. Add: First Wisconsin Mortgage Trust; MIL-JAM Corp. (A Jamaican corp.).
(3) No change.
(4) No change.

This statement is made of April 11, 1973.

Dated April 11, 1973.

NICHOLAS A. RICCI.

[FR Doc.73-8955 Filed 5-4-73;8:45 am]

JOHN ROLFING

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) No change.
(2) No change.
(3) No change.
(4) No change.

This statement is made as of April 10, 1973.

Dated April 11, 1973.

JOHN ROLFING.

[FR Doc.73-8956 Filed 5-4-73;8:45 am]

DEPARTMENT OF AGRICULTURE

ADVISORY COMMITTEE ON HOG CHOLERA ERADICATION

Notice of Meeting

A meeting of the Advisory Committee on Hog Cholera Eradication will be held at 10 a.m., on May 22, 1973, at the Muehlebach Hotel, Kansas City, Mo.

The purpose of the committee is to advise and counsel the Secretary of Agriculture regarding program operations or measures to eradicate hog cholera from this country.

Topics of discussion will include a review of program progress, problems, and recommended actions.

The meeting is open to the public, however, space and facilities are limited. Comments of interested persons may be filed with the committee before or after the meeting.

Dated May 2, 1973.

F. J. MULHERN,
Chairman.

[FR Doc.73-8974 Filed 5-4-73;8:45 am]

Agricultural Marketing Service

MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA AND MINNEAPOLIS-ST. PAUL, MINN., MARKETING AREAS

Determination of Equivalent Prices in April 1973 for New York Grade AA (93-Score) Butter

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable provisions of the orders, as amended, regulating the handling of milk in the aforesaid milk marketing areas, hereinafter referred to as the "orders", it is hereby found and determined as follows:

(1) The daily wholesale bulk selling price for New York grade AA (93-score) butter, as reported by the Dairy and Poultry Market News Service, U.S. Department of Agriculture Agricultural Marketing Service, was available and reported on only one regular reporting day during April 1973. Dairy and Poultry Market News Service regularly reports wholesale bulk butter prices for New New York grade AA (93-score) butter on Tuesday, Thursday, and Friday of each week. The average of such prices during the month is used to determine the class II butterfat differentials pursuant to the two specified milk orders. The single price reported during April 1973 is not a dependable representation of an average butter price for the month. It is therefore determined to be necessary to provide equivalent prices for those reporting days on which the wholesale bulk butter prices for New York grade AA (93-score) were lacking.

Such equivalent prices have been determined based on spot market prices for New York Grade AA (93-score) butter on the New York Mercantile Exchange plus a normal differential between such spot prices and wholesale bulk selling prices. Using these equivalent prices in conjunction with the single

wholesale bulk New York Grade AA (93-score) butter price reported during the month it is hereby determined that the average New York Grade AA (93-score) butter price for April 1973, for purposes specified in the aforesaid orders is 62.781 cents.

(2) Notice of proposed rulemaking, public procedure thereon, and 30 days prior notice of the effective date hereof are impracticable, unnecessary and contrary to the public interest, in that (a) the daily wholesale bulk selling price for New York Grade AA (93-score) butter has been reported by the Dairy and Poultry Market News Service, U.S. Department of Agriculture, Agricultural Marketing Service on only one day during the month of April 1973, and such single price is not a representative price for the entire month of April 1973; (b) the need for determination of equivalent prices could not be known until the end of April 1973, and such determination could not be made until all available data for the month had been obtained; (c) the determination of such equivalent prices is necessary to make possible the announcement of butterfat differentials pursuant to the orders on May 5, 1973; (d) this determination is necessary to give notice to all interested persons that the single New York Grade AA (93-score) wholesale bulk butter price reported by the Dairy and Poultry Market News Service during April 1973, will not be the price used in computing butterfat differentials under the aforesaid orders; and (e) this determination does not require substantial or extensive preparation by any person.

Signed at Washington, D.C., on May 2, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-8925 Filed 5-4-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-345]

AMERADA HESS CORP.

Notice of Application

Notice is hereby given that application has been filed under the Merchant Marine Act of 1936, as amended, for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on June 30, 1973 (unless extended only for subsidized voyages in progress on that date). Inasmuch as the blow listed applicant, and/or related persons or firms, employ ships in the domestic intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, will be required if its application for operating-differential subsidy is granted.

The following applicant has requested permission involving the domestic intercoastal or coastwise service described below:

Name of applicant.—Amerada Hess Corp.

Description of domestic service and vessels.—The applicant, Amerada Hess, has requested written permission for any of its vessels listed below while not on subsidy to operate in coastwise trade between the U.S. Gulf and Atlantic:

Hess Petrol	Hess Bunker
Hess Trader	Hess Voyager

Written permission is now required by the applicant, Amerada Hess, notwithstanding that a voyage in the proposed service for which subsidy is sought would not be eligible for subsidy if the vessel carried domestic commerce of the United States on that voyage.

Interested parties may inspect this application in the Office of the Secretary, Maritime Administration, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20235.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in the application and desiring to be heard on issues pertinent to section 805(a) or desiring to submit comments or views concerning the application must, by close of business on May 11, 1973, file same with the Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for 10 a.m. on May 15, 1973, in room 4898, Department of Commerce Bldg., 14th and E Streets NW., Washington, D.C. 20235. The purpose of the hearing will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal services, or (b) would be prejudicial to the objects and policy of the act.

Dated May 2, 1973.

By order of the Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-8971 Filed 5-4-73;8:45 am]

[Docket No. S-346]

AMERADA HESS CORP. ET AL.

Notice of Application

Notice is hereby given that Amerada Hess Corp. has filed an application for an operating-differential subsidy contract to carry bulk cargoes to expire on June 30, 1973 (unless extended only for a subsidized voyage in progress on that date). The bulk cargo carrying vessels proposed to be subsidized, and the trade in which they propose to engage are presented below:

Applicant's name and address	Type of ships	Name of ships
Amerada Hess Corp., 1 Hess Plaza, Woodbridge, N.J. 07095.	Tanker	SS Hess Bunker.
	do	SS Hess Petrol.
	do	SS Hess Trader.
	do	SS Hess Voyager.

The application may be inspected in the Office of the Secretary, Maritime Subsidy Board, Maritime Administration, U.S. Department of Commerce, Washington, D.C., during regular working hours.

The vessels are to engage in the carriage of export bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the United States to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Liquid and dry bulk cargoes may be carried from U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions, and restrictions upon both the subsidized operators and vessels, appear in the regulations published in the FEDERAL REGISTER on November 16, 1972 (37 FR 24349).

For purposes of section 605(c), Merchant Marine Act, 1936, as amended (the Act), it should be assumed that the four ships listed above will engage in the trades described on a full-time basis through June 30, 1973 (with extension to termination of any approved subsidized voyages in progress on that date). Each voyage must be approved for subsidy before commencement of the voyage. The Maritime Subsidy Board (Board) will act on each request for a subsidized voyage as an administrative matter under the terms of the operating-differential subsidy contract for which there is no requirement for further notices under section 605(c) of the Act.

Any person having an interest in the granting of such application and who would contest a finding of the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes as previously specified is inadequate, must, on or before May 14, 1973, notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's rules of practice and procedure (46 CFR part 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Act and with as much specificity as possible the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application hereinabove described is one with respect to the vessels to be operated in an essential service, served by citizens of the U.S. 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 is inadequate and (2) whether in the accomplishment of the purposes 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 Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such action as may be deemed appropriate.

Dated May 2, 1973.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-9056 Filed 5-4-73;8:45 am]

NATIONAL ADVISORY COMMITTEE FOR THE FLAMMABLE FABRICS ACT

Notice of Meeting

MAY 4, 1973.

The National Advisory Committee for the Flammable Fabrics Act will meet at 10 a.m., on May 16, 1973, in room 4832 of the Department of Commerce, 14th Street between Constitution Avenue and E Street NW., Washington, D.C. 20230.

The National Advisory Committee for the Flammable Fabrics Act is composed of members fairly representative of manufacturers, distributors, and the consuming public. Under the Flammable Fabrics Act, the Secretary of Commerce must consult with the National Advisory Committee before prescribing flammability standards or other regulations established under the act.

AGENDA

10:00 a.m.—Call to order, children's sleepwear sizes 7–14, amendments to mattress standard.
11:45 a.m.—Lunch.
1:00 p.m.—Reconvene, amendments to carpet and rug standard, Consumer Product Safety Commission, other business, public statements.
4:30 p.m.—Adjourn.

The meeting will be open to public observation; applications for admission will be accepted and granted on a first-come-first-served basis. These applications and requests for information should be sent by first class mail to the Executive Secretary at room 2815, Department of Commerce, Washington, D.C. 20230.

Interested persons are permitted to file written statements with the Committee. Such statements should be directed to the Executive Secretary. To the extent time is available before adjournment, the presentation of oral statements before the Committee will be allowed.

JAMES F. HOEBEL,
Executive Secretary, National Advisory Committee for the Flammable Fabrics Act.

[FR Doc.73-9074 Filed 5-4-73;10:18 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE

Notice of Acceptance of Applications and Closing Date

The Commissioner of Education hereby gives notice that, pursuant to the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa–241ff), as added by title IV, part A, of Public Law 92–318, applications for assistance are being accepted from local educational agencies and eligible nonlocal educational agencies for grants pursuant to sections 303(b) and 305 of the act for projects specially designed to meet the special educational needs of Indian children.

Awards under the act will be subject to the provisions of the act as well as to the regulation published in 45 CFR part 186, upon such regulation becoming final. A notice of proposed rulemaking setting forth the proposed regulation was published in the FEDERAL REGISTER on May 1, 1973, 38 FR 10738.

Application forms will be mailed to those local educational agencies determined to be eligible to apply for assistance under the act on the basis of enrollment data obtained by the Commissioner, including data obtained from the data collection survey distributed to Chief State School Officers. Applications also may be obtained from Mr. Frank B. McGettrick, Acting Deputy Commissioner of Indian Education, U.S. Office of Education, room 4068, 400 Maryland Avenue SW., Washington, D.C. 20202. Completed applications for assistance pursuant to this notice should be submitted to Mr. McGettrick at the same address.

In order to allow sufficient time for the necessary processing and review of such applications (which are also subject to review by the National Advisory Council on Indian Education provided for under the act) and for the obligation of available funds prior to the end of the current fiscal year, applications under the act must be received by the Office of Education no later than June 8, 1973.

Amounts which would be available pursuant to sections 303(a) and 307(a) of the act to a local educational agency for the current fiscal year will, if such agency's application under the act is not received by June 8, 1973, be subject to reallocation pursuant to section 307(b) of the act to other eligible local educational agencies which have made approvable applications by that date. (20 U.S.C. 241ff(b)).

Dated May 3, 1973.

JOHN OTTINA,
Acting U.S. Commissioner of Education.

[FR Doc.73-9037 Filed 5-4-73;8:45 am]

Office of the Secretary

OFFICE OF PERSONNEL AND TRAINING

Statement of Organization, Functions, and Delegations of Authority

Part 1 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare has been amended to add a new Chapter T50, "Office of Personnel and Training." This material supersedes all previous material issued as chapter 2–510 (34 FR 14099 dated Sept. 5, 1969). Deleted from this statement are the functions of providing personnel administrative services to the Health Services and Mental Health Administration and the Food and Drug Administration which are assigned to the Assistant Secretary for Health and the functions related to the administration of the Public Health Service Commissioned Corps personnel system which are also assigned to the Assistant Secretary for Health. The functions of providing personnel administrative services to the headquarters of the Office of the Secretary are assigned to the Office of Administration. The new chapter reads as follows:

SECTION 1T50.00 *Mission.*—The Office of Personnel and Training serves as the Secretary's staff for promoting effective personnel management and personnel administration in the Department. The Office (1) avises and acts for the Secretary on personnel management and training matters affecting HEW employees; (2) formulates policies and plans broad programs under which the personnel and training functions will be carried out throughout the Department; (3) maintains cognizance of such policies and programs; and (4) represents the Department on personnel and training matters with the Civil Service Commission, other Federal agencies, the Congress, and public.

SEC. 1T50.10 *Organization.*—The Office of Personnel and Training reports to the Assistant Secretary for Administration and Management. The components of the Office of Personnel and Training are as follows:

Administrative Office.
Office of Labor Relations.
Office of Upward Mobility.
Division of Executive Manpower and Development.
Division of Personnel Systems and Evaluation.
Division of Personnel Policy and Planning.
HEW fellows program.

SEC. 1T50.20 *Functions.*—The functions performed by the Office of Personnel and Training are as follows:

A. *Administrative Office.*—Plans, organizes, directs, and implements the administrative procedures and services for the Office of Personnel and Training. Formulates and executes the budget, including funds control and coordination of accounting reporting; develops manpower plans, controls manpower resources, and assures that all personnel actions conform to departmental and office policy; provides other administrative services, such as space and procurement; provides consultation on administrative management to key staff.

B. *Office of Labor Relations.*—Assists in policy formulation, administers, and provides technical assistance in a comprehensive labor relations program for the Department, with a view toward establishing effective and sound relationships between management and employees, and with labor unions at the international, national, and local levels.

C. *Office of Upward Mobility.*—1. Provides central leadership, guidance, and coordination in developing and conducting an effective upward mobility program for the Department.

2. Assists agency, regional, and field personnel offices in developing upward mobility programs appropriate to their needs and in accordance with directives of the Secretary on the subject.

3. Reviews and analyzes upward mobility program proposals for adequacy, appropriateness, and conformance with directives of the Secretary, makes recommendations for modification and allocation of resources as appropriate.

4. Monitors the implementation of programs and supportive activities to insure relevancy of expended efforts and to stimulate new activities as required.

5. Evaluates the effectiveness of programs to determine if they are, in fact, meeting the needs and objectives for which they were designed; issues periodic reports on the findings, with specific recommendations for corrective action where needed.

D. *Division of Executive Manpower and Development.*—Formulates policies, develops and administers programs, and provides technical assistance to operating agencies on activities related to recruitment, placement, utilization, development, retention, and separation of employees subject to the executive assignment system. Forecasts needs for executive positions and prepares justification for additional quota spaces; assures a continuing supply of well-qualified candidates for executive positions from DHEW and external sources; establishes and coordinates an executive development program for incumbents of executive positions; promotes the concept of equal opportunity for women and minorities in executive positions.

E. *Division of Personnel Systems and Evaluation.*—Develops and maintains the departmental personnel data system. Evaluates the personnel management and administrative programs of the Department. Provides technical assistance to field activities and agencies of the Department with special emphasis on programs dealing with the regions. Develops and operates the departmental management intern program. Provides leadership and direction to the incentive awards program and provides service functions as required.

F. *Division of Personnel Policy and Planning.*—Provides personnel management leadership in the development, review, and interpretation of Department personnel policy procedures and regulations. Manages special high-priority policy or program development tasks and projects. Develops and administers programs and provides technical advice and assistance to operating agencies and others related to personnel policy, regulations, staffing, training, classification, job restructuring, compensation, employee services, grievances, and appeals.

G. *HEW Fellows program.*—Plans and administers the HEW Fellows program.

Dated April 28, 1973.

ROBERT H. MARIK,
Assistant Secretary for Administration and Management.

[FR Doc.73-8949 Filed 5-4-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA FLIGHT SERVICE STATION AT VANDALIA, ILL.

Notice of Relocation

Notice is hereby given that on May 15, 1973, the Vandalia, Illinois Flight Service Station will be relocated to the Decatur Airport, Decatur, Ill. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Des Plaines, Ill. on April 20, 1973.

LYLE K. BROWN,
Director, Great Lakes Region.

[FR Doc.73-8934 Filed 5-4-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-373, 50-374]

COMMONWEALTH EDISON CO.

Order and Notice of Environmental Hearing

In the matter of the Commonwealth Edison Co. (La Salle County Nuclear Power Station, units 1 and 2).

Take notice, the following orders are issued pursuant to the prehearing conference on environmental issues on April 16, 1973:

1. Intervenors are required to file an original and two copies of pleadings and documents other than correspondence with the Secretary, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff; a copy is to be served on each member of the Board, one copy on the applicant and one on the regulatory staff. The Board recognizes that the circumstances in this case justify this action but it should not be considered precedent.

2. The public is invited to the hearing and limited appearance statements will be received in the course of the first day of the hearing. Oral limited appearance statements will be limited to 5 minutes for each person. Written statements in place of or supplementing oral statements will be accepted by the Board if submitted at the time provided for limited appearances.

3. Mr. Roy Spaulding has withdrawn as an Intervenor and the Board therefore dismisses him from this proceeding.

4. Additional questions on environmental issues will be submitted by the Board to the parties by May 8, 1973.

5. All discovery in this proceeding will be concluded on May 25, 1973.

6. Trial briefs, the résumés and statements of direct testimony of witnesses and answers to the Board's questions will be in the hands of the Board and the parties by June 1, 1973.

Take notice, the evidentiary hearing on environmental issues will commence at 1:30 p.m. (local time), on June 11, 1973, in the large conference room, Holiday Inn, Junction of Highways I-80 and Route 47, Morris, Ill. 60450.

It is so ordered.

Issued at Washington, D.C., this second day of May 1973.

THE ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.73-8901 Filed 5-4-73;8:45 am]

[Dockets Nos. 50-352; 50-353]

PHILADELPHIA ELECTRIC CO.

Order Postponing Commencement of Evidentiary Session

After a telephone conference with the attorneys for the parties respecting a change in circumstances advising a change in the date from May 9 to May 10, 1973, for the commencement of the session of evidentiary hearings on radiological safety issues,

Wherefore, it is ordered, In accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, the evidentiary session of public hearings on radiological safety issues is postponed from May 9 and in lieu thereof shall convene at 2 p.m. on Thursday, May 10, 1973, in the Pott's Room, Holiday Inn, Pottstown, Pa.

Issued May 2, 1973, at Germantown, Md.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.73-8960 Filed 5-4-73;8:45 am]

REGULATORY GUIDES

Notice of Issuance and Availability

The Atomic Energy Commission has issued two guides in its regulatory guide series. This series has been developed to describe and make available to the public methods acceptable to the AEC regulatory staff of implementing specific parts

of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The new guides are in division 3, "Fuels and Materials Facilities Guides." Regulatory guide 3.7 provides specific guidance on monitoring and alarm systems to forewarn against the formation of flammable mixtures of combustible gases and vapors in plutonium processing and fuel fabrication plants. Regulatory guide 3.8 provides specific guidance to applicants on the contents of environmental reports submitted with applications for uranium milling licenses.

Comments and suggestions in connection with improvements in the guides are encouraged and should be sent to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff. Requests for single copies of issued guides or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director of Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Telephone requests cannot be accommodated. Regulatory Guides are not copyrighted and Commission approval is not required to reproduce them.

Other Division 3 Regulatory Guides currently being developed include the following:

Seismic Design Classification for Plutonium Processing and Fuel Fabrication Plants.
Design of Embankment Retention Systems for Uranium Mills.
Stabilization, Maintenance and Long Term Control of Uranium Mill Tailings Retention Systems.
Ventilation Systems Criteria for Plutonium Processing and Fuel Fabrication Plants.

(5 U.S.C. 552(a).)

Dated at Bethesda, Md. this 27th day of April 1973.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.73-8902 Filed 5-4-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Dockets Nos. 23333 and 24488; Order 73-4-126]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Passenger Fares, Cargo Rates, and Currency Matters; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of April 1973.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the International Air Transport Association (IATA). The agreement was adopted for May 1, 1973, effectiveness at the Composite Currency Conference at London in March 1973, and has been assigned the above-designated CAB agreement number.

The agreement proposes upward adjustments in passenger fares and cargo rates within the Western Hemisphere, across the Pacific, and in various other world area,[1] to reflect devaluation of the U.S. dollar on February 12, 1973. The agreement would also amend IATA-agreed exchange rates for currencies of certain Western Hemisphere countries which have fluctuated substantially in relation to the dollar. The changes embodied in the agreement are intended to maintain an appropriate equilibrium among currencies whose relative values have fluctuated in recent weeks and to avoid carrier revenue losses which would otherwise result from such fluctuations.

Insofar as the agreement involves transportation to/from the United States, transpacific fares and South Pacific cargo rates would be subject to a general 5-percent increase. Within the Western Hemisphere, fares and rates for transportation between the mainland United States and Venezuela, the Netherlands Antilles, and the French West Indies would be increased in amounts ranging between 1 and 5 percent,[2] while no change is contemplated in fares and rates to Mexico and Central America. Fares and rates between the United States and South America would be increased approximately 2 percent. Fares and rates between San Juan and the U.S. Virgin Islands, on the one hand, and Venezuela and the French West Indies, on the other hand, would be increased in substantially greater amounts than in the case of the mainland United States, ranging upwards to 11 percent in the case of transportation between these islands and the French West Indies.[3]

Delta Air Lines, Inc. (Delta), Pan American World Airways, Inc. (Pan American), and Braniff International (Braniff) have submitted statements in support of the agreement. Delta contends that a 3-percent increase in fares and rates to/from Venezuela is necessary to restore the previous revenue/cost relationships in that market, and cites expenses incurred in Venezuela and paid in local currency. Delta estimates the increases will produce $68,000 in additional revenue for the forecast year ending April 30, 1974. Pan American and Braniff likewise cite increased costs in terms of dollars which they incur in Latin America. Pan American anticipates an overall $1,623,429 increase in revenues from the currency adjustments, and emphasizes that the agreed increases represent a compromise among the varying needs of the carriers, both United States and foreign, serving those areas.

The U.S. dollar is the basic currency for the sale of international air transportation within the Western Hemisphere. A significant change in the value of the dollar relative to other currencies in the area is certain to have a substantial impact, and it seems clear that the carriers serving these markets would be adversely affected in the absence of some increase in dollar-specified fares and rates. The precise aggregate impact on each carrier depends, of course, upon the exchange relationship between the dollar and each local currency involved, and the relationship of revenue earned to expenses incurred in each country. The proposed changes do not appear unreasonable as an overall solution in light of the probable impact of the devaluation on the carriers as a whole and accordingly, with the exceptions discussed below, we will approve the agreement.[4]

As noted previously, the proposed increases in fares/rates between San Juan/Virgin Islands and various foreign points in the Caribbean significantly exceed corresponding increases between the same foreign points and the continental United States. The carriers have provided no explanation for this apparent anomaly, and we are unable to perceive why the dollar devaluation should result in such a discrepancy. We will, therefore, condition our approval of the agreement so as to require that fares and rates to/from San Juan and the Virgin Islands shall in no case be increased by a greater percentage amount than that agreed to and approved for fares/rates between the mainland United States and the corresponding foreign points. The carriers have likewise provided no justification for a currency adjustment in fares and rates to/from the Netherlands Antilles, and we will therefore disapprove that portion of the agreement.

By order 73-4-60, April 12, 1973, the Board established procedural dates for the receipt of justification, comments, and replies on IATA agreements which together comprise the overall North/Central and South Pacific fare structures for effect from May 1, 1973.

[1] Traffic Conference 2 (Europe, Africa and the Middle East); Joint Conference 2-3 (between TC2 and TC3 which is comprised of Asia, Australia and Australasia); and Joint Conference 1-2-3 (between TC2 and TC3 via the Western Hemisphere). These fares and rates have no direct application in air transportation as defined by the Act except insofar as they involve transportation to/from Guam or American Samoa which are included in Traffic Conference 3.

[2] The Board, in order 73-4-77 of Apr. 18, 1973, and order 73-4-118 of Apr. 27, approved the Caribbean and Central/South America fare agreements for effect through Mar. 31, 1974. The instant adjustments to these fares would be effective for the same period. The increases in cargo rates would be effective through Sept. 30, 1973, when the current worldwide cargo agreement is scheduled to expire.

[3] The agreement also proposes a 6-percent increase in presently effective mid-Atlantic fares to/from San Juan and other Caribbean points to reflect currency realignments.

[4] We will also approve the 6-percent increase proposed in mid-Atlantic fares to/from San Juan. The Board recently approved a 6-percent increase in North Atlantic fares (order 73-4-64) and there would appear no reason not to maintain the relationship between North and mid-Atlantic fares which previously existed. We will also approve the agreement insofar as it applies in conferences JT23 and JT123 to the extent it applies to transportation solely between foreign points.

The Board has concluded to defer consideration of the proposed currency adjustments in transpacific passenger fares, and in fares to and from Guam and American Samoa until such time as it disposes of the underlying fare agreements.[1]

[1] We will, however, approve the 5 percent general increase in South Pacific cargo rates, which will be effective only through Sept. 30, 1973, when the current worldwide cargo agreement is scheduled to expire.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is not found that the following resolutions, which are incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act except to the extent that they provide for increases in fares and rates to/from the Netherlands Antilles, provided that approval is subject to the conditions hereinafter ordered:

Agreement CAB	IATA No.	Title	Application
23608:			
R-3	021bb	Special Conversion Rates (TC1) (New)	1.
R-4	021k	TC1 Fares Currency Adjustment (New)	1.
R-5	021z	TC1 Rates Currency Adjustment (New)	1.
R-7	022c	JT31 (South Pacific) Special Rules for Sale of Air Cargo Transportation (New).	3/1; 1/2/3.
R-13	022n	JT12 and JT123 (Mid Atlantic) Special Rules for Sales of Passenger Air Transportation (New).	1/2; 1/2/3.
R-14	314a	Special Rates for Personal Effects (South Pacific) (New)	3/1; 1/2/3.

2. It is not found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
23608:			
R-2	003l	Special Rescission Resolution	2
R-8	022M	TC2 Special Rules Relating to Sales of Passenger Air Transportation (New).	2
R-12	022m	TC2 Special Rules for Sales of Cargo Air Transportation (New)	2

3. It is not found that the following resolutions, which are incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act to the extent they do not directly apply in air transportation as defined by the Act:

Agreement CAB	IATA No.	Title	Application
23608:			
R-1	003h	Special Rescission Resolution	2/3; 1/2/3.
R-6	022h	JT23/JT123 Special Rules for Sales of Cargo Air Transportation (new).	2/3; 1/2/3.
R-10	022f	JT23/JT123 Special Rules Relating to Sales of Passenger Air Transportation (new).	2/3; 1/2/3.

Accordingly, *It is ordered*, That:

1. Those portions of Agreement CAB 23608 described in finding paragraph 1 above, be and hereby are approved with the exception of increases in fares and rates to/from the Netherlands Antilles which are disapproved. With respect to Resolutions 021k and 021z, in no case shall fares and rates between Puerto Rico and the U.S. Virgin Islands on the one hand, and foreign points in the Western Hemisphere on the other hand, be increased by a greater percentage amount than fares and rates between the continental United States and those same foreign points;

2. Those portions of Agreement CAB 23608 described in finding paragraph 2, above, which have indirect application in air transportation as defined by the Act, be and hereby are approved;

3. Those portions of Agreement CAB 23608 described in finding paragraph 3 above, be and hereby are approved to the extent they do not have direct application in air transportation as defined by the Act;

4. Action is deferred with respect to those portions of Agreement CAB 23608 described in finding paragraph 3 above to the extent they have direct application in air transportation as defined by the Act;

5. Tariffs implementing Agreement CAB 23608, R–4, shall be marked to expire on March 31, 1974;

6. Tariffs implementing Agreement CAB 23608, R–5, R–7, and R–14, shall be marked to expire September 30, 1973; and

7. Tariffs implementing Agreement CAB 23608, R–13, shall be marked to expire on October 31, 1973.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-8976 Filed 5-4-73;8:45 am]

[Docket No. 22908; Order 73-4-98]

UNITED AIR LINES, INC.

Order Approving Discussions on Capacity Reductions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of April 1973.

United Air Lines has filed an application requesting that the Board approve discussions looking toward the extension of the existing transcontinental capacity agreement. American Airlines and Trans World Airlines, which are parties with United to the transcontinental agreement, in addition to certain civic interests, support the application, whereas several other carriers, civic interests, and the Department of Justice have filed answers in opposition.[1]

Upon careful consideration of the pleadings, as well as a comprehensive review of economic results under the transcontinental capacity agreement, the Board has decided, subject to the matters set forth below, to (1) grant United's application, and (2) put all parties on notice that the Board has tentatively concluded that capacity limitation agreements may in many circumstances be in the public interest and that the Board is prepared to consider requests for authority to discuss capacity reduction agreements in specific markets and to judge resulting agreements on their merits.

Based on the experience gained in the transcontinental markets, the Board has come to the tentative view that capacity agreements constitute an immediately effective remedy for eliminating wasteful overcapacity in city-pair markets—and may, in conjunction with other Board policies, serve to dampen and ultimately reverse the chronic and persistent industrywide tendency to operate excessive capacity and the unnecessary operating costs associated thereunder.[2]

It further appears that there exists a potential major impact that reduction can have in the area of fuel conservation. As seen in appendix A,[2] the existing transcontinental agreement resulted in a reduction of approximately 9,900 departures in the three coast-to-coast markets and an additional reduction of 2,700 one-way flights in the Chicago-San Francisco market during the first 12 months of operation. That, in turn, may well have resulted in a saving of upward of 120 million gallons of fuel over that which would have been consumed if the previous year's level had

[1] The Port Authority of New York and New Jersey has filed in support of the application. Answers in opposition have been filed by the city of Chicago, Braniff Airways, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., the National Air Carrier Association, and the Department of Justice. A comment has also been filed by the Maryland Department of Transportation.

[2] See appendix A, filed as part of the original document, for a comparison of departures, seats, passengers, and load factors in the 4 markets concerned for a 1-year period prior to the effectiveness of the agreement and the 1st year of operation thereunder. The elimination of the costs associated with the reduction in capacity have been substantial, and have resulted, insofar as the routes in question are concerned, in significant contributions to operating profits. Moreover, the service provided under the agreements has been fully satisfactory in terms of average load factors.

[2] Filed as part of the original document.

been maintained.[4] This amount is more than 1.5 percent of the total domestic truck consumption for 1971.

Obviously, with results of this magnitude achievable in only four markets, the potential for systemwide reductions are significant. Furthermore, unnecessary departures and arrivals are a major contributor to airport congestion, which, apart from its various other ill effects, is in turn a material factor in fuel consumption because of increased block times. Given the critical importance that energy conservation represents for our economy, we believe that failure to consider these factors would be inconsistent with our public interest mandate.

Finally, our examination of the effect of the transcontinental capacity agreement over the past year and a half has led us to the view that the concerns the Board earlier expressed about capacity limitation agreements may have been misplaced.

Under these circumstances the Board has decided that the carriers should be given an opportunity to consider whether a further period of experimentation is warranted for the transcontinental markets.

In previous orders all of the reasons advanced in opposition to capacity agreements were thoroughly addressed, and, in large measure, certain of the basic arguments relating to the nature of the competitive system were accepted[5]—principally that unilateral management decisions on the level of capacity offered are preferable, in the long run, to carrier agreements regulating capacity, even though such agreements would be subject to plenary supervision by the Board. Upon further examination based upon the actual operation of the agreements, however, we have tentatively concluded that capacity agreements constitute a useful and successful regulatory device that can be employed pragmatically in order to help achieve, particularly, the rate of return found required by the Board in phase 8, of the recently concluded domestic passenger-fare investigation (DPFI), docket 21866. As set forth in the phase 8 opinion, the Board is convinced that the industry should earn, on a consistent basis, an adequate rate of return in order to be in a position to maintain and improve, on the long term, a transportation system that will meet the growing and changing needs of the American people. All parties agree that while many factors have contributed to the industry's failure to achieve an adequate rate of return, the principal single cause has been the cost of operating excess capacity. Until capacity can be brought into a rational relationship with demand, industry profits will not reach required levels. Finally, it is clear that, as all parties appear to concede, excess capacity—the operation of flights with unduly low load factors in city-pair markets—is generally of marginal or no utility to the traveling public.

In phase 6B of the DPFI the Board found that, given a consistent regulatory fare policy based upon standard load factors, carriers will, in the long run, tend to schedule their operations at load factors which will produce an adequate return on investment.[6] We continue to believe that this is sound long-term economic policy. However, the opinion recognized that the industry is cyclical in nature and tends to go through long periods of severe overcapacity. Although the domestic system load factor experience improved measurably between 1971 and 1972, later data reveal that there has been a leveling off in the improvement, and in some markets load factors have declined. Moreover, if reported load factors, which are based on the seating configuration actually in use, are adjusted for the Board's standard seating configuration criteria, the domestic system experience of the industry has failed to reach even the relatively low interim load factor standards.[7] And, in many markets service has been and continues to be operated at unduly low load factors. Moreover, the domestic trunkline rate of return for the 12 months ended December 1972, is plainly unreasonably low judged on any basis, and significantly below the 12-percent standard established in phase 8. While it may well be, as the Department of Justice suggests, that fare policy should be allowed to perform its function of bringing capacity into balance with demand, we are concerned that this process may be too slow to bring the industry back to economic health within a reasonable time frame. Moreover, the industry has suffered substandard earnings since 1967, and continued failure to achieve reasonable earnings must inevitably damage the carriers' ability to provide the American public with high quality service at a reasonable fare level.

Under these circumstances, the Board intends to use every regulatory tool at its disposal to cause the industry to achieve, on a system basis, the load factor standards enunciated in the DPFI, and, simultaneously, to correct individual city-pair market situations where low load factors indicate that capacity is in excess of demand. We caution the industry concerning our seriousness of purpose in this area and urge that equipment acquisition decisions must be based on projected capacity levels geared to achieving the prescribed load factor standards.[8] This will mean that increases in capacity should be held below increases in demand both on a system basis and in respect to individual markets.

To deal with overcapacity in city-pair markets, we will employ a number of regulatory tools, and we will make use of segment load factor data to identify such situations. Because capacity agreements can immediately correct overcapacity problems in individual competitive markets, particularly those that have experienced unduly low load factors (as they were able to do in the transcontinental markets), it is the Board's tentative view that, contrary to our earlier determinations and as discussed above, such agreements properly constituted a useful regulatory tool that should not be discarded for theoretical reasons. In light of this revised position of the Board, carriers may wish to file applications for permission to discuss capacity agreements in other markets.[9] In this regard it is the Board's view that if capacity agreements are to be utilized as a regulatory tool, it is important that they meet specific regulatory guidelines designed to insure that no significant impairment of the air service offered to the public will result. Outlined below are guidelines that the Board is considering utilizing when passing upon proposed capacity limitation agreements.

First, the Board would approve agreements only if the service proposed is fully satisfactory in terms of passenger requirements. The characteristics of individual markets differ substantially. Thus it may be that load factors intended to be achieved by capacity limitation agreements should vary depending upon the specific facts. In any event, the Board has tentatively concluded that the 55-percent-load-factor standard adopted in phase 6B is not necessarily appropriate for use in a capacity limitation agreement, and that in that latter context, higher load factors—say a quarterly average of 65 percent, by way of example—might well be in the public interest, if the agreement took into account day/hour peak requirements. Further, capacity agreements should provide for both a reasonable schedule spread and flights properly timed to accommodate the needs of the markets concerned.[10] Put another way, the Board would not approve agreements that have a detrimental impact on the traveling public. The

[4] Based on an average of 5 hours of flight time for the coast-to-coast flights and 4 hours for Chicago-San Francisco, and a fuel consumption rate of 2,000 gal/h (a composite figure derived from the average rates of fuel consumption for 4-engine narrow-bodied, 3-engine wide-bodied and 4-engine wide-bodied aircraft, weighted to reflect usage over the agreement markets as reported by the carriers). Total fuel saving depends, of course, on whether the equipment taken off the 4 transcontinental markets was grounded or was used elsewhere. We expect that this point will be addressed at such time as the parties seek approval of a proposed agreement.

[5] Our past approvals of such agreements was founded on short-term economic considerations which, in our judgment, constituted a major, but temporary, transportation need in each case. See order 71-8-91, Aug. 19, 1971; and order 72-11-6, Nov. 2, 1972.

[6] Order 71-4-54.

[7] See the Board's opinion in phase 6A of the DPFI, order 72-5-101.

[8] As set forth in greater detail above, we are vitally concerned that wasteful overcapacity will materially contribute to unnecessary fuel consumption and the increasing nationwide energy crisis.

[9] If the carriers do not come forward with additional applications for capacity discussions, the Board may, in the discharge of its regulatory responsibilities, suggest those markets where capacity agreements would be warranted.

[10] Individual market conditions vary so widely that these generalizations could, depending on the circumstances, be either more or less stringent.

sole purpose of such agreements would be to eliminate wasteful overcapacity.

Second, the Board would expect any carrier that is a party to an approved capacity agreement to use the utmost restraint in scheduling capacity on the balance of its system. In other words, the Board would not permit a carrier benefiting from an agreement to pursue a corporate policy of using released capacity (or the financial benefits resulting from agreement markets) in unduly adding capacity in other, nonagreement markets. The Board would retain the power to revoke agreements in force on 60 days' notice, and would do so if any nonagreement party filing a complaint could show that an agreement carrier is introducing excessive capacity in nonagreement markets. Moreover, the Board would expect carriers party to capacity agreements to undertake a leadership role throughout their domestic systems by setting an example in the restrained employment of additional capacity. As a general rule, the Board would expect all carriers to increase capacity at a slower pace than traffic growth until system load factors are consistent with the phase 6B standards. Failure of the agreement carriers to adhere to the letter and spirit of this admonition would constitute a major factor in determining whether to approve the extension of any agreement in force, as well as additional agreements—and the Board woud reserve the right to revoke its approvals of existing agreements for such conduct on 60 days' notice.[11]

Third, carriers should consider entering into such agreements in markets experiencing unduly low load factors on a persistent basis.[12]

Finally, in order for the Board to determine whether such agreements would in fact work toward alleviating the cyclical tendency toward overcapacity in the overall domestic system, and would therefore have a beneficial impact on system overcapacity, the Board would limit approvals to a 2-year term in each instance. The Board's staff would be directed to carefully monitor the experience gained both in respect to the market concerned, and as it may affect carrier system experience in respect to capacity.[13]

[11] On the other hand, we will not place agreement carriers at a competitive disadvantage in nonagreement competitive markets if other carriers add capacity beyond the general guidelines set forth above. In this situation, which the Board would look upon with extreme disfavor, we would permit agreement carriers to competitively respond. All carriers are on notice that such conduct will be dealt with under all of the regulatory powers of the Board.

[12] It is our tentative view that so long as the foregoing guidelines were observed, any market, including 2-carrier competitive markets, could reasonably be the subject of applications for capacity limitation discussions.

[13] We fully appreciate the antitrust implications raised by the Department of Justice, and recognize our duty to administer the Board's powers under sec. 412 of the act in a manner consistent with antitrust principles and our statutory responsibilities under the act. Since sec. 412 expressly provides that the Board is empowered to approve agreements of the character here involved, the basic antitrust considerations consist of balancing the anticompetitive aspects of capacity agreements against the serious transportation need under the economic regulatory provisions of the act that we have found to exist. Our tentative determination is that the transcontinental agreement has worked to the advantage of the public interest, notwithstanding its anticompetitive aspects, and it would appear that a similar agreement would continue to do so. In respect to the antitrust aspects of a series of coexisting capacity limitation agreements, that would appear to depend on the number of agreements the carriers propose, the interrelationships between the agreements, the facts relating to each agreement, and so on.

[14] We note, for example, that 1st quarter results during both years covered by the agreement have been well below the standard load factor. It would appear that this could be compensated for by a carefully drawn agreement.

[15] Revision to Airline Tariff Publishers, Inc., Agent Tariffs CAB Nos. 65, 136, and 142. The 3 east coast cities covered by capacity agreements are also included in TWA's tariff filing, which further includes the city of Boston. We are concerned that the possible use by all 3 carriers of demand scheduling from points other than New York, might well impede their ability to reach an acceptable capacity agreement for which we have found a public interest transportation need. Accordingly, without delaying discussions concerning the formulation of a revised agreement in respect to regularly scheduled operations, the carriers should as soon as possible consider entering into a supplementary agreement that would take the operations contemplated into account.

Based on the foregoing, the existing agreement, and the pattern of service thereunder, as well as civic comments filed in answer to United's application, the Board finds that it should approve discussions looking to extension of a capacity agreement subject, however, to the matters set forth below.

United, American, and TWA are directed to take into consideration, in formulating any revised agreement, the following:

(1) The comments filed by the Port Authority of New York and New Jersey and the Maryland Department of Transportation regarding service distribution between various metropolitan airports;

(2) The comments of the city of Chicago regarding high peak period load factors in the Chicago-San Francisco market;

(3) The possibility of improving load factor performance during shoulder (and off peak) periods.[14]

(4) The effect on agreements of the "Demand Scheduling" tariffs filed by TWA if each carrier operates pursuant to such tariffs in transcontinental markets, and whether a supplementary agreement covering such operations should be submitted; [15] and

(5) That any schedules which are agreed upon should be operated so as to maximize fuel conservation in flight operations.

Accordingly, *It is ordered*, That:

1. The application of United Air Lines for approval of discussions regarding capacity reductions in the below-specified city-pairs,[16] be and it hereby is approved subject to the following conditions:

(a) Discussions shall be held in Washington, D.C., the hour and date of such meetings to be determined by the carriers. A notice of such meetings shall be served upon the Civil Aeronautics Board and the persons stated in ordering paragraph 2 at least 3 calendar days prior to such meetings;

(b) Participation in each city-pair discussion shall be limited to carriers certificated to provide single-plane scheduled service in the market under discussion;

(c) Representatives of the Civil Aeronautics Board and any other local, State, or Federal Government agency; civic, trade, or consumer association, group or representative; or air carrier expressing an interest shall be permitted to attend and view the discussions as observers;

(d) A full transcript shall be maintained of all meetings, at the expense of the carriers, and a copy of said transcript shall be filed with the Board within 10 days after the conclusion of each day's meeting, and shall be available for purchase by any person;

(e) Any agreement reached as a result of the discussions authorized herein shall be filed with the Board for approval under section 412 of the act within 15 days of consummation thereof, accompanied by an explanatory statement and a statement of justification, and shall be served on the persons listed in ordering paragraph 2 within the same period: *Provided*, That no agreement shall be implemented without having been previously approved by the Board;

(f) Comments pertaining to any agreements filed pursuant to subparagraph (e) shall be filed within 15 days from the date of the filing of such agreements with the Board;

(g) Comments in reply to any previously filed document authorized to be filed in subparagraphs (e) and (f) shall be filed within 10 days of the date of filing of such document;

(h) The relief granted herein shall expire within 90 days of the date of this order and may be revoked or amended at any time in the discretion of the Board;

(i) This authorization does not extend to discussions of rates, fares, charges, or inflight or other services pertaining to air transportation; and

(j) The participating carriers shall continue to file the information required by order 72-11-6 until further notice from the Board.

2. Copies of this order shall be served on the Departments of Defense, Justice, Post Office, and Transportation; New York, N.Y.; Newark, N.J.; Los Angeles and San Francisco, Calif.; Chicago, Ill.; Washington, D.C.; Baltimore, Md.; the Port Authority of New York and New Jersey; the Maryland Department of

[16] The authorized city-pairs are: New York/Newark-Los Angeles, New York/Newark-San Francisco, Chicago-San Francisco, and Washington/Baltimore-Los Angeles.

Transportation; the National Air Carrier Association; and all certificated scheduled and supplemental air carriers; and

3. To the extent not granted herein all outstanding requests be and they hereby are dismissed without prejudice.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[37]

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-8977 Filed 5-4-73;8:45 am]

COMMISSION ON CIVIL RIGHTS

WEST VIRGINIA STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the West Virginia State Advisory Committee to this Commission will convene at 12 noon on May 8, 1973, in parlor D of the Daniel Boone Hotel, Washington and Capitol Streets, Charleston, W. Va. 25328.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Mid-Atlantic Regional Office of the Commission, room 510, 2120 L Street NW., Washington, D.C. 20425.

The purpose of this meeting shall be to review a proposal to study urban renewal and relocation problems in Charleston, W. Va., and discuss the merits of initiating a project based on this proposal.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., May 3, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-9065 Filed 5-4-73;8:45 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental impact statements received by the Council from April 23 through April 27, 1973.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250, 202-447-7803.

Final

Chattooga River, N.C., Ga., and S.C., April 6: The proposal is for the legislative designation of 56.9 miles of the Chattooga River as a river of the National Wild and Scenic Rivers System. The river flows through Jackson and Macon Counties, N.C.; Rabun County, Ga.; and Oconee County, S.C. The impact of increased recreation use will be controlled through regulations based on the carrying capacity of the river and land, rather than on demand (42 pages). Comments made by: DOI, COE, HEW, DOT, HUD, EPA, FPC, WRC, the Governors of North Carolina, South Carolina, and Georgia. (ELR Order No. 00589.) (NTIS Order No. EIS 73 0589-F.)

AGRICULTURAL RESEARCH SERVICE

Draft

Application of sewage sludge to agricultural land, Minnesota, April 25: The proposal is for the development of a practical and complete farm management system for the handling and use of sewage sludge on agricultural land. Special measures are needed to be developed here because of soil and climatic conditions in an area where there are 4.5 to 5 months of frozen soils annually. Adverse impacts include possible dangers to esthetics and remote dangers to human health (18 pages). (ELR Order No. 00706.) (NTIS Order No. EIS 73 0706-D.)

FOREST SERVICE

Draft

Timber management plan, Apache National Forest, Ariz. and N. Mex., April 4: The statement refers to a revised 10-year timber management plan for the Apache National Forest, which is located in Apache and Greenlee Counties, Ariz., and Catron County, N. Mex. The plan would cover the period July 1, 1974, through June 30, 1983, and would allow an annual cut of 68,700 M bm (thousand board feet) (not including a salvage cut). The permanent road system of the forest will be improved, and temporary roads will be constructed. There will be adverse impact to air, water, scenic beauty, and soil stability. Harvesting near the Mount Baldy Wilderness and the Blue Range Primitive Area could affect uses of these areas; timber management activities could affect inclusion in the Wilderness System. (ELR Order No. 00564.) (NTIS Order No. EIS 73 0564-D.)

Blanchard Spring Caverns, Ark., April 4: The proposal is for the operation and administration, beginning July 1973, of the Blanchard Spring Caverns of the Ozark and St. Francis National Forests. Development will include a visitor information center, elevators to the caverns, 0.7 mile of paved and curbed trails, lighting, water, sewer, and electrical systems, and related work. The fragile ecosystem of the caverns will be disturbed; the rare and endangered Indiana Bat will be deprived of some habitat; the culture of the area will become commercialized (38 pages). (ELR Order No. 00707.) (NTIS Order No. EIS 73 0707-D.)

East Fork Yaak Planning Unit, Kootenai National Forest, Lincoln County, Mont., April 4: The proposal is for the implementation of a revised multiple-use plan for the 74,000 acre planning unit. The land involved will be divided into eight management units, each being managed with emphasis upon particular values (recreation, retention of vegetative cover, timber harvesting, etc.). Development will cause some air and noise pollution, and disturbance of soil and vegetation. There will be some road construction in the unit (66 pages). (ELR Order No. 00563.) (NTIS Order No. EIS 73 0563-D.)

Final

Burning of Big Sagebrush, Montana, several counties, April 25: The statement refers to the proposed prescribed burning of 1,800 acres of sagebrush-covered land annually, during fiscal years 1973-75 in order to improve the range resource on national forest lands. National forests included are Beaverhead, Gallatin, and Deerlodge. Counties affected are Beaverhead, Jefferson, Madison, Silver Bow, and Gallatin. Existing plant communities will be altered from a grassland dominated by sagebrush to a grassland interspersed with sagebrush. Short term erosion, water siltation, and air pollution will occur (117 pages). Comments made by: USDA, DOI, HEW. (ELR Order No. 00701.) (NTIS Order No. EIS 73 0701-F.)

Land exchange, U.S. Government and J. Hamilton, New Mexico, April 20: The statement refers to a proposed exchange of lands between the Forest Service and John S. Hamilton, Jr. of Silver City, N. Mex. Under the agreement Mr. Hamilton offers 976.41 acres of private land owned by him and wishes to select 9,771.72 acres of land of the Gila National Forest. Included in Mr. Hamilton's offer are 71.622 acre-feet of water rights on the Gila River System which would be used for the Gila River Bird Management Area. Mr. Hamilton will utilize his new land for ranching purposes; this he already does under permit. If no exchange is made Mr. Hamilton will sell his land, possibly to development interests, with adverse impact to the Gila Wilderness and the Gila Primitive Area. Comments made by: EPA, DOI, USDA, State and local agencies, and concerned citizens. (ELR Order No. 00712.) (NTIS Order No. EIS 73 0712-F.)

SOIL CONSERVATION SERVICE

Draft

Fall Creek Watershed project, Warren County, Ind., April 18: The proposal is for a watershed protection, flood prevention, and recreation project. Project measures would include land treatment on 1,306 acres, one multiple-purpose reservoir, riprap, and recreation facilities. Adverse impacts will include the commitment of 233 acres to reservoir and park development and 59 acres to the pool, dam, and spillway; utilization of recreation facilities will require increased capacity for Williamsport's treatment plant (22 pages). (ELR Order No. 00670.) (NTIS Order No. EIS 73 0670-D.)

Burnt Creek R.C. & D. measure, Burleigh County, N. Dak., April 23: The project is intended to reduce flooding on 2,500 acres of agricultural land. Project features include a floodwater diversion, dikes, a grade control structure, a diversion structure, and an inverted siphon. Two and one-half acres of woody habitat will be destroyed (17 pages). (ELR Order No. 00682.) (NTIS Order No. EIS 73 0682-D.)

Final

Ogunquit sand dune stabilization, York County, Maine, April 25: The statement refers to the proposed land stabilization of a 28-acre barrier dune, through the placement of sand, planting of vegetation, and installation of erosion and pedestrian control measures (37 pages). Comments made by: USDA, DOI, and EPA. (ELR Order No. 00704.) (NTIS Order No. EIS 73 0704-F.)

ATOMIC ENERGY COMMISSION

Contact: For nonregulatory matters: Mr. Robert J. Catlin, Director, Division of Environmental Affairs, Washington, D.C. 20545, 202-973-5391. For regulatory matters: Mr. A. Giambusso, Deputy Director for Reactor Projects, Directorate of Licensing, 202-973-7373, Washington, D.C. 20545.

Draft

Grand Gulf Nuclear Station, units 1 and 2, Claiborne County, Miss., April 25: The proposal is the issuance of a construction permit to the Mississippi Power & Light Co. The station will employ identical boiling water reactors, each producing 3,833 thmlMW (thermal magawatts) and 1,290 MWe (megawatts electrical) (net), with future levels of 4,025 thmlMW and 1,380 MWe anticipated. Cooling will be through wet, natural-draft

[37] Member Minetti issued a concurring opinion filed as part of the original document. Member Murphy concurred in opinion expressed by member Minetti.

towers, with 36,000 gal/min (gallons per minute) of the 58,000 gal/min flow of Mississippi River water being consumed through evaporation and drift. The 2,300-acre site is primarily wooded; construction activity will disturb 345 acres. Removal of vegetation will promote erosion, with adverse effect to Gin and Hamilton Lakes (approximately 400 pages). (ELR Order No. 00697.) (NTIS Order No. EIS 73 0697–D.)

R. E. Ginna Nuclear Power Plant, Wayne County, N.Y., April 24: The proposal is for the conversion of Rochester Gas & Electric Corp.'s present provisional operating license to a full-term operating license. The plant employs a pressurized water reactor to produce 1,300 thmlMW and 420 MWe (net); future levels of 1,520 thmlMW and 490 MWe are anticipated. Exhaust steam will be condensed by a once-through flow from Lake Ontario. At full design power this water will be removed at 400,000 gal/min, and heated 18.4° F. above ambient before return to the lake (220 pages). (ELR Order No. 00693.) (NTIS Order No. EIS 73 0693–D.)

H. B. Robinson Unit 2, Darlington County, S.C., April 25: The proposed action is the continuation of an operating license, held by Carolina Power & Light Co. The unit employs a pressurized water reactor to produce 2,200 thmlMW and 700 MWe (net); future levels of 2,300 thmlMW and 730 MWe are anticipated. Exhaust steam is cooled with water obtained from Lake Robinson, which is heated 21° F. above ambient and discharged via a 4-mile canal to the lake. The additional heat probably causes a small reduction in lake productivity of fish, plankton, and benthos (178 pages). (ELR Order No. 00695.) (NTIS Order No. EIS 73 0695–D.)

Catawba Nuclear Station, York County, S.C., April 25: The proposed action is the issuance of a construction permit to the Duke Power Co. for a 2-unit station on Lake Wylie. The 2 pressurized water reactors will produce a total of 7,164 thmlMW and 2,360 MWe (net). Exhaust steam will be cooled by a once-through flow from Lake Wylie, with adverse effects to fishery and swimming for 1 to 4 months per year. The discharge of heated water is expected to adversely effect 4,000 acres of the Catawba River Basin, displacing fish and stimulating blue-green algae. Construction will affect 750 acres of the lake, 405 acres of land within the exclusion area, 584 acres of transmission right of way, and 79 acres for a railroad spur (320 pps.) (ELR Order No. 00696.) (NTIS Order No. EIS 73 0696–D.)

Department of Commerce

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202–967–4335.

Economic Development Administration

Draft

Cook Inlet, city of Anchorage, Alaska, April 6: The proposal is for the expansion of existing port facilities at the northern end of Cook Inlet. The project is the first of a three-phased port development program which will provide facilities for increased marine commerce. Included will be the extension of the existing pier (by 370 ft), dredging of the ship channel, and the potential for an additional container carrier. There will be adverse impact to marine biota during construction (63 pages). (ELR Order No. 00595.) (NTIS Order No. EIS 73 0595–D.)

Department of Defense

Army Corps

Contact: Mr. Francis X. Kelly, Director, Office of Public Affairs, Attention: DAEN–PAP, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202–693–7168.

Draft

Flood control, Brush Bayou, Caddo Parish, La., April 5: The proposal is for the enlargement and/or realignment of 6.22 miles of the Brush Bayou Channel in Shreveport. The purpose of the action is that of reducing flood stages and related damage to 730 acres of urban development located near the bayou. Two million cubic yards of spoil will be dredged and disposed of; 4 bridges and 28 utility crossings will be relocated and/or modified. The project will enhance intensive development and utilization of 615 acres of land for urban expansion. Approximately 891 acres will be modified for project features and expected urban expansion (New Orleans District) (94 pages). (ELR Order No. 00572.) (NTIS Order No. EIS 73 0572–D.)

Gallatin River flood control, Gallatin County, Mont., April 19: The proposal is a flood-control project on the West Gallatin River, near Bozeman. A 24-mile stretch of the river would be cleared of selected debris, with 20 acres being used for a disposal area. There would be a loss of 20 acres of flood plain biota, and 130 acres of snag cover (Omaha District) (18 pages). (ELR Order No. 00673.) (NTIS Order No. EIS 73 0673–D.)

Final

Lake Bluff Beach, Lake Michigan, Lake County, Ill., April 26: The statement refers to a proposed beach erosion project which involves the construction of two steel-sheet piling impermeable groins, and the placement of 10,000 yd³ of sand fill on the north side of the south groin. The project is intended to prevent further erosion, and to restore the beach at Sunrise Park (Chicago District) (104 pages). Comments made by: USDA, DOC, EPA, HUD, and DOI. (ELR Order No. 00709.) (NTIS Order No. EIS 73 0709–F.)

Environmental Protection Agency

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, room 3630, Waterside Mall, Washington, D.C. 20460, 202–755–0940.

Draft

Sewage system, Hollywood and Pembroke Pines, Broward County, Fla., April 12: The statement refers to Federal grants assistance for the construction of a larger collection system and a more advanced waste water treatment plant for Hollywood, and a transmission system which will route waste water from Pembroke Pines to the treatment plant at Hollywood. Treatment at Hollywood will be upgraded from primary to secondary, with plant capacity remaining constant at 36 Mgal/d (million gallons per day). Effluent discharge will continue to be to the Atlantic Ocean. Six acres will be committed to the new facilities. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," NTIS Order No. EIS 73 0491–F, March 22, 1973, should be considered with this.) (ELR Order No. 00625.) (NTIS Order No. EIS 73 0625–D.)

Sewage system, southern Dade County, Dade County, Fla., April 13: The proposed action is the construction of major waste water management facilities for the south district. Included are: A sewage transmission system intercepting flows from nine systems in south Dade; a single 50 Mgal/d regional secondary treatment plant which will replace the nine smaller plants; and a deep-well disposal system for the treated and disinfected effluent. Potential accidents could pollute the Biscayne Aquifer. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," NTIS Order No. EIS 73 0491–F, March 22, 1973, should be considered part of this statement by reference.) (126 pages.) (ELR Order No. 00631.) (NTIS Order No. EIS 73 0631–D.)

Sewage system, central Dade County, Dade County, Fla., April 13: The statement refers to the proposed construction of wastewater pumping stations, force mains, a treatment plant, and an ocean outfall, for central Dade County. Upon completion of phase 3 of the project, system capacity will be 115 Mgal/d at 90 percent BGD and suspended solids removal. There will be adverse impact from construction disruption. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," March 22, 1973, should be considered part of this statement by reference.) (96 pages.) (ELR Order No. 00632.) (NTIS Order No. EIS 73 0632.)

Sewage system, Fort Lauderdale, Broward County, Fla., April 19: The proposed action is the construction of a larger and more advanced sewage collection and treatment system. Total capacity will be expanded from 19.5 Mgal/ to 38 Mgal/d. Among the project measures are: Multimedia filtration, nitrification, and breakpoint chlorination at the Port Everglades and Coral Ridge plants; redirection of flow from the Executive Airport plant to north Broward; interconnection among several plants; and related work. Completion of the project will allow continued area population growth. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," NTIS No. EIS 73 0491–F, March 22, 1973, should be considered part of the statement by reference.) (ELR Order No. 00678.) (NTIS Order No. EIS 73 0678–D.)

Sewage system, central Dade County, Fla., April 13: The statement refers to the proposed construction of wastewater pumping stations, force mains, a treatment plant, and an ocean outfall, for central Dade County. Upon completion of phase 3 of the project, system capacity will be 115 Mgal/d at 90 percent Bgal/d and suspended solids removal. There will be adverse impact from construction disruption. (The statement "Ocean Outfalls and Other Methods of Treated" EIS 73 0632D should be considered part of this statement by reference.) (96 pages.) (ELR Order No. 00632.) (NTIS Order No. EIS 73 0632.)

Sewage system, Fort Lauderdale, Broward County, Fla., April 19: The proposed action is the construction of a larger and more advanced sewage collection and treatment system. Total capacity will be expanded from 19.5 Mgal/d to 38 Mgal/d. Among the project measures are: Multimedia filtration, nitrification, and breakpoint chlorination at the Port Everglades and Coral Ridge Plants; redirection of flow from the Executive Airport Plant to North Broward; interconnection among several plants; and related work. Completion of the project will allow continued area population growth. (The statement "Ocean Outfalls and Other Methods of Treated Wastewater Disposal in Southeast Florida," NTIS No. EIS 73 0491F, March 22, 1973, should be considered part of the statement by reference.) (ELR Order No. 00678.) (NTIS Order No. EIS 73 0678D.)

Federal Power Commission

Contact: Dr. Richard F. Hill, Acting Advisor on Environmental Quality, 441 G Street NW., Washington, D.C. 20426, 202–386–6084.

Draft

Hudson River Project No. 2842, Saratoga and Washington Counties, N.Y., April 25: The proposal is for Commission approval of the abandonment, retirement, and removal of the Fort Edwards Development of the project by the Niagara Mohawk Power Corp. The

dam and powerhouse, of 2,850 KW, are considered to be in poor condition, with the cost of replacement being uneconomic. With removal approximately 100 acres of previously inundated land would be exposed to the air (69 pages). (ELR Order No. 00702.) (NTIS Order No. EIS 73 0702D.)

Final

Saluda project, several counties, South Carolina, April 25: The statement refers to an application filed by the South Carolina Electric & Gas Co. for permission to grant easements to the Watergate partnership for the use of 2.83 acres of land in the Lake Murray Reservoir. Watergate would develop causeways, one of which would incorporate a bridge and a pipeline along the lake bottom for the discharge of treated domestic waste. The bridge and causeways will provide access to five islands (totaling 43.85 acres) (71 pages). Comments made by: USDA, COE, HEW, DOI, and EPA. (ELR Order No. 00699.) (NTIS Order No. EIS 73 0699F.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Rod Kreger, Acting Administrator, GSA–AD, Washington, D.C. 20405, 202–343–6077.

Draft

North American Rockwell Building, Laguna Niguel, Orange County, Calif., April 17: The proposal is for acquisition by exchange of the 1 million ft² building, in order to provide for short- and long-term space needs of the Federal Government in southern California. Government properties to be exchanged are: Installation No. 9091, El Segundo Storage Annex, El Segundo; Air Force Plant No. 56, Canoga Park; and portions of related personal property, North American Rockwell Corp., Los Angeles. Adverse impact will result from traffic congestion when the building becomes occupied (36 pages). (ELR Order No. 00654.) (NTIS Order No. EIS 73 0654D.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410, 202–755–6186.

Final

Fair Oaks Apartments, Henrico County, Va., April 27: The statement refers to the proposed construction of a 13-building, 100-apartment complex for low- and moderate-income housing under section 236 of the National Housing Act. The site lies within CNR Noise Zone 2 of the Richard E. Byrd Airport; this will have effects upon residents of the complex. The area is one of poor water drainage; structural measures will be needed to facilitate water removal (129 pages). Comments made by: DOC, EPA, DOT, and HEW. (ELR Order No. 00720.) (NTIS Order No. EIS 73 0720–F.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 7260, Department of the Interior, Washington, D.C. 20240, 202–343–3891.

NATIONAL PARK SERVICE

Final

Yosemite National Park, Calif., April 26: The statement refers to the proposed designation of 646,700 acres of the park as wilderness. A segment of the Sierra Nevada mountain range would be preserved. Impacts discussed in the statement include cultural, social, scientific, and economic effects (114 pages). Comments made by: AHP, DOD, DOI, EPA, and USDA. (ELR Order No. 00714.) (NTIS Order No. EIS 73 0714F.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 Seventh Street SW., Washington, D.C. 20590, 202–466–4357.

FEDERAL AVIATION ADMINISTRATION

Final

Patrick Henry Airport, Va., April 25: The statement refers to the proposed purchase of 200 acres of farmland in order to construct a 1,500-ft. runway extension, to strengthen existing runways, and to extend medium intensity lighting. An electric substation will require relocation, and 16 residences will be displaced. Approximately 145 acres of scrub trees and brush will be cleared (70 pages). Comments made by: COE, EPA, FPC, DOT, HEW, and HUD. (ELR Order No. 00705.) (NTIS Order No. EIS 73 0705F.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Whitemarsh Boulevard, SR 43, Baltimore County, Md., April 7: The proposed project is the extension of SR 43, from an existing interchange at I–95 westerly for approximately 5.4 miles to an interchange at proposed Perring Freeway. The facility will require from 16 to 23.5 acres of park (a 4(f) statement will be filed). Between 12 and 27 families, along with zero to three businesses, will be displaced. The facility will cross several streams, causing erosion, siltation, and sedimentation. Other adverse effects are loss of forest land and wildlife habitat, and the introduction of higher air and water pollution levels into a new area (approximately 150 pages). (ELR Order No. 00651.) (NTIS Order No. EIS 73 0651D.)

Route 71, Maryville Relocation, Nodaway County, Mo., April 18: The statement considers four corridors for the proposed relocation of approximately 7 miles of Route 71. The project will provide a four-lane limited access facility through or around Maryville. The number of displacements will depend upon the corridor selected. Approximately 200 acres of rural land will be acquired for right-of-way. Adverse effects include loss of tax base and increased air and noise pollution (32 pages). (ELR Order No. 00669.) (NTIS Order No. EIS 73 0669D.)

Eighty-fourth Street, Omaha, Douglas County, Nebr., April 19: The statement refers to the proposed construction of twin tunnels under the Union Pacific Railroad at 84th Street; modification of the 84th Street interchange, and construction of a new interchange at 96th Street on Interstate 80. Adverse impacts include acquisition of right-of-way and increased air and noise pollution levels (37 pages). (ELR Order No. 00675.) (NTIS Order No. EIS 73 0675D.)

State Route 107, Montpelier to U.S. 20A, Williams County, Ohio, April 19: The proposed project consists of upgrading a 3-mile segment of State Route 7 to a four-lane facility and providing a four-lane replacement bridge over the Norfolk & Western Railroad. One family will be displaced by the action. An unspecified amount of land will be acquired for right-of-way (21 pages). (ELR Order No. 00674.) (NTIS Order No. EIS 73 0674D.)

Final

Mekoryuk, Alaska, April 24: The statement is concerned with the reconstruction of approximately 3 miles of road in the village of Mekoryuk, on Nunivak Island, which is 20 miles off the coast of Alaska, in the Bering Sea. The project will be located entirely on existing right-of-way. A 4(f) statement will be filed, as the island is considered to be an open wildlife refuge (67 pages). Comments made by: EPA, COE, DOC, DOI, and HUD. (ELR Order No. 00688.) (NTIS Order No. EIS 73 0688F.)

South Chapel Street, New Castle County, Del., April 24: The project consists of the relocation of South Chapel Street east of Newark, and the construction of a bridge over the Penn Central Railroad. The number of displacements and the amount of right-of-way required will depend upon the route selected (130 pages). Comments made by: USDA, DRBC, HUD, DOI, HEW, and EPA. (ELR Order No. 00689.) (NTIS Order No. EIS 73 0689–F.)

Relocation of DuPont Road, New Castle County, Del., April 24: The proposed action is the reconstruction and relocation of DuPont Road (State Route 100) beginning at the Maryland Avenue-DuPont Road intersection and ending north of New Road (Del. Route 2). The project consists of four lanes and a bridge over Little Mill Creek and the B. & O. Railroad. The facility will displace from 21 to 32 families and from 1 to 5 businesses. The project will increase noise, air, and possibly water pollution levels. (132 pages). Comments made by: USDA, DOI, DOT, DRBC, EPA, and HEW. (ELR Order No. 00690.) (NTIS Order No. EIS 73 0690–F.)

Hawaii, Halawa Heights Road, Hawaii, April 24: The proposed project is a four-lane divided highway with two additional auxiliary lanes for access to the new Oahu Stadium. Total length is 0.6 mile. The project will require 14.6 acres of private land. An increase in noise and air pollution levels will occur (approximately 100 pages). Comments made by: USDA, DOI, DOT, EPA, HUD, USN, USA, State, and local agencies and members of Congress. (ELR Order No. 00687.) (NTIS Order No. EIS 73 0687–F.)

Wilson Bridge and aproaches, Island of Oahu, Hawaii, April 24: The project involves replacement of the existing Wilson Bridge and the widening of Kamehameha Highway to Kilani Avenue, a distance of approximately 2,500 ft. Ten families and 15 businesses will be displaced. Adverse impacts will include increased erosion, siltation, and noise and air polution (59 pages). Comments made by: USA, USAF, USDA, COE, DOI, EPA, HUD, State, and local agencies, and members of Congress. (ELR Order No. 00691.) (NTIS Order No. EIS 73 0691–F.)

U.S. COAST GUARD

Final

Oil Pollution Act of 1961, amendments, April 25: The statement considers a bill (S. 3766/H. 15627), which would amend the Oil Pollution Act of 1961, as amended, by the implementation of the 1969 and 1971 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, 1954, as amended. The bill would establish rigid control measures to prevent and control pollution of the sea by oil. The statement indicates that no adverse environmental effects would result from enactment of the bill (60 pages). Comments made by: COE, EPA, DOC, DOI, DOT, and USN. (ELR Order No. 00703.) (NTIS Order No. EIS 73 0703–F.)

South Carolina Route 700, Charleston County, S.C., April 26: The statement refers to the proposed approval of location and plans for a (replacement) fixed highway bridge to carry Route 700 across Church Creek at Wadmalaw Island. Some marshland will be adversely affected (26 pages). Comments made by: EPA, DOI, COE, and DOT. (ELR Order No. 00717.) (NTIS Order No. EIS 73 0717–F.)

TIMOTHY ATKESON,
General Counsel.

[FR Doc.73-8959 Filed 5-4-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Notice of Availability

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period from April 1, 1973 to April 15, 1973.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this reviewing period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in appendix II, and the EPA source for copies of the comments as set forth in appendix V.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this reviewing period. The listing will include the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in appendix V.

Appendix IV contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. The listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in appendix V.

Appendix V contains a listing of the names and addresses of the sources for copies of EPA comments listed in appendices I, III, and IV.

Copies of the EPA Order 1640.1, setting forth the policies and procedures for EPA's review of agency actions, may be obtained by writing the Public Inquiries Branch, Office of Public Affairs, Environmental Protection Agency, Washington, D.C. 20460. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency or from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

Dated May 1, 1973.

SHELDON MEYERS,
Director,
Office of Federal Activities.

APPENDIX I

DRAFT ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN APRIL 1, 1973 AND APRIL 15, 1973

Corps of Engineers	D-COE-39004-HI: Nawiliwili small boat harbor, KAUAI, Hawaii.	LO-2	J
Do	D-COE-34068-NM: Cochiti Lake Rio Grande, N. Mex.	LO-2	G
Do	D-COE-35059-NY: Earth fill embankment and place fill in Hempstead Harbor, N.Y.	EU-2	C
Do	D-COE-35062-MS: Maintenance dredging, pass Christian Harbor, Harrison County, Miss.	ER-2	E
Do	D-COE-35065-VA: Channel to Newport News, maintenance dredging, Virginia.	LO-2	D
Do	D-COE-36228-IL: Meredosia levee and drainage district, Whiteside and Rock Island Counties, Ill.	LO-2	F
Do	D-COE-36233-TX: El Paso local protection project, Northwest area, Tex.	LO-1	G
Do	D-COE-36235-MS: Tombigbee River, East Fork, channel improvement and flood control, Itawamba County, Miss.	ER-2	E
Do	D-COE-39005-LA: Brush Bayou, La., Boggy and Cypress Bayous.	LO-1	G
Do	D-COE-84019-NC: Coastal Engineering Research Center, Field Research Facility, Duck, N.C.	LO-1	E
Delaware River Basin Commission.	D-DRB-00000-DE: Edge Moor electric generating station expansion, Delaware.	ER-2	D
Department of Agriculture	D-AFS-82063-MT: Burning for control of big sagebrush, Montana.	ER-2	I
Do	D-DOA-36250-SD: Silver Creek Watershed, Minnehaha County, S. Dak.	LO-2	I
Do	D-SCS-36251-SD: Mud Creek Watershed, Grant and Duel Counties, S. Dak.	LO-2	I
Do	D-ASC-39009-WT: Squaw Lake control structure, Oneida and Vilas Counties, Wis.	LO-1	F
Do	D-SCS-36230-KY: Caney Creek Watershed, Ohio, Butler and Grayson Counties, Ky.	LO-2	E
Do	D-SCS-36226-AR: Poinsett Watershed Project, Poinsett County, Ark.	LO-2	G
Do	D-SCS-36234-KY: Narge Creek Watershed Project Measure, Hopkins County, Ky.	ER-2	E
Do	D-REA-08002-SC: Transmission Lines—230 kV, and associated facilities Pinopolis-Kingstree; Robinson Plant-Blythewood, S.C.	LO-2	E
Department of the Interior	D-SFW-64004-HI: Proposal to designate a portion of the Hawaiian Islands National Wilderness Preservation System, Hawaii.	LO-1	J
Do	D-NPS-61124-OR: Proposed Wilderness Crater Lake National Park, Oreg.	LO-1	K
Department of Transportation	D-FAA-51232-SD: Linton Municipal Airport, Linton, S. Dak.	LO-1	I
Do	D-FAA-51230-DC: Role of Washington National Airport and Dulles International Airport, District of Columbia	LO-2	D
Do	D-FAA-51253-AR: Improvements to the Ozark-Franklin County Airport, Ozark, Ark.	LO-1	G
Do	D-FAA-51231-SD: Madison Municipal Airport, Madison, S. Dak.	ER-2	I
Do	D-FAA-51242-NB: Medisett Field Rushville, Sheridan County, Nebr.	LO-1	H
Do	D-FAA-51244-OK: Stigler Municipal Airport, Okla.	LO-1	G
Do	D-FAA-51243-WI: Marshfield Municipal Airport, Wood County, Wis.	LO-1	F
Do	D-FHW-41690-CO: Southwest Colorado Forest Highway Route 7, Mineral and Hindsdale Counties, Colo.	ER-2	I
Do	D-FHW-41697-WI: County Trunk Highway "Y" Spring Creek Drive, U.S. Highway 8, Lincoln and Oneida Counties, Wis.	LO-2	F
Do	D-FHW-41705-IN: F.A. Route 65, Marshall County, Ind.	LO-1	F
Do	D-FHW-41724-TX: State Highway 35 Bypass at West Columbia, Brazoria County, Tex.	LO-2	G
Do	D-FHW-41712-SC: Lexington and Richland Counties, I-20 and I-26 Connector Highway Improvement, S.C.	LO-2	E
Do	D-FHW-41782-CA: California Forest Highway No. 4 (State Road 36) from Forest Glen to a point 3.2 miles east.	LO-1	J
Do	D-FHW-41715-WV: West Virginia Route 2, Cabell City, W. Va.	LO-2	D
Do	D-FHW-41719-MO: Route 63, Columbia, Boone County, Mo.	LO-2	H
Do	D-FHW-41623-UT: Ogden—12th Street Corridor, Utah.	LO-1	I
Do	D-FHW-41765-AS: Tutuila Perimeter Road, TER-S 106(3) Aua to Afono, Island of Tutuila, American Samoa.	3	J
Do	D-FHW-41731-NB: U.S. 30 east, improvements, Grand Island, Nebr.	LO-2	H
Do	D-FHW-41734-KY: Campbell and Kenton Counties, (5th Street Bridge) bridge over Licking River and approaches, U-320(9), Ky.	LO-2	E
Do	D-FAA-51268-AR: Pocalhontas Municipal Airport, Ark.	LO-1	G
Federal Power Commission	D-FPC-05426-VA: Blue Ridge Project, VA/NE	3	D
Do	D-FPC-05430-WA: Wells project No. 2149, Hydroelectric, Washington Wildlife Proceedings, Wash.	LO-1	K
Do	D-FPC-05429-WI: Wausau Hydroelectric Development Project No. 1999, Marathon County, Wis.	LO-2	F
General Services Administration	D-GSA-81118-CA: Proposed construction of Social Security Payment Center, Richmond, Calif.	LO-1	J
Missouri River Basin Commission.	D-MRB-39002-MO: Missouri River Basin Comprehensive Framework Study, Mo.	3	H

APPENDIX II—DEFINITION OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

ENVIRONMENTAL IMPACT OF THE ACTION

LO—Lack of objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these aspects.

EU—Environmentally unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

ADEQUACY OF THE IMPACT STATEMENT

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonably available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III

FINAL ENVIRONMENTAL IMPACT STATEMENTS FOR WHICH COMMENTS WERE ISSUED BETWEEN APRIL 1, 1973, AND APRIL 15, 1973

Title and identifying number	General nature of comments	Source for copies of comments
DEPARTMENT OF TRANSPORTATION		
F-FHW-41713-MS: Lee County, Miss. (Relocation of U.S.-45, from Shannon to Verona).	No major objections raised on proposed project. However, final statement fails to identify affected streams and water quality.	E
DEPARTMENT OF THE INTERIOR		
F-NPS-61074-TN: Gatlinburg Aerial Tramway crossing of new entrance road to Great Smokey Mountains National Park, Sevier County, Tenn.	No objections raised on proposed project. Final statement satisfactorily responds to comments made by EPA during the review of the draft statement.	E

APPENDIX IV

REGULATIONS, LEGISLATION AND OTHER FEDERAL AGENCY ACTIONS FOR WHICH COMMENTS WERE ISSUED BETWEEN APRIL 1, 1973 AND APRIL 15, 1973

Responsible Federal Agency	Title	General nature of comments	Source for copies of comments
Department of Transportation.	R-FHW-88000-00: commercial motor vehicle interior noise levels.	EPA is concerned that the 10-hour exposure noise levels selected by the Bureau of Motor Carrier Safety are inadequate to prevent significant hearing loss.	A

APPENDIX V

SOURCES FOR COPIES OF EPA COMMENTS

A. Director, Office of Public Affairs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

B. Director of Public Affairs, Region I, Environmental Protection Agency, room 2303, John F. Kennedy Federal Building, Boston, Mass. 02203.

C. Director of Public Affairs, Region II, Environmental Protection Agency, room 847, 26 Federal Plaza, New York, N.Y. 10007.

D. Director of Public Affairs, Region III, Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106.

E. Director of Public Affairs, Region IV, Environmental Protection Agency, suite 300, 1421 Peachtree Street NE., Atlanta, Ga. 30309.

F. Director of Public Affairs, Region V, Environmental Protection Agency, One North Wacker Drive, Chicago, Ill. 60606.

G. Director of Public Affairs, Region VI, Environmental Protection Agency, 1600 Patterson Street, Dallas, Tex. 75201.

H. Director of Public Affairs, Region VII, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Mo. 64108.

I. Director of Public Affairs, Region VIII, Environmental Protection Agency, Lincoln Tower, room 916, 1860 Lincoln Street, Denver, Colo. 80203.

J. Director of Public Affairs, Region IX, Environmental Protection Agency, 100 California Street, San Francisco, Calif. 94102.

K. Director of Public Affairs, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Wash. 98101.

[FR Doc.73-8983 Filed 5-4-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

CABLE TELEVISION ADVISORY COMMITTEE, PANEL 9

Notice of Meeting

MAY 1, 1973.

Panel 9 of the Cable Television Technical Advisory Committee will hold an open meeting on Monday, May 7, 1973, at 9:30 a.m. The meeting will be held at the ATC Building, 360 South Monroe Street, Denver, Colo.

The agenda of the meeting will include continuing the discussion of panel 9 issues.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-8946 Filed 5-4-73;8:45 am]

DIALER DEVICES ADVISORY SUBCOMMITTEE

Notice of Meeting

MAY 1, 1973.

In accordance with Public Law 92-463, announcement is made of a public meeting of the Dialer Devices Advisory Subcommittee of the Dialer and Answering Advisory Committee to be held May 15 and 16, 1973, at the Drake Oakbrook Hotel, Oakland, Ill. The meeting will commence at 9:30 a.m.

1. *Purpose.*—The purpose of this subcommittee is to prepare recommended standards and procedures to the FCC, in order to permit the interconnection of customer provided dialer devices to the public switched network without the need for carrier provided connecting arrangements.

2. *Activities.*—As at prior meetings, subcommittee members and observers present their suggestions and recommendations regarding the various technical criteria and standards that should be considered with respect to the interconnection of dialer devices to the public telephone network. Subcommittee members include representatives of the Federal Government, State regulatory bodies, manufacturers, carriers and users.

3. *Agenda.*—The agenda for the May 15 and 16, 1973 meeting will be as follows:

Final review of the technical criteria:
a. Equipment test and inspection standard.
b. Procedure and enforcement including quality control.
c. Cover letter to Commissioner Lee.

4. *Public Participation.*—The public is invited to attend this meeting. Any member of the public wishing to file a written statement with the committee, may do so before or after the meeting.

It is suggested that those desiring more specific information, contact the Domestic Rates Division on (202) 632-6457.

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

[FR Doc.73-8947 Filed 5-4-73;8:45 am]

[Docket No. 19639-19640; FCC 73R-164]

NORTHEAST OKLAHOMA BROADCASTING, INC. AND PBL BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Northeast Oklahoma Broadcasting, Inc., Vinita, Okla., docket No. 19639, file No. BP-19163; PBL Broadcasting Co., Vinita, Okla., docket No. 19640, file No. BP-19233; for construction permits.

1. The above-captioned applications to operate the facilities of Station KVIN, Vinita, Okla., on a regular basis were designated for hearing by Commission order, FCC 72-1031, released November 21, 1972, 37 FR 25066, published November 25, 1972. The issues specified encompass inquiries into PBL Broadcasting Co.'s (PBL) financial qualifications, the effect of PBL's proposal on safety to air navigation, and a standard comparative issue. PBL, on December 18, 1972, filed a petition for enlargement of issues, seeking addition of the following issues: [1]

(a) Whether Ralph L. Weir, Jr., and Robert K. Weary are undisclosed parties in interest or principals in Northeast Oklahoma Broadcasting, Inc.

(b) Whether the principals have misrepresented facts to the Commission concerning ownership and control of Northeast Oklahoma Broadcasting, Inc. and its predecessor, Green Country Broadcasting, Inc.

(c) The facts and circumstances surrounding efforts by Northeast Oklahoma Broadcasting, Inc., including use of facilities of station KVIN, to solicit and aid ex parte contacts on behalf of KVIN to the Federal Communications Commission.

(d) The facts and circumstances surrounding the violation of § 73.1201 of the Commission's rules regarding station identification of station KKMA, Pryor, Okla., including any involvement of Wallace Dale Sparks.

(e) The facts and circumstances surrounding the suit by L. L. Gaffaney against Wallace Dale Sparks, case No. C-72-17 in the district court in and for Craig County, State of Oklahoma for money damages.

(f) Whether Northeast Oklahoma Broadcasting, Inc., has failed to disclose material information, regarding a., b., d., and e. above, to the Commission in its application, or comply with the provisions of §§ 1.514 and/or 1.65 of the Commission's rules.

(g) The efforts made by Northeast to ascertain community needs and interests for the area to be served and the means by which the applicant proposes to meet those needs and interests.

(h) Whether, in light of the evidence adduced pursuant to the foregoing issues, Northeast possesses the requisite qualifications to be a licensee of the Commission, or in the alternative, if a comparative demerit or demerits should be assessed against it.

2. The undisclosed party-in-interest and misrepresentation issues are based essentially on the same facts. PBL first points out that Ralph L. Weir, Jr., is the father of Daniel R. Weir, Northeast's president and 70 percent stockholder. PBL states further: That Ralph L. Weir, Jr., originally owned 40 percent of Green Country Broadcasting Co., the original applicant for KVIN's facilities; that Ralph L. Weir, Jr., owns extensive CATV and broadcast interests elsewhere; and that at the time the corporate name was changed from Green Country to Northeast Oklahoma Broadcasting, Inc., Ralph L. Weir, Jr., and three of the other principals of Green Country withdrew from the corporation, Daniel R. Weir increased his holding from 10 to 70 percent, and a new shareholder, Jim Smith, was brought into the corporation.[2] PBL also points out that Daniel R. Weir paid for his additional shares of stock in Northeast with the proceeds of a $30,000 loan from the First State Bank of Junction City, Kans., and that Northeast relies upon a commitment from that bank to lend it $45,000 to establish its financial qualifications. Each of these loans, PBL observes, is guaranteed by Ralph L. Weir, Jr. Moreover, PBL notes, Ralph L. Weir, Jr., and Robert K. Weary, attorney for Ralph L. Weir, Jr., and for Northeast Broadcasting, Inc., are both directors of that bank. PBL further contends that Daniel R. Weir is only 21 years of age and his most recent employment has been at radio stations owned by his father, Ralph L. Weir, Jr. PBL also alleges that Robert K. Weary and Ralph L. Weir, Jr., engaged in negotiations with PBL's principals, looking toward arrangements for the interim operation of KVIN in June of 1972, and in December of 1972. PBL contends that the change in ownership of Northeast was accomplished to hide Ralph L. Weir's real ownership and thus improve the comparative position of Northeast in this proceeding. Therefore, PBL contends, issues concerning the real party in interest and an issue to inquire whether Northeast has in fact made misrepresentations to the Commission should be included in the proceeding.

3. Northeast, in opposition, concedes that Daniel R. Weir is the 21-year-old son of Ralph L. Weir, Jr., and that Ralph L. Weir, Jr., has agreed to guarantee repayment of his son's loan from the First State Bank of Junction City, Kans., and the loan to Northeast. Moreover, Northeast concedes that Robert K. Weary is its attorney and its registered agent in the State of Oklahoma. However, Northeast points out that the terms of the loans only require Ralph L. Weir, Jr.'s guarantee until such time as the Commission grants Northeast a regular license to operate KVIN. No further guarantee is required by the bank. Furthermore, Northeast contends that the employment of Daniel R. Weir by his father and the father-son relationship do not give rise to the presumption that the father will exercise control of Northeast; nor does the fact that Northeast changed its corporate structure prior to designation for hearing warrant the presumption that there was an attempt to mislead the Commission. As to the negotiations with PBL, Northeast points out that in June 1972, Ralph L. Weir, Jr., was still the principal stockholder and president of Green Country Broadcasting Corp., and alleges that Ralph L. Weir, Jr., did not participate in the December negotiations which were conducted by telephone; rather, it is alleged that these negotiations were conducted by Mr. Weary and Mr. Daniel Weir. These assertions are supported by the affidavits of Robert K. Weary, Ralph L. Weir, Jr., and Daniel Weir. Mr. Weary also states in his affidavit that his relationship with Northeast is purely a professional one, and that he will exercise no influence whatsoever on the policy and management of Northeast. Further, Northeast points out that, although Daniel Weir is only 21 years of age, he is legally independent, he has had considerable experience in the broadcast business, he does not live at home and he will, in fact, move to Vinita if and when a license is granted by the Commission.

4. The requested real party-in-interest and misrepresentation issues will be denied. The relatively close relationship between father and son does not, of itself, give rise to a presumption that the father will control the affairs of the son. "Michael Rice," 9 F.C.C. 2d 217, 2 R.R. 2d 965 (1967). Nor do the terms of the loan arrangement in any way indicate that Ralph Weir, Jr., will have control over the proposed station.[3] Moreover, the

[1] The Board also has before it for consideration: A supplement to the petition to enlarge, filed by PBL on Dec. 29, 1972; an opposition to the petition to enlarge, filed Jan. 10, 1973, by Northeast Oklahoma Broadcasting, Inc. (Northeast); a further supplement to the petition to enlarge, filed Jan. 16, 1973, by PBL; the Broadcast Bureau's comments, filed Jan. 17, 1973; and a reply to the opposition to the petition to enlarge, filed Jan. 22, 1973; two petitions for leave to file supplements to opposition, filed by Northeast on Feb. 2 and Mar. 7, 1973, respectively; and an opposition to the petition for leave to supplement, filed Mar. 15, 1973, by PBL.

[2] PBL notes that it has filed a petition with the Commission to have Northeast's application severed from this proceeding and returned to the processing line, based on the contention that the change in corporate ownership was grounds for dismissal under § 1.571(j)(2). That petition was denied by the administrative law judge, by order, FCC 73M-31, released Jan. 10, 1973.

[3] The facts that Ralph Weir, Jr., was originally a principal of the applicant and that he divested his ownership in order to improve the applicant's comparative position does not show that he retained an undisclosed interest in the applicant.

affidavits of Daniel Weir, Ralph Weir, Jr., and Robert Weary make clear that the business relationships here involved are not such that the son will be subordinated by his father. In short, the Board is of the view that petitioner's argument is predicated on speculation and surmise, and lacks the specificity required by § 1.229 of the rules. In these circumstances, the requested issue will be denied.

5. Radio station KVIN, Vinita, Oklahoma, has been operated by Lum A. Humphries. The Commission denied Humphries' application for renewal and Green Country Broadcasting Corp. (now Northeast) purchased the physical facilities of that station and secured a special temporary authorization to operate it. That special temporary authorization was once extended and the Commission indicated that Northeast and PBL should undertake to work out an agreement for the interim operation of the station pending the outcome of the instant litigation to determine the permanent licensee. The second STA expired before such agreement was reached and the Commission advised Northeast that it must terminate its operation of the station. Northeast thereafter petitioned the Commission to reconsider, and PBL opposed the reconsideration. PBL notes that Wallace D. Sparks and Jim Smith, both stockholders and employees of Northeast, broadcast a series of appeals to the public in Vinita requesting listeners to write or telegraph the Commission asking it to reverse its position and keep KVIN on the air. It is not disputed that Sparks and Smith frequently advised their listeners that it was not important who the eventual licensee of the station would be, but that their request was directed to obtaining a reversal of the Commission's decision requiring Northeast to immediately cease its operation of KVIN. These facts are supported by extensive tape recordings of virtually a full day's broadcasting. Moreover, it is conceded that 35 or more citizens of Vinita and the surrounding area did in fact write or telegraph Dean Burch, Chairman of the FCC, urging the Commission to reverse its decision and permit KVIN to remain on the air. PBL contends that this constitutes a solicitation of ex parte presentations in a restricted proceeding which is prohibited by the Commission's rules. Northeast, in opposition, argues that it solicited a presentation in its effort to persuade the Commission to permit the continued operation of station KVIN, but that, since it specifically pointed out that it was not seeking an effort on the part of the public to influence the outcome of the instant proceeding, its actions were not prohibited by the rules.

6. The Board is satisfied that an issue inquiring into this matter must be added. The definition of a restricted proceeding is set forth in § 1.1203 of the Commission's rules. It is clear from a reading of that section that any contested proceeding which is involved in a hearing is restricted. While it is true that the petition for extension of STA filed by Northeast was not in hearing, it is nevertheless related to the instant proceeding because it involves the continued operation of the facilities for which the applicants in the instant proceeding are seeking a permanent authorization. Moreover, Northeast's petition to reconsider was in fact opposed by PBL. In the Board's view, these circumstances raise questions which should be explored in the context of this hearing. Northeast's reliance on "Fine Music," 8 F.C.C. 529, for the proposition that the communications it solicited are not prohibited by the rules is not well taken. The Commission's rules clearly prohibit the solicitation of ex parte presentations in restricted proceedings, whether those presentations go to the outcome of the proceedings or are merely status inquiries.[4] "Fine Music" merely defines a narrow exception to this rule. Because Congress exercises overall supervision of the Commission's activities, the Commission concluded that a communication to a member of Congress by a party to a restricted proceeding, which resulted in an inquiry concerning the Commission's delay was not precluded by the Commission's rules. This case affords no basis for the conclusion that an applicant may request the general public to urge an early favorable disposition in a restricted proceeding. Accordingly, an issue will be specified to ascertain the facts concerning Northeast's request that its listeners communicate with the Commission concerning the Commission's order terminating the operation of KVIN and the effect of this activity no Northeast's qualifications to be a Commission licensee.

7. Wallace D. Sparks, a stockholder, vice president and director of Northeast and the proposed general manager of the facility being sought, had formerly been employed by the licensee of KVIN. After that employment was terminated he contracted with the licensee of FM Station KKMA, Pryor, Okla., to establish an auxiliary studio in Vinita and to broadcast from Vinita as a time broker. Station KKMA was subsequently cited for rules violations, including station identification which failed to properly identify the city of license and which the Commission found was designed to mislead its listeners. KKMA was subsequently assessed a $2,000 forfeiture for these violations. Among the announcements cited were certain announcements by one Wally D.[5] Sparks acknowledged having made the announcements but in an affidavit attached to Northeast's opposition denies any intent to mislead his listeners or to violate the Commission's rules. The Board will add an issue concerning Sparks' participation in this matter. Sparks is Northeast's proposed general manager, and in view of his broadcast management experience, it must be presumed that he had available to him, and was familiar with, the Commission's station identification rules. A subsequent affidavit disclaiming intent to violate the rules cannot relieve him of his responsibility for knowledge of those rules. In view of these circumstances, an inquiry to ascertain the facts concerning Sparks' alleged failure to comply with the Commission's station identification rules and its effect on Northeast's qualifications to be a licensee will be added to this proceeding.

8. Sparks' relationship with Station KKMA also resulted in a civil lawsuit against Sparks by the owner of that station in which it was alleged that Sparks had given Gaffaney, the licensee of Station KKMA, "hot checks" and that Sparks owed him $6,888.67. Sparks, in turn, filed a cross claim and a judgment was eventually entered against Sparks in the sum of $1,750, plus costs and legal fees. PBL contends that since the plaintiff in that case relied to some extent on the fact that Sparks had given him "hot checks," questions concerning Sparks' character are raised and an issue to ascertain all of the facts concerning the lawsuit and its effect on the qualifications of Northeast is required. This requested issue will be denied. Sparks' obligation to Mr. Gaffaney, licensee of KKMA, has no bearing on his ability to meet his obligation to Northeast since his stock is already paid for with the proceeds of a bank loan. Moreover, the disagreement between Sparks and Gaffaney as to the money owed, which was resolved in the civil suit is not sufficient to warrant further inquiry in this proceeding. Accordingly, the requested issue will be denied.

9. PBL also contends that Northeast's failure to report Sparks' involvement in KKMA's forfeiture for violation of rules and its failure to include reference to Gaffaney's lawsuit against Sparks warrant the inclusion of §§ 1.514 and 1.65 issues in this proceeding. PBL notes that the lawsuit against Sparks was filed on January 28, 1972, while Northeast's application was not filed until March 6, 1972. The Commission's memorandum opinion and order assessing a forfeiture against KKMA (FCC 72-747) was released August 30, 1972, 37 F.C.C. 2d 74, 25 R.R. 2d 226. PBL urges that Northeast's failure to report the lawsuit in its application and to subsequently advise the Commission of the forfeiture requires an issue to determine whether Northeast has violated §§ 1.514 and 1.65 of the Commission's rules. Northeast, opposing the requests, contends that Sparks was not made a party to the forfeiture proceeding and received no notice of the Commission's August 30, 1972, action assessing the forfeiture against KKMA, but that when the matter was called to its attention by counsel for PBL in an attempt to persuade it to dismiss its application, Northeast proceeded to prepare an amendment to its application, which was filed January 3, 1973. As to the civil suit against Sparks, Northeast states,

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[4] See §§ 1.1223, 1.1225, and 1.227(e) of the Commission's rules.

[5] Northeast has conceded in an amendment to the application that the Wally D. referred to in the KKMA matter is Wallace D. Sparks, its vice president and proposed general manager.

there was no judgment pending at the time the application was filed. Northeast concedes that its counsel was advised of the judgment dated November 20, 1972, against Sparks by counsel for PBL but contends that it voluntarily advised the Commission of the matter within 30 days of the date judgment on the verdict was filed in the court. Thus, Northeast concludes, no violation of the rule occurred.

10. The requested issue will be denied. Northeast voluntarily amended its application to advise the Commission of the judgment against Sparks and to acknowledge that Sparks was involved in the KKMA matter. The Commission was notified of the judgment within the 30-day limitation set forth in § 1.65 of the rules, and we cannot agree with the petitioner's contention that it was incumbent on Northeast to report the pendency of the lawsuit since petitioner has not shown with specificity its significance on Northeast's qualifications. As to the forfeiture, we have no reason to doubt Northeast's assertion that Sparks, who was not a party to the forfeiture, was unaware of it until recently, and it was reported within 35 days after the Commission denied remission or mitigation of the forfeiture. The fact that the amendments were filed after counsel for PBL discussed the matter with counsel for Northeast does not necessitate further inquiry in this proceeding.

11. PBL notes that Northeast's survey to ascertain community needs was supervised by Ralph L. Weir, Jr., and that the interviews were conducted by Sparks and Pat Powers. PBL contends that since Weir and Powers have now withdrawn from the corporation the survey no longer complies with the requirements of the Commission's "Primer on Ascertainment of Community Needs," 27 F.C.C. 2d 650, and that an issue with respect to this matter should therefore be added to the proceeding. The request will be denied. PBL misconceives the relevant requirements. The primer, supra, at question 11(a) specifies that the interviews of community leaders must be conducted by principals or management-level employees and this was done. Sparks was at the time of the interviews a 10 percent stockholder, vice president, and proposed general manager. Since he has remained with Northeast in those capacities the ascertainment of needs survey is not deficient in this respect. The Board will therefore deny this request.

12. *Accordingly, it is ordered*, That the petitions to file supplement to opposition to petition to enlarge issues, filed February 2, 1973, and March 7, 1973, by Northeast Oklahoma Broadcasting, Inc., are denied; and

13. *It is further ordered*, That the petition to enlarge issues, filed December 18, 1972, by PBL Broadcasting Co. is granted to the extent indicated herein, and is denied in all other respects; and that the issues are enlarged as follows:

1. To determine the facts and circumstances surrounding alleged efforts by Northeast Oklahoma Broadcasting, Inc., to solicit ex parte contracts prohibited by § 1.1225 of the Commission's rules.

2. To determine the facts and circumstances surrounding the alleged participation of Wallace Dale Sparks in certain violations of § 73.1201 of the Commission's rules by Station KKMA–FM, Pryor, Okla.

3. To determine the effect of the evidence adduced pursuant to the foregoing issues on Northeast's requisite and comparative qualifications to be a licensee of the Commission.

14. *It is further ordered*, That the burden of proceeding with the introduction of evidence under the foregoing issues shall be on PBL Broadcasting Co., and the burden of proof under these issues shall be on PBL Broadcasting Co. and casting, Inc.

Adopted April 20, 1973.

Released April 26, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[4]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-8944 Filed 5-4-73;8:45 am]

[Docket No. 19725-19726; FCC 73-437]

STEREO BEAM CORP. AND KVCH, INC.

Order Designating Application for Hearing on Stated Issues

In regard applications of: Stereo Beam Corp., Cedar Rapids, Iowa, requests: 102.9 MHz, No. 275; 100 kW (H & V); 667 feet, docket No. 19725, file No. BPH–7437; KVCH, Inc., Cedar Rapids, Iowa, requests: 102.9 MHz, No. 275; 100 kW (H & V); 605 feet, docket No. 19726, file No. BPH–7671; for construction permits.

1. The Commission has under consideration: (a) The captioned applications; (b) a "Petition to Dismiss or Require Amendment" filed against KVCH, Inc.'s, application by Stereo Beam Corp. (Stereo Beam); (c) a "Motion to Dismiss Improperly Filed Pleading" filed by KVCH, Inc. (KVCH), in response to the foregoing petition; (d) a "Petition to Include Issues Upon Designating FM Application for Hearing" filed against Stereo Beam's application by KVCH; and (e) related pleadings in opposition and reply.

2. Stereo Beam's "Petition to Dismiss or Require Amendment," filed on March 6, 1972, requests that the Commission either dismiss KVCH's application or require it to demonstrate its financial qualifications by supplying additional financial information, including the names of the business and professional men who purportedly agreed to finance its FM proposal. In its "Motion to Dismiss Improperly Filed Pleading," KVCH asserts that Stereo Beam's petition should be dismissed because it was not timely filed in compliance with § 1.580 of our rules. Since Stereo Beam did not file its petition within 30 days of the issuance of the public notice of the acceptance of KVCH's application for filing, as required by § 1.580 of our rules, we shall not consider its pleading as a formal petition to deny, but we shall treat the matters raised in the petition as informal objections, pursuant to § 1.587 of the rules.

3. Based on cost estimates contained in its application, we find that KVCH will required funds of $78,300 to construct and operate its proposed station for 1 year.[1] To satisfy this requirement, KVCH initially relied on $500 in cash and $75,000 in loans. Thus, even if these funds had been shown to be available, KVCH would have been $3,000 short of the amount required. Although the availability of the $500 in cash was established, the availability of the loans was not. In its initial submission, KVCH stated that three unnamed business and professional men would provide up to $75,000 to it, and would, at our request, underwrite and obtain a letter of commitment certifying their financial ability and willingness to honor the said pledge through a letter of credit from the People's Bank and Trust Co. of Waterloo, Iowa. By Commission letter, KVCH was requested to submit an appropriate letter of credit, a statement from the guarantors that they were willing to underwrite the loan, and balance sheets or financial statements from such individuals. By letter received June 7, 1972, KVCH stated that the financial supporters who were interested in its proposal did not want to have their names and financial situations made part of a public record and that KVCH was therefore trying to arrange financing through more traditional means. Subsequently, KVCH obtained a commitment from a private lender, Mr. Roman W. Koenigs, to lend it $85,000; however, the commitment letter from Mr. Koenigs does not state what security, if any, is required. We do not know, therefore, whether KVCH can meet the lender's security requirements. Thus, the availability of the loan has not been established and financial issues will be specified against KVCH. In view of the foregoing and KVCH's new financial plan, the informal objections filed by Stereo Beam will be dismissed as moot.

4. In its petition to include issues upon designating FM application for hearing, KVCH requests that misrepresentation and character qualification issues, as well as an issue concerning failure to comply with § 1.65 of our rules, be specified against Stereo Beam. Mr. James I. Mitchell, who is the president, proposed general manager, and 60 percent stockholder in Stereo Beam, is also the president and proposed general manager of Stereo Corp., licensee of station WBLM,

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[4] Board Member Berkemeyer absent.

[1] KVCH's first-year expenses are itemized as follows: Down payment on equipment, $11,470; first-year payments on equipment, including interest, $25,080; building expenses, $1,500; miscellaneous expenses, $4,000; interest on loan, if available, estimated at seven percent, $5,250; and operating expenses, $31,000.

Lewiston, Maine. Mr. Edward F. Bock, who owns 20 percent of Stereo Beam, also owns 99 percent of Stereo Corp. Thus, Messrs. Bock and Mitchell control both Stereo Beam and Stereo Corp. Although Stereo Corp.'s application for an FM station in Lewiston, Maine, was filed on December 27, 1971, subsequent to the filing of Stereo Beam's Cedar Rapids application, the Cedar Rapids application was not amended to supply data relating to the Lewiston application until April 29, 1972. The Lewiston application was granted on March 27, 1972. KVCH contends that Stereo Beam and Mr. Mitchell, by not amending their Cedar Rapids application within 30 days of the filing of Stereo Corp.'s application for the Lewiston facility, as required by § 1.65 of our rules, misrepresented facts to the Commission and preserved a potential comparative advantage vis-a-vis KVCH on the issue of integration of ownership and management in their Cedar Rapids proposal. Furthermore, KVCH notes that Edward Bock, a proposed donor of funds to both projects, did not amend his balance sheet submitted with the Cedar Rapids application to reflect his commitment to the Lewiston, Maine, proposal. Thus, KVCH requests that issues be specified to determine whether Stereo Beam or Mr. Mitchell made deliberate misrepresentations to the Commission; whether Mr. Mitchell or Stereo Beam have the requisite candor to be a Commission licensee; and whether failure to update the Cedar Rapids application, as required by § 1.65 of the Commission's rules, should render Mr. Mitchell or Stereo Beam unqualified to be a Commission licensee.

5. In response to these allegations, Stereo Beam asserts that the Lewiston, Maine, application filed by Messrs. Mitchell and Bock stated that Mr. Mitchell's primary interest was in the Cedar Rapids application, that his funds were committed to Cedar Rapids, and that if the Cedar Rapids application should be granted, he would return to Iowa to manage the station. Stereo Beam claims that Mr. Mitchell agreed to manage the Lewiston station only because, at the time of the filing of the application for Lewiston, a rulemaking petition to remove channel 275 from Cedar Rapids was pending and it appeared that proceedings involving parties interested in operating on that channel could involve months or even years.[2] Mr. Mitchell filed a statement prepared on July 10, 1972, in which he explained that he had no familiarity with the rules governing practice and procedure before the Commission because his years of experience in the broadcast industry were involved mostly with Commission rules which dealt with practical broadcasting problems. His counsel advised him that since the Lewiston application appeared certain to be disposed of long before the Cedar Rapids application, the decision was made to wait until the Lewiston application was granted and then prepare an appropriate amendment to the pending Cedar Rapids proposal. Furthermore, Stereo Beam states that it believed that the Commission had been adequately informed of the various broadcast interests of Messrs. Mitchell and Bock in the Lewiston application. In conclusion, Stereo Beam notes that its delay in complying with § 1.65 of our rules did not amount to a lack of candor on its part and did not prejudice the other applicant.

6. In light of the foregoing, we find that Stereo Beam has not shown any intent to misrepresent facts to the Commission, has not evinced a lack of candor, and no substantial or material questions of fact exist with respect to these matters which would warrant further exploration in the hearing process. All relevant broadcast interests and commitments of the principals of Stereo Beam are now clearly explained in Stereo Beam's Cedar Rapids application. At the most, the late submission of the information concerning the Lewiston application appears to have been the result of carelessness or an unfamiliarity with procedural requirements on the part of Stereo Beam's principals, rather than an attempt to deliberately mislead the Commission. Although broadcast applicants and licensees are responsible for knowledge of the rules and compliance therewith, in this instance, the relevant information has been provided within a reasonable time and the opposing applicant has not been prejudiced by the delay in supplying the information. Thus, we find that issues pertaining to misrepresentation, character qualifications, and § 1.65 violations are not required as to Stereo Beam.

7. A comparison of programing proposals is warranted when one applicant proposes predominantly specialized programing and the other, general market programing—"Ward L. Jones," FCC 67–82 (1967); "Policy Statement on Comparative Broadcast Hearings," 1 FCC 2d 393, footnote 9 at 397 (1965). In this case, KVCH proposes a primarily black-oriented programing format, while Stereo Beam proposes mostly general market programing. Therefore, this aspect of the applicants' programing proposals will be considered under the standard comparative issue.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed, However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the application of KVCH, Inc.:

(a) The security required for the $35,000 loan from Mr. Roman W. Koenigs, whether the applicant can meet the lender's security requirements, and, therefore, whether the loan will be available to the applicant;

(b) Whether, in light of the evidence adduced under the preceding issue, the applicant is financially qualified.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications for construction permits should be granted.

10. *It is further ordered,* That the petition to dismiss or require amendment filed by Stereo Beam Corp. is dismissed as moot, and that the petition to include issues upon designating FM applications for hearing filed by KVCH, Inc. is denied.

11. *It is further ordered,* That each of the applicants shall file a written appearance stating an intention to appear and present evidence on the specified issues, within the time and in the manner required by § 1.221(c) of our rules.

12. *It is further ordered,* That the applicants shall give notice of the hearing, within the time and in the manner specified in § 1.594 of our rules, and shall seasonably file the statement required by § 1.594(g).

Adopted April 25, 1973.

Released May 2, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[3]

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

[FR Doc.73-8945 Filed 5-4-73;8:45 am]

[2] By "Second Report and Order" in docket No. 19401, released Feb. 12, 1973, FM assignments were made for Charles City, Hampton, and Pella, Iowa, which eliminate the necessity of removing channel 275 from Cedar Rapids.

[3] Commissioners Reid and Wiley absent.

FEDERAL POWER COMMISSION

NATIONAL POWER SURVEY—TECHNICAL ADVISORY COMMITTEE ON RESEARCH AND DEVELOPMENT

Agenda of Seventh Meeting

Meeting to be held at the Federal Power Commission Offices, 825 North Capitol Street NE., Washington, D.C., at 8:30 a.m., May 10, 1973, room 5200.

1. Meeting called to order by FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Approval of minutes of April 12 meeting.
B. Task force progress reports.
C. Further discussion/identification of key electric power research issues.
D. Other business.
E. Dates of future meetings.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB, *Secretary.*

[FR Doc. 73-8898 Filed 5-4-73;8:45 am]

NATIONAL POWER SURVEY—TECHNICAL ADVISORY COMMITTEE ON CONSERVATION OF ENERGY—TASK FORCE ON ENVIRONMENTAL ASPECTS

Agenda of Meeting

Meeting to be held at the Federal Power Commission Offices, 825 North Capitol Street NE., Washington, D.C., at 1:30 p.m., May 8, 1973, room 5200.

1. Meeting called to order by the FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Approval of minutes of March 15, 1973, meeting.
B. Review and analysis of report on environmental aspects of energy consumption through the year 2000 (prepared by Mr. James J. MacKenzie).
C. Review and analysis of report on the impact of environmental legislation on energy use (prepared by Mr. Fred Lawrence).
D. Review and analysis of report on total energy systems (prepared by Mr. David Lingo).
E. Further discussion of proposed policy recommendations.
F. Other business.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8899 Filed 5-4-73;8:45 am]

NATIONAL POWER SURVEY—TECHNICAL ADVISORY COMMITTEE ON POWER SUPPLY—TASK FORCE ON FORECAST REVIEW

Agenda of Meeting

Meeting to be held at the Federal Power Commission Offices, 825 North Capitol Street NE., Washington, D.C., at 8:30 a.m., May 11, 1973, room 5200.

1. Meeting opened by FPC Coordinating Representative.
2. Objectives and purposes of meeting:
A. Correction and additions to minutes of previous meeting.
B. Discussion of reports by task force members:
1. Mr. Hanrahan—"AEC Forecast Procedures."
2. Ms. Kline—"Econometric Forecast Study."
3. Mr. Savage—"Review of Forecasts for Regional Council Areas."
4. Mr. Geist—"Summary of Fuel Availability Studies."
5. Mr. Button—"Price Elasticity and Other Factors."
6. Mr. Lloyd—"Substitution of Electric Energy for Natural Gas and Fuel Oil Usage."
C. Discussion of a task force consensus.
D. Other business.
E. Set date for next meeting.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the Committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8900 Filed 5-4-73;8:45 am]

[Docket No. CI73-699]

APACHE EXPLORATION CORP.

Further Notice of Application

MAY 1, 1973.

Take notice that on April 16, 1973, Apache Exploration Corp. (Applicant), P.O. Box 2299, Tulsa, Okla. 74101, filed in docket No. CI73-699 an application, as revised by a filing on April 23, 1973, for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transwestern Pipeline Co., from the Vici Southwest Field, Dewey County, Okla., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas for 1 year at 54 cents per M ft^3 (thousand cubic feet) at 14.65 lb/in^2a (pounds per square inch absolute), subject to upward and downward British thermal unit adjustment with upward adjustment limited to 1,100 Btu per cubic foot, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Estimated deliveries for the first month of service are 26,250 M ft^3 of gas at 59.40 cents per M ft^3.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application, as revised, should on or before May 21, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Persons who have heretofore filed protests and petitions to intervene need not file again.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8893 Filed 5-4-73;8:45 am]

[Docket No. CI73-709]

D. F. MILES & M. W. MAXWELL

Notice of Application

MAY 1, 1973.

Take notice that on April 23, 1973, D. F. Miles & M. W. Maxwell (Applicants), P.O. Box 67, Tullos, La. 71479, filed in Docket No. CI73-709 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Gas Transmission Corp., from the Olla Field LaSalle Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to sell 2,000 M ft^3 of gas per day for 1 year at 40 cents per M ft^3 at 15.025 lb/in^2a, subject to downward Btu adjustment, within the contemplation of section 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of

the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8894 Filed 5-4-73;8:45 am]

[Docket No. CI73-707]

OKMAR OIL CO., ET AL.

Notice of Application

MAY 1, 1973.

Take notice that on April 19, 1973, Okmar Oil Co. et al. (Applicants), 1130 Vickers, KSB&T Building, Wichita, Kans. 67202, filed in docket No. CI73-707 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Co., from the Camrick Field, Texas County, Okla., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell an average of 2,000 M ft³ (thousand cubic feet) of gas per day for 2 years at 49c/M ft³ (cents per thousand cubic feet) at 14.65 lb/in²a (pounds per square inch absolute), subject to upward and downward Btu adjustment from 900 Btu/ft³, plus reimbursement for all existing and new taxes, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8896 Filed 5-4-73;8:45 am]

[Docket No. CI73-706]

PHILLIPS PETROLEUM CO.

Notice of Application

MAY 1, 1973.

Take notice that on April 19, 1973, Phillips Petroleum Co. (Applicant), Bartlesville, Okla. 74004, filed in docket No. CI73-706 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Co. from acreage in Eddy County, N. Mex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on April 10, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 240,000 M ft³ (thousand cubic feet) of gas per month at 52c/M ft³ (cents per thousand cubic feet) at 14.65 lb/in²a (pounds per square inch absolute), subject to upward and downward Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8895 Filed 5-4-73;8:45 am]

[Docket No. CI73-714]

TEXAS OIL & GAS CORP.

Notice of Application

MAY 1, 1973.

Take notice that on April 23, 1973, Texas Oil & Gas Corp. (Applicant), 2700 Fidelity Union Tower Building, Dallas, Tex. 75201, filed in docket No. CI73-714 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transcontinental Gas Pipe Line Corp., from the Gueydan Field, Vermilion Parish, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on April 4, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act and proposes to continue said sale for 3 years from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell approximately 30,000 M ft³ (thousand cubic feet) of gas per month at 35c/M ft³ (cents per thousand cubic feet) at 15.025 lb/in²a (pounds per square inch absolute).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining

the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-8897 Filed 5-4-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. D-39]

SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Delegation of Authority

1. *Purpose.*—This regulation delegates authority to the Secretary of Health, Education, and Welfare (HEW) to perform all functions in connection with the leasing of clinic space throughout Alaska for use by the HEW Indian Health Service.

2. *Effective date.*—This regulation is effective immediately.

3. *Expiration date.*—This delegation of authority shall expire April 30, 1976.

4. *Delegation.*—a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Secretary of Health, Education, and Welfare to perform all functions in connection with leasing of clinic space in amounts not to exceed 2,500 ft² throughout Alaska.

b. This delegation shall extend to leasing space under authority contained in section 210(h)(1) of the above-cited act for a firm period not to exceed 10 years for use by the HEW Indian Health Service.

c. The Secretary of Health, Education, and Welfare may redelegate this authority to any official or employee of the Department of Health, Education, and Welfare (40 U.S.C. 486(d)).

d. This authority shall be exercised in accordance with the limitations and requirements of the above-cited act, section 322 of the act of June 30, 1932 (40 U.S.C. 278a), as amended, other applicable statutes and regulations, and the policies, procedures, and controls prescribed by the General Services Administration.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

APRIL 24, 1973.

[FR Doc.73-8927 Filed 5-4-73;8:45 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

EASTERN ASSOCIATED COAL CORP.

Application for Renewal Permit; Notice of Opportunity for Public Hearing

Application for renewal permit for noncompliance with the interim mandatory dust standard (2.0 mg/m³) has been received as follows:

ICP Docket No. 20113, Eastern Associated Coal Corp., Joanne Mine, USBM ID No. 46 01430 0, Rachel, W. Va.:
- Section ID No. 004-0 (3 south mains).
- Section ID No. 009-0 (1 right, 1 west).
- Section ID No. 011-0 (15 left, 2 south).
- Section ID No. 012-0 (16 left, 2 south).
- Section ID No. 013-0 (8 right, 3 east).
- Section ID No. 014-0 (3 west mains).

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed on or before May 22, 1973. Requests for public hearing must be filed in accordance with 30 CFR part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, room 800, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman, Interim Compliance Panel.

MAY 1, 1973.

[FR Doc.73-8910 Filed 5-4-73;8:45 am]

UNITED STATES STEEL CORP. ET AL.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for renewal permits for noncompliance with the interim mandatory dust standard (2.0 mg/m³) have been received as follows:

(1) ICP Docket No. 20172, United States Fuel Co., King Mine, USBM ID No. 42 00098 0, Hiawatha, Utah:
- Section ID No. 008 (10 west).
- Section ID No. 009 (11 west).
- Section ID No. 001 (10 east).
- Section ID No. 007 (6 east).

(2) ICP Docket No. 20263, Westmoreland Coal Co., Pine Branch No. 2 Mine, USBM ID No. 44 03285 0, Dunbar, Va.:
- Section ID No. 001 (main south).

(3) ICP Docket No. 20371, Pocahontas Fuel Co., Buckeye Colliery, USBM ID No. 46 01546 0, Stephenson, W. Va.:
- Section ID No. 009-0 (1st right).
- Section ID No. 010-0 (3d right).
- Section ID No. 011-0 (1st left).
- Section ID No. 012-0 (3A-panel).

(4) ICP Docket No. 20376, Pocahontas Fuel Co., Eckman-Page Mine, USBM ID No. 46 01584 0, Eckman, W. Va.:
- Section ID No. 001-0 (west mains).
- Section ID No. 002-0 (north mains).
- Section ID No. 003-0 (No. 5 panel).

(5) ICP Docket No. 20513, Slab Fork Coal Co., Slab Fork No. 8 Mine, USBM ID No. 46 01504 0, Slab Fork, W. Va.:
- Section ID No. 816-0 (20 left No. 4 south).
- Section ID No. 819-0 (No. 2 north).
- Section ID No. 820-0 (13 right No. 4 south).
- Section ID No. 821-0 (1st right No. 1 east).

In accordance with the provisions of section 202(b)(4) (30 U.S.C. 842(b)(4)) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed on or before May 22, 1973. Requests for public hearing must be filed in accordance with 30 CFR part 505 (35 FR 11296, July 15, 1970), as amended, copies of which may be obtained from the panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, room 800, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman, Interim Compliance Panel.

MAY 1, 1973.

[FR Doc.73-8911 Filed 5-4-73;8:45 am]

OFFICE OF EMERGENCY PREPAREDNESS

ALABAMA

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Alabama, dated March 27, 1973, and published April 2, 1973 (38 FR 8488); amended April 5, 1973, and published April 9, 1973 (38 FR 9049); and amended April 20, 1973, and published April 26, 1973 (38 FR 10334) is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 27, 1973:

The counties of:

Baldwin
Escambia
Mobile

Dated May 3, 1973.

DARRELL M. TRENT,
Acting Director, Office of Emergency Preparedness.

[FR Doc.73-8984 Filed 5-4-73;8:45 am]

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portions of that manual are considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore these materials are set forth in full as follows:

[Temporary Instruction No. 624-3, 626-3, 627-3]

RESUMPTION OF PROCESSING OF PERSONAL APPEARANCES AND APPEALS

(Reference: Sections 1604.1(b), 1624.1, 1626.3(c), 1626.4(a), 1627.3(d), SSR)

1. The processing of personal appearances and appeals which is being held in abeyance in accordance with temporary instruction No. 624-2/626-2/627-2, issued February 14, 1973, will be resumed upon receipt of this temporary instruction.

2. Any registrant who has a personal appearance pending before a local or appeal board is entitled to have a personal appearance or appeal, if he wishes. A registrant who is eligible for classification into class 1-H, will have mailed to him by the board which has his file two copies of a "waiver" letter (see sample letter attached) affording him the opportunity to waive his personal appearance and be classified in class 1-H.

3. If a registrant waives his right to a personal appearance, and the file is at the local board, the registrant's classification shall be reopened by the local board. If the file is at the appeal board, his appeal shall be processed.

4. All registrants other than those mentioned in paragraph 2 will be processed in the normal manner, including any personal appearances which have been requested.

5. Temporary instruction No. 624-2/626-2/627-2 is rescinded.

This temporary instruction will terminate on June 30, 1973.

Issued April 4, 1973.

SAMPLE WAIVER LETTER FOR REGISTRANT WITH PENDING PERSONAL APPEARANCE

(Local or Appeal Board Stamp)

(Date of mailing)

To: ---

SSN: ---

Dear ---

In accordance with current Selective Service System classification policy, you are now eligible for classification into class 1-H. Class 1-H is a holding classification for registrants who are not currently subject to processing for induction.

You may, under the circumstances, elect to waive your right to a personal appearance, since no apparent purpose can be served by your expenditure of time and travel costs to have a hearing at this time. You may waive your right to a personal appearance by signing statement No. 1, below:

STATEMENT NO. 1

"As a result of the board determining that I am now eligible for classification into class 1-H, I wish to waive my right to a personal appearance. It is understood that my being classified in class 1-H will in no way preclude my being considered for any other classification for which I may later establish eligibility."

(Signature)

Should you continue to desire a personal appearance, please sign statement No. 2, below, and one will be scheduled for you:

STATEMENT NO. 2

"I still desire a personal appearance."

(Signature)

Regardless of which statement you sign, please return one copy of this letter in the enclosed envelope within 15 days of the date shown above.

(Authorized signature)

(To be requisitioned from State Headquarters.)

[Temporary Instruction No. 608-2]

INFORMATION BROCHURE "BUT I THOUGHT THE DRAFT HAD ENDED?"

(Reference: Section 1608.1, SSR)

1. A brochure entitled "But I Thought the Draft Had Ended?" has been produced to provide registrants accurate information on the standby draft system, and their legal responsibilities under the selective service law. Shipment of this brochure to each State headquarters will begin on or about April 16, 1973.

2. This brochure is designed to fit the window envelopes used by Selective Service, and will become a standard inclusion in all local board mailings of status cards to registrants, beginning upon receipt of the brochures.

3. Local boards are encouraged to also distribute this brochure to advisors to registrants, school counselors, college registrars, and other individuals from whom young men may seek advice about selective service.

4. A 6-month supply of the brochure has been ordered. If any change in volume is desired for the second 6-month supply, State directors must inform national headquarters, operations division, registrant relations, no later than August 15, 1973.

This temporary instruction will terminate when this information is included in a revision to chapter 608, RPM.

Issued April 6, 1973.

BYRON V. PEPITONE,
Director.

APRIL 26, 1973.

[FR Doc.73-8958 Filed 5-4-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Notice of Disaster Loan Area 967; Amdt. 2]

ALABAMA

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Alabama as a major disaster area following severe flooding and tornadoes which began on or about March 14, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the following additional County of Clarke, Ala. (See 38 FR 8700 and 38 FR 9626.)

Applications may be filed at the:

Small Business Administration, District Office, 908 South 20th Street, Birmingham, Ala. 35205.

and at such temporary offices as are established. Such addresses will be announced locally.

Applications for disaster loans under this announcement must be filed not later than May 30, 1973.

Dated April 27, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-8915 Filed 5-4-73;8:45 am]

[License No. 09/09-0163]

BRANTMAN CAPITAL CORP.

Notice of Issuance of a License To Operate as a Small Business Investment Company

On February 15, 1973, a notice was published in the FEDERAL REGISTER (38 FR 4542) stating that an application had been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing the small business investment companies (13 CFR 107.102 1973) for a license to operate as a small business investment company by Brantman Capital Corp., 1920 Paradise Drive, Tiburon, Calif. 94920.

Interested parties were invited to submit their written comments to SBA. No comments were received.

Notice is hereby given that pursuant to the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), after having considered the application and all other pertinent information and facts with regard thereto, SBA has issued license No. 09/09-0163 to Brantman Capital Corp. to operate as a small business investment company.

Dated April 25, 1973.

DAVID A. WOLLARD,
Associate Administrator for Finance and Investment.

[FR Doc.73-8913 Filed 5-4-73;8:45 am]

[Notice of Disaster Loan Area 968; Amdt. 1]

GEORGIA

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Georgia as a major disaster area following severe flooding and tornadoes beginning on or about March 16, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in the additional counties of Chattooga, DeKalb, and Gordon. (See 38 FR 9626).

Applications may be filed at the:

Small Business Administration, Regional Office, 1401 Peachtree Street NE., Atlanta, Ga. 30309

and at such temporary offices as are established. Such addresses will be announced locally.

Applications for disaster loans under this announcement must be filed not later than June 8, 1973.

Dated April 30, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-8916 Filed 5-4-73;8:45 am]

[Notice of Disaster Loan Area 969; Amdt. 1]

MICHIGAN

Amendment to Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Michigan as a major disaster area following severe storms and flooding which began on or about March 16, 1973, applications for disaster relief loans will be accepted by the Small Business Administration from flood victims in Arenac County, Mich. (See 38 FR 10140)

Applications may be filed at the:

Small Business Administration, District Office, 1249 Washington Boulevard, Detroit, Mich. 48226.

and at such temporary offices as are established. Such addresses will be announced locally.

Applications for disaster loans under this announcement must be filed not later than June 13, 1973.

Dated April 27, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-8917 Filed 5-4-73;8:45 am]

[Notice of Disaster Loan Area 964; Amdt. 2]

TENNESSEE

Notice of Disaster Relief Loan Availability

As a result of the President's declaration of the State of Tennessee as a major disaster area following heavy rains and flooding which began on or about March 14, 1973, and the subsequent designation of the additional counties of Cannon and Grundy by the Office of Emergency Preparedness as affected areas, the Small Business Administration will accept applications for disaster relief loans in these additional two counties. (See 38 FR 8544 and 38 FR 9124.)

Applications may be filed at:

Small Business Administration, District Office, 500 Union Street, Nashville, Tenn. 37219.

and at such temporary offices as are established. Such addresses will be announced locally.

Applications for disaster loans under this announcement must be filed not later than May 25, 1973.

Dated April 27, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-8918 Filed 5-4-73;8:45 am]

[License No. 01/01-5271]

21C VENTURE CAPITAL CORP.

Notice of Application for License as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by 21C Venture Capital Corp. (applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1972).

The officers and directors of the applicant are as follows:

Volney J. Steffire, president, director, 1 Winthrop Square, Cambridge, Mass. 02138.
Martin C. Steffire, vice president, director, 1 Winthrop Square, Cambridge, Mass. 02138.
Rubin L. Gorewitz, treasurer, director, general manager, 7 Danville Court, West Nyack, N.Y. 10994.
Robert Projansky, secretary, director, legal counsel, 250 West 57th Street, New York, N.Y. 10019.

The applicant, a New York corporation, with its principal place of business located at 1 Winthrop Square, Cambridge, Mass. 02138, will begin operations with $300,000 of paid-in capital, consisting of 60 shares of common stock issued at $5,000 a share. The 21C Corporation, a new product development corporation, located at the same address as the applicant, will be the sole owner of the applicant's stock. The 21C Corporation is a publicly held company having approximately 200 shareholders.

Applicant will not concentrate its investments in any particular industry. According to the company's stated investment policy, its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA rules and regulations.

Any person may, on or before May 22, 1973, submit to SBA written comments on the proposed licensee. Any such communication should be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Cambridge, Mass.

Dated April 25, 1973.

DAVID A. WOLLARD,
Associate Administrator for Finance and Investment.

[FR Doc.73-8912 Filed 5-4-73;8:45 am]

[Delegation of Authority No. 30—Region III; Amdt. 1]

DEPUTY REGIONAL DIRECTOR ET AL.

Delegation of Authority To Conduct Program Activities in Region III

Delegation of Authority No. 30—Region III (37 FR 17599) is hereby amended by revising part I, section A, 3a and 3b; section B, 1a, 3a, 3b, and 3c; and parts II and VIII in their entirety. This amendment includes strategic arms limitation economic injury loans; more clearly defines certain authorities; eliminates references to class B disasters; and includes authority to contract for local credit bureau services and loss verification services.

Parts I, II, and VIII are revised to read as follows:

PART I—FINANCING PROGRAM

SECTION A. *Loan approval authority.*

* * *

3. Displaced business and other economic injury loans.

a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

(1) Deputy Regional Director	$1,000,000
(2) Disaster Branch Manager	1,000,000
(3) Chief and Assistant Chief, Regional Financing Division	350,000

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA shares):

(1) Regional Supervisory Loan Officer	$50,000
(2) District Director	350,000
(3) Chief, District Financing Division	350,000

SEC. B. *Other Financing Authority.*—1. *Loan Participation Agreements.*—a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, and strategic arms limitation economic injury loan participation agreements with banks:

(1) Deputy Regional Director.
(2) Chief and Assistant Chief, Regional Financing Division.
(3) Regional Supervisory Loan Officer.
(4) District Director.
(5) Chief, District Financing Division.
(6) Disaster Branch Manager.

* * * * *

3. Cancel, reinstate, modify, and amend authorizations.

a. For business economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational health and safety, and strategic arms limitation economic injury loans:

(1) Deputy Regional Director.

(2) District Director.

(3) Disaster Branch Manager.

b. For fully undisbursed or partially disbursed business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational health and safety, coal mine health and safety, and strategic arms limitation economic injury loans:

(1) Chief and Assistant Chief, Regional Financing Division.

(2) Regional Supervisory Loan Officer.

(3) Chief, District Financing Division.

c. For business economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, occupational safety and health, and strategic arms limitation economic injury loans personally approved under delegated authority: None.

* * * * *

PART II—DISASTER PROGRAM

Section A. Disaster Loan Authority. 1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disaster) except to the extent of refinancing of a previous SBA disaster loan:

(1) Deputy Regional Director.

(2) Chief and Assistant Chief, Regional Financing Division.

(3) Disaster Branch Manager.

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety loans, occupational safety and health loans, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters), in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) District Director.

(2) Chief, District Financing Division.

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

Regional Supervisory Loan Officer... $50,000

4. To appoint as a processing representative any bank in the disaster area:

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Directors.

(3) Disaster Branch Manager as assigned.

5. To approve or reject the request of an applicant to file for a disaster loan after the period for acceptance under the original disaster declaration, or extension thereof, has expired:

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Director.

SEC. B. *Administrative Authority.*—1. *Establishment of Disaster Field Offices.*—a. To establish field offices upon receipt of advice of the designation of a disaster area; and to close disaster field offices when no longer advisable to maintain such offices:

(1) Deputy Regional Director.

(2) Chief and Assistant Chief, Regional Financing Division.

(3) District Director.

b. To obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space:

(1) Regional Chief, Administrative Division.

2. Purchase and Contract Authority.

a. To contract for local credit bureau services and loss verification services pursuant to chapter 4 of title 41, United States Code, as amended, subject to the limitations contained in sections 257 (a) and (b) of that chapter:

(1) Regional Chief, Administrative Division.

(2) District Director.

(3) Disaster Branch Manager as assigned.

b. Other Administrative Authority: See Part VIII.

PART VIII—ADMINISTRATIVE

SECTION A. *Authority to Purchase, Rent, or Contract for Equipment, Services, and Supplies.*—1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. attorneys in foreclosure cases:

(1) Chief, Regional Administrative Division.

(2) District Director.

(3) Branch Manager as assigned.

2. Purchase and contract authority to purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to chapter 4 of title 41, United States Code, as amended, subject to the limitations contained in sections 257 (a) and (b) of that chapter:

(1) Chief, Regional Administrative Division.

(2) Regional Office Services Specialist.

(3) District Director.

(4) Disaster Branch Managers as assigned.

3. Rental of Motor Vehicles. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this administration:

(1) Chief, Regional Administrative Division.

(2) Regional Office Services Specialist.

(3) District Director.

(4) Disaster Branch Managers as assigned.

4. Rental of Conference Space. To rent temporarily SBA conference space located within the respective geographical jurisdiction:

a. Chief, Regional Administrative Division.

b. Regional Office Services Specialist.

c. District Director.

e. Branch Manager as assigned.

Effective date.—Part I, section A, 3a, and 3b, section B, 1a, 3a, 3b and 3c, September 28, 1972, parts II and VIII, July 1, 1972.

RUSSELL HAMILTON, Jr.,
Regional Director,
Region III.

[FR Doc.73-8914 Filed 5-4-73;8:45 am]

TARIFF COMMISSION

[TEA-W-197]

KOSS SHOE CO., INC.

Workers' Petition; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Koss Shoe Co., Inc., Auburn, Maine, the U.S. Tariff Commission, on May 2, 1973, instituted an investigation under section 301(c)(2) of the act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for men (of the types provided for in items 700.25, 700.26, 700.27, 700.29, 700.35, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before May 17, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the

Tariff Commission located in room 437 of the Customhouse.

Issued May 2, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-8968 Filed 5-4-73;8:45 am]

[AA1921-114]

STAINLESS STEEL PLATE FROM SWEDEN

Determination of Injury

MAY 1, 1973.

The Treasury Department advised the Tariff Commission on February 1, 1973, that stainless steel plate from Sweden is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-114 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held March 27-29, 1973. Notice of the investigation and hearing was published in the FEDERAL REGISTER of February 16, 1973 (30 FR 4599).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission [1] has determined that an industry in the United States is being injured by reason of the importation of stainless-steel plate from Sweden being sold at less than fair value.

STATEMENT OF REASONS

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury, or likelihood of injury, to an industry in the United States, or an industry in the United States must be prevented from being established. Second, such injury, likelihood of injury, or prevention of establishment of an industry, must be by reason of the importation into the United States of the class or kind of foreign merchandise the Secretary of the Treasury has determined is being, or is likely to be, sold at less than fair value (LTFV).

The aforementioned conditions are satisfied in the instant case. In our judgment an industry [2] in the United States is being injured by reason of imports of stainless-steel plate from Sweden sold at less than fair value. Our determination is based primarily on the following evaluation of facts developed during the investigation.

The Treasury Department found from its investigation that the bulk of the exports of stainless-steel plate from Sweden to the United States is being sold at less than fair value, and that the margins of dumping, i.e., the difference between fair value and the LTFV sales prices, are substantial.

Prices paid by distributors for LTFV imports are substantially lower than those paid for domestically produced stainless-steel plate, and the difference in price is approximately equal to the average LTFV margin found by the Treasury Department. Many distributors state that they would not purchase stainless-steel plate from any foreign source unless it was priced substantially below the price paid for U.S.-produced stainless-steel plate. Were the Swedish producers to sell at fair value the prices of imports from Sweden and of the domestic articles would be comparable, and domestic sales of imports from Sweden would be reduced. If such imports had been sold at fair value the sharp increase in imports and in U.S. market penetration by LTFV imports would never have occurred.

By reason of the LTFV sales on the part of the Swedish exporters, U.S. producers' prices have failed to increase in proportion to increased costs of domestic production. For example, the average net sales price per ton of domestically produced stainless-steel plate actually declined by 4.5 percent between 1970 and 1972, while the average hourly earnings per worker in primary metals industries, of which the stainless-steel plate industry is a part, increased by 18.2 percent. Other costs of production have also increased, thus resulting in a severe profit squeeze for the U.S. producers, caused—at least in part—by their inability to raise prices sufficiently to meet competition from LTFV imports of stainless-steel plate from Sweden.

Notwithstanding greatly increased exports to the U.S. market, such export sales continued in 1971 and 1972 to account for a small proportion of Sweden's total exports of such merchandise. In 1971, exports of stainless-steel plate and sheet to the United States accounted for only 10 percent of Sweden's total exports of such merchandise, exports to Western Europe accounted for 67 percent, and exports to all other countries accounted for 23 percent. There is considerable room for expansion of exports to the United States not only by altering market priorities but also by increasing production.

Swedish producers of stainless-steel plate, despite sales at less than fair value, are able to achieve a higher net return on their sales in the United States than on their sales in any other market. Thus, the Swedish producers have the capacity to increase their exports to the United States and the higher profitability for them from their sales to the United States at less than fair value is likely to encourage them to do so.

Imports of stainless-steel plate from Sweden have increased sharply in the past several years. In 1970, U.S. imports of stainless-steel plate from Sweden amounted to 1,600 net tons, or 19 percent of total imports, but in 1972 they amounted to nearly 10,000 net tons or 58 percent of total imports. Imports from Sweden alone in 1972 were almost equal to imports from all sources in 1971 and were greater than imports from all sources in any previous year.

One of the principal reasons for increased Swedish concentration on the U.S. market was the decline in demand for stainless-steel plate and sheet in Sweden's largest market, Western Europe. From available international statistical records, Swedish exports of stainless-steel plate and sheet during the period 1968-71 increased annually, from 90,000 metric tons in 1968 to 94,000 metric tons in 1971. However, exports to Western Europe fell off by 12,000 metric tons in 1971, while exports to the United States increased sharply. With the loss of its Western European market, Sweden maintained its total export level in 1971 by increasing its exports to the United States and to other markets outside of Western Europe.

In 1970, imports of stainless-steel plate from Sweden amounted to only 2 percent of apparent U.S. consumption. In 1971, however, they amounted to more than 5 percent, and by 1972, when Treasury found LTFV sales, they amounted to nearly 12 percent of the domestic market.

There is clear relation between lost sales by U.S. producers and LTFV imports of stainless-steel plate from Sweden. The Commission contacted distributors accounting for over 80 percent of total U.S. sales of stainless-steel plate. Over 75 percent of these distributors stated that they were buying or had bought stainless-steel plate imported from Sweden since January 1, 1972. Such LTFV sales supplanted purchases that would otherwise have been made from U.S. producers. This is supported by the fact that U.S. producers' shipments were 3 percent smaller in 1972 than in 1970, whereas U.S. consumption was 9 percent greater.

A review of the accounting procedures and financial statements of the principal producers of stainless-steel plate finds an overall decline in profits and returns on investment. Net operating profits for those firms as a percentage of net sales declined from 7 percent in 1968 and 1969 to 4 percent in 1972. For their stainless-steel plate operations alone, net operating profit as a percentage of net sales of stainless-steel plate declined even more precipitously, from 4.4 percent in 1968 to 1.5 percent in 1972. Although some of the decline in profitability of these producers may have been due to recessionary factors in 1970 and 1971,

[1] Vice Chairman Parker and Commissioners Leonard and Young did not participate in the decision.

[2] We have determined that the domestic industry being injured by LTFV imports herein considered consists of the facilities of domestic producers engaged in the production of stainless-steel plate.

the continued low level of profits in 1972 is directly attributable to increased production costs coupled with LTFV sales of Swedish stainless-steel plate that have held domestic prices at abnormally low levels.

On the basis of the foregoing, we conclude that an industry in the United States is being injured by reason of imports of stainless-steel plate from Sweden sold at less than fair value.

By direction of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.73-8920 Filed 5-4-73;8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

ALABAMA DEVELOPMENTAL PLAN

Submission of Plan and Availability for Public Comment

1. *Submission and description of plan.*—Pursuant to section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 667) and § 1902.11 of title 29, Code of Federal Regulations, notice is hereby given that an occupational safety and health plan for the State of Alabama has been submitted to the Assistant Secretary of Labor for Occupational Safety and Health. The Assistant Secretary has preliminarily reviewed the plan, and hereby gives notice that the question of approval of the plan is in issue before him.

The plan designates the Alabama Department of Labor as the agency to be responsible for administering the plan throughout the State. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1). All safety and health standards and amendments thereto which have been adopted by the Secretary of Labor except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring) are to be adopted by the State.

Included in the plan is proposed draft legislation to be considered by the Alabama Legislature during its 1973 session. Under the proposed legislation the Alabama Department of Labor is to have full authority to enforce and to administer laws respecting employee safety and health. Further, the draft legislation provides for the coverage of all employees within the State with the exception of employees of the United States, employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor and employees working for State agencies acting under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) as provided under section 4(b)(1) of the Occupational Safety and Health Act of 1970, and domestic workers employed in private homes.

The legislation is intended to bring the plan into conformity with the requirements of 29 CFR part 1902 in areas such as procedures for variances and protection of employees from hazards; procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; and procedures for prompt restraint or elimination of imminent danger situations.

The legislation also proposes to insure inspections in response to complaints; give employer and employee representative an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards; and employer right of review and employee participation in review proceedings.

Included in the plan is a statement of the Governor's support for it and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of Alabama. The plan set out goals and provides a timetable for bringing it into full conformity with part 1902. The plan also includes assurances of sufficient resources and qualified personnel hired under a merit system.

2. *Location of plan for inspection and copying.*—A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of Federal and State Operations, Occupational Safety and Health Administration, room 305, Railway Labor Building, 400 First Street NW., Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, room 587, 1375 Peachtree Street NE., Atlanta, Ga. 30309; and the Alabama Department of Labor Office, 600 Administrative Building, 64 North Union Street, Montgomery, Ala. 36104.

3. *Public participation.*—Interested persons are hereby given until June 6, 1973, in which to submit to the Assistant Secretary written data, views, and arguments concerning the plan. The submissions are to be addressed to the Director, Office of Federal and State Operations, room 305, Railway Labor Building, 400 First Street NW., Washington, D.C. 20210. The written comments will be available for public inspection and copying at the above address.

Any interested person(s) may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed by June 6, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

The Assistant Secretary of Labor for Occupational Safety and Health shall thereafter consider all relevant comments and arguments presented and issue his decision as to approval or disapproval of the plan.

Signed at Washington, D.C., this first day of May 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-8928 Filed 5-4-73;8:45 am]

INDIANA DEVELOPMENTAL PLAN

Submission and Availability for Public Comment; Correction

In FR Doc. 73-7833, published at page 10049 of the issue dated Monday, April 23, 1973, a correction is made by changing the date in the fourth line of the second paragraph of item 3. "Public participation" to "May 23, 1973." As corrected the second paragraph of "Public participation" should read as follows:

Any interested person(s) may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed by May 23, 1973. If the Assistant Secretary finds that substantial objections are filed, he shall hold a formal or informal hearing on the subjects and issues involved.

Signed at Washington, D.C., this 1st day of May 1973.

CHAIN ROBBINS,
Deputy Assistant Secretary of Labor.

[FR Doc.73-8929 Filed 5-4-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 236]

ASSIGNMENT OF HEARINGS

MAY 2, 1973.

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. No amendments will be entertained after the date of this publication.

MC 117119 Sub 463, Willis Shaw Frozen Express, Inc., now being assigned continued hearing May 22, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

I. & S. M-26765, pickup and delivery charge at Chicago, and I. & S. M-26765 Sub 1, pickup and delivery charge at Chicago, now being assigned hearing June 13, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

I. & S. M-26750 and I. & S. M-26750 Sub 1, rate increases for under 1,000 pounds, central and southern region, now being assigned hearing June 25, 1973, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 110098 Sub 126, Zero Refrigerated Lines, now assigned May 16, 1973, at San Francisco, Calif., is canceled and application is dismissed.

MC-115841 Sub 438, Colonial Refrigerated Transportation, Inc., is continued to June 18, 1973, at the Top of the 21 Motel, Highland and 21st Avenues South, Birmingham, Ala.

MC-C-7979, Danigarno Transportation, Inc., investigation and revocation of certificates, now assigned May 7, 1973, at Denver, Colo., is canceled.

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

[FR Doc.73-8964 Filed 5-4-73;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 2, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

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 on or before May 22, 1973.

FSA No. 42670—Lumber and lumber articles from points in Montana. Filed by Trans-Continental Freight Bureau, Agent (No. 482), for interested rail carriers. Rates on lumber and lumber articles, in carloads, as described in the application, from Nathan and White Sulphur Springs, Mont., to points in western trunkline and Illinois territories on the ICG.

Grounds for relief—Market and carrier competition.

Tariff—Supplement 153 to Trans-Continental Freight Bureau, agent, tariff 28-Q, ICC No. 1750. Rates are published to become effective on June 5, 1973.

FSA No. 42671—Cereal food preparations within the western district. Filed by Southwestern Freight Bureau, agent (No. B-413), for interested rail carriers. Rates on cereal food preparations, in carloads, as described in the application, from, to, and between points in Colorado-Utah-Wyoming Committee, Illinois Freight Association, Southwestern Freight Bureau, Texas-Louisiana Freight Bureau, and Western Trunk Line Committee territories.

Grounds for relief—Revision in carload minimum weights.

FSA No. 42672—Joint water-rail container rates—Nippon Yusen Kaisha. Filed by Nippon Yusen Kaisha (No. 4), for itself and interested rail carriers. Rates on general commodities, between ports in Japan, Korea, Hong Kong, and Taiwan, on the one hand, and rail stations on the U.S. Atlantic and Gulf seaboard, on the other.

Grounds for relief—Water competition.

By the Commission.

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

[FR Doc.73-8963 Filed 5-4-73;8:45 am]

[Ex Parte 241; Rule 19, Exemption 39, Amdt. 1]

LOUISIANA AND ARKANSAS RAILWAY CO.

Exemption From Mandatory Car Service Rules

Upon further consideration of Exemption No. 39 (Louisiana and Arkansas Railway Co.) issued April 13, 1973.[2]

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 39 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire May 15, 1973.

This amendment shall become effective April 28, 1973.

Issued at Washington, D.C., April 27, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] LEWIS R. TEEPLE, *Agent.*

[FR Doc.73-8961 Filed 5-4-73;8:45 am]

[Ex Parte 241; Rule 19; Exemption 40, Amdt.[1]]

LOUISIANA & ARKANSAS RAILWAY CO.

Exemption From Mandatory Car Service Rules

Upon further consideration of Exemption No. 40 (Louisiana & Arkansas Railway Co.) issued April 19, 1973.[1]

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 40 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 be, and it is hereby, amended to expire May 15, 1973.

This amendment shall become effective April 30, 1973.

Issued at Washington, D.C., April 27, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] LEWIS R. TEEPLE, *Agent.*

[FR Doc.73-8962 Filed 5-4-73;8:45 am]

[Notice 265]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before May 29, 1973. 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-74252. By order entered April 27, 1973, the Motor Carrier Board approved the transfer to Flamingo Transportation, Inc., Fort Lauderdale, Fla., of the operating rights set forth in certificate No. MC-133975, issued March 20, 1970, to Tri-City Transfer, Inc., Fort Lauderdale, Fla., authorizing the transportation of: General commodities, with the usual exceptions, but including mobile homes, between points in specified counties in Florida, subject to traffic having an immediate or subsequent movement and handling by freight forwarder. Richard B. Austin, 5720 West 17th Street, Miami, Fla. 33155, attorney for applicants.

No. MC-FC-74301. By order entered April 27, 1973, the Motor Carrier Board approved the transfer to B. Panella Drayage Co., a corporation, San Jose, Calif., of the operating rights set forth in certificates Nos. MC-10811 and MC-10811 (sub-No. 1), issued June 11, 1964, and October 24, 1961, respectively, and certificate of registration No. MC-10811 (sub-No. 3), issued April 7, 1964 to Frank Panella and Bernard R. Panella, doing business as B. Panella Drayage Co., San Jose, Calif., authorizing the transportation of canned fruits and vegetables, tallow, meat scraps, and general commodities, with specified exceptions, from, to, or between specified points and places in California. E. H. Griffiths, 1182 Market Street, suite 207, San Francisco, Calif. 94102.

No. MC-FC-74338. By order entered April 27, 1973, the Motor Carrier Board approved the transfer to C. & E. Bradley's Inc., Wrangell, Alaska, of the operating rights set forth in certificate No. MC-127156, issued October 28, 1970, to E. J. Bradley, doing business as Ed's Fuel and Transfer, Wrangell, Alaska, authorizing the transportation of general commodities, except those of unusual value, between points on Wrangell Island, Alaska. The authority to the extent that it authorizes the transportation of classes A and B explosives, shall be limited, in point of time, to a period expiring September 16, 1975. W. C. Stump, Box 2693, Ketchikan, Alaska 99901, attorney for applicants.

No. MC-FC-74367. By order entered April 25, 1973, the Motor Carrier Board

[2] Published at 38 FR 10051, Apr. 23, 1973.
[1] Published at 38 FR 10283, April 26, 1973.

approved the transfer to Ship Tank Container Corp., Secaucus, N.J., of the operating rights set forth in certificate No. MC–133349, issued November 18, 1969, to United Container Services, Inc., Secaucus, N.J., authorizing the transportation of general commodities (except classes A and B explosives), in containers or trailers having a prior or subsequent movement by water in foreign commerce, between points in that part of the New York, N.Y., commercial zone, as defined by the Commission in Fifth Supplemental Report in Commercial Zones and Terminal Areas, 53 M.C.C. 451, within which local operations may be conducted under the exempt provisions provided by section 203(b)(8) of the act (exempt zone). Elliot I. Mexnick, foot of Grace Street, Secaucus, N.J. 07094, representative for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-8967 Filed 5-4-73;8:45 am]

[Notice 57]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 1, 1973.

The following are notices of filing of application, except as otherwise specifically, noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex parte No. MC–67 (49 CFR pt. 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15-calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 32779 (sub-No. 8 TA), filed April 23, 1973. Applicant: SILVER EAGLE COMPANY, a corporation, 5885 Northwest St. Helens Road, P.O. Box 10286, Portland, Oreg. 97210. Applicant's representative: Robert R. Hollis, Commonwealth Building, Portland, Oreg. 97204. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except household goods as defined in 17 M.C.C. 467, commodities in bulk, in tank vehicles, and commodities which because of size and weight require the use of special equipment in transit), (1) between Portland, Oreg., and port of entry at intersection of U.S. Highway 97 and United States-Canadian border near Oroville, Wash.: From Portland over Interstate Route 80N to junction U.S. Highway 197 east of The Dalles, Oreg., thence over U.S. Highway 197 to junction U.S. Highway 97 near Goldendale, Wash., thence over U.S. Highway 97 to junction Washington State Route 131 near Ellensburg, Wash., thence over Washington State Route 131 to junction U.S. Highway 97 south of Liberty, Wash., thence over U.S. Highway 97 to United States-Canadian border north of Oroville, Wash., and return over the same route, serving intermediate and off-route points in Okanogan, Douglas, and Chelan Counties, Wash., and the off-route point of Quincy, Wash.; (2) between Portland, Oreg., and port of entry at intersection of U.S. Highway 97 and United States-Canadian border near Oroville, Wash.: From Portland over Interstate Route 80N to junction Washington State Route 18 near Federal Way, Wash., thence over Washington State Route 18 to junction Interstate Route 90 near North Bend, Wash., thence over Interstate Route 90 to junction U.S. Highway 97 near Cle Elum, Wash., thence over U.S. Highway 97 to United States-Canadian border north of Oroville, Wash., and return over the same route, serving intermediate and off-route points in Okanogan, Douglas, and Chelan Counties, Wash., and the off-route point of Quincy, Wash.;

(3) Between Seattle, Wash., and port of entry at intersection of U.S. Highway 97 and United States-Canadian border near Oroville, Wash.: From Seattle over Interstate Route 5 to junction Washington State Route 18 near Federal Way, Wash., thence over Washington State Route 18 to junction Interstate Route 90 near North Bend, Wash., thence over Interstate Route 90 to junction U.S. Highway 97 near Cle Elum, Wash., thence over U.S. Highway 97 to United States-Canadian border north of Oroville, Wash., and return over the same route, serving intermediate and off-route points in Okanagan, Douglas, and Chelan Counties, Wash., and the off-route point of Quincy, Wash.; and (4) between Spokane, Wash., and port of entry at intersection of U.S. Highway 97 and United States-Canadian border near Oroville, Wash.: from Spokane over Interstate Route 90 to junction Washington State Route 281 near George, Wash., thence over Washington State Route 281 to junction Washington State Route 28 at Quincy, Wash., thence over Washington State Route 28 to junction U.S. Highway 97 near Wenatchee, Wash., thence over U.S. Highway 97 to United States-Canadian border north of Oroville, Wash., and return over the same route, serving intermediate and off-route points in Okanagan, Douglas, and Chelan Counties, Wash., and the off-route point of Quincy, Wash., for 180 days.

NOTE.—Applicant will interline with other carrier at all authorized service points.

Supporting shippers: There are approximately 28 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, Oreg. 97204.

No. MC 51146 (sub-No. 317 TA), filed April 23, 1973. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298 (box ZIP 54306), 2661 South Broadway, Green Bay, Wis. 54306. Applicant's representative: Neil Du Jardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and metal container ends*, from Michigan City, Ind., to Frankenmuth, Mich., for 180 days. Supporting shipper: National Can Corp., Midway Center, 5959 South Cicero Avenue, Chicago, Ill. 60638 (Robert G. McCormick, Ohio district traffic manager). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, room 807, Milwaukee, Wis. 53203.

No. MC 114552 (sub-No. 78 TA), filed April 18, 1973. Applicant: SENN TRUCKING CO., a corporation, P.O. Box 333, Newberry, S.C. 29108. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from the facilities of Celotex Corp., at Lockland and Cincinnati, Ohio, to points in Virginia, North Carolina, South Carolina, Georgia, Tennessee, Kentucky, and Florida, for 180 days. Supporting shipper: Celotex Corp., Tampa, Fla. Send protests to: E. E. Strotheid, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 300 Columbia Building, 1200 Main Street, Columbia, S.C. 29201.

No. MC 114552 (sub-No. 79 TA), filed April 23, 1973. Applicant: SENN TRUCKING COMPANY, a corporation, P.O. Box 333, Newberry, S.C. 29108. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, composition board, molding and accessories and supplies used in the installation thereof*, from the facilities of Evans Products Co. at Chesapeake, Va., to points in Florida, Georgia, North Carolina, and South Carolina, for 180 days. Supporting shipper: Evans Products Co., 201 Dexter Street West, Chesapeake, Va. 23324. Send protests to: E. E. Strotheid, District Supervisor, Bureau of Operations, Interstate Commerce Commission,

300 Columbia Building, 1200 Main Street, Columbia, S.C. 29201.

No. MC 136166 (sub-No. 5 TA) (correction), filed March 21, 1973, published in the FEDERAL REGISTER, issue of April 9, 1973, and republished as corrected this issue. Applicant: CF TANK LINES, INC., 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: Robert M. Bowden, P.O. Box 3062, Portland, Oreg. 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid synthetic resins*, in bulk, in tank vehicles, from Oxnard, Calif., to points in Illinois, Indiana, Kansas, Michigan, New Jersey, Ohio, Pennsylvania, and Virginia, for 180 days. Supporting shipper: Diamond Shamrock Chemical Co., 617 Veterans Boulevard, Redwood City, Calif. 94063. Send protests to: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

NOTE.—Applicant seeks to operate as a common carrier rather than as a contract carrier which was shown in error in previous publication.

No. MC 138497 (sub-No. 1 TA) (correction), filed March 21, 1973, published in the FEDERAL REGISTER, issue of April 9, 1973, and republished as corrected this issue. Applicant: GRADY WHITFIELD, JR., AND BILL WHITFIELD, doing business as WHITFIELD TRUCKING CO., 213 Mitcham, North Little Rock, Ark. 72117. Applicant's representative: Louis Tarlowski, Pyramid Life Building, Little Rock, Ark. 72201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer ingredients*, in bulk, from facilities of Arkla Chemical Corp. in Phillips County, Ark., to points in Mississippi, points in Tennessee west of State Highway 13, points in Alabama west of U.S. Highways 31 and 11, from Alabama-Tennessee State line to Birmingham and from Birmingham to Alabama-Mississippi State line, points in Kentucky west of U.S. Highway 41, points in Illinois south of U.S. Highway 50, points in Missouri south of I–44, points in Oklahoma east of U.S. Highway 69, points in Texas east of U.S. Highway 69, from Texas-Oklahoma State line to Rusk and from Rusk, points north of U.S. Highway 84 to Texas-Louisiana State line, and points in Louisiana north of U.S. Highway 84, for 180 days. Supporting shipper: Arkla Chemical Corp., 400 East Capitol Avenue, Little Rock, Ark. 72203. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

NOTE.—The purpose of this republication is to correct "* * * points in Illinois south of U.S. Highway 50 * * *", in lieu of "* * * points in Illinois sought of U.S. Highway 41 * * *" which was published in error.

No. MC 138627 (sub-No. 1 TA), filed April 18, 1973. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, Iowa 50501. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed motor vehicles*, from points in Iowa, to Chicago and South Beloit, Ill.; Kansas City and St. Louis, Mo.; and Minneapolis, Minn., and points in their respective commercial zones, for 180 days. Supporting shipper: Roving Auto Crushers, Inc., 1226 East 27th Court, Des Moines, Iowa 50317. Send protests to: Herbert W. Allen, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 875 Federal Building, Des Moines, Iowa 50309.

No. MC 138639 TA, filed April 23, 1973. Applicant: CAVALIER TRANSPORTATION CO., INC., P.O. Box 7, Riverside, N.J. 08075. Applicant's representative: Bert Collins, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from the plantsite of Kaiser Gypsum Co., Inc., Delanco, N.J., to points in Maine, Vermont, and New Hampshire, for 180 days. Supporting shipper: Kaiser Gypsum Co., Inc., Kaiser Center, 300 Lakeside Drive, Oakland, Calif. 94604. Send protests to: Richard M. Regan, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 428 East State Street, room 204, Trenton, N.J. 08608.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 73-8965 Filed 5-4-73;8:45 am]

[Notice 264]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 2, 1973.

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-74462. By application filed April 26, 1973, HUNTER TRUCK LINES, INC., 201 West Pine Street, Ponchatoula, La. 70454, seeks temporary authority to lease the operating rights of FREILER INDUSTRIES, INC., P.O. Box 636, Amite, La. 70422, under section 210a(b). The transfer to HUNTER TRUCK LINES, INC., of the operating rights of FREILER INDUSTRIES, INC., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-8966 Filed 5-4-73;8:45 am]

COST OF LIVING COUNCIL

PRENOTIFICATION FIRMS WITH TERM LIMIT PRICING AUTHORIZATIONS

Revocation of Price Commission Order No. 13 Requiring Submission of Report

On December 15, 1972, the Price Commission issued Price Commission Order No. 13 (37 FR 28223, Dec. 21, 1972) requiring prenotification firms with term limit pricing (TLP) authorizations to submit a special report within 45 days after the expiration of its TLP authorization. The report was designed to assure an orderly transition from pricing under a TLP authorization to pricing pursuant to phase II's prenotification rules.

Under section 3(a) of Executive Order 11695, which initiated phase III of the economic stabilization program, Price Commission Order No. 13 remained in effect until "altered, amended, or revoked" by the Chairman of the Council or such competent authority as the Chairman may specify. After review of Price Commission Order No. 13 in light of the phase III regulations, it has been determined that this order no longer serves any useful purpose.

Section 130.3 of phase III regulations specifically provides that for the purpose of applying the 1.5 percent weighted annual average price increase after the expiration of the TLP, the firm must include all price increases placed in effect after January 10, 1973. Moreover, all TLP firms—including those which do not choose the 1.5 percent weighted annual average alternative—will be required to complete the new CLC–2 form which will show price increases effective after January 10, 1973. If TLP firms were to substantially increase prices toward the end of the term of their TLP authorization, this information would be reflected in the firm's reports and records required under phase III regulations §§ 130.21 and 130.22. These reports and records will better serve the purpose of evaluating compliance with the economic stabilization program than the report required by order No. 13, because the information will be based upon actual results rather than the forecast called for in order No. 13.

Therefore, pursuant to the authority delegated to the Director by Cost of Living Council Order No. 14 (38 FR 1489, Jan. 12, 1973), Price Commission Order No. 13 is revoked effective immediately.

Issued in Washington, D.C., on May 3, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

[FR Doc.73-9073 Filed 5-4-73;12:23 p.m.]

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MONDAY, MAY 7, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 87

PART II

DEPARTMENT OF LABOR

Wage and Hour Division

■

FAIR LABOR STANDARDS ACT

Extension of Equal Pay Provisions to Formerly Exempted Employees

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

PART 541—DEFINING, AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

Section 13(a) of the Fair Labor Standards Act of 1938, as amended, was further amended by Public Law 92-318, the Education Amendments of 1972, 84 Stat. 235, 86 Stat. 375, approved June 23, 1972, and effective July 1, 1972. This amendment changed section 13(a) to read "The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—".

By this amendment the equal pay provisions of the Fair Labor Standards Act, as amended, were made applicable to certain employees otherwise exempt from the act's minimum wage and overtime pay provisions contained in sections 6 and 7. To incorporate the sense of this amendment in 29 CFR part 541, the obsolete material in § 541.5b is hereby revoked, and a new § 541.5b entitled "Equal pay provisions of section 6(d) of the act apply to executive, administrative, and professional employees, and to outside salesmen" is added. Certain other technical amendments to other sections of the regulations where reference was made to the previous § 541.5b are also made.

Therefore, pursuant to the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), Reorganization Plan No. 6 of 1950 (3 CFR 1949—53 Comp., p. 1004) and Secretary's Orders Nos. 13-71 and 15-71 (36 FR 8755, 8756), part 541 of title 29, Code of Federal Regulations is amended as set forth below.

These changes, which involve technical changes, are not subject to the notice, public procedure, and delayed effective date provisions of 5 U.S.C. 553, and accordingly shall be effective on May 7, 1973.

The revised 29 CFR part 541 reads as follows:

Subpart A—General Regulations

Subpart B—Interpretations

AUTHORITY.—Sec. 13, 52 Stat. 1067, as amended; 29 U.S.C. 213.

Subpart A—General Regulations

§ 541.0 Terms used in regulations.

(a) "Administrator" means the Administrator of the Wage and Hour Division, U.S. Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in him under section 13(a)(1) of the Fair Labor Standards Act.

(b) "Act" means the Fair Labor Standards Act of 1938, as amended.

§ 541.1 Executive.

The term "employee employed in a bona fide executive * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided*, That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $125 per week (or $115 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That an employee who is compensated on a salary basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or

subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.2 Administrative.

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of either:

(1) The performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or

(2) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in the regulations of this subpart), or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e)(1) Who is compensated for his services on a salary or fee basis at a rate of not less than $125 per week (or $100 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, or

(2) Who, in the case of academic administrative personnel, is compensated for his services as required by paragraph (e)(1) of this section, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he is employed: *Provided*, That an employee who is compensated on a salary or fee basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

§ 541.3 Professional.

The term "employee employed in a bona fide * * * professional capacity" in section 13(a)(1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of:

(1) Work requiring knowledge of an advance type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or

(2) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee, or

(3) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he is employed; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than $140 per week (or $125 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities: *Provided*, That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of it branches, nor in the case of an employee employed and engaged as a teacher as provided in paragraph (a)(3) of this section; and *Provided further*, That an employee who is compensated on a salary or fee basis at a rate of not less than $200 per week (or $150 per week, if employed in Puerto Rico, the Virgin Islands, or American Samoa), exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in paragraph (a) (1) or (3) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.5 Outside salesman.

The term "employee employed * * * in the capacity of outside salesman" in section 13(a)(1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act, or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.5a Special provision for motion picture producing industry.

The requirement of §§ 541.1, 541.2, and 541.3 that the employee be paid "on a salary basis" shall not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $200 a week (exclusive of board, lodging, or other facilities).

§ 541.5b Equal pay provisions of section 6(d) of the act apply to executive, administrative, and professional employees, and to outside salesmen.

Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesmen under section 13(a)(1) of the act. Thus, for example, where an exempt administrative employee and another employee of the establishment are performing substantially "equal work," the sex discrimination prohibitions of section 6(d) are applicable with respect to any wage differential between those two employees.

§ 541.6 Petition for amendment of regulations.

Any person wishing a revision of any of the terms of the foregoing regulations may submit in writing to the Administrator a petition setting forth the

changes desired and the reasons for proposing them. If, upon inspection of the petition, the administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties, or will make other provision for affording interested parties an opportunity to present their views, either in support of or in opposition to the proposed changes. In determining such future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

Subpart B—Interpretations

§ 541.99 Introductory statement.

(a) Section 13(a)(1) of the Fair Labor Standards Act, as amended, exempts from the wage and hour provisions of the act "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), ,or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 percent of his hours worked in the workweek are devoted to such activities)." The quirements of the exemption under this section of the act are contained in subpart A of this part.

Employee Employed in a Bona Fide Executive Capacity

§ 541.101 General.

The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of § 541.1 contains among other things, percentage limitations on the amount of time which an employee may devote to activities "which are not directly and closely related to the performance of the work described in paragraphs (a) through (d)" of that section. For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as "exempt" work, while other activities will be referred to as "nonexempt" work.

§ 541.102 Management.

(a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety of the men and the property.

§ 541.103 Primary duty.

A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor. For example, in some departments, or subdivisions of an establishment, an employee has broad responsibilities similar to those of the owner or manager of the establishment, but generally spends more than 50 percent of his time in production or sales work. While engaged in such work he supervises other employees, directs the work of warehouse and delivery men, approves advertising, orders merchandise, handles customer complaints, authorizes payment of bills, or performs other management duties as the day-to-day operations require. He will be considered to have management as his primary duty. In the data processing field an employee who directs the day-to-day activities of a single group of programers and who performs the more complex or responsible jobs in programing will be considered to have management as his primary duty.

§ 541.104 Department or subdivision.

(a) In order to qualify under § 541.1, the employee's managerial duties must be performed with respect to the enterprise in which he is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of men assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order properly to classify an individual as an executive he must be more than merely a supervisor of two or more employees; nor is it sufficient that he merely participates in the management of the unit. He must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, it is clear that where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. Questions arise principally in cases involving supervisors who work outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a recognized unit with a continuing function, it is the division's position that the unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of such a unit. The following examples will illustrate these points.

(d) The projects on which an individual in charge of a certain type of construction work is employed may occur at different locations, and he may even hire most of his work force at these locations. The mere fact that he moves his location would not invalidate his exemption if there are other factors which show that he is actually in charge of a recognized unit with a continuing function in the organization.

(e) Nor will an otherwise exempt employee lose the exemption merely because he draws the men under his supervision from a pool, if other factors are present which indicate that he is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of the unit which has the continuing responsibility for making all installations for his employer,

or all installations in a particular city or a designated portion of a city, he would be in charge of a department or subdivision despite the fact that he draws his subordinates from a pool of available men.

(f) It cannot be said, however, that a supervisor drawn from a pool of supervisors who supervises employees assigned to him from a pool and who is assigned a job or a series of jobs from day to day or week to week has the status of an executive. Such an employee is not in charge of a recognized unit with a continuing function.

§ 541.105 Two or more other employees.

(a) An employee will qualify as an "executive" under § 541.1 only if he customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees of whom one works morning and one, afternoons; or four part-time employees, two of whom work mornings and two afternoons, this requirement would be met.

(b) The employees supervised must be employed in the department which the "executive" is managing.

(c) It has been the experience of the divisions that a supervisor of as few as two employees usually performs nonexempt work in excess of the general 20-percent tolerance provided in § 541.1.

(d) In a large machine shop there may be a machine-shop supervisor and two assistant machine-shop supervisors. Assuming that they meet all the other qualifications of § 541.1 and particularly that they are not working foremen, they should certainly qualify for the exemption. A small department in a plant or in an office is usually supervised by one person. Any attempt to classify one of the other workers in the department as an executive merely by giving him an honorific title such as assistant supervisor will almost inevitably fail as there will not be sufficient true supervisory or other managerial work to keep two persons occupied. On the other hand, it is incorrect to assume that in a large department, such as a large shoe department in a retail store which has separate sections for men's, women's, and children's shoes, for example, the supervision cannot be distributed among two or three employees, conceivably among more. In such instances, assuming that the other tests are met, especially the one concerning the performance of nonexempt work, each such employee "customarily and regularly directs the work of two or more other employees therein."

(e) An employee who merely assists the manager or buyer of a particular department and supervises two or more employees only in the actual manager's or buyer's absence, however, does not meet this requirement. For example, where a single unsegregated department, such as a women's sportswear department or a men's shirt department in a retail store, is managed by a buyer, with the assistance of one or more assistant buyers, only one employee, the buyer, can be considered an executive, even though the assistant buyers at times exercise some managerial and supervisory responsibilities. A shared responsibility for the supervision of the same two or more employees in the same department does not satisfy the requirement that the employee "customarily and regularly directs the work of two or more employees therein."

§ 541.106 Authority to hire or fire.

Section 541.1 requires that an exempt executive employee have the authority to hire or fire other employees or that his suggestions and recommendations as to hiring or firing and as to advancement and promotion or any other change of status of the employees whom he supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless he is directly concerned either with the hiring or the firing and other change of status of the employees under his supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

§ 541.107 Discretionary powers.

(a) Section 541.1(d) requires that an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.

(b) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.

§ 541.108 Work directly and closely related.

(a) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in such managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently such exempt work is of a kind which in establishments that are organized differently, or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose. Illustration will serve to make clear the meaning to be given the phrase "directly and closely related".

(b) Keeping basic records of working time, for example, is frequently performed by a timekeeper employed for that purposes. In such cases the work is clearly not exempt in nature. In other establishments which are not large enough to employ a timekeeper, or in which the timekeeping function has been decentralized, the supervisor of each department keeps the basic time records of his own subordinates. In these instances, as indicated above, the timekeeping is directly related to the function of managing the particular department and supervising its employees. However, the preparation of a payroll by a supervisor, even the payroll of the employees under his supervision, cannot be considered to be exempt work, since the preparation of a payroll does not aid in the supervision of the employees or the management of the department. Similarly, the keeping by a supervisor of production or sales records of his own subordinates for use in supervision or control would be exempt work, while the maintenance of production records of employees not under his direction would not be exempt work.

(c) Another example of work which may be directly and closely related to the performance of management duties is the distribution of materials or merchandise and supplies. Maintaining control of the flow of materials or merchandise and supplies in a department is ordinarily a responsibility of the managerial employee in charge. In many nonmercantile establishments the actual distribution of materials is performed by nonexempt employees under the supervisor's direction. In other establishments it is not uncommon to leave the actual distribution of materials and supplies in the hands of the supervisor. In such cases it is exempt work since it is directly and closely related to the managerial responsibility of maintaining the flow of materials. In a large retail establishment, however, where the replenishing of stocks of merchandise on the sales floor is customarily assigned to a nonexempt employee, the performance of such work by the manager or buyer of the department is nonexempt. The amount of time the manager or buyer spends in such work must be offset against the statutory tolerance for nonexempt work. The supervision and control of a flow of merchandise to the sales floor, of course, is directly and closely related to the managerial responsibility of the manager or buyer.

(d) Setup work is another illustration of work which may be exempt under certain circumstances if performed by a supervisor. The nature of setup work differs in various industries and for different operations. Some setup work is typically performed by the same employees who perform the "production" work; that is, the employee who operates the machine also "sets it up" or adjusts it for the particular job at hand. Such setup work is part of the production operation and is not exempt. In other instances the setting up of the work is a highly skilled operation which the ordinary production worker or machine

tender typically does not perform. In some plants, particularly large ones, such setup work may be performed by employees whose duties are not supervisory in nature. In other plants, however, particularly small plants, such work is a regular duty of the executive and is directly and closely related to his responsibility for the work performance of his subordinates and for the adequacy of the final product. Under such circumstances it is exempt work. In the data processing field the work of a supervisor when he performs the more complex or more responsible work in a program utilizing several computer programers or computer operators would be exempt activity.

(e) Similarly, a supervisor who spot checks and examines the work of his subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to his managerial and supervisory functions. However, this kind of examining and checking must be distinguished from the kind which is normally performed by an "examiner," "checker," or "inspector," and which is really a production operation rather than a part of the supervisory function. Likewise, a department manager or buyer in a retail or service establishment who goes about the sales floor observing the work of sales personnel under his supervision to determine the effectiveness of their sales techniques, checking on the quality of customer service being given, or observing customer preferences and reactions to the lines, styles, types, colors, and quality of the merchandise offered, is performing work which is directly and closely related to his managerial and supervisory functions. His actual participation, except for supervisory training or demonstration purposes, in such activities as making sales to customers, replenishing stocks of merchandise on the sales floor, removing merchandise from fitting rooms and returning to stock or shelves, however, is not. The amount of time a manager or buyer spends in the performance of such activities must be included in computing the percentage limitation on nonexempt work.

(f) Watching machines is another duty which may be exempt when performed by a supervisor under proper circumstances. Obviously the mere watching of machines in operation cannot be considered exempt work where, as in certain industries in which the machinery is largely automatic, it is an ordinary production function. Thus, an employee who watches machines for the purpose of seeing that they operate properly or for the purpose of making repairs or adjustments is performing nonexempt work. On the other hand, a supervisor who watches the operation of the machinery in his department in the sense that he "keeps an eye out for trouble" is performing work which is directly and closely related to his managerial responsibilities. Making an occasional adjustment in the machinery under such circumstances is also exempt work.

(g) A word of caution is necessary in connection with these illustrations. The recordkeeping, material distributing, setup work, machine watching and adjusting, and inspecting, examining, observing and checking referred to in the examples of exempt work are presumably the kind which are supervisory and managerial functions rather than merely "production" work. Frequently it is difficult to distinguish the managerial type from the type which is a production operation. In deciding such difficult cases it should be borne in mind that it is one of the objectives of § 541.1 to exclude from the definition foremen who hold "dual" or combination jobs. (See discussion of working foremen in § 541.115.) Thus, if work of this kind takes up a large part of the employee's time it would be evidence that management of the department is not the primary duty of the employee, that such work is a production operation rather than a function directly and closely related to the supervisory or managerial duties, and that the employee is in reality a combination foreman-"setup" man, foreman-machine adjuster (or mechanic), or foreman-examiner, floorman-salesperson, etc., rather than a bona fide executive.

§ 541.109 Emergencies.

(a) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of such emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the employees under their supervision, the preservation and protection of the merchandise, machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread breakdown in production, sales, or service operations. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of operations, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the percentage limitation on nonexempt work.

(b) The rule in paragraph (a) of this section is not applicable, however, to nonexempt work arising out of occurrences which are not beyond control or for which the employer can reasonably provide in the normal course of business.

(c) A few illustrations may be helpful in distinguishing routine work performed as a result of real emergencies of the kind for which no provision can practicably be made by the employer in advance of their occurrence and routine work which is not in this category. It is obvious that a mine superintendent who pitches in after an explosion and digs out the men who are trapped in the mine is still a bona fide executive during that week. On the other hand, the manager of a cleaning establishment who personally performs the cleaning operations on expensive garments because he fears damage to the fabrics if he allows his subordinates to handle them is not performing "emergency" work of the kind which can be considered exempt. Nor is the manager of a department in a retail store performing exempt work when he personally waits on a special or impatient customer because he fears the loss of the sale or the customer's goodwill if he allows a salesperson to serve him. The performance of nonexempt work by executives during inventory-taking, during other periods of heavy workload, or the handling of rush orders are the kinds of activities which the percentage tolerances are intended to cover. For example, pitching in on the production line in a canning plant during seasonal operations is not exempt "emergency" work even if the objective is to keep the food from spoiling. Similarly, pitching in behind the sales counter in a retail store during special sales or during Christmas or Easter or other peak sales periods is not "emergency" work, even if the objective is to improve customer service and the store's sales record. Maintenance work is not emergency work even if performed at night or during weekends. Relieving subordinates during rest or vacation periods cannot be considered in the nature of "emergency" work since the need for replacements can be anticipated. Whether replacing the subordinate at the workbench, or production line, or sales counter during the first day or partial day of an illness would be considered exempt emergency work would depend upon the circumstances in the particular case. Such factors as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly would all have to be weighed.

(d) All the regular cleaning up around machinery, even when necessary to prevent fire or explosion, is not "emergency" work. However, the removal by an executive of dirt or obstructions constituting a hazard to life or property need not be included in computing the percentage limitation if it is not reasonably practicable for anyone but the supervisor to perform the work and it is the kind of "emergency" which has not been recurring. The occasional performance of repair work in case of a breakdown of machinery, or the collapse of a display rack, or damage to or exceptional disarray of merchandise caused by accident or a customer's carelessness may be considered exempt work if the breakdown is one which the employer cannot reasonably anticipate. However, recurring breakdowns or disarrays requiring frequent attention, such as that of an old

belt or machine which breaks down repeatedly or merchandise displays constantly requiring re-sorting or straightening, are the kind for which provision could reasonably be made and repair of which must be considered as nonexempt.

§ 541.110 Occasional tasks.

(a) In addition to the type of work which by its very nature is readily identifiable as being directly and closely related to the performance of the supervisory and management duties, there is another type of work which may be considered directly and closely related to the performance of these duties. In many establishments the proper management of a department requires the performance of a variety of occasional, infrequently recurring tasks which cannot practicably be performed by the production workers and are usually performed by the executive. These small tasks when viewed separately without regard to their relationship to the executive's overall functions might appear to constitute nonexempt work. In reality they are the means of properly carrying out the employee's management functions and responsibilities in connection with men, materials, and production. The particular tasks are not specifically assigned to the "executive" but are performed by him in his discretion.

(b) It might be possible for the executive to take one of his subordinates away from his usual tasks, instruct and direct him in the work to be done, and wait for him to finish it. It would certainly not be practicable, however, to manage a department in this fashion. With respect to such occasional and relatively inconsequential tasks, it is the practice in industry generally for the executive to perform them rather than to delegate them to other persons. When any one of these tasks is done frequently, however, it takes on the character of a regular production function which could be performed by a nonexempt employee and must be counted as nonexempt work. In determining whether such work is directly and closely related to the performance of the management duties, consideration should be given to whether it is (1) the same as the work performed by any of the subordinates of the executive; or (2) a specifically assigned task of the executive employees; or (3) practicably delegable to nonexempt employees in the establishment; or (4) repetitive and frequently recurring.

§ 541.111 Nonexempt work generally.

(a) As indicated in § 541.101 the term "nonexempt work," as used in this subpart, includes all work other than that described in § 541.1 (a) through (d) and the activities directly and closely related to such work.

(b) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In such cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section" will usually be necessary in arriving at a determination.

§ 541.112 Percentage limitations on nonexempt work.

(a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent, or in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(b) (1) The maximum allowance of 20 percent for nonexempt work applies unless the establishment by which the employee is employed qualifies for the higher allowance as a retail or service establishment within the meaning of the act. Such an establishment must be a distinct physical place of business, open to the general public, which is engaged on the premises in making sales of goods or services to which the concept of retail selling or servicing applies. As defined in section 13(a)(2) of the act, such an establishment must make at least 75 percent of its annual dollar volume of sales of goods or services from sales that are both not for resale and recognized as retail in the particular industry. Types of establishments which may meet these tests include stores selling consumer goods to the public; hotels; motels; restaurants; some types of amusement or recreational establishments (but not those offering wagering or gambling facilities); hospitals, or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or defective residing on the premises, if open to the general public; public parking lots and parking garages; auto repair shops; gasoline service stations (but not truck stops); funeral homes; cemeteries; etc. Further explanation and illustrations of the establishments included in the term "retail or service establishment" as used in the act may be found in Part 779 of this chapter.

(2) Public and private elementary and secondary schools and institutions of higher education are, as a rule, not retail or service establishments, because they are not engaged in sales of goods or services to which the retail concept applies. Under section 13(a)(2)(iii) of the act prior to the 1966 amendments, it was possible for private schools for physically or mentally handicapped or gifted children to qualify as retail or service establishments if they met the statutory tests, because the special types of services provided to their students were considered by Congress to be of a kind that may be recognized as retail. Such schools, unless the nature of their operations has changed, may continue to qualify as retail or service establishments and, if they do, may utilize the greater tolerance for nonexempt work provided for executive and administrative employees of retail or service establishments under section 13(a)(1) of the act.

(3) The legislative history of the act makes it plain that an establishment engaged in laundering, cleaning, or repairing clothing or fabrics is not a retail or service establishment. When the act was amended in 1949, Congress excluded such establishments from the exemption under section 13(a)(2) because of the lack of a retail concept in the services sold by such establishments, and provided a separate exemption for them which did not depend on status as a retailer. Again in 1966, when this exemption was repealed, Congress made it plain by exclusionary language that the exemption for retail or service establishments was not to be applied to laundries or dry cleaners.

(c) There are two special exceptions to the percentage limitations of paragraph (a) of this section:

(1) That relating to the employee in "sole charge" of an independent or branch establishment, and

(2) That relating to an employee owning a 20-percent interest in the enterprise in which he is employed. These except the employee only from the percentage limitations on nonexempt work. They do not except the employee from any of the other requirements of § 541.1. Thus, while the percentage limitations on nonexempt work are not applicable, it is clear that an employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1(a) that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

§ 541.113 Sole-charge exception.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for "an employee who is in sole charge of an independent establishment or a physically separated branch establishment * * *". Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the applicable percentage limitation on nonexempt work.

(b) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

(c) (1) A determination as to the status as "an independent establishment or a physically separated branch establishment" of any part of the business operations on the premises of a retail or other

establishment, however, must be made on the basis of the physical and economic facts in the particular situation. (See 29 CFR 779.305, 779.306, 779.225.) A leased department cannot be considered to be a separate establishment where, for example, it and the retail store in which it is located operate under a common trade name and the store may determine, or have the power to determine, the leased department's space location, the type of merchandise it will sell, its pricing policy, its hours of operation and some or all of its hiring, firing, and other personnel policies, and matters such as advertising, adjustment, and credit operations, insurance and taxes, are handled on a unified basis by the store.

(2) A leased department may qualify as a separate establishment, however, where, among other things, the facts show that the lessee maintains a separate entrance and operates under a separate name, with its own separate employees and records, and in other respects conducts his business independently of the lessor's. In such a case the leased department would enjoy the same status as a physically separated branch store.

(d) Since the employee must be in "sole" charge, only one person in any establishment can qualify as an executive under this exception, and then only if he is the top person in charge at that location. (It is possible for other persons in the same establishment to qualify for exemption as executive employees, but not under the exception from the nonexempt work limitation.) Thus, it would not be applicable to an employee who is in charge of a branch establishment but whose superior makes his office on the premises. An example is a district manager who has overall supervisory functions in relation to a number of branch offices, but makes his office at one of the branches. The branch manager at the branch where the district manager's office is located is not in "sole charge" of the establishment and does not come within the exception. This does not mean that the "sole-charge" status of an employee will be considered lost because of an occasional visit to the branch office of the superior of the person in charge, or, in the case of an independent establishment by the visit for a short period on 1 or 2 days a week of the proprietor or principal corporate officer of the establishment. In these situations, the sole-charge status of the employee in question will appear from the facts as to his functions, particularly in the intervals between visits. If, during these intervals, the decisions normally made by an executive in charge of a branch or an independent establishment are reserved for the superior, the employee is not in sole charge. If such decisions are not reserved for the superior, the sole-charge status will not be lost merely because of the superior's visits.

(e) In order to qualify for the exception the employee must ordinarily be in charge of all the company activities at the location where he is employed. If he is in charge of only a portion of the company's activities at his location, then he cannot be said to be in sole charge of an independent establishment or a physically separated branch establishment. In exceptional cases the divisions have found that an executive employee may be in sole charge of all activities at a branch office except that one independent function which is not integrated with those managed by the executive is also performed at the branch. This one function is not important to the activities managed by the executive and constitutes only an insignificant portion of the employer's activities at that branch. A typical example of this type of situation is one in which "desk space" in a warehouse otherwise devoted to the storage and shipment of parts is assigned a salesman who reports to the sales manager or other company official located at the home office. Normally only one employee (at most two or three, but in any event an insignificant number when compared with the total number of persons employed at the branch) is engaged in the nonintegrated function for which the executive whose sole-charge status is in question is not responsible. Under such circumstances the employee does not lose his "sole-charge" status merely because of the desk-space assignment.

§ 541.114 Exception for owners of 20-percent interest.

(a) An exception from the percentage limitations on nonexempt work is provided in § 541.1(e) for an employee "who owns at least a 20-percent interest in the enterprise in which he is employed". This provision recognizes the special status of a shareholder of an enterprise who is actively engaged in its management.

(b) The exception is available to an employee owning a bonda fide 20-percent equity in the enterprise in which he is employed regardless of whether the business is a corporate or other type of organization.

§ 541.115 Working foremen.

(a) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the "working" foreman or "working" supervisor who regularly performs "production" work or other work which is unrelated or only remotely related to his supervisory activities. (The term "working" foreman is used in this subpart in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by his subordinates.)

(b) One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as strawbosses, or gang or group leaders perform the same kind of work as that performed by their subordinates, and also carry on supervisory functions. Clearly, the work of the same nature as that performed by the employees' subordinates must be counted as nonexempt work and if the amount of such work performed is substantial the exemption does not apply. ("Substantial," as used in this section, means more than 20 percent. See discussion of the 20-percent limitation on nonexempt work in § 541.112.) A foreman in a dress shop, for example, who operates a sewing machine to produce the product is performing clearly nonexempt work. However, this should not be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.

(c) Another type of working foreman or working supervisor who cannot be classed as a bona fide executive is one who spends a substantial amount of time in work which, although not performed by his own subordinates, consists of ordinary production work or other routine, recurrent, repetitive tasks which are a regular part of his duties. Such an employee is in effect holding a dual job. He may be, for example, a combination foreman-production worker, supervisor-clerk, or foreman combined with some other skilled or unskilled occupation. His nonsupervisory duties in such instances are unrelated to anything he must do to supervise the employees under him or to manage the department. They are in many instances mere "fill-in" tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. In other instances the nonsupervisory, nonmanagerial duties may be the principal ones and the supervisory or managerial duties are subordinate and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties. Typical of employees in dual jobs which may involve a substantial amount of nonexempt work are: (1) Foremen or supervisors who also perform one or more of the "production" or "operating" functions, though no other employees in the plant perform such work. An example of this kind of employee is the foreman in a millinery or garment plant who is also the cutter, or the foreman in a garment factory who operates a multiple-needle machine not requiring a full-time operator; (2) foremen or supervisors who have as a regular part of their duties the adjustment, repair, or maintenance of machinery or equipment. Examples in this category are the foreman-fixer in the hosiery industry who devotes a considerable amount of time to making adjustments and repairs to the machines of his subordinates, or the planer-mill foreman who is also the "machine man" who repairs the machines and grinds the knives; (3) foremen or supervisors who perform clerical work other than the maintenance of the time and production records of their subordinates; for example, the foreman of the shipping room who makes out the bills of lading and other shipping records, the warehouse foreman who also acts as inventory clerk, the head shipper who also has charge of a finished goods stock room, assisting in placing goods on shelves and

keeping perpetual inventory records, or the office manager, head bookkeeper, or chief clerk who performs routine bookkeeping. There is no doubt that the head bookkeeper, for example, who spends a substantial amount of his time keeping books of the same general nature as those kept by the other bookkeepers, even though his books are confidential in nature or cover different transactions from the books maintained by the under bookkeepers, is not primarily an executive employee and should not be so considered.

§ 541.116 Trainees, executive.

The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

§ 541.117 Amount of salary required.

(a) Except as otherwise noted in paragraph (b) of this section, compensation on a salary basis at a rate of not less than $125 per week, exclusive of board, lodging, or other facilities, is required for exemption as an executive. The $125 a week may be translated into equivalent amounts for periods longer than 1 week. The requirement will be met if the employee is compensated biweekly on a salary basis of $250, semimonthly on a salary basis of $270.83 or monthly on a salary basis of $541.66. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an "executive" is $115 per week.

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

(d) The validity of including a salary requirement in the regulations in subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling* v. *Yeakley*, 140 F. (2d) 830 (C.A. 10); *Helliwell* v. *Haberman*, 140 F. (2d) 833 (C.A. 2); and *Walling* v. *Morris*, 155 F. (2d) 832 (C.A. 6) (reversed on another point in 332 U.S. 442); *Wirtz* v. *Mississippi Publishers*, 364 F. (2d) 603 (C.A. 5); *Craig* v. *Far West Engineering Co.*, 265 F. (2d) 251 (C.A. 9) cert. den. 361 U.S. 816; *Hofer* v. *Federal Cartridge Corp.*, 71 F. Supp. 243 (D.C. Minn.).

§ 541.118 Salary basis.

(a) An employee will be considered to be paid "on a salary basis" within the meaning of the regulations if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided below, the employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which he performs no work.

(1) An employee will not be considered to be "on a salary basis" if deductions from his predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

(2) Deductions may be made, however, when the employee absents himself from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, his salaried status will not be affected if deductions are made from his salary for such absences.

(3) Deductions may also be made for absences of a day or more occasioned by sickness or disability (including industrial accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer's particular plan, policy or practice provides compensation for such absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under such plan, policy or practice, and after he has exhausted his leave allowance thereunder. It is not required that the employee be paid any portion of his salary for such days or days for which he receives compensation for leave under such plan, policy or practice. Similarly, if the employer operates under a State sickness and disability insurance law, or a private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of an industrial accident, the "salary basis" requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

(4) Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

(5) Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee's salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

(6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable to him during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

(b) *Minimum guarantee plus extras.*—It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $125 or more per week and in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch, if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in any week in which he performs any work. Such arrangements are subject to the exceptions in paragraph (a) of this section. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement of payment "on a salary basis." For example, a salary of $175 a week may not arbitrarily be divided into a guaranteed minimum of $125 paid in each week in which any work is performed, and an additional $50 which is made subject to deductions which are not permitted under paragraph (a) of this section.

(c) *Initial and terminal weeks.*—Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations if he is employed occasionally for a few days and is paid a proportionate

part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations.

§ 541.119 Special proviso for high salaried executives.

(a) Except as otherwise noted in paragraph (b) of this section, § 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than $200 per week exclusive of board, lodging, or other facilities. Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes the customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.1(f) applies to those managerial employees who are compensated on a salary basis at a rate of not less than $150 per week.

(c) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY

§ 541.201 Types of administrative employees.

(a) Three types of employees are described in § 541.2(c) who, if they meet the other tests in § 541.2, qualify for exemption as "administrative" employees.

(1) *Executive and administrative assistants.*—The first type is the assistant to a proprietor or to an executive or administrative employee. In modern industrial practice there has been a steady and increasing use of persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

(2) *Staff employees.*—(i) Employees included in the second alternative in the definition are those who can be described as staff rather than line employees, or as functional rather than departmental heads. They include among others employees who act as advisory specialists to the management. Typical examples of such advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians.

(ii) Also included are persons who are in charge of a so-called functional department, which may frequently be a one-man department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

(3) *Those who perform special assignments.*—(i) The third group consists of persons who perform special assignments. Among them are to be found a number of persons whose work is performed away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies. It should be particularly noted that this is a field which is rife with honorific titles that do not adequately portray the nature of the employee's duties. The field representative of a utility company, for example, may be a "glorified serviceman."

(ii) This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion men of various types.

(b) *Job titles insufficient as yardsticks.*—(1) The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or his exempt or nonexempt status under the regulations in subpart A of this part. Titles can be had cheaply and are of no determinative value. Thus, while there are supervisors of production control (whose decisions affect the welfare of large numbers of employees) who qualify for exemption under section 13(a)(1), it is not hard to call a rate setter (whose functions are limited to timing certain operations and jotting down times on a standardized form) a "methods engineer" or a "production-control supervisor."

(2) Many more examples could be cited to show that titles are insufficient as yardsticks. As has been indicated previously, the exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities, and salary meet all the requirements of the appropriate section of the regulations in subpart A of this part.

(c) Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those of his assistants whose duties are primarily concerned with administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program. In individual school establishments those engaged in overall academic administration include the principal and the vice principals who are responsible for the operation of the school. Other employees engaged in academic administration are such department heads as the heads of the mathematics department, the English department, the foreign language department, the manual crafts department, and the like. Institutions of higher education have similar organizational structure, although in many cases somewhat more complex.

§ 541.202 Categories of work.

(a) The work generally performed by employees who perform administrative tasks may be classified into the following general categories for purposes of the definition: (This classification is without regard to whether the work is manual or nonmanual. The problem of manual work as it affects the exemption of administrative employees is discussed in § 541.203.) (1) The work specifically described in paragraphs (a), (b), and (c) of § 541.2; (2) routine work which is directly and closely related to the performance of the work which is described in paragraphs (a), (b), and (c) of § 541.2; and (3) routine work which is not related or is only remotely related to the administrative duties. (As used in this subpart the phrase "routine work" means work which does not require the exercise of discretion and independent judgment. It is not necessarily restricted to work which is repetitive in nature.)

(b) The work in category 1, that which is specifically described in § 541.2 as requiring the exercise of discretion and independent judgment, is clearly exempt in nature.

(c) Category 2 consists of work which if separated from the work in category 1 would appear to be routine, or on a fairly low level, and which does not itself require the exercise of discretion and independent judgment, but which has a direct and close relationship to the performance of the more important duties. The directness and closeness of this relationship may vary depending upon the nature of the job and the size and organization of the establishment in which the work is performed. This "directly and closely related" work includes routine work which necessarily arises out of the administrative duties, and the routine work without which the employee's more important work cannot be performed properly. It also includes a variety of routine tasks which may not be essential to the proper performance of the more important duties but which are functionally related to them directly and closely. In this latter category are activities which an adminintrative employee may reasonably be expected to perform in

connection with carrying out his administrative functions including duties which either facilitate or arise incidentally from the performance of such functions and are commonly performed in connection with them.

(d) These "directly and closely related" duties are distinguishable from the last group, category 3, those which are remotely related or completely unrelated to the more important tasks. The work in this last category is nonexempt and must not exceed the 20-percent limitation for nonexempt work (up to 40 percent in the case of an employee of a retail or service establishment) if the exemption is to apply.

(e) Work performed by employees in the capacity of "academic administrative" personnel is a category of administrative work limited to a class of employees engaged in academic administration as contrasted with the general usabe of "administrative" in the act. The term "academic administrative" denotes administration relating to the academic operations and functions in a school rather than to administration along the lines of general business operations. Academic administrative personnel are performing operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration. Examples of jobs in school systems, and educational establishments and institutions, which are outside the term academic administration are jobs relating to building management and maintenance, jobs relating to the health of the students and academic staff such as social workers, psychologist, lunch room manager, or dietitian. Employees in such work which is not considered academic administration may qualify for exemption under other provisions of § 541.2 or under other sections of the regulations in subpart A of this part provided the requirements for such exemptions are met.

§ 541.203 Nonmanual work.

(a) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work it is immaterial whether it is manual or nonmanual in nature. This is consistent with the intent to include within the term "administrative" only employees who are basically white-collar employees since the accepted usage of the term "white-collar" includes all office workers. Persons employed in the routine operation of office machines are engaged in office work within the meaning of § 541.2 (although they would not qualify as administrative employees since they do not meet the other requirements of § 541.2).

(b) Section 541.2 does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that he cannot be said to be basically a "white-collar" employee he does not qualify for exemption as a bona fide administrative employee, even if the manual work he performs is directly and closely related to the work requiring the exercise of discretion and independent judgment. Thus, it is obvious that employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of § 541.2. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that he is not primarily engaged in "nonmanual" work, although he would lose the exemption if he failed to meet any of the other requirements.

§ 541.205 Directly related to management policies or general business operations.

(a) The phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" or, in a retail or service establishment, "sales" work. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers.

(b) The administrative operations of the business include the work performed by so-called white-collar employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing such work is engaged in activities relating to the administrative operations of the business notwithstanding that he is employed as an administrative assistant to an executive in the production department of the business.

(c) As used to describe work of substantial importance to the management or operation of the business, the phrase "directly related to management policies or general business operations" is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is "directly related" to management policies or to general business operations include those work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a subtantial degree, even though their assignments are tasks related to the operation of a particular segment of the business.

(1) It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business. It should be clear that the cashier of a bank performs work at a responsible level and may therefore be said to be performing work directly related to management policies or general business operations. On the other hand, the bank teller does not. Likewise it is clear that bookkeepers, secretaries, and clerks of various kinds hold the run-of-the-mine positions in any ordinary business and are not performing work directly related to management policies or general business operations. On the other hand, a tax consultant employed either by an individual company or by a firm of consultants is ordinarily doing work of substantial importance to the management or operation of a business.

(2) An employee performing routine clerical duties obviously is not performing work of substantial importance to the management or operation of the business even though he may exercise some measure of discretion and judgment as to the manner in which he performs his clerical tasks. A messenger boy who is entrusted with carrying large sums of money or securities cannot be said to be doing work of importance to the business even though serious consequences may flow from his neglect. An employee operating very expensive equipment may cause serious loss to his employer by the improper performance of his duites. An inspector, such as, for example, an inspector for an insurance company, may cause loss to his employer by the failure to perform his job properly. But such employees, obviously, are not performing work of such substantial importance to the management or operation of the business that it can be said to be "directly related to management policies or general business operations" as that phrase is used in § 541.2.

(3) Some firms employ persons whom they describe as "statisticians." If all such a person does, in effect, is to tabulate data, he is clearly not exempt. However, if such an employee makes analyses of data and draws conclusions which are important to the determination of, or which, in fact, determine financial, merchandising, or other policy, clearly be is doing work directly related to management policies or general business operations. Similarly, a personnel employee may be a clerk at a hiring window of a plant, or he may be a man who determines or effects personnel policies affecting all the workers in the establishment. In the latter case, he is clearly doing work directly related to management policies or general business operations. These examples illustrate the two extremes. In each case, between these extreme types there are many employees whose work may be of substantial importance to the management or operation of the business, depending upon the particular facts.

(4) Another example of an employee whose work may be important to the welfare of the business is a buyer of a particular article or equipment in an industrial plant or personnel commonly called assistant buyers in retail or service establishments. Where such work is of substantial importance to the management or operation of the business, even though it may be limited to purchasing for a particular department of the business, it is directly related to management policies or general business operations.

(5) The test of "directly related to management policies or general business operations" is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claim agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, promotion men, and many others.

(6) It should be noted in this connection that an employer's volume of activities may make it necessary to employ a number of employees in some of these categories. The fact that there are a number of other employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

(7) In the data processing field some firms employ persons described as systems analysts and computer programers. If such employees are concerned with the planning, scheduling, and coordination of activities which are required to develop systems for processing data to obtain solutions to complex business, scientific, or engineering problems of his employer or his employer's customers, he is clearly doing work directly related to management policies or general business operations.

(d) Under § 541.2 the "management policies or general business operations" may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisers and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, systems analysts, or resident buyers. Such employees, if they meet the other requirements of § 541.2, qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers, or those of their employer.

§ 541.206 Primary duty.

(a) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or, in the case of "academic administrative personnel," the employee must have as his primary duty work that is directly related to academic administration or general academic operations of the school in whose operations he is employed.

(b) In determining whether an employee's exempt work meets the "primary duty" requirement, the principles explained in § 541.103 in the discussion of "primary duty" under the definition of "executive" are applicable.

§ 541.207 Discretion and independent judgment.

(a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in subpart A of this part, moreover, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. (Without actually attempting to define the term, the courts have given it this meaning in applying it in particular cases. See, for example, *Walling* v. *Sterling Ice Co.*, 69 F. Supp. 655, reversed on other grounds, 165 F. (2d) 265 (CCA 10). See also *Connell* v. *Delaware Aircraft Industries*, 55 Atl. (2d) 637.)

(b) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misappplied by employers and employees in cases involving the following: (1) Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards; and (2) misapplication of the term to employees making decisions relating to matters of little consequence.

(c) Distinguished from skills and procedures:

(1) Perhaps the most frequent cause of misapplication of the term "discretion and independent judgment" is the failure to distinguish it from the use of skill in various respects. An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of § 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or a tolerance above or below a specific standard.

(2) A typical example of the application of skills and procedures is ordinary inspection work of various kinds. Inspectors normally perform specialized work along standardized lines involving well-established techniques and procedures which may have been cataloged and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They may have some leeway in the performance of their work but only within closely prescribed limits. Employees of this type may make recommendations on the basis of the information they develop in the course of their inspections (as for example, to accept or reject an insurance risk or a product manufactured to specifications), but these recommendations are based on the development of the facts as to whether there is conformity with the prescribed standards. In such cases a decision to depart from the prescribed standards or the permitted tolerance is typically made by the inspector's superior. The inspector is engaged in exercising skill rather than discretion and independent judgment within the meaning of the regulations in subpart A of this part.

(3) A related group of employees usually called examiners or graders perform similar work involving the comparison of products with established standards which are frequently cataloged. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for the manual of standards does not convert the character of the work performed to work requiring the exercise of discretion and independent judgment as required by the regulations in subpart A of this part. The mere fact that the employee uses his knowledge and experience does not change his decision, i.e., that the product does or does not conform with the established standard, into ar eal decision in a significant matter.

(4) For example, certain "graders" of lumber turn over each "stick" to see both sides, after which a crayon mark is made to indicate the grade. These lumber grades are well established and the employee's familiarity with them stems from his experience and training. Skill rather than discretion and independent judgment is exercised in grading the lumber. This does not necessarily mean, however, that all employees who grade lumber or other commodities are not exercising discretion and independent judgment. Grading of commodities for which there are no recognized or established standards may require the exercise of discretion and independent judgment as contemplated by the regulations in subpart A of this part. In addition, in those situations in which an otherwise exempt buyer does grading, the grading even though routine work, may be considered exempt if it is directly and closely related to the exempt buying.

(5) Another type of situation where skill in the application of techniques and procedures is sometimes confused with discretion and independent judgment is

the "screening" of applicants by a personnel clerk. Typically such an employee will interview applicants and obtain from them data regarding their qualifications and fitness for employment. These data may be entered on a form specially prepared for the purpose. The "screening" operation consists of rejecting all applicants who do not meet standards for the particular job or for employment by the company. The standards are usually set by the employee's superior or other company officials, and the decision to hire from the group of applicants who do meet the standards is similarly made by other company officials. It seems clear that such a personnel clerk does not exercise discretion and independent judgment as required by the regulations in subpart A of this part. On the other hand an exempt personnel manager will often perform similar functions; that is, he will interview applicants to obtain the necessary data and eliminate applicants who are not qualified. The personnel manager will then hire one of the qualified applicants. Thus, when the interviewing and screening are performed by the personnel manager who does the hiring they constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(6) Similarly, comparison shopping performed by an employee of a retail store who merely reports to the buyer his findings as to the prices at which a competitor's store is offering merchandise of the same or comparable quality does not involve the exercise of discretion and judgment as required in the regulations. Discretion and judgment are exercised, however, by the buyer who evaluates the assistants' reports and on the basis of their findings directs that certain items be re-priced. When performed by the buyer who actually makes the decisions which affect the buying or pricing policies of the department he manages, the comparison shopping, although in itself a comparatively routine operation, is directly and closely related to his managerial responsibility.

(7) In the data processing field a systems analyst is exercising discretion and independent judgment when he develops methods to process, for example, accounting, inventory, sales, and other business information by using electronic computers. He also exercises discretion and independent judgment when he determines the exact nature of the data processing problem, and structures the problem in a logical manner so that a system to solve the problem and obtain the desired results can be developed. Whether a computer programer is exercising discretion and independent judgment depends on the facts in each particular case. Every problem processed in a computer first must be carefully analyzed so that exact and logical steps for its solution can be worked out. When this preliminary work is done by a computer programer he is exercising discretion and independent judgment. A computer programer would also be using discretion and independent judgment when he determines exactly what information must be used to prepare the necessary documents and by ascertaining the exact form in which the information is to be presented. Examples of work not requiring the level of discretion and judgment contemplated by the regulations are highly technical and mechanical operations such as the preparation of a flow chart or diagram showing the order in which the computer must perform each operation, the preparation of instructions to the console operator who runs the computer or the actual running of the computer by the programer, and the debugging of a program. It is clear that the duties of data processing employees such as tape librarians, keypunch operators, computer operators, junior programers and programer trainees are so closely supervised as to preclude the use of the required discretion and independent judgment.

(d) Decisions in significant matters:

(1) The second type of situation in which some difficulty with this phrase has been experienced relates to the level or importance of the matters with respect to which the employee may make decisions. In one sense almost every employee is required to use some discretion and independent judgment. Thus, it is frequently left to a truckdriver to decide which route to follow in going from one place to another; the shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders; and the bookkeeper may usually decide whether he will post first to one ledger rather than another. Yet it is obvious that these decisions do not constitute the exercise of discretion and independent judgment of the level contemplated by the regulations in subpart A of this part. The divisions have consistently taken the position that decisions of this nature concerning relatively unimportant matters are not those intended by the regulations in subpart A of this part, but that the discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence. This interpretation has also been followed by courts in decisions involving the application of the regulations in this part, to particular cases.

(2) It is not possible to state a general rule which will distinguish in each of the many thousands of possible factual situations between the making of real decisions in significant matters and the making of choices involving matters of little or no consequence. It should be clear, however, that the term "discretion and independent judgment," within the meaning of the regulations in subpart A of this part, does not apply to the kinds of decisions normally made by clerical and similar types of employees. The term does apply to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise. The regulations in subpart A of this part, however, do not require the exercise of discretion and independent judgment at so high a level. The regulations in subpart A of this part also contemplate the kind of discretion and independent judgment exercised by an administrative assistant to an executive, who without specific instructions or prescribed procedures, arranges interviews and meetings, and handles callers and meetings himself where the executive's personal attention is not required. It includes the kind of discretion and independent judgment exercised by a customer's man in a brokerage house in deciding what recommendations to make to a customer for the purchase of securities. It may include the kind of discretion and judgment exercised by buyers, certain wholesale salesmen, representatives, and other contact persons who are given reasonable latitude in carrying on negotiations on behalf of their employers.

(e) Final decisions not necessary:

(1) The term "discretion and independent judgment" as used in the regulations in subpart A of this part does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment within the meaning of the regulations in subpart A of this part. For example, the assistant to the president of a large corporation may regularly reply to correspondence addressed to the president. Typically, such an assistant will submit the more important replies to the president for review before they are sent out. Upon occasion, after review, the president may alter or discard the prepared reply and direct that another be sent instead. This action by the president would not, however, destroy the exempt character of the assistant's function, and does not mean that he does not exercise discretion and independent judgment in answering correspondence and in deciding which replies may be sent out without review by the president.

(2) The policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization, may have the plan reviewed or revised by his superiors before it is submitted to the client. The purchasing agent may be required to consult with top management officials before making a purchase commitment for raw materials in excess of the contemplated plant needs for a stated period, say 6 months. These employees exercise discretion and independent judgment within the meaning of the regulations despite the fact

that their decisions or recommendations are reviewed at a higher level.

(f) Distinguished from loss through neglect: A distinction must also be made between the exercise of discretion and independent judgment with respect to matters of consequence and the cases where serious consequences may result from the negligence of an employee, the failure to follow instruction or procedures, the improper application of skills, or the choice of the wrong techniques. The operator of a very intricate piece of machinery, for example, may cause a complete stoppage of production or a breakdown of his very expensive machine merely by pressing the wrong button. A bank teller who is engaged in receipt and disbursement of money at a teller's window and in related routine bookkeeping duties may, by crediting the wrong account with a deposit, cause his employer to suffer a large financial loss. An inspector charged with responsibility for loading oil onto a ship may, by not applying correct techniques fail to notice the presence of foreign ingredients in the tank with resulting contamination of the cargo and serious loss to his employer. In these cases, the work of the employee does not require the exercise of discretion and independent judgment within the meaning of the regulations in subpart A of this part.

(g) Customarily and regularly: the work of an exempt administrative employee must require the exercise of discretion and independent judgment customarily and regularly. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

§ 541.208 Directly and closely related.

(a) As indicated in § 541.202, work which is directly and closely related to the performance of the work described in § 541.2 is considered exempt work. Some illustrations may be helpful in clarifying the differences between such work and work which is unrelated or only remotely related to the work described in § 541.2.

(b) (1) For purposes of illustration, the case of a high-salaried management consultant about whose exempt status as an administrative employee there is no doubt will be assumed. The particular employee is employed by a firm of consultants and performs work in which he customarily and regularly exercises discretion and independent judgment. The work consists primarily of analyzing, and recommending changes in, the business operations of his employer's client. This work falls in the category of exempt work described in § 541.2.

(2) In the course of performing that work, the consultant makes extensive notes recording the flow of work and materials through the office and plant of the client. Standing alone or separated from the primary duty such notemaking would be routine in nature. However, this is work without which the more important work cannot be performed properly. It is "directly and closely related" to the administrative work and is therefore exempt work. Upon his return to the office of his employer the consultant personally types his report and draws, first in rough and then in final form, a proposed table of organization to be submitted with it. Although all this work may not be essential to the performance of his more important work, it is all directly and closely related to that work and should be considered exempt. While it is possible to assign the typing and final drafting to nonexempt employees and in fact it is frequently the practice to do so, it is not required as a condition of exemption that it be so delegated.

(3) Finally, if because this particular employee has a special skill in such work, he also drafts tables of organization proposed by other consultants, he would then be performing routine work wholly unrelated, or at best only remotely re- such conditions, the drafting is nonlated, to his more important work. Under exempt.

(c) Another illustration is the credit manager who makes and administers the credit policy of his employer. Establishing credit limits for customers and authorizing the shipment of orders on credit, including the decisions to exceed or otherwise vary these limits in the case of particular customers, would be exempt work of the kind specifically described in § 541.2. Work which is directly and closely related to these exempt duties may include such activities as checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis and writing letters giving credit data and experience to other employers or credit agencies. On the other hand, any general office or bookkeeping work is nonexempt work. For instance, posting to the accounts receivable ledger would be only remotely related to his administrative work and must be considered nonexempt.

(d) One phase of the work of an administrative assistant to a bona fide executive or administrative employee provides another illustration. The work of determining whether to answer correspondence personally, call it to his superior's attention, or route it to someone else for reply requires the exercise of discretion and independent judgment and is exempt work of the kind described in § 541.2. Opening the mail for the purpose of reading it to make the decisions indicated will be directly and closely related to the administrative work described. However, merely opening mail and placing it unread before his superior or some other person would be related only remotely, if at all, to any work requiring the exercise of discretion and independent judgment.

(e) The following additional examples may also be of value in applying these principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise in transit and making the necessary rearrangements resulting from delays, damages, or irregularities in transit. This employee may also spend part of his time taking city orders (for local deliveries) over the telephone. The order-taking is a routine function not directly and closely related to the exempt work and must be considered nonexempt.

(f) An office manager who does not supervise two or more employees would not meet the requirements for exemption as an executive employee but may possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the executive of the employer's credit policy, the management of the company's traffic, purchasing, and other responsible office work requiring the customary and regular exercise of discretion and judgment, which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and send out monthly statements of account. These latter activities are not directly and closely related to the exempt functions and are not exempt.

§ 541.209 Percentage limitations on nonexempt work.

(a) Under § 541.2(d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent, or, in the case of an employee of a retail or service establishment if he devotes as much as 40 percent, of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a workweek basis and the percentage of time spent on nonexempt work is computed on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the percentages allowed for all types of nonexempt work.

(d) Refer to § 541.112(b) for the definition of a retail or service establishment as this term is used in paragraph (a) of this section.

§ 541.210 Trainees, administrative.

The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

§ 541.211 **Amount of salary or fees required.**

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $125 a week, exclusive of board, lodging, or other facilities, is required for exemption as an administrative employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $250, semimonthly on a salary basis of $270.83, or monthly on a salary basis of $541.66.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as an administrative employee is $100 per week.

(c) In the case of academic administrative personnel, the compensation requirement for exemption as an administrative employee may be met either by the payment described in paragraph (a) or (b) of this section, whichever is applicable, or alternatively by compensation on a salary basis in an amount which is at least equal to the entrance salary for teachers in the school system, or educational establishment or institution by which the employee is employed.

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.212 **Salary basis.**

The explanation of the salary basis of payment made in § 541.118 in connection with the definition of "executive" is also applicable in the definition of "administrative".

§ 541.213 **Fee basis.**

The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis. For a discussion of payment on a fee basis, see § 541.313.

§ 541.214 **Special proviso for high salaried administrative employees.**

(a) Except as otherwise noted in paragraph (b) of this section, § 541.2 contains a special proviso including within the definition of "administrative" an employee who is compensated on a salary or fee basis at a rate of not less than $200 per week exclusive of board, lodging, or other facilities, and whose primary duty consists of either the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein, where the performance of such primary duty includes work requiring the exercise of discretion and independent judgment. Such a highly paid employee engaged in such work as his primary duty is deemed to meet all the requirements in § 541.2 (a) through (e). If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.2 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the proviso of § 541.2(e) applies to those administrative employees who are compensated on a salary or fee basis of not less than $150 per week.

§ 541.215 **Elementary or secondary schools and other educational establishments and institutions.**

To be considered for exemption as employed in the capacity of academic administrative personnel, the employment must be in connection with the operation of an elementary or secondary school system, an institution of higher education, or other educational establishment or institution. Sections 3(v) and 3(w) of the act define elementary and secondary schools as those day or residential schools which provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may include also nursery school programs in elementary education and junior college curriculums in secondary education. Education above the secondary school level is in any event included in the programs of institutions of higher education. Special schools for mentally or physically handicapped or gifted children are included among the educational establishments in which teachers and academic administrative personnel may qualify for the administrative exemption, regardless of any classification of such schools as elementary, secondary, or higher. Also, for purposes of the exemption, no distinction is drawn between public or private schools. Accordingly, the classification for other purposes of the school system, or educational establishment or institution, is ordinarily not a matter requiring consideration in a determination of whether the exemption applies. If the work is that of a teacher or academic personnel as defined in the regulations, in such an educational system, establishment, or institution, and if the other requirements of the regulations are met, the level of instruction involved and the status of the school as public or private or operated for profit or not for profit will not alter the availability of the exemption.

EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY

§ 541.301 **General.**

The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of such employment is different in character from the test for persons in the learned professions, an alternative test for such employees is contained in the regulations, in addition to the requirements common to both groups.

§ 541.302 **Learned professions.**

(a) The "learned" professions are described in § 541.3(a)(1) as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, or physical processes.

(b) The first element in the requirement is that the knowledge be of an advanced type. Thus, generally speaking, it must be knowledge which cannot be attained at the high school level.

(c) Second, it must be knowledge in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The requisite knowledge, in the third place, must be customarily acquired by a prolonged course of specialized intellectual instruction and study. Here it should be noted that the word "customarily" has been used to meet a specific problem occurring in many industries. As is well known, even in the classical profession of law, there are still a few practitioners who have gained their knowledge by home study and experience. Characteristically, the members of the profession are graduates of law schools, but some few of their fellow professionals whose status is equal to theirs, whose attainments are the same, and whose work is the same did not enjoy that opportunity. Such persons are not barred from the exemption. The word "customarily" implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession. It makes the exemption available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry, etc., but it does not include the members of such quasi-professions as journalism in which the bulk of the employees have acquired their skill by experience rather than by any formal specialized training. It should be noted also that many employees in these quasi-professions may qualify for exemption under other sections of the regulations in subpart A of this part or under the alternative paragraph of the "professional" definition applicable to the artistic fields.

(e)(1) Generally speaking the professions which meet the requirement for a prolonged course of specialized intellectual instruction and study include law, medicine, nursing, accountancy, actuarial computation, engineering, architecture, teaching, various types of physical,

chemical, and biological sciences, including pharmacy and registered or certified medical technology and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not universal) prerequisite. In the case of registered (or certified) medical technologists, successful completion of 3 academic years of preprofessional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association will be recognized as a prolonged course of specialized intellectual instruction and study. Registered nurses have traditionally been recognized as professional employees by the Division in its enforcement of the act. Although, in some cases, the course of study has become shortened (but more concentrated), nurses who are registered by the appropriate State examining board will continue to be recognized as having met the requirement of § 541.3(a)(1) of the regulations.

(2) The areas in which professional exemptions may be available are expanding. As knowledge is developed, academic training is broadened, degrees are offered in new and diverse fields, specialties are created and the true specialist, so trained, who is given new and greater responsibilities, comes closer to meeting the tests. However, just as an excellent legal stenographer is not a lawyer, these technical specialists must be more than highly skilled technicians. Many employees in industry rise to executive or administrative positions by their natural ability and good commonsense, combined with long experience with a company, without the aid of a colllege education or degree in any area. A college education would perhaps give an executive or administrator a more cultured and polished approach but the necessary know-how for doing the executive job would depend upon the person's own inherent talent. The professional person, on the other hand, attains his status after a prolonged course of specialized intellectual instruction and study.

(f) Many accountants are exempt as professional employees (regardless of whether they are employed by public accounting firms or by other types of enterprises). (Some accountants may qualify for exemption as bona fide administrative employees.) However, exemption of accountants, as in the case of other occupational groups (see § 541.308), must be determined on the basis of the individual employee's duties and the other criteria in the regulations. It has been the Divisions' experience that certified public accountants who meet the salary requirement of the regulations will, except in unusual cases, meet the requirements of the professional exemption since they meet the tests contained in § 541.3. Similarly, accountants who are not certified public accountants may also be exempt as professional employees if they actually perform work which requires the consistent exercise of discretion and judgment and otherwise meet the tests prescribed in the definition of "professional" employee. Accounting clerks, junior accountants, and other accountants, on the other hand, normally perform a great deal of routine work which is not an essential part of and necessarily incident to any professional work which they may do. Where these facts are found such accountants are not exempt. The title "Junior Accountant," however, is not determinative of failure to qualify for exemption any more than the title "Senior Accountant" would necessarily imply that the employee is exempt.

(g)(1) A requisite for exemption as a teacher is the condition that the employee is "employed and engaged" in this activity as a teacher in the school system, or educational establishment or institution by which he is employed.

(2) "Employed and engaged as a teacher" denotes employment and engagement in the named specific occupational category as a requisite for exemption. Teaching consists of the activities of teaching, tutoring, instructing, lecturing, and the like in the activity of imparting knowledge. Teaching personnel may include the following (although not necessarily limited to): Regular academic teachers; teachers of kindergarten or nursery school pupils or of gifted or handicapped children; teachers of skilled and semiskilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisers in such areas as drama, forensics, or journalism are engaged in teaching. Such activities are a recognized part of the school's responsibility in contributing to the educational development of the student.

(3) Within the public schools of all the States, certificates, whether conditional or unconditional, have become a uniform requirement for employment as a teacher at the elementary and secondary levels. The possession of an elementary or secondary teacher's certificate provides a uniform means of identifying the individuals contemplated as being within the scope of the exemption provided by the statutory language and defined in § 541.3(a)(3) with respect to all teachers employed in public schools and those private schools who possess State certificates. However, the private schools of all the States are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and teacher's certificates are not generally necessary for employment as a teacher in institutions of higher education or other educational establishments which rely on other qualification standards. Therefore, a teacher who is not certified but is engaged in teaching in such a school may be considered for exemption provided that such teacher is employed as a teacher by the employing school or school system and satisfies the other requirements of § 541.3.

(4) Whether certification is conditional or unconditional will not affect the determination as to employment within the scope of the exemption contemplated by this section. There is no standard terminology within the States referring to the different kinds of certificates. The meanings of such labels as permanent, standard, provisional, temporary, emergency, professional, highest standard, limited, and unlimited vary widely. For the purpose of this section, the terminology affixed by the particular State in designating the certificates does not affect the determination of the exempt status of the individual.

(h) The question arises whether computer programers and systems analysts in the data processing field are included in the learned professions. At the present time there is too great a variation in standards and academic requirements to conclude that employees employed in such occupations are a part of a true profession recognized as such by the academic community with universally accepted standards for employment in the field. Some computer programers and systems analysts may have managerial and administrative duties which may qualify them for exemption under §§ 541.1 or 541.2 (see §§ 541.205(c)(7) and 541.207(c)(7) of this subpart).

§ 541.303 Artistic professions.

(a) The requirements concerning the character of the artistic type of professional work are contained in § 541.3(a)(2). Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(b) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

(c)(1) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. In the field of music there should be little difficulty in ascertaining the application of this requirement. Musicians, composers, conductors, soloists, all are engaged in original and creative work within the sense of this definition. In the plastic and graphic arts the requirement is, generally speaking, met by painters who at most are given the subject matter of their painting. It is similarly met by cartoonists who are merely told the title or underlying concept of a cartoon and then must rely on their own creative powers to express the concept. It would not normally be met by a person who is employed as a copyist, or as an "animator"

of motion-picture cartoons, or as a retoucher of photographs since it is not believed that such work is porperly described as creative in character.

(2) In the field of writing the distinction is perhaps more difficult to draw. Obviously the requirement is met by essayists or novelists or scenario writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed). The requirement would also be met, generally speaking, by persons holding the more responsible writing positions in advertising agencies.

(d) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee." This requirement is easily met by a person employed as an actor, or a singer, or a violinist, or a short-story writer. In the case of newspaper employees the distinction here is similar to the distinction observed above in connection with the requirement that the work be "original and creative in character." Obviously the majority of reporters do work which depends primarily on intelligence, diligence, and accuracy. It is the minority whose work depends primarily on "invention, imagination, or talent." On the other hand, this requirement will normally be met by actors, musicians, painters, and other artists.

(e)(1) The determination of the exempt or nonexempt status of radio and television announcers as professional employees has been relatively difficult because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

(2) The duties which many announcers are called upon to perform include: Functioning as a master of ceremonies; playing dramatic, comedy, or straight parts in a program; interviewing; conducting farm, fashion, and home economics programs; covering public events, such as sports programs, in which the announcer may be required to ad lib and describe current changing events; and acting as narrator and commentator. Such work is generally exempt. Work such as giving station identification and time signals, announcing the names of programs, and similar routine work is nonexempt work. In the field of radio entertainment as in other fields of artistic endeavor, the status of an employee as a bona fide professional under § 541.3 is in large part dependent upon whether his duties are original and creative in character, and whether they require invention, imagination or talent. The determination of whether a particular announcer is exempt as a professional employee must be based upon his individual duties and the amount of exempt and nonexempt work performed, as well as his compensation.

(f) The field of journalism also employs many exempt as well as many nonexempt employees under the same or similar job titles. Newspaper writers and reporters are the principal categories of employment in which this is found.

(1) Newspaper writers, with possible rare exceptions in certain highly technical fields, do not meet the requirements of § 541.3(a)(1) for exemption as professional employees of the "learned" type. Exemption for newspaper writers as professional employees is normally available only under the provisions for professional employees of the "artistic" type. Newspaper writing of the exempt type must, therefore, be "predominantly original and creative in character." Only writing which is analytical, interpretative or highly individualized is considered to be creative in nature. (The writing of fiction to the extent that it may be found on a newspaper would also be considered as exempt work.) Newspaper writers commonly performing work which is original and creative within the meaning of § 541.3 are editorial writers, columnists, critics, and "top-flight" writers of analytical and interpretative articles.

(2) The reporting of news, the rewriting of stories received from various sources, or the routine editorial work of a newspaper is not predominantly original and creative in character within the meaning of § 541.3 and must be considered as nonexempt work. Thus, a reporter or news writer ordinarily collects facts about news events by investigation, interview, or personal observation and writes stories reporting these events for publication, or submits the facts to a rewrite man or other editorial employees for story preparation. Such work is nonexempt work. The leg man, the reporter covering a police beat, the reporter sent out under specific instructions to cover a murder, fire, accident, ship arrival, convention, sport event, etc., are normally performing duties which are not professional in nature within the meaning of the act and § 541.3.

(3) Incidental interviewing or investigation, when it is performed as an essential part of and is necessarily incident to an employee's professional work, however, need not be counted as nonexempt work. Thus, if a dramatic critic interviews an actor and writes a story around the interview, the work of interviewing him and writing the story would not be considered as nonexempt work. However, a dramatic critic who is assigned to cover a routine news event such as a fire or a convention would be doing nonexempt work since covering the fire or the convention would not be necessary and incident to his work as a dramatic critic.

§ 541.304 Primary duty.

(a) For a general explanation of the term "primary duty" see the discussion of this term under "executive" in § 541.103. See also the discussion under "administrative" in § 541.206.

(b) The "primary duty" of an employee employed as a teacher must be that of activity in the field of teaching. Mere certification by the State, or employment in a school will not suffice to qualify an individual for exemption within the scope of § 541.3(a)(3) if the individual is not in fact both employed and engaged as a teacher (see § 541.302(g)(2)). The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole. Therefore, employment and engagement in the activity of imparting knowledge as a primary duty shall be determinative with respect to employment within the meaning of the exemption as "teacher" in conjunction with the other requirements of § 541.3.

§ 541.305 Discretion and judgment.

(a) Under § 541.3 a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

(b) A prime characteristic of professional work is the fact that the employee does apply his special knowledge or talents with discretion and judgment. Purely mechanical or routine work is not professional.

§ 541.306 Predominantly intellectual and varied.

(a) Section 541.3 requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work. This test applies to the type of thinking which must be performed by the employee in question. While a doctor may make 20 physical examinations in the morning and perform in the course of his examinations essentially similar tests. It requires not only judgment and discretion on his part but a continual variety of interpretation of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

(b) Another example of this is the professional medical technologist who performs complicated chemical, microscopic, and bacteriological tests and procedures. In a large medical laboratory or clinic, the technologist usually specializes in making several kinds of related tests in areas such as microbiology, parasitology, biochemistry, hematology, histology, cytology, and nuclear medical technology. The technologist also does the blood banking. He will also conduct tests related to the examination and treatment of patients, or do research on new drugs, or on the improvement of laboratory techniques, or teach and perform administrative duties. The simple, routine, and preliminary tests are generally performed by laboratory assistants or technicians. However, technologists

who work in small laboratories may perform tasks that are performed by nonexempt employees in larger establishments. This type of activity will not necessarily be considered nonexempt (see § 541.307).

(c) On the other hand, X-ray technicians have only limited opportunity for the exercise of independent discretion and judgment, usually performing their duties under the supervision of a more highly qualified employee. The more complex duties of interpretation and judgment in this field are performed by obviously exempt professional employees.

§ 541.307 Essential part of and necessarily incident to.

(a) Section 541.3(d), it will be noted, has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described in § 541.3 (a) through (c). This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees. For example, a chemist performing important and original experiments frequently finds it necessary to perform himself some of the most menial tasks in connection with the operation of his experiments, even though at times these menial tasks can be conveniently or properly assigned to laboratory assistants. See also the example of incidental interviewing or investigation in § 541.303(a)(3).

(b) It should be noted that the test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative." Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

(c) Section 541.3(d) takes into consideration the fact that there are teaching employees whose work necessarily involves some of the actual routine duties and physical tasks also performed by nonexempt employees. For example, a teacher may conduct his pupils on a field trip related to the classroom work of his pupils and in connection with the field trip engage in activities such as driving a school bus and monitoring the behavior of his pupils in public restaurants. These duties are an essential part of and necessarily incident to his job as teacher. However, driving a school bus each day at the beginning and end of the school day to pick up and deliver pupils would not be exempt type work.

§ 541.308 Nonexempt work generally.

(a) It has been the Divisions' experience that some employers erroneously believe that anyone employed in the field of accountancy, engineering, or other professional fields, will qualify for exemption as a professional employee by virtue of such employment. While there are many exempt employees in these fields, the exemption of any individual depends upon his duties and other qualifications.

(b) It is necessary to emphasize the fact that section 13(a)(1) exempts "any employee employed in a bona fide * * * professional capacity." It does not exempt all employees of professional employers, or all employees in industries having large numbers of professional members, or all employees in any particular occupation. Nor does it exempt, as such, those learning a profession. Moreover, it does not exempt persons with professional training, who are working in professional fields, but performing subprofessional or routine work. For example, in the field of library science there are large numbers of employees who are trained librarians but who, nevertheless, do not perform professional work or receive salaries commensurate with recognized professional status. The field of "engineering" has many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but are actually working as trainees, junior engineers, or draftsmen.

§ 541.309 20-percent nonexempt work limitation.

Time spent in nonexempt work, that is, work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the workweek.

§ 541.310 Trainees, professional.

The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

§ 541.311 Amount of salary or fees required.

(a) Except as otherwise noted in paragraphs (b) and (c) of this section, compensation on a salary or fee basis at a rate of not less than $140 per week, exclusive of board, lodging, or other facilities, is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of $280, a semimonthly salary of $303.33, or a monthly salary of $606.67.

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the salary test for exemption as a "professional" employee is $125 per week.

(c) The payment of the compensation specified in paragraph (a) or (b) of this section is not a requisite for exemption in the case of employees exempted from this requirement by the proviso to § 541.3 (e), as explained in § 541.314.

(d) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in subpart A of this part do not prohibit the sale of such facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.312 Salary basis.

The salary basis of payment is explained in § 541.118 in connection with the definition of "executive."

§ 541.313 Fee basis.

(a) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

(b) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis. The type of payment contemplated in the regulations in subpart A of this part is thus readily recognized.

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than $140 per week to a professional employee or at a rate of not less than $125 per week to an administrative employee can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus compliance will be tested in each case of a fee payment by determining whether the payment is at a rate which would amount to at least $140 per week to a professional employee or at a rate of not less than $125 per week to an administrative employee if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $50 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $140 at this rate of pay in far less than 40 hours.

(2) An artist is paid $75 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $150 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $150. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only $100. The fee payment of $150 for work which required 60 hours to complete

therefore does not meet the requirement of payment at a rate of $140 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (pt. 516 of this chapter).

§ 541.314 Exception for physicians, lawyers, and teachers.

(a) A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, or a holder of the requisite academic degree for the general practice of medicine who is engaged in an internship or resident program pursuant to the practice of his profession, or an employee employed and engaged as a teacher in the activity of imparting knowledge, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law, medicine, and teaching and not to employees in related professions which merely serve these professions.

(b) In the case of medicine:

(1) The exception applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term physicians means medical doctors including general practitioners and specialists, and osteopathic physicians (doctors of osteopathy). Other practitioners in the field of medical science and healing may include podiatrists (sometimes called chiropodists), dentists (doctors of dental medicine, optometrists (doctors of optometry or bachelors of science in optometry).

(2) Physicians and other practitioners included in paragraph (b)(1) of this section, whether or not licensed to practice prior to commencement of an internship or resident program, are excepted from the salary or fee requirement during their internship or resident program, where such a training program is entered upon after the earning of the appropriate degree required for the general practice of their profession.

(c) In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

§ 541.315 Special proviso for high salaried professional employees.

(a) Except as otherwise noted in paragraph (b) of this section, the definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis at a rate of at least $200 per week exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption in § 541.3(a) through (e) will be deemed to be met by an employee who receives the higher salary or fees and whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning, or work as a teacher in the activity of imparting knowledge, which includes work requiring the consistent exercise of discretion and judgment, or consists of the performance of work requiring invention, imagination, or talent in a recognized field of artistic endeavor. Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under § 541.3 (a) through (e).

(b) In Puerto Rico, the Virgin Islands, and American Samoa, the second proviso of § 541.3(e) applies to those "professional" employees who are compensated on a salary or fee basis of not less than $150 per week.

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

§ 541.500 Definition of "outside salesman."

Section 541.5 defines the term "outside salesman" as follows: The term "employee employed * * * in the capacity of outside salesman" in section 13(a)(1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(1) Making sales within the meaning of section 3(k) of the act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a) (1) or (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employers: *Provided*, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 Making sales or obtaining orders.

(a) Section 541.5 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the act, or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the divisions have interpreted section 3(k) of the act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3(k). (Sec. 3(k) of the act states that "sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.)

(c) It will be noted that the exempt work includes not only the sales of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." "Obtaining orders or contracts * * * for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

(e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services". For example, it does not include persons such as servicemen even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman-customer.

§ 541.502 Away from his employer's place of business.

(a) Section 541.5 requires that an outside salesman be customarily and regularly engaged "away from his employer's place or places of business". This requirement is based on the obvious connotation of the word "outside" in the term "outside salesman". It would obviously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesmen. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained in paragraph (b) of this section) is nonexempt.

(b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the

foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these sample rooms should not be considered as his employer's places of business.

§ 541.503 Incidental to and in conjunction with sales work.

Work performed "incidental to and in conjunction with the employee's own outside sales or solicitation" includes not only incidental deliveries and collections which are specifically mentioned in § 541.5(b), but also any other work performed by the employee in furthering his own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of his sales reports, the revision of his own catalog, the planning of his itinerary and attendance at sales conferences.

§ 541.504 Promotion work.

(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt work, depending upon the circumstances under which it is performed. Promotion men are not exempt as "outside salesmen." (This discussion relates solely to the exemption under § 541.5, dealing with outside salesmen. Promotion men who receive the required salary and otherwise qualify may be exempt as administrative employees.) However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. On the other hand, promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work. Many persons are engaged in certain combinations of sales and promotional work or in certain types of promotional work having some of the characteristics of sales work while lacking others. The types of work involved include activities in borderline areas in which it is difficult to determine whether the work is sales or promotional. Where the work is promotional in nature it is sometimes difficult to determine whether it is incidental to the employee's own sales work.

(b) (1) Typically, the problems presented involve distribution through jobbers (who employ their own salesmen) or through central warehouses of chainstore organizations or cooperative retail buying associations. A manufacturer's representative in such cases visits the retailer, either alone or accompanied by the jobber's salesman. In some instances the manufacturer's representative may sell directly to the retailer; in others, he may urge the retailer to buy from the jobber.

(2) This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such persons can be considered salesmen only if they are actually employed for the purpose of and are engaged in making sales or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else the work must be considered nonexempt. With such variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of his own sales, at least to the extent of obtaining a commitment to buy from the person to whom he is selling. If his efforts are directed toward stimulating the sales of his company generally rather than the consummation of his own specific sales his activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

(c) (1) A few illustrations of typical situations will be of assistance in determining whether a particular type of work is exempt or nonexempt under § 541.5. One situation involves a manufacturer's representative who visits the retailer for the purpose of obtaining orders for his employer's product, but transmits any orders he obtains to the local jobber to be filled. In such a case the employee is performing sales work regardless of the fact that the order is filled by the jobber rather than directly by his own employer. The sale in this instance has been "consummated" in the sense that the salesman has obtained a commitment from the customer.

(2) Another typical situation involves facts similar to those described in the preceding illustration with the difference that the jobber's salesman accompanies the representative of the company whose product is being sold. The order in this instance is taken by the jobber's salesman after the manufacturer's representative has done the preliminary work which may include arranging the stock, putting up a display or poster, and talking to the retailer for the purpose of getting him to place the order for the product with the jobber's salesman. In this instance the sale is consummated by the jobber's salesman. The work performed by the manufacturer's representative is not incidental to sales made by himself and is not exempt work. Moreover, even if in a particular instance the sale is consummated by the manufacturer's representative it is necessary to examine the nature of the work performed by the representative to determine whether his promotional activities are directed toward paving the way for his own present and future sales, or whether they are intended to stimulate the present and future sales of the jobber's salesman. If his work is related to his own sales it would be considered exempt work, while if it is directed toward stimulating sales by the jobber's representative it must be considered nonexempt work.

(3) Another type of situation involves representatives employed by utility companies engaged in furnishing gas or electricity to consumers. In a sense these representatives are employed for the purpose of "selling" the consumer an increased volume of the product of the utility. This "selling" is accomplished indirectly by persuading the consumer to purchase appliances which will result in a greater use of gas or electricity. Different methods are used by various companies. In some instances the utility representative after persuading the consumer to install a particular appliance may actually take the order for the appliance which is delivered from stock by his employer, or he may forward the order to an appliance dealer who then delivers it. In such cases the sales activity would be exempt, since it is directed at the consummation of a specific sale by the utility representative, the employer actually making the delivery in the one case, while in the other the sale is consummated in the sense that the representative obtains an order or commitment from the customer. In another type of situation the utility representative persuades the consumer to buy the appliance and he may even accompany the consumer to an appliance store where the retailer shows the appliance and takes the order. In such instances the utility representative is not an outside salesman since he does not consummate the sale or direct his efforts toward making the sale himself. Similarly, the utility representative is not exempt as an outside salesman if he merely persuades the consumer to purchase an appliance and the consumer then goes to an appliance dealer and places his order.

(4) Still another type of situation involves the company representative who visits chainstores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the manager as to the requirements of the store, fills out a requisition for the quantity wanted and leaves it with the store manager to be transmitted to the central warehouse of the chainstore company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Since the manufacturer's representative in this instance does not consummate the sale nor direct his efforts toward the consummation of a sale (the store manager often has no authority to buy) this work must be counted as nonexempt.

§ 541.505 Driver salesmen.

(a) Where drivers who deliver to an employer's customers the products distributed by the employer also perform functions concerned with the selling of such products, and questions arise as to whether such an employee is employed in the capacity of outside salesman, all the facts bearing on the content of the job as a whole must be scrutinized to determine whether such an employee is

really employed for the purpose of making sales rather than for the service and delivery duties which he performs and, if so, whether he is customarily and regularly engaged in making sales and his performance of nonexempt work is sufficiently limited to come within the tolerance permitted by § 541.5. The employee may qualify as an employee employed in the capacity of outside salesman if, and only if, the facts clearly indicate that he is employed for the purpose of making sales and that he is customarily and regularly engaged in such activity within the meaning of the act and this part. As in the case of outside salesmen whose jobs do not involve delivery of products to customers, the employee's chief duty or primary function must be the making of sales or the taking of orders if he is to qualify under the definition in § 541.5. He must be a salesman by occupation. If he is, all work that he performs which is actually incidental to and in conjunction with his own sales effort is exempt work. All other work of such an employee is nonexempt work. A determination of an employee's chief duty or primary function must be made in terms of the basic character of the job as a whole. All of the duties performed by an employee must be considered. The time devoted to the various duties is an important, but not necessarily controlling, element.

(b) Employees who may perform a combination of selling or sales promotion activities with product deliveries are employed in a number of industries. Distributors of carbonated beverages, beer, bottled water, food and dairy products of various kinds, cigars and other nonfood products commonly utilize such employees, variously known as routemen, route drivers, route salesmen, dealer salesmen, distributor salesmen, or driver salesmen. Some such employees deliver at retail to customers' homes; others deliver on wholesale routes to such customers as retail stores, restaurants, hospitals, hotels, taverns, and other business establishments. Whether such an employee qualifies as an outside salesman under the regulations depends, as stated in paragraph (a) of this section, on the content of the job as a whole and not on its title or designation or the kind of business in which the employer is engaged. Hearings in 1964 concerning the application of § 541.5 to such employees demonstrated that there is great variation in the nature and extent of sales activity and its significance as an element of the job, as among drivers whose duties are performed with respect to different products or different industries and also among drivers engaged in the same industry in delivering products to different types of customers. In some cases the facts may make it plain that such an employee is employed for the purpose of making sales; in other cases the facts are equally clear that he is employed for another purpose. Thus, there is little question that a routeman who provides the only sales contact between the employer and the customers, who calls on customers and takes orders for products which he delivers from stock in his vehicle or procures and delivers to the customer on a later trip, and who receives compensation commensurate with the volume of products sold, is employed for the purpose of making sales. It is equally clear, on the other hand, that a routeman whose chief duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations, is not selling his employer's product or employed for the purpose of making sales but is employed for purposes which, although important to the promotion of sales to customers using the machines, plainly cannot characterize the employee as a salesman by occupation. In other cases there may be more difficulty in determining whether the employee is employed for the purpose of making sales within the meaning of this part. The facts in such cases must be weighed in the light of the principles stated in paragraph (a) of this section, giving due consideration to the factors discussed in subsequent paragraphs of this section.

(c) One source of difficulty in determining the extent to which a route driver may actually be engaged in making sales arises from the fact that such a driver often calls on established customers day after day or week after week, delivering a quantity of his employer's products at each call. Plainly, such a driver is not making sales when he delivers orders to customers to whom he did not make the initial sale in amounts which are exactly or approximately prearranged by customer or contractual arrangement or in amounts specified by the customer and not significantly affected by solicitations of the customer by the delivering driver. Making such deliveries, as well as recurring deliveries the amounts of which are determined by the volume of sales by the customer since the previous delivery rather than by any sales effort of the driver, do not qualify the driver as an outside salesman nor are such deliveries and the work incident thereto directly to the making or soliciting of sales by the driver so as to be considered exempt work. On the other hand, route drivers are making sales when they actually obtain or solicit, at the stops on their routes, orders for their employer's products from persons who have authority to commit the customer for purchases. A driver who calls on new prospects for customers along his route and attempts to convince them of the desirability of accepting regular delivery of goods is likewise engaged in sales activity and is making sales to those from whom he obtains a commitment. Also, a driver salesman calling on established customers on his route, carrying an assortment of the articles which his employer sells, may be making sales by persuading regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery of the employer's products may have been made by someone else. Work which is performed incidental to and in conjunction with such sales activities will also be considered exempt work, provided such solicitation of the customer is frequent and regular. Incidental activities include loading the truck with the goods to be sold by the driver salesman, driving the truck, delivering the products sold, removing empty containers for return to the employer, and collecting payment for the goods delivered.

(d) Neither delivery of goods sold by others nor sales promotion work as such constitutes making sales within the meaning of § 541.5; delivery men and promotion men are not employed in the capacity of outside salesmen for purposes of section 13(a)(1) of the act although both delivery work and promotion work are exempt salesman as an incident to his own sales or efforts to sell. The distinction between the making of sales and the promotion of sales is explained in more detail in the discussion and illustrations contained in § 541.504. Under the principles there stated a route driver, just as any other employee, must have as his chief duty and primary function the making of sales in the sense of obtaining and soliciting commitments to buy from the persons upon whom he calls if he is to qualify under the regulations as an employee employed in the capacity of outside salesman. For this reason, a route driver primarily engaged in making deliveries to his employer's customers and performing activities intended to promote sales by customers, including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves or in coolers or cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases, is not employed in the capacity of an outside salesman by reason of such work. Such work is nonexempt work for purposes of this part unless it is performed as an incident to or in conjunction with sales actually made by the driver to such customers. If the driver who performs such functions actually takes orders or obtains commitments from such customers for the products which he delivers, and the performance of the promotion work is in furtherance of his own sales efforts, his activities for that purpose in the customer's establishment would be exempt work.

(e) As indicated in paragraph (a) of this section, whether a route driver can qualify as an outside salesman depends on the facts which establish the content of his job as a whole. Accordingly, in borderline cases a determination of whether the driver is actually employed for the purpose of, is customarily and regularly engaged in, and has as his chief duty and primary function the making of sales, may involve consideration of such factors as a comparison of his duties with those of other employees engaged as (1) truckdrivers and (2) salesmen; possession of a salesman's or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual prearrangements concerning amounts of products

to be delivered; description of the employee's occupation in union contracts; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; proportion of earnings directly attributable to sales effort; and other factors that may have a bearing on the relationship to sales of the employee's work. However, where it is clear that an employee performs nonexempt work in excess of the amount permitted by § 541.5, he would be nonexempt in any event and consideration of such factors as the foregoing would not be pertinent.

(f) The following examples will further illustrate the factual situations in which, under the principles discussed previously in this section, routemen engaged in recurrent deliveries of goods may qualify or may fail to qualify for exemption as outside salesmen.

(1) A retail routeman who regularly calls on established retail customers to deliver goods of generally prearranged amounts and kinds may also exert considerable effort not only to keep such customers satisfied to continue their orders for such goods but also to make such customers aware of other products which he would like to sell to them and to offer to take orders for such products or for increased amounts of the products which he is already delivering to the customer. In addition, he may call at prospective retail customers' homes for the purpose of persuading such persons to order the goods which he sells. A routeman who customarily and regularly calls on customers for these purposes and takes orders from them for products which he delivers to them, in addition to those products for which delivery has been prearranged, who is in practical effect his employer's exclusive sales contact with such customers, and whose earnings are in large part directly attributable to sales made to such customers, will be considered to be employed in the capacity of outside salesman and within the exemption provided by section 13(a)(1) of the Act if he does not perform nonexempt work in excess of the tolerance permitted by § 541.5.

(2) A routeman who calls on retail stores which are among his employer's established customers may also qualify for exemption as an outside salesman notwithstanding the goods he delivers to them are of kinds and in amounts which are generally prearranged. Other facts may show that making sales is his chief duty and primary function and that he is customarily and regularly engaged in performing this function. Thus, such a routeman whose regular calls on established customers involve not only delivery of prearranged items but also active efforts to persuade such customers to continue or increase their orders for such goods and to solicit their orders for other kinds of products which he offers for sale, who alos calls on retail stores which are prospective customers, talks to persons who are authorized to order goods for such stores, and solicits orders from them for the goods which he sells, and whose compensation is based primarily on the volume of sales attributable to his efforts, will be considered exempt as an outside salesman if he does not perform nonexempt work in excess of the tolerance permited by § 541.5.

(3) If a routeman delivers goods to branch business establishments whose personnel have no authority to place orders or make commitments with respect to the kinds and amounts of such goods, and if the kinds and amounts of goods delivered are not determined pursuant to orders placed by the authorized personnel of the customer's enterprise as a result of sales solicitation by the routeman, it is clear that the routeman's calls on such branch establishments are not a part of the making of sales by him or incidental to sales made by him. If such work is his chief duty or primary function or if he spends a greater proportion of the workweek in such work than is allowed for nonexempt work under § 541.5, such a routeman cannot qualify for exemption as an "outside salesman".

(4) A routeman who delivers to supermarkets after the enterprise has been persuaded, by a salesman of the routeman's employer, to accept delivery of goods, and whose functions other than such deliveries are primarily to arrange merchandise, rotate stocks, place point-of-sale and other advertising materials, and engage in other activities which are intended to promote sales by the supermarkets of the goods he has delivered, is not employed primarily for the purpose of selling and is not customarily and regularly engaged in making sales. Rather, he is employed primarily to deliver goods and to perform activities in the supermarkets of a nature usually performed by store employees not employed as salesmen. Such a routeman is not employed in the capacity of outside salesman within the exemption provided by section 13(a)(1).

(5) Some employees are engaged in a combination of activities involving delivery, the selling of services, and the performance of the services. For example, some drivers call on customers for the purpose of selling pesticides and, if a sale is consummated, applying the pesticides on the customer's property. Such employees, like those referred to in § 541.501(e), are not exempt as outside salesmen. They are primarily engaged in delivery or service functions, not in outside selling.

§ 541.506 Nonexempt work generally.

Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 20-percent limitation on nonexempt work.

Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 Trainees, outside salesmen.

The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside salesmen who are not actually performing the duties of an outside salesman (see also § 541.506).

Special Problems

§ 541.600 Combination exemptions.

(a) The divisions' position under the regulations in subpart A of this part permits the "tacking" of exempt work under one section of the regulations in subpart A to exempt work under another section of those regulations, so that a person who, for example, performs a sional work may qualify for exemption. combination of executive and profes- In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, if the employee performs a combination of an executive's and an outside salesman's function (regardless of which occupies most of his time) he must meet the salary requirement for executives. Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the hours worked in the workweek by the nonexempt employees of the employer, whichever is the smaller amount.

(b) Under the principles in paragraph (a) of this section combinations of exemptions under the other sections of the regulations in subpart A of this part are also permissible. In short, under the regulations in subpart A, work which is "exempt" under one section of the regulations in subpart A will not defeat the exemption under any other section.

§ 541.601 Special provision for motion picture producing industry.

Under § 541.5a, the requirement that the employee be paid "on a salary basis"

does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $200 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under §§ 541.1, 541.2, or 541.3 and who is employed at a base rate of at least $200 a week is exempt if he is paid at least pro rata (based on a week of not more than 6 days) for any week when he does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if he is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and his daily base rate would yield at least $200 if 6 days were worked; or (b) the employee is in a job category having a weekly base rate of at least $200 and his daily base rate is at least one-sixth of such weekly base rate.

§ 541.602 Special proviso concerning executive and administrative employees in multi-store retailing operations.

(a) The tolerance of up to 40 percent of the employee's time which is allowed for nonexempt work performed by an executive or administrative employee of a retail or service establishment does not apply to employees of a multiunit retailing operation, such as a chainstore system or a retail establishment having one or more branch stores, who perform central functions for the organization in physically separated establishments such as warehouses, central office buildings, or other central service units or by traveling from store to store. Nor does this special tolerance apply to employees who perform central office, warehousing, or service functions in a multiunit retailing operation by reason of the fact that the space provided for such work is located in a portion or portions of the building in which the main retail or service establishment or another retail outlet of the organization is also situated. Such employees are subject to the 20-percent limitation on nonexempt work.

(b) With respect to executive or administrative employees stationed in the main store of a multistore retailing operation who engage in activities (other than central office functions) which relate to the operations of the main store, and also to the operations of one or more physically separated units, such as branch stores, of the same retailing operation, the Divisions will, as an enforcement policy, assert no disqualification of such an employee for the section 13(a)(1) exemption by reason of nonexempt activities if the employee devotes less than 40 percent of his time to such nonexempt activities. This enforcement policy would apply, for example, in the case of a buyer who works in the main store of a multistore retailing operation and who not only manages the millinery department in the main store, but is also responsible for buying some or all of the merchandise sold in the millinery departments of the branch stores.

Signed at Washington, D.C., this 30th day of April 1973.

BEN P. ROBERTSON,
Acting Administrator,
Wage and Hour Division.

OCCUPATIONAL INDEX

NOTE.—This index lists, for ease of reference, the sections of this part which refer to job titles. The user should note, however, that where job titles do appear in the illustrations in the text, they should not be construed to mean that employees holding such titles are either exempt or nonexempt or that they meet any one of the specific requirements for exemption.

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PART III

COST OF LIVING COUNCIL

■

Phase III Regulations

REPORTING FORMS

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

Appendix C—Cost of Living Council Reporting Forms

The purpose of this amendment is to add a new Appendix C, Cost of Living Council Reporting Forms, to part 130 of the Cost of Living Council regulations. The appendix contains form CLC–2 which serves as a report or record of prices, cost and profits pursuant to subpart C of part 130, "Reporting and Recordkeeping," and as a prenotification form pursuant to subpart N of part 130, "Mandatory Prenotification Rules for Certain Firms."

The instructions to the CLC–2 form are generally self-explanatory. However, there are several modifications for preparation of the first form. The form CLC–2 instructions require that the form be prepared and retained or submitted 45 days after the last day of each fiscal quarter ending after January 10, 1973. However, the first form CLC–2, required for the fiscal quarter including January 11, 1973, will be due 45 days after publication of this form in the FEDERAL REGISTER. The CLC–2 form due for any subsequent fiscal quarter is due 45 days after the last day of the fiscal quarter as stated in the instructions to the form, or 45 days after publication of CLC–2, whichever is later.

The first form CLC–2 prepared and maintained or submitted for the fiscal quarter including January 11, 1973, must include, in addition to profit margin information for the fiscal quarter, cost and price information relating to all price increases put into effect after January 10, 1973, and before May 1, 1973. On the form CLC–2 prepared for the first fiscal quarter which does not include January 11, 1973, firms must include cost and price information relating to price increases made during the fiscal quarter being reported, even if certain of those increases were included on the first form CLC–2.

Some firms have been filing or retaining form PC–50 and form PC–51 in the interim period prior to publication of the CLC–2 form. The instructions to form CLC–2 require firms to prepare the form for the fiscal quarter including January 11, 1973 and for all subsequent fiscal quarters. Firms are no longer required to file or retain a form PC–50 or PC–51 for any fiscal quarter ending after January 10, 1973. Thus, if a firm prepared and retained or submitted a PC–50 or PC–51 for a fiscal quarter ending on or after January 11, 1973, the firm must now prepare and maintain or submit a form CLC–2 for the same fiscal quarter.

Publication of form CLC–2 does not change the requirement that the form PC–50 or PC–51 be filed for any fiscal period ending on or before January 10, 1973 where such a report was required by Price Commission regulations then in effect. Form CLC–2 now replaces reports or records required pursuant to subpart F of part 130.

A new subpart N, effective, 4 p.m. e.d.t., May 2, 1973, establishes mandatory prenotification requirements for price increases by certain firms with $250 million or more in annual sales or revenues. The form CLC–2 is to be used for making such prenotification filings.

(Economic Stabilization Act of 1970, Public Law 92–210, 85 Stat. 743, as amended, and Executive Order No. 11695, 38 FR 1473.)

In consideration of the foregoing, part 130 of title 6 of the Code of Federal Regulations is amended as set forth herein, effective May 2, 1973.

Issued in Washington, D.C., May 2, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

Part 130 of title 6 of the Code of Federal Regulations is amended by adding a new appendix C to read as follows:

APPENDIX C—COST OF LIVING COUNCIL REPORTING FORMS

Form CLC-2
(May 1973)
Cost of Living Council

Prenotification Report or Record of Prices, Costs and Profits

Type of submission.
(a) ☐ Prenotification (b) ☐ Quarterly report (c) ☐ Other ▶

CLC Identification Number (Parent)
Unconsolidated Entity

OMB Number: 172-R0001
Approval Expires April 1974

Reference Number
Batch Number
Time Stamp

Cost of Living Council Use Only

Form applies to:
- ☐ Reporting Parent and consolidated entities
- ☐ Reporting unconsolidated entity. Parent name
- ☐ Recordkeeping parent and consolidated entities
- ☐ Recordkeeping unconsolidated entity. Parent name

Part I.—Identification Data

1 (a) Name of parent or unconsolidated entity to which this form applies

(b) Address (Number and street)

(c) City or town, State and ZIP code

(d) Chief executive officer

2 Is this a resubmission? ☐ Yes ☐ No

3 Ending date of most recently completed fiscal year (Month, day, and year). ▶

4 Reporting period ending date (Month, day, and year). ▶

5 Annual sales or revenues (To be completed by Parent only) -- ▶ $

Part II.—Calculation of Base Period Profit Margin

6 Base year 1 net sales — Fiscal year ended(Month, day, and year) _____	$	
7 Base year 2 net sales — Fiscal year ended(Month, day, and year) _____	$	
8 (Add Item 6 and 7) ▶		$
9 Base year 1 operating income.	$	
10 Base year 2 operating income.	$	
11 Total (Add Item 9 and 10) ▶		$
12 Base period profit margin (Divide Item 11 by Item 8) ▶		%

Part III.—Calculation of Profit Variation

	Current Period	Same Period Prior Year
13 Net sales	$	$
14 Base period profit margin (From Part II, Item 12)	%	
15 Target current period profit (Item 13 times Item 14)	$	
16 Actual operating income	$	$
17 Current profit under (over) target profit (Subtract Item 16 from Item 15)	$	

Part IV.—Additional Information

18 (a) Name and title of individual to be contracted for further information

(b) Address (Number and street)

(c) City or town, State and ZIP code | (d) Phone number (include area code)

19 You must maintain for possible inspection and audit, a record of all price changes subsequent to November 13, 1971. Give location of such records. ▶

Part V.—Certification

I certify that the information submitted on and with this Form is factually correct, complete, and in accordance with Economic Stabilization Regulations (Title 6, Code of Federal Regulations) and instructions to Form CLC-2.

Type name and title of the Chief Executive Officer of parent or other authorized Executive Officer and date of signing.

Name ▶ _____
Title ▶

Date ▶ | Signature ▶

Part VI.—Price/Cost Information

Name of parent or unconsolidated entity (From Part 1)

Product or Service Line Description (a)	4-Digit SIC (b)	Reporting Period From ▶ To ▶ Sales ($000 Omitted) (c)	Weighted Average % Price Adjustment Actual (d)	Weighted Average % Price Adjustment Authorized (e)	% Cost Justification (f)	Maximum Percentage Price Increase (g)	Cumulative Period From ▶ To ▶ Sales ($000 Omitted) (h)	Cumulative Period Authorized Weighted Average % Price Adjustment (i)
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20 Totals from Continuation Schedule								
21 Totals (lines 1 through 20)		$					$	
22 Weighted Average % Price Adjustment			%	%	%			%
23 Sales of or from Foreign Operations		$					$	
24 Sales of Food								
25 Other Non-applicable Sales								
26 Net Sales		$					$	

INSTRUCTIONS FOR THE PREPARATION OF FORM CLC—2 PRENOTIFICATION, REPORT, OR RECORD OF PRICES, COSTS, AND PROFITS

GENERAL INSTRUCTIONS

A. *Purpose*

1. Form CLC–2 is designed to provide the data necessary for the Cost of Living Council to execute its role in monitoring the performance of the economy pursuant to Executive Order 11695. Attention has been given to the self-administered aspects of phase III and an effort has been made to reduce the public and private burden of the economic stabilization program.

2. Form CLC–2 provides the means by which the Cost of Living Council monitors on a quarterly basis the price adjustments and related costs and profits of those firms subject in whole or in part to the general price standard of subpart B and those firms subject in whole or in part to the mandatory rules applicable to the food industry in subpart F of the phase III regulations. In addition form CLC–2 provides the means by which an entity prenotifies the Cost of Living Council of certain price adjustments (see special instructions for prenotification of price adjustments).

B. *Who Must Use Form CLC–2*

1. *Price reporting firm.*—Each firm with $250 million or more of annual sales or revenues as defined in 6 CFR, part 130, subpart L must report quarterly to the Cost of Living Council on form CLC–2.

2. *Price recordkeeping firm.*—Each firm with $50 million or more but less than $250 million of annual sales or revenues as defined in 6 CFR, part 130, subpart L must place among its records on a quarterly basis a completed form CLC–2.

3. *Other CLC–2 users.*—Generally, firms with less than $50 million of annual sales or revenues as defined in 6 CFR, part 130, subpart L are not required to use form CLC–2 but are encouraged to do so to assist in complying with the General Price Standard (6 CFR 130.13). However, every firm which is subject to the mandatory rules applicable to the food industry (6 CFR, part 130, subpart F), and which is not a price reporting firm is subject to the price recordkeeping requirements regardless of the dollar amount of its annual sales or revenues and must therefore place among its records on a quarterly basis a completed form CLC–2.

4. *General rules.*—The following rules apply for the purpose of determining whether a firm is a price reporting firm or a price recordkeeping firm:

a. *Determination of "Firm".*—If a firm directly or indirectly controls another firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is called a "parent" for the purposes of this form CLC–2. If a firm does not directly or indirectly control any other firm or firms, and is not itself directly or indirectly controlled by another firm, that firm is also called a "parent" for purposes of this form CLC–2. The parent and its consolidated and unconsolidated controlled firms (if any), taken all together, constitute the "firm" for the purposes of paragraphs B.1–B.3, above.

b. *Parent and consolidated entities.*—Once the price reporting or price recordkeeping status is determined, only the sales or revenues of the parent and the sales or revenues of the controlled entities (if any), consolidated with the parent in its financial statements prepared in accordance with generally accepted accounting principles are combined for purposes of preparation of the form CLC–2 applicable to the "Parent and Consolidated Entities." The form CLC–2 is prepared by the parent for and on behalf of the entire consolidated group and is either submitted to the Cost of Living Council or retained as a record depending upon the price reporting or price recordkeeping status of the "firm."

c. *Unconsolidated entity.*—In addition to preparing form CLC–2 for and on behalf of the entire consolidated group, the parent must prepare a separate form CLC–2 for and on behalf of each unconsolidated entity with annual sales or revenues of $10 million or more. An "unconsolidated entity" is any entity directly or indirectly controlled by a parent but not consolidated with the parent for purposes of financial statements prepared in accordance with generally accepted accounting principles. An "unconsolidated entity" includes any entity consolidated with that unconsolidated entity for purposes of financial statements prepared in accordance with generally accepted accounting principles. Whether the form CLC–2 must be submitted to the Cost of Living Council or retained as a record depends upon the price reporting or a price recordkeeping status of the "firm."

5. *Certificate in lieu of form CLC–2.*—Any firm with annual sales or revenues of $50 million or more and which has not charged any price above base price levels since November 13, 1971, or which has not charged any price above base price levels after complying fully with the Price Commission's Special Regulation No. 1, in effect on January 10, 1973, may, in lieu of retaining in its files or submitting to the Cost of Living Council a form CLC–2, submit within 30 days of the end of the firm's fiscal quarter the following "Certificate in Lieu of Form CLC–2":

I certify that as of (last day in firm's fiscal quarter), _____
(Name of firm)
has not at any time since November 13, 1971, charged a price in excess of the base price established for a property or service of a covered activity under the regulations of the Price Commission in effect on January 10, 1973, or if such a price were charged, the firm has complied with all of the requirements of special regulation No. 1 of the Price Commission, and, since that time, has not charged a price in excess of such base price.

_____
(Chief Executive Officer (or other authorized executive officer))

C. *When To Submit or Prepare*

1. A price reporting firm must submit and a price recordkeeping firm must retain all CLC–2 forms which are required to be prepared for each fiscal quarter beginning with the first fiscal quarter which includes January 11, 1973. Form CLC–2 must be submitted or retained not later than 45 days after the end of each fiscal quarter or 90 days after the end of the fiscal year.

D. *What To Submit or Prepare*

1. This form and instructions only require basic information. However, the Cost of Living Council may request additional data in particular cases. Firms required to prepare form CLC–2 must attach all supporting schedules indicated in the instructions. Firms which submit forms CLC–2 which contain incomplete or incorrect information will be required to submit corrected forms CLC–2 and may be in violation of the reporting requirements if complete and correct forms are not submitted within the time periods prescribed.

2. Price adjustments and supporting cost justification must be recorded for each product line or service line categorized by four-digit Standard Industrial Classification (SIC) code if that is the entity's customary pricing unit (e.g., cost or profit center, for that product line or service line. If a customary pricing unit includes more than one four-digit SIC code, such pricing unit may be used provided that a listing of four-digit SIC codes included within the pricing unit is attached to the form. The listing of SIC codes must be in decreasing order of sales within the pricing unit. If a customary pricing unit is at a level of aggregation which is less than one four-digit SIC code, the entity may record price adjustments and supporting cost justification at that level.

3. For purposes of parts II and III of this form, price reporting firms which file forms 10–K and 10–Q with the Securities and Exchange Commission must attach to the form CLC–2 a copy of the form 10–Q for each fiscal quarter which ends on the date entered in item 4, Part I, form CLC–2. If the first submission of the form CLC–2 does not cover the first quarter of the firm's fiscal year, an additional form 10–Q must be submitted for the quarter immediately preceding the reported quarter. With the first submission, firms must file form 10–K for each of the 2 base years. Thereafter, the form 10–K must be filed at the end of each fiscal year as an attachment to the form CLC–2.

4. Firms which do not file forms 10–K and 10–Q with the Securities and Exchange Commission must prepare and attach to the form CLC–2, quarterly and annual financial statements (prepared in conformity with generally accepted

accounting principles consistently applied) in conformity with definitions in the Securities and Exchange Commission Regulation S–X in lieu of forms 10–Q and 10–K as specified in paragraph D.3 above.

In addition, such firms which do not file form 10–K with the Securities and Exchange Commission but which have annual financial statements audited by independent public accountants must attach a copy of such audited statements in conformance with the requirements for submitting form 10–K in paragraph 3 above. Such firms which do not have audited annual financial statements must attach a document explaining why such statements are not available.

E. *Where To Submit*

1. Price reporting firms must forward form CLC–2 and attachments to: Cost of Living Council, Form CLC–2 Submission, 2000 M Street NW., Washington, D.C. 20508.

2. Price recordkeeping firms must retain form CLC–2 at the address of the executive office of the parent.

F. *Confidentiality of Information*

1. Section 205 of the Economic Stabilization Act of 1970, as amended, provides as follows:

"(a) Except as provided in subsection (b), all information reported to or otherwise obtained by any person exercising authority under this title which contains or relates to a trade secret or other matter referred to in section 1905 of 18, United States Code, shall be considered confidential for the purposes of that section, except that such information may be disclosed to other persons empowered to carry out this title solely for the purpose of carrying out this title or when relevant in any proceeding under this title.

"(b)(1) Any business enterprise subject to the reporting requirements under section 130.21(b) of the regulations of the Cost of Living Council in effect on January 11, 1973, shall make public any report (except for matter excluded in accordance with paragraph (2)) so required which covers a period during which that business enterprise charges a price for a substantial product which exceeds by more than 1.5 percent the price lawfully in effect for such product on January 10, 1973, or on the date 12 months preceding the end of such period, whichever is later. As used in this subsection, the term 'substantial product' means any single product or service which accounted for 5 percent or more of the gross sales or revenues of a business enterprise in its most recent full fiscal year.

"(2) A business enterprise may exclude from any report made public pursuant to paragraph (1) any information or data reported to the Cost of Living Council, proprietary in nature, which concerns or relates to the amount or sources of its income, profits, losses, costs, or expenditures but may not exclude from such report, data, or information, so reported, which concerns or relates to its prices for goods and services.

"(3) Immediately upon enactment of this subsection, the President or his delegate shall issue regulations defining for the purpose of this subsection what information or data are proprietary in nature and therefore excludable under paragraph (2), except that such regulations may not define as excludable any information or data which cannot currently be excluded from public annual reports to the Securities and Exchange Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 by a business enterprise exclusively engaged in the manufacture or sale of a substantial product as defined in paragraph (1). Such regulations shall define as excludable any information or data which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus of the business enterprise."

2. The Council will issue regulations providing for implementation of this provision.

G. *Suggestions for Improvement*

The Cost of Living Council welcomes suggestions for improving this and other forms. The Council seeks ways of obtaining the information it needs to exercise its responsibilities under the phase III economc stabilization program with the minimum amount of reporting burden. Suggestions should be submitted to: Cost of Living Council, Office of Price Monitoring, Special Projects Division, 2000 M Street NW., Washington, D.C. 20508.

H. *Rounding*

For purposes of this form, all percentages must be expressed to the nearest two decimal places (such as 5.92 percent). All dollar entries must be rounded to the nearest $1,000 and the 000 should be omitted (such as $1,750,803 entered as $1.751).

I. *Sanctions*

The submission of CLC–2 forms by price reporting firms as a report or prenotification and the preparation and retention of CLC–2 forms by price recordkeeping firms are mandatory requirements under the phase III regulations. Failure to file, to keep records or otherwise to comply with these instructions may result in criminal fines, civil penalties, and other sanctions as provided by law including the Economic Stabilization Act of 1970, as amended, Executive Order 11695 and the economic stabilization regulations.

SPECIFIC INSTRUCTIONS

Organization to Which Form Applies

Check the one box which indicates the status of the organization to which this form applies. If either box (2) or (4) is checked, enter the legal name of the parent on the line provided.

Type of Submission

Check one box to indicate the reason for submission of the form to the Cost of Living Council.

Part I—*Identification Data*

ITEM 1. *Name, address, and chief executive officer of parent or unconsolidated entity.*—Enter the legal name of the parent or unconsolidated entity to which the form applies. Enter the address of its executive office. Enter the name and title of the chief executive officer.

NOTE.—Hereafter the parent or unconsolidated entity to which the form applies will be referred to as the "entity."

ITEM 2. *Is this a resubmission?*—Answer item 2 "yes" if you are supplying additional information or are resubmitting a report. In either case, the form must be completed in its entirety.

ITEM 3. *Ending date of most recently completed fiscal year.*—Enter the date of the last day of the most recently completed fiscal year of the entity. If the fiscal year ending date has changed, enter the word "change" and attach a letter explaining the change.

ITEM 4. *Reporting period ending date.*—Enter the date of the last day in the reporting period.

The reporting period must conform with the entity's most recently completed fiscal quarter. For purposes of the first preparation of this form, the reporting period is the fiscal quarter which includes January 11, 1973.

ITEM 5. *Annual sales or revenues* (to be completed by parent only)—Enter for the most recently completed fiscal year, the total of the annual sales or revenues (as defined in 6 CFR, part 130, subpart L) of the parent and its consolidated and unconsolidated controlled firms. The amount entered in this item is computed as follows:

Total annual gross receipts of the firm from whatever source derived, less gross receipts of or from foreign entities, branches or divisions (in accordance with the definition of "annual sales or revenues" provided in subpart L of the phase III regulations).

Special Instructions Applicable to the Food Industry

Subpart F of the phase III regulations provides that a firm which is subject to both the general standard for price adjustments (subpart B) and the mandatory rules applicable to the food industry (subpart F) is subject to two profit margin limitations: One for subpart B purposes and one for subpart F purposes. The subpart B profit margin can be based, at the option of the firm, on total sales or on nonfood sales only, but if the former option is chosen the 1.5 percent price increase alternative of the general price standard is not available. The profit margin for subpart F purposes is a food sales profit margin calculated according to the rules of subpart F.

When these two profit margins are required to be calculated pursuant to subpart F, parts II and III of the form CLC–2 are completed for the subpart B profit margin and an additional form CLC–2 must be attached with parts II and III completed for the subpart F profit margin. Type in "For Subpart F Purposes" following the headings for part II and part III of the attached form

CLC–2 and also complete part I of the attached form CLC–2.

In the event that the entity to which form CLC–2 applies is itself engaged in food sales only or in nonfood sales only, the entity need not complete two parts II and III but it must designate whether the part II and III it does complete is for subpart B or for subpart F purposes. Entities which are engaged in both food and nonfood sales must complete two parts II and III of the form CLC–2, as indicated above, according to whether the firm (as defined in the general instructions) is subject to subpart F of the phase III regulations in addition to subpart B, unless the sales used to compute the profit margin for purposes of subpart F are equal to the sales used to compute the profit margin for purposes of subpart B.

If the firm of which the entity is a part is subject only to subpart F (i.e., all of its sales are from food operations), the entity will, of course, prepare only one part II and III of the form CLC–2, Type in "Firm Subject to Subpart F Only" following the headings for part II and part III of the form CLC–2.

Part II—*Calculation of Base Period Profit Margin*

This part must be completed at the time the initial form CLC–2 is prepared. Thereafter, this part must be completed only if the base period profit margin is restated. The term "base period" means any two, at the option of the entity, of the following fiscal years: That entity's last 3 fiscal years ending before August 15, 1971, and any fiscal year, other than the fiscal year for which compliance is being measured, completed on or after that date. In determining a base period for the purpose of computing a base period profit margin a weighted average of profits during the 2 years chosen must be used. The entries made in items (6), (7), (9), and (10) must be reconciled with the corresponding entries reported on the supporting form 10–K or other financial statements required in the general instructions under "What to Submit or Prepare." Such reconciliation must be attached to the form CLC–2.

ITEMS 6 and 7. *Base years 1 and 2—net sales.*—Enter, for the first base year (item 6) and second base year (item 7), net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of: (1) Public utilities (as defined in 6 CFR, Part 130, Subpart L); (2) foreign operations (as defined in the instructions to line 23, part VI of this form); (3) insurers; and (4) farming.

ITEM 8. *Total.*—Enter the sum of items 6 and 7.

ITEMS 9 and 10. *Base years 1 and 2—Operating income.*—Enter, for the first base year (item 9) and second base year (item 10), operating income computed as follows: Net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of (1) Public utilities (as defined in 6 CFR, Part 130, Subpart L); (2) foreign operations (as defined in the instructions to line 23, part VI of this form); (3) insurers, and (4) farming; less (1) costs of tangible goods sold, (2) other operating costs and expenses, (3) selling, general and administrative expenses, (4) provision for doubtful accounts and notes, (5) interest expense and (6) other general expenses as defined in Securities and Exchange Commission Regulation S–X except operating costs and expenses of (1) public utilities (as defined in 6 CFR, Part 130, Subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming. The following costs and expenses must not be included in the computation of operating income for Items 9 and 10: (1) Nonoperating items, (2) extraordinary items, and (3) taxes on income.

ITEM 11. *Total.*—Enter the sum of items 9 and 10.

ITEM 12. *Base period profit margin.*—The base period profit margin is calculated by dividing item 11 by item 8.

Part III—*Calculation of Profit Variation*

This part must be completed by all entities each time form CLC–2 is prepared. The entries made in items 13 and 16 must be reconciled with the corresponding entries reported on the supporting form 10–K, form 10–Q, or other financial statements required in the general instructions under "What to Submit or Prepare." Such reconciliation must be attached to the form CLC–2.

ITEM 13. *Net sales.*—Enter net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X, except operating revenues of: (1) Public utilities (as defined in 6 CFR, part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming, for the "Current Period" and "Same Period Prior Year" in the applicable columns. Current period is defined as the portion of the fiscal year from the beginning of the fiscal year to the date in item 4, part I of this form.

ITEM 14. *Base period profit margin.*—Enter the base period profit margin from part II, item 12.

ITEM 15. *Target current period profit.*—Enter the target amount of current period profit determined by multiplying item 13 ("Current Period") by item 14.

ITEM 16. *Actual operating income.*—Enter for the "Current Period" and "Same Period Prior Year" in the applicable columns the operating income computed as follows: Net sales of tangible products and other revenues as defined in Securities and Exchange Commission Regulation S–X except operating revenues of: (1) Public utilties (as defined in 6 CFR part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers, and (4) farming; less (1) costs of tangible goods sold, (2) other operating costs and expenses, (3) selling, general and administrative expenses, (4) provision for doubtful accounts and notes, (5) interest expense and (6) other general expenses as defined in Securities and Exchange Commission Regulation S–X, except operating costs and expenses of: (1) Public utilities (as defined in 6 CFR, part 130, subpart L), (2) foreign operations (as defined in the instructions to line 23, part VI of this form), (3) insurers and (4) farming. The following costs and expenses must not be included in the computation of actual operating income for item 16: (1) nonoperating items, (2) extraordinary items, and (3) taxes on income.

ITEM 17. *Current profit under (over) target profit.*—This entry is determined by subtracting item 16 from item 15.

Part IV—*Additional Information*—Self-explanatory

Part V—*Certification*

Type the name and title of the individual who has signed the certification and the date of signing. The individual who signs and certifies this form CLC–2 must be the chief executive officer of the parent or such other executive officer of the entity as authorized by the chief executive officer to sign for him for this purpose. Such authorization must be received by the Cost of Living Council (price reporting firm) or filed in the records of the entity (price recordkeeping firm) in the following format:

DELEGATION OF AUTHORITY TO SIGN AND CERTIFY

(Typed date of signing)

(Name of parent)

I, ---, hereby
(Name)

certify that I am the---
(Title)

of the above-named parent; and that, as such, I am authorized to sign documents and to certify to the Cost of Living Council, on behalf of said parent, the accuracy and completeness of all the information in such documents. Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the persons listed below, who are executive officers of the above-named parent or entity of the firm.

This delegation is effective until it is revoked in writing, and in the case of a price reporting firm, the Cost of Living Council so notified.

(Date)

(Signature)

Authorized Individuals

Name and Title (Alphabetical by surname)	Extent of Authorization (Consolidated parent or unconsolidated entity)
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---	---
---	---
---	---
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Introduction

This part is used to report adjustments in the selling prices of products and services. For purposes of this form, every reference to product also applies to service and every reference to product line also applies to service line. Any price adjustments which have been made by means of changes in quantity, quality, specifications, or characteristics must be taken into account when reporting price adjustments. The price of an item in inventory may be increased only to reflect cost increases incurred in the production of that item.

Separation of food and nonfood operations.—In view of the fact that the general price standard of subpart B provides an alternative whereby prices may be increased by a weighted annual average of 1.5 percent to reflect increased costs without limitation as to profit margin, "nonfood" sales and related costs are reported on lines 1–19 of part VI of the form CLC–2 and a weighted average percentage price adjustment test is applied to total "nonfood" sales (line 22). "Food" sales are reported separately (line 24 and separate part VI) without application of the weighted average percentage price adjustment test to total "food" sales since the 1.5 percent alternative does not apply to sales subject to subpart F.

Separation of wholesale/retail and other operations.—An entity engaged in "nonfood" wholesale or retail operations may choose to complete lines 1–19 of this part for its "nonfood" operations including wholesale and retail operations, or it may separate its wholesale and retail operations from other operations and complete lines 1–19 for its other operations only. In the case where the entity separates its wholesale and retail operations from other operations, it must include the sales and revenues from wholesale and retail operations in lines 25 of this part (see paragraph (h) under "Non-Applicable Sales") and complete and attach a schedule T, "Report or Record of Retailing and Wholesaling Markups of Gross Margins." Only an entity of a firm subject to subpart B of the phase III regulations which chooses to complete lines 1–19 of this part for its combined "nonfood" operations, including wholesale and retail operations, may use the alternative in the general price standard pertaining to the 1.5-percent weighted annual average price increase. An entity which separates its wholesale and retail operations from its other operations has decided, in effect, that its price adjustments under subpart B will be such that the subpart B profit margin limitation will apply and that it is therefore not necessary to attempt to include its wholesale and retail operations in computing a weighted annual average price increase for subpart B sales.

All sales of the entity must be listed in lines 1–19 of this part by the appropriate SIC code except sales or revenues in the following industries or categories:

a. Foreign operations (as defined in the instructions for line 23, part VI of this form) (entered in line 23).

b. Food operations (which includes wholesale and retail operations); unless the firm of which the entity is a part derives less than 20 percent and less than $50 million of its annual sales or revenues from sales of food. If less than 20 percent and less than $50 million of the annual sales or revenues are from sales of food, food operations are to be recorded in lines 1–19 of part VI.

Other Nonapplicable Sales (entered in line 25)

c. Exempt items (set forth in 6 CFR, part 130, subpart D).

d. All insurance not set forth as exempt in 6 CFR, part 130, subpart D.

e. Providers of health services (covered in 6 CFR, part 130, subpart G).

f. Public utilities (covered in 6 CFR, part 130, subpart I).

g. Custom products (as defined in the Price Commission regulations in effect on January 10, 1973, including such products provided by entities in the construction industry).

h. Nonfood wholesale and retail operations if not included in part VI, lines 1–19.

Abbreviated Reporting—Entities Under 1.5 Percent

An entity of a price reporting firm subject to subpart B which has not increased its prices under subpart B to more than a 1.5 percent weighted average price increase above its authorized base prices need not complete lines 1–21 of part VI on any form CLC–2 submitted to the Cost of Living Council.

However, an entity which qualifies for abbreviated reporting must complete and retain in its records a part VI with lines 1–22 completed in accordance with the specific instructions, exclusive of the instructions for abbreviated reporting, for each form CLC–2 submitted to the Cost of Living Council.

On any form CLC–2 submitted to the Council, total price information and cost justification for an entity which qualifies for abbreviated reporting is recorded in line 22 and schedule C must be attached supporting this entity-wide cost justification. The entries in columns (d), (e), and (i), line 22 are calculated in accordance with the specific instructions for line 22. If the entry in line 22, column (f) is less than line 22, column (e), documentation must be furnished explaining why the price increase exceeds the cost justification. If the entry in line 22, column (e) is greater than 1.5 percent, the entity no longer qualifies for abbreviated reporting and must complete lines 1–22 in accordance with the specific instructions exclusive of these instructions for abbreviated reporting on any form CLC–2 submitted to the Cost of Living Council.

Weighted Average Percentage Price Adjustments

The calculation of the weighted average percentage price adjustment is required for purposes of completing this part. The following definitions and an example are provided to assist in this calculation:

(a) The base price period is the most recent fiscal quarter ending prior to January 11, 1973.

(b) The average price of a product for a period is determined by dividing the net sales by the quantity of the product sold for that period.

(c) The actual base price is the average price lawfully charged for transactions to a class of purchasers during the base price period. If no transaction took place for a product during the base price period, the entity should use the average price during the quarter most recently preceding the base price period in which a transaction was made for that product.

(d) The authorized base price is the price authorized or lawfully in effect on January 10, 1973. Prices "authorized or lawfully in effect on January 10, 1973" are the prices from which compliance is measured for price increases pursuant to the general price standard of phase III.

The basic starting point for measuring compliance with the general price standard is the set of base prices established at the beginning of the economic stabilization program on August 15, 1971. For items for which approval to increase prices was required and for which no authority to increase prices was granted throughout phase II, base prices as defined in subpart F of the Price Commission regulations for phase II may be used as the starting point. For items for which prior approval to increase prices was required, and authorization to increase prices was obtained, authorized prices as of January 10, 1973, may be used whether or not price increases had been implemented up to authorized levels. For items for which prior approval to increase prices was not required, prices charged may be used, provided that these prices were lawfully in effect under the phase II regulations.

For firms that received authority to increase prices under term limit pricing (TLP) authorizations, the starting point for measuring compliance with the general price standard is the limit on overall average price increases permitted under the TLP authorization. For example, for a firm granted authority for a weighted average price increase of 2 percent under a TLP authorization, price increases of up to an additional 1.5 percent can be placed into effect to reflect increased costs without limitation of its profit margin to the base period level. Thus, in this case the set of prices consistent with the general price standard must result in a weighted average that does not exceed 1.5 percent above prices authorized on January 10, 1973, or, alternatively, 3.5 percent above base levels for phase II. It should be noted that the authorized price on January 10, 1973, for any individual item under the TLP authorization depends on the magnitude of price increases for other items sold by the firm, and if prices for many items have been increased by more than the overall average authorized, authorized prices on

January 10, 1973, for other items may be below base prices for phase II.

With regard to base prices, whether authorized or actual, if the price of a product normally fluctuates in distinct seasonal patterns, its base price may be adjusted according to its seasonal pattern as supported by a history of this pattern for the most recently completed 3 years. (See 6 CFR 300.81 of the Price Commission regulations in effect on January 10, 1973.)

In establishing a base price for a new product, the entity should be guided by 6 CFR 300.409.

(e) Current revenues are the actual net sales of the product for the reporting period (average price times quantity sold).

(f) Base price revenues are the revenues that would have been derived during the reporting period if all prices had been at base price (actual or authorized) i.e. base price times quantity sold during the reporting period.

(g) The weighted average percentage price adjustment is the difference between current revenues and base price revenues all over base price revenues. The result is multiplied by 100 to convert to a percentage, i.e.:

$$\left[\frac{(\text{Current revenues})-(\text{base price revenues})}{(\text{Base price revenues})}\right]\times 100 = \text{Weighted average percentage price adjustment}$$

The weighted average percentage price adjustment can be computed using this formula for any level of aggregation (group of products, product line, all products of the firm, etc.).

(h) The actual weighted average percentage price adjustment is calculated using the actual base price to compute base price revenues.

(i) The authorized weighted average percentage price adjustment is calculated using the authorized base price to compute the base price revenues.

Computing the Weighted Average Percentage Price Adjustment

Although the calculation of the weighted average percentage price adjustment requires determination of price changes at the item or individual product level, it may not be feasible to compute and record the percentage price changes at this level of detail. In such cases, it may be permissible to use a sampling, averaging, exceptions, or other valid technique. However, the weighted average percentage price adjustment resulting from such techniques must not be materially different from the weighted average percentage price adjustment computed using the method below. Where these techniques are used to calculate a weighted average percentage price adjustment, the entity must adhere to accepted standards with regard to materiality, sampling validity, and consistency.

The entity must maintain documentation which outlines the type of techniques used in its various divisions. The entity must weight its price changes according to the quantity sold during the reporting period (as shown below), but may weight its price changes according to the quantity sold during the most recent fiscal quarter ending prior to January 10, 1973, provided that it can demonstrate that there has been no material difference in product mix between the two periods. The factor for weighting price adjustments may be represented by the value of the sales to which a price change applies as a proportion of the total sales for which the weighted average is computed. Note that the method shown below takes into account price increases and decreases from base price. The base price in the example below may be the actual base price or the authorized base price depending on whether the actual or authorized weighted average percentage price adjustment is being computed.

METHOD OF COMPUTING THE WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT

The steps for computing the weighted average percentage price adjustment are:

1. Multiply the quantity of each item sold during the reporting period by its base price. The result is the base price revenues for each item.

2. Total the base price revenues (column 5) for the individual items to arrive at the total base price revenues (sum of column 5).

3. Divide the total base price revenues computed in step (2) above into the difference between total current revenues (sum of column 6) and total base price revenues and multiply the result by 100 to convert to a percentage.

SAMPLE CALCULATION OF WEIGHTED AVERAGE PERCENTAGE PRICE ADJUSTMENT

(1) Item	(2) Base price	(3) Average price reporting period column (6)÷column (4)	(4) Quantity sold during reporting period (000's)	(5) Base price revenues (000's) column (2)× column (4)	(6) Current revenues (000's)
A	$5	$4.80	40	$200	$192
B	6	6.10	60	360	366
C	3	3.20	50	150	160
D	10	10.00	15	150	150
E	8	8.25	40	320	330
Total				1,180	1,198

$$\text{Weighted average percentage price adjustment} = \left[\frac{1198-1180}{1180}\right]\times 100 = 1.53\%$$

Lines 1–19 (and any continuation schedule) show applicable sales and price adjustment and cost information by four-digit SIC except as provided in paragraph D2 of the general instructions to form CLC–2. Where applicable sales for the reporting period in any pricing unit are less than $3 million, such sales may be classified in a miscellaneous category using 9999 as the SIC code. However, in no case may the combined sales in the miscellaneous category exceed 10 percent of the entity's total applicable sales as entered in line 21, column (c).

Column (a).—Enter the description of the product line or service line as it is customarily described by the entity, regardless of whether there was a price increase or decrease. (Limit description to space provided.)

NOTE.—For all remaining columns in this part, entries must be made if required, for each product line identified in column (a).

Column (b).—Enter the 1967 four-digit SIC code for the product line. (The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.)

Reporting Period

Enter the date of the first and last day of the reporting period (as explained in item 4) which applies to columns (c) through (g).

NOTE.—For purposes of the first preparation of part VI as a quarterly report or report or record, the reporting period will include the fiscal quarter which includes January 11, 1973, an the additional time period up to and including April 30, 1973. Therefore, the ending date of the reporting period entered in part VI for the first preparation of form CLC–2 as a report or record is April 30, 1973.

Column (c).—Enter the net sales for the reporting period.

Column (d).—Enter for the reporting period the actual weighted average percentage price adjustment. This column must be completed only at the time the initial form CLC–2 is prepared.

Column (e).—Enter for the reporting period the authorized weighted average percentage price adjustment, regardless of whether this amount is positive or negative.

Column (f).—For those product lines with amounts in column (e) that are greater than zero, enter the percentage cost justification from schedule C, line 11. Schedule C must be attached for each amount entered in this column. If the percentage cost justification in this column is less than the percentage entered in column (e) (part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification.

Column (g).—Enter the highest percentage price increase over the authorized base price which was made in the

reporting period for any transaction for any individual item in the product line.

Cumulative Period

Cumulative data (columns (h) and (i)) must be measured from the beginning of the reporting period used for the first submission to the date required to be entered in part I, item 4 (reporting period ending date), until completion of the fiscal year. Thereafter, cumulative data must be measured from the beginning of each new fiscal year.

Enter the date of the first and last day of the cumulative period.

Column (h).—Enter the net sales for the cumulative period.

Column (i).—Enter the cumulative authorized weighted average percentage price adjustment.

Line 20.—Enter the net sales, from columns (c) and (h), from any continuation schedule. Use additional copies of part VI, form CLC–2 for any continuation schedule.

Line 21.—Enter total of lines 1 through 20 for column (c) and for column (h).

Line 22.—For the first preparation only, in column (d) enter the actual weighted average percentage price adjustment for all products in lines 1 through 20 for the reporting period. In columns (e) and (i), enter the authorized weighted average percentage price adjustment for all products in lines 1 through 20 for the reporting period (column (e)) and cumulative period (column (i)). Each of the percentages entered in this line is a weighted average of all price adjustments for items whose sales are shown in line 21, and not a simple average of the percentages in columns (d), (e), and (i). The percentage entered in column (e), line 22 of part VI must be compared with 1.5 percent to determine whether the entity is limited with regard to its profit margin. If column (e), line 22 of part VI is greater than 1.5 percent and item 17 (part III) shows current profit over target profit, the entity is required to furnish documentation with its submission explaining why its does not appear to be conforming with the general price standard. If such documentation includes as justification the efficient allocation of resources or the maintenance of adequate levels of supply, a detailed explanation as to the economic justification for each such adjustment in excess of the general price standard must be attached to the form CLC–2. Each such explanation of economic justification must be signed solely by the chief executive officer, and not by any other delegated executive officer.

Line 23.—Enter for the reporting period in column (c) and cumulative period in column (h), the sales or revenues from foreign operations; that is, the gross receipts of or from a foreign branch, division, or wholly or partially owned foreign entity if the gross receipts are derived primarily from transactions with other foreign firms.

Line 24.—Enter the sales of the entity from food operations for the reporting period in column (c) and cumulative period in column (h) unless such sales are required to be entered in lines 1–19 (see subparagraph b of the third paragraph of the introduction to part VI). Where the amount in column (c) exceeds $10 million, attach a supporting part VI of this form providing the data required in columns (a) through (i) for lines 1 through 21 of this form. It is not necessary to fill in column (f), line 24, in those cases where the prenotification requirement has been met. For purposes of this supporting schedule, food wholesaling and retailing must be aggregated into one line with only columns (a), (b), (c), and (h) completed.

Line 25.—Enter the net sales for the reporting period in column (c) and cumulative period in column (h) for those operations of the entity which are listed in the introduction to part VI under "Other Nonapplicable Sales" and not provided for in lines 23 and 24. For each entry made on this line, attach a schedule listing the industries or categories of nonapplicable sales and the amount of net sales for each industry or category listed.

Line 26.—Enter the total of lines 21 through 25 in column (c) and the total of lines 21 through 25 in column (h).

SPECIAL INSTRUCTIONS FOR THE PREPARATION OF FORM CLC–2 AS A PRENOTIFICATION OF PRICE ADJUSTMENTS

A. *Purpose*

These special instructions are designed to prescribe the rules for furnishing the mandatory prenotification of price adjustments to the Cost of Living Council pursuant to 6 CFR 130.131.

B. *Who Must Prenotify*

Each entity of a price reporting firm which on or before April 30, 1973, has increased prices by a weighted average of 1.5 percent or more over prices authorized or lawfully in effect on January 10, 1973, must prenotify the Cost of Living Council on form CLC–2 of all price adjustments after April 30, 1973.

Any entity of a price reporting firm which increases a price after April 30, 1973, which, in conjunction with all other price adjustments after January 10, 1973, has the effect of increasing the entity's prices by a weighted average of 1.5 percent or more over prices authorized or lawfully in effect on January 10, 1973, must prenotify the Cost of Living Council on form CLC–2 of such price increase and any subequent price increase.

Prenotification rules apply only to price adjustments for a product or service sold by an entity as a manufacturer or service organization.

Prenotification rules do not apply to price adjustments which are subject to subpart F (food sales), subject to special rule No. 1 (petroleum products), or effected pursuant to volatile pricing authority.

C. *When To Prenotify*

The Cost of Living Council must receive a completed form CLC–2 from each entity subject to these special instructions not later than 30 days prior to the charging of the price adjustment described in "Who Must Prenotify."

D. *Where To Prenotify*

Prenotification on form CLC–2 must be forwarded to: Cost of Living Council, Form CLC–2 Prenotification, 2000 M Street NW., Washington, D.C. 20508.

E. *Preparation of Prenotification*

Organization to which form applies—Complete in accordance with the general and specific instructions to the form CLC–2.

Part I—*Identification Data*

Items 1–5.—Complete in accordance with the general and special instructions to the form CLC–2.

Special Instruction Applicable to the Food Industry

Subpart F of the phase III regulations provides that a firm which is subject to both the general standard for price adjustments (subpart B) and the mandatory rules applicable to the food industry (subpart F) is subject to two profit margin limitations: One for subpart B purposes and one for subpart F purposes. Such firms must enter in parts II and III the subpart B profit margin. The subpart B profit margin can be based, at the option of the firm, on total sales or nonfood sales only.

Part II—*Calculation of Base Period Profit Margin*

Complete in accordance with the general and specific instructions to form CLC–2 unless previously submitted to the Cost of Living Council.

Part III—*Calculation of Profit Variation*

Complete in accordance with the general and specific instructions to form CLC–2 unless previously submitted to the Cost Of Living Council for the most recently completed fiscal quarter.

Part IV—*Additional Information*

(Self-explanatory.)

Part V—*Certification*

Complete in accordance with the general and specific instructions to the form CLC–2.

Part VI—*Price/Cost Information*

Introduction

This part is used to prenotify the Cost of Living Council of adjustments in the selling prices of products and services. Prenotification must be made of any price increase by means of changes in quantity, quality, specifications, or characteristics.

Lines 1–19 must be prepared for each price increase being prenotified in accordance with the instructions to form CLC–2 as modified herein below.

Column (a).—Enter the description of the product line or service line as it is customarily described by the entity. (Limit description to space provided.)

NOTE.—For all remaining columns in this part, entries, if required, must be made for each product line identified in column (a).

Column (b).—Enter the 1967 four-digit SIC code for the product line. (The 1972 "Standard Industrial Classification Manual," which defines such codes, may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402. This edition of the manual has a table for conversion of the 1972 codes to the 1967 codes.)

Reporting Period

Strike out the word "Reporting" and enter the date of the first and last day of the four consecutive fiscal quarters ending on the date entered in item 4, part I. This is the "current price period."

Column (c).—Enter the net sales for the current price period.

Column (d).—Strike the word "Actual" and insert "Prenotified", then enter the weighted average price adjustment for which prenotification is being made, expressed as a percent above the authorized base prices.

Column (e).—Complete in accordance with the general and specific instructions for form CLC-2.

Column (f).—For those product lines with amounts in column (d) that are greater than zero, enter the percentage cost justification from schedule C, line 15. Schedule C must be attached for each amount entered in this column. If the percentage cost justification in this column is less than the percentage entered in column (d) (part VI), the entity must furnish documentation explaining why the price increase exceeds the cost justification.

Column (g).—Enter the highest percentage price increase over the authorized base price which will be made in any transaction for any individual item in the product line for the period entered above columns (h) and (i).

Cumulative Period

Strike the word "cumulative" and enter the first and last day of the four fiscal quarters following the date entered in item 4, part I.

Column (h).—Enter the net sales for the period entered above columns (h) and (i).

Schedule C
(Form CLC-2)
(May 1973)
Cost of Living Council

Calculation of Cost Justification to Support Net Price Increases on Form CLC - 2

CLC Identification Number (Parent)
Unconsolidated Entity
OMB Number: 172-R0001
Approval Expires April 1974
Reference Number

Product or service line description
(From Columns (a) and (b), Part VI on corresponding Form CLC-2)

4-digit SIC

Part I—Identification Data

1 (a) Name of parent or unconsolidated entity

(b) Address (Number and street)

(c) City or town, State and ZIP code

2 Reporting period ending date (Month, day, and year) . . . . . →

Part II.—Calculation of Cost Justification

Cost Elements (Attach supporting schedules as required by instructions)	% of Cost element that is variable (a)	% Increase (Decrease) in current cost level vs. primary cost level (b)	% of Cost element to total costs at the primary cost level (c)	(b) x (c) expressed as as a percent (d)
3 Direct materials (a) Imported				
(b) Other				
4 Direct labor				
5 Other manufacturing or service costs (a) Labor				
(b) Other costs				
6 Other operating costs (a) Labor				
(b) Marketing, General and Administrative				
(c) All other costs				
7 Non-Allowable costs				
8 Subtotal			100%	%
9 Offset for productivity increase				%
10 Offset for volume increase				%
11 Weighted average percentage price increase justified by this Schedule C. (Subtract line 9 and 10 from 8)				%
12 Percent of total current costs to sales				%

INSTRUCTIONS FOR THE PREPARATION OF SCHEDULE C TO FORM CLC–2

GENERAL INSTRUCTIONS

Schedule C sets forth the basis for calculating the cost justification for charging a net price increase as reported in column (e), or prenotified in column (d), of part VI, form CLC–2. This schedule must be prepared for each weighted average price increase in a 4-digit standard industrial classification (SIC) code, except as provided in paragraph D–2 of the general instructions to form CLC–2.

Price reporting firms must submit a schedule C for each cost justification percentage entered in column (f), part VI, lines 1–19, form CLC–2, whether the form CLC–2 is submitted as a quarterly report or as a prenotification of price adjustments.

Price recordkeeping firms must prepare a schedule C to support each weighted average percentage price increase recorded in part VI, column (e), lines 1–19, form CLC–2 and attach the schedule to their form CLC–2. The form with all schedules attached must be retained in the corporate records for inspection upon request.

SPECIFIC INSTRUCTIONS

Part I *Identification Data*

ITEM 1. *Name and address of parent or unconsolidated entity.*—Enter the legal name of the parent or unconsolidated entity, conforming with the name on the corresponding form CLC–2. Enter the address of its executive office.

ITEM 2. *Reporting period ending date.*—Enter the date of the last day in the reporting period conforming with the date in Part I, Item 4 on the corresponding Form CLC–2. However, on any Schedule C required to be attached to the first Form CLC–2 prepared as a quarterly report or record, enter the date April 30, 1973.

Part II *Calculation of Cost Justification*

The level of costs from which all cost increases are measured ("primary cost level") is that level incurred on the date the last price increase was lawfully placed into effect prior to January 11, 1973, for the product line or service line covered by this schedule. If no price increase has been placed into effect since January 1, 1971, the level of costs on that date is the level from which cost increases must be measured. All subsequent cost increases must be measured from the primary cost level. However, in no case may cost increases used to justify a price increase requested and approved prior to January 11, 1973, be used to justify any price increase after January 10, 1973, above authorized prices. The current cost level is the level of costs being incurred on the date the price increase to which this schedule applies is first charged and must be calculated using an estimated volume that is not less than the volume at the primary cost level.

In calculating the percentage increase in column (b), the measurement of cost increases must be made either by individual unit cost element (input basis) or, alternatively, by product or service unit cost (output basis), provided that all entries in column (b) are derived from the same basis.

Cost elements must be measured in a consistent manner when determining primary cost level and all subsequent period costs.

Allowable Costs (Items 3 through 6)

Only costs which are included in the determination of operating income (as defined in the instructions to form CLC–2) are allowable as justification for a price above the authorized base price. Furthermore, allowable costs under part II are costs that have been incurred, are continuing to be incurred, are necessary and reasonable, and have not been disallowed by the Cost of Living Council. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration must be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the firm's business;

2. The restraints or requirements imposed by such factors as sound business practice, arm's-length bargaining, and Federal and State laws and regulations;

3. The action that a prudent person would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, Federal and State Government, and the public at large; and

4. Significant deviations from the established practices of the firm.

Each column in part II must be filled out on this schedule for each cost element including those elements where there has been no change. If an element does not apply, enter NA. Entities which submit a schedule C which contains incomplete or incorrect information will be required to submit a corrected schedule C and may be in violation of the reporting requirements if complete and correct schedules are not submitted within the time periods prescribed.

ITEM 3. *Direct materials.* Include materials and material related costs in accordance with accounting procedures normally employed by the firm. Those costs should be further classified as indicated on lines (a) and (b) of this item.

Imported materials are materials produced outside of the United States where the form of the materials has not changed substantially between the date of its initial sale into U.S. commerce and the date of its purchase by the firm.

Supporting schedules must be attached to schedule C listing significant types of direct materials for which costs have changed, and the percentage change in each of these materials.

ITEM 4. *Direct Labor*

Include labor and labor-related costs in accordance with accounting procedures normally employed by the firm. For this, and for all other labor items for which a cost change is shown, provide supporting detail in an attachment.

If any portion of the labor cost increases shown in column (b) includes cost increases resulting from any adjustment exceeding 5.5 percent (excluding qualified fringe benefits) for an employee unit for any control year as determined under the applicable wage stabilization rules of the Economic Stabilization regulations, supporting documentation must be attached to the schedule C giving the following information:

1. Name of employee unit.

2. Number of employees in employee unit.

3. Percentage increase for the employee unit.

4. Basis for any exception.

ITEM 5. *Other manufacturing or service costs.*—Other manufacturing or service costs should be segregated as indicated on lines (a) and (b). Labor categories must include all labor and labor-related costs; and supporting detail as described for item 4 must be provided. Supporting schedules must be attached listing the cost elements or functional accounts included, and any basis for allocation.

ITEM 6. *Other operating costs*

Other operating costs must be segregated as indicated on lines (a), (b), and (c).

Other operating costs include expenses incurred directly and allocated expenses within the firm, if such allocations are consistent with those in prior periods.

Supporting schedules must be attached listing the cost elements or functional accounts covered, the basis for allocation, and volume assumptions.

Enter the data required by columns (a), (b), (c), and (d) for each cost element.

ITEM 7. *Nonallowable costs*

This item is used for costs deemed nonallowable by the Cost of Living Council.

ITEM 8. *Subtotal*

Enter in column (d) the total of the percentages in column (d), items 3–6. As indicated on the form, all cost percentages recorded in column (c) must total 100 percent.

ITEM 9. *Offset for productivity increase*

Increases in costs must be offset by reduction in costs due to improvements in productivity.

The rules and regulations of the Price Commission in effect on January 10, 1973, and instructions to form PC–1 contained therein, are recommended as guidelines (for subpart B purposes) and must be used (for subpart F purposes) for calculating the offset for productivity increase. Attach a supporting schedule indicating the manner in which the offset

for productivity increase was determined. In no instance may negative productivity be utilized to justify a price increase.

ITEM 10. *Offset for Volume Increase*

Nonvariable costs are normally reduced per unit with an increase in volume. This reduction is the result of a broader base for absorbing nonvariable costs.

The full extent of the reduction in unit fixed costs resulting from volume increases must be expressed as a percentage on this line.

Attach a supporting schedule indicating the manner in which the offset for volume increase was determined. In no instance may a negative volume offset be utilized to justify a price increase.

ITEM 11. *Weighted Average Percentage Price Increase Justified by This Schedule C*

This entry is determined by subtracting items 9 and 10 from item 8, column (d). The result represents the percentage above the authorized base price that prices may be increased. Enter this percentage on the appropriate line in part VI, column (f), form CLC-2 for the product line or service line for which this schedule C has been prepared.

ITEM. 12. *Percent of Total Current Costs to Sales*

"Total current costs" means the costs incurred during the reporting period. "Sales" means the amount entered on form CLC-2, part VI, column (c) for the product line or service line for which the schedule C has been prepared. Enter the figure obtained by dividing total current costs by "sales" and express the result as a percentage.

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