CASE NO. 18-55682

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARISHA RUSSELL, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiff and Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant and Appellee.

Appeal From The United States District Court,
Southern District of California, Case No. 3:17-cv-00672-JLS-WVG,
Hon. Janis L. Sammartino, Presiding

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANT-APPELLEE GOVERNMENT EMPLOYEES INSURANCE COMPANY

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The Chamber of Commerce of the United States of America ("Chamber") hereby moves, pursuant to Rule 29 of the Federal Rules of Appellate Procedure, for leave to file the accompanying brief as *amicus curiae* in the above-captioned matter.

The Chamber the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. The outcome of this proceeding has the potential to impact the Chamber's members and other businesses throughout this country that seek in good faith to provide valuable retirement and other benefits to employees.

The Chamber respectfully requests permission to submit the accompanying brief so that it can present the Court with analysis on two points: (1) the proper construction of the FLSA's regular rate exclusions in light of *Encino Motorcars LLC v. Navarro*, 138 S. Ct. 1142 (2018), and (2) the validity of 29 C.F.R. § 778.215(a)(3), the interpretive guidance on which Plaintiff-Appellant bases her contention that trust contributions under Defendant-Appellee's Profit Sharing Plan do not qualify for exclusion from the regular rate of pay. While the Chamber agrees with Defendant-Appellee's analysis in its Answering Brief, and submits that the Court may affirm here without reaching the issue of whether § 778.215(a)(3) is

valid, the analysis in the accompanying brief will assist the Court in the event it does find it necessary to determine the validity of § 778.215(a)(3).

Counsel for the Chamber sought the consent of the parties to file an *amicus curiae* brief in this matter. Defendant-Appellee consented. Plaintiff-Appellant did not respond to the Chamber's request prior to the time this Motion was filed.

DATED: October 31, 2018

Respectfully submitted,

By: /s/ *Katherine M. Forster*

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CERTIFICATE OF COMPLIANCE PURSUANT TO

FED. R. APP. 32(A)(7)(C) AND CIRCUIT RULE 32-1

Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief is proportionally spaced, has a typeface of 14 points and contains 581 words.

DATED: October 31, 2018

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America ("Chamber") states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community.

The Chambers seeks permission to file this brief to assist this Court in understanding the broader perspective of employers on the interpretation of their overtime obligations under the Fair Labor Standards Act ("FLSA"). The outcome of this proceeding has the potential to impact businesses throughout this Circuit (and for business operating nationwide, the entire country) that seek in good faith to provide valuable retirement and other benefits to employees without incurring unexpected overtime liability. The Chamber, as an organization devoted to advancing the interests of commerce, is well positioned to address the importance

[1] The Chamber has moved for leave to file this brief as *amicus curiae*. Pursuant to Federal Rule of Appellate Procedure 29, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

of following settled norms and fairly, rather than unduly narrowly, interpreting regular rate exclusions in determining overtime obligations.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff-Appellant Marisha Russell ("Plaintiff") contends that when Defendant GEICO made cash payments and retirement trust contributions for the benefit of her and other employees under its Profit Sharing Plan (PSP), it should have also factored these benefit payments into her regular rate of pay and then paid her and others additional overtime premiums. The District Court properly rejected these claims as a matter of law.

Plaintiff's trust contribution argument now rests on the application of a single subsection of mere interpretive guidance. Specifically, Plaintiff contends that the statutory regular rate exclusion for retirement contributions set forth at 29 U.S.C. § 207(e)(4) does not apply to the retirement contributions at issue here because they were not made formulaically consistent with the guidance set forth at 29 C.F.R. § 778.215(a)(3).

The Chamber respectfully submits that (a) there is no reason for this Court to address the validity of this guidance here, because Defendant GEICO has offered several independently sufficient reasons why Plaintiff's trust contribution claim fails regardless of the application of 29 C.F.R. § 778.215(a)(3); but if the Court reaches this issue nevertheless, then (b) Plaintiff's urged application of the guidance set forth at 29 C.F.R. § 778.215(a)(3) is impermissibly inconsistent with

the actual statute and would in fact undermine the purpose of that statutory exemption.

Defendant GEICO has set forth three independently sufficient reasons to conclude that it need not pay additional overtime premiums based on its retirement trust contributions.

First, GEICO is not required to make further premium overtime payments on its retirement trust contributions because these contributions are calculated as a percentage of total compensation and thus already factor in both straight and overtime wages. Indeed, for this same reason and as set forth below, the District Court properly concluded that GEICO need not make additional overtime payments as a result of the cash payments made under the PSP. The same logic applies to the trust contributions and moots the need to consider whether any of the statutory regular rate exclusions apply at all.

Second, Plaintiff's argument that GEICO's retirement trust contributions do not satisfy the guidance in § 778.215(a)(3) rests on her contention that the pertinent contributions are discretionary. Regardless of the specific regular rate exemption for retirement trust contributions set forth in the statute at 29 U.S.C. § 207(e)(4), there is a separate exclusion for discretionary payments set forth at 29 U.S.C. § 207(e)(2), and it applies here by Plaintiff's own admission.

Third, even if the analysis reaches 29 U.S.C. § 207(e)(4) and the associated guidance on which Plaintiff relies, GEICO's retirement trust contributions satisfy that guidance as set forth in 29 C.F.R. § 778.215(a)(3). Specifically, Plaintiff's argument is that both the amount contributed by each employer under the plan and the amount then paid to each employee must be made pursuant to a definite formula. GEICO satisfies this test: First, once the bonus pool is funded by the Board, the amount of each company's contribution to the Planning Centers under the PSP is determined by a specific formula. See ER 101. And as Plaintiff concedes, after these contributions have been made, each employee's individual share of the company contribution under the PSP is also determined by a specific formula. *See id.*

For these three independently sufficient reasons, Plaintiff's regular rate claim fails, and there is no need for this Court to reach the validity of the guidance set forth in 29 C.F.R. 778.215(a)(3).

To the extent that the Court finds it necessary to do so, however, that guidance is entitled to no deference because it is unsupported and indeed contrary to the exclusion for retirement trust contributions set forth at 29 U.S.C. § 207(e)(4). Section 207(e)(4) excludes from the regular rate of pay all "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or

similar benefits for employees." Nothing in the statute requires that these contributions be made formulaically—instead, the statute's only requirement as to the manner in which such contributions be made is that they be made irrevocably. Plaintiff cannot and now does not dispute that the contributions here were made irrevocably.

Unable to evade the clear reach of the controlling, statutory regular rate exclusion here, Plaintiff first urges this Court to read the statutory exclusion narrowly under an antiquated principle. As GEICO correctly states, the Supreme Court has recently invalidated the notion that courts are to construe FLSA exemptions narrowly. *See Encino Motorcars LLC v. Navarro* (*Encino Motorcars II*), 138 S. Ct. 1134, 1142 (2018). This holding requires "fair" and not "narrow" construction of the FLSA's overtime exemptions, including its regular rate exclusions. Specifically, both the overtime exemptions and the regular rate exclusions represent express exceptions to a general rule, and *Encino Motorcars II* commands that both the rule and the exceptions are integral parts of the statute to be interpreted fairly, not against either the employer or the employee.

In another effort to manufacture a basis for deference to her urged application of § 778.215(a)(3), Plaintiff refers to it as an "interpreting regulation[]." Opening Brief ("OB") 29. It is no regulation at all. In *Madison v. Resources for Human Development, Inc.*, 233 F.3d 175, 186 (3d Cir. 2000), the

court addressed the history of § 778.215 and held that there was "no doubt" that it "is an interpretive guideline, issued on the advice of the Solicitor of Labor…, not an official regulation promulgated after notice-and-comment rule making." Then, consistent with Supreme Court precedent, the court held that such guidelines "do not rise to the level of a regulation and do not have the effect of law" but instead have only the power to persuade to the extent they are actually consistent with the pertinent statute and otherwise satisfy the *Skidmore* analysis. *Id*. at 185-87.

Applying this proper analysis, it is clear that Plaintiff's urged application of § 778.215(a)(3) is not a persuasive interpretation of the statutory exclusion set forth at 29 U.S.C § 207(e)(4). To start, the provision runs contrary to Congress's intent as reflected in the statutory language. Furthermore, the guidance in § 778.215(a)(3) was not issued contemporaneously with § 207(e)(4). And finally, *all* of the pertinent *Skidmore* factors counsel against deference here: The guidance is not thoroughly reasoned, the Wage and Hour Division did not offer any reason—much less a valid reason—to justify its effort to expand the statutory requirements, and it conflicts with earlier pronouncements.

In fact, applying the statutory exclusion set forth in § 207(e)(4) here would serve, not hinder, the interests of the FLSA. GEICO's PSP furthers the goals Congress sought to achieve by balancing the general rule requiring the inclusion of hourly and related compensation in the regular rate while at the same time

excluding certain benefits. The exclusion for contributions to benefit plans was meant to incentivize employers to provide such benefits to employees. Such benefits are urgently needed, especially in the face of insufficient retirement savings levels, and GEICO should not be punished with an unexpected overtime liability for providing such benefits to its employees.

ARGUMENT

I. GEICO Has Demonstrated That Its Cash Payments Are Properly Excluded From The Regular Rate Of Pay.

Although the Chamber will respectfully focus this brief on Plaintiff's claim concerning the retirement trust contributions, the Chamber submits that the District Court correctly held that Plaintiff's cash payment claim fails because the cash payments under GEICO's PSP are percentage bonuses that already factor all overtime into the regular rate of pay. (Indeed, as set forth below, this principle informs the discussion of the retirement trust contributions because they are properly excluded from the regular rate calculation for this same reason, regardless of § 778.215(a)(3).)

As GEICO has explained, Plaintiff has admitted that the cash payments constitute a percentage of total earnings. ER 49 (Complaint); OB 4; Answering Brief ("AB") 21. The applicable overtime attributable to the bonus has therefore already been paid as a mathematical fact, since the cash payments increase straight

time earnings and overtime earnings by the same percentage. As a result, paying an additional premium would impermissibly result in "overtime on overtime."

Avoiding "overtime on overtime" was a key consideration driving the 1949 amendments to the FLSA that defined the regular rate of pay and the associated exclusions. In *Bay Ridge Operating Co. v. Aaron* (*Bay Ridge*), 334 U.S. 446, 473-77 (1948), the Supreme Court had required premiums for weekend or holiday work and extra payments for work outside "clock" hours provided under collective bargaining agreement to be included in the regular rate of pay, resulting in "overtime on overtime" and disrupting traditional pay practices in the stevedoring and longshore industry. In the 1949 amendments to the FLSA, Congress abrogated this "overtime-on-overtime" decision. *See The New Wage and Hour Law* (1949), at 6-9 (describing Congress's desire to override *Bay Ridge*).

The longevity requirement set forth in the PSP does not alter this conclusion. As GEICO has made clear, an employer may make payment of a percentage bonus contingent on remaining employed through the date of payment. *See Brock v. Two R Drilling Co.*, 789 F.2d 1177, 1180 (5th Cir. 1986) ("A conditional bonus 'based on a percentage of total wages,' no less than an unconditional one, 'increases both straight time and overtime wages by the same percentage.'"); AB 21-22. The language requiring that such bonuses be "paid unconditionally," 29 C.F.R. § 778.503, simply serves to distinguish true percentage bonuses from pseudo

percentage bonuses where the amount to be paid varies with the amount of overtime worked so as to evade the employer's overtime obligation. *See id.* (explaining that sham "pseudo percentage" bonuses, while "expressed as a percentage of both straight time and overtime wages . . . are generally separated out of a fixed weekly wage and usually decrease in amount in direct proportion to increases in the number of hours worked in a week in excess of 40"). No such sham arrangement is present here.

GEICO has also demonstrated that Plaintiff's attack on the "allocation" of the bonus is without merit. *See* OB 10, 16-18 (contending that cash payments under the PSP must be allocated over a period of 14 rather than 12 months). The District Court correctly held that the cash payments constitute a percentage bonus that requires no allocation because they already account for the overtime worked. AB 13, 32-35; ER 11-14 (Order).

Indeed, even if the cash payments at issue here did not qualify as a percentage bonus—which they do—there is nothing about providing for payment of an annual bonus early the following year that suggests a subterfuge or other attempt to evade overtime obligations. Such an approach is common and in no way requires an employer to allocate an annual bonus for regular rate purposes over anything other than the calendar year. *See* 29 C.F.R. § 778.209 (where bonus earnings cannot be attributed to a particular workweek, "it may be reasonable and

equitable to assume that the employee earned an equal amount of bonus each week of *the period to which the bonus relates*") (emphasis added). To suggest otherwise would disrupt the settled expectations of countless employers who have implemented annual bonus programs that provide for payment early the following year.

II. GEICO Has Demonstrated That Plaintiff's Trust Contribution Claims Fail Regardless of Whether 29 C.F.R. § 778.215(a)(3) Is Persuasive.

Although the Chamber focuses this submission on the invalidity of the interpretive guidance set forth in § 778.215(a)(3), the Chamber respectfully submits that the Court need not reach this issue because GEICO has established three independently sufficient grounds on which Plaintiff's trust contribution claims fail regardless of the validity of § 778.215(a)(3).

First, as Plaintiff concedes, the trust contributions under the PSP are calculated as a percentage of total earnings. As a result, any payment already reflects a premium for overtime hours as a matter of simple arithmetic. OB 3-4; AB 32-40. As GEICO has already explained, if the payment is a percentage a total of wages, then the payment will increase as overtime is worked and overtime premiums are paid. *See Brock*, 789 F.2d at 1179 (no "recomputation of the 'regular' rate of pay" is required "because the bonus is deemed to increase the straight time pay and the overtime pay by the same percentage, thus not altering the ratio between them") (citing *Siomkin v. Fairchild Camera & Instrument Corp.*,

174 F.2d 289 (2nd Cir. 1949) (Judge Learned Hand). Put simply, the payment already includes a regular rate adjustment, and so there is no need to assess whether a statutory exclusion applies.

Second, as GEICO also correctly explains, even if the trust contributions were not paid a percentage of wages, Plaintiff's own argument brings them under the exclusion set forth at 29 U.S.C. § 207(e)(3). Specifically, Plaintiff argues that the trust contributions run afoul of the guidance set forth in § 778.215(a)(3) because the initial decision to fund the pool is discretionary. In particular, she contends that GEICO employees do not have any expectation of any particular PSP trust contribution, or indeed any such contribution at all, since "GEICO can deem it to be zero if it wants to." OB 31. Stressing that under the PSP, the Board could decide to make no contribution at all, Plaintiff argues that both "the fact of a contribution, and its initial amount" are decided "on a whim." OB 33. And 29 U.S.C. § 207(e)(3) expressly excludes from the regular rate of pay "[s]ums paid in recognition of services performed during a given period if . . . both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period" and not pursuant to any prior promise. This exclusion therefore applies.

Third, even if this Court ignores both the percentage and discretionary nature of the payments conceded by Plaintiff and applies § 778.215, GEICO has

established that the PSP satisfies this guidance. AB 33-36. Although she does not contest that most elements of § 778.215 are met, Plaintiff does contend that GEICO cannot satisfy § 778.215(a)(3) because the overall employer contribution is not determined formulaically. OB 29-32. But once the bonus pool is funded by the Board, the amount of each company's contribution to the Planning Centers under the PSP is in fact determined by a specific formula. *See* ER 101 (PSP § 5.2, providing for allocation "to the Planning Centers within such Company based on the ratio of (i) each Planning Center's Planning Center Ranking multiplied by the total Earnings of Eligible Participants in such Planning Center to (ii) the sum of the products of each Planning Center's Planning Center Ranking and the total Earnings of all Eligible Participants in such Planning Center."). Furthermore, as Plaintiff concedes, each employee's individual share of the company contribution under the PSP is also determined by a specific formula. *See id.* Accordingly, the District Court correctly concluded that the trust contributions under the PSP comply with the guidance set forth in § 778.215.

III. Even If This Court Rejects The Above Contentions, The Trust Contributions Are Still Properly Excluded From The Regular Rate, Because GEICO Has Satisfied The Statutory Exclusion For Retirement Contributions, And Plaintiff's Urged Application Of The Guidance Is Invalid.

For the three independently sufficient reasons set forth above, there is no need for this Court to reach the validity of the guidance set forth in 29 C.F.R. § 778.215(a)(3).

To the extent that the Court finds it necessary to do so, however, that guidance is entitled to no deference because it is unsupported and indeed contrary to the exclusion for retirement trust contributions set forth at 29 U.S.C. § 207(e)(4), the pertinent and controlling statute.

Section 207(e)(4) excludes from the regular rate of pay all "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees." Nothing in the statute requires that these contributions be made formulaically—instead, the statute's only requirement as to the manner in which such contributions be made is that they be made irrevocably. Plaintiff cannot and now does not dispute that the contributions here were made irrevocably, and the guidance on which she relies in attempting to graft a new requirement onto the statute is unpersuasive as a matter of law.

A. The Statutory Exclusion Must Be Interpreted Fairly, Not Narrowly Construed.

Plaintiff incorrectly contends that the regular rate exclusions are to be "interpret[ed] "narrowly" and that the statutory exclusion for retirement contributions must be "construed narrowly against GEICO." OB 32-33 (emphasis omitted). As GEICO states, AB 40-41, the Supreme Court has squarely rejected the notion that FLSA exemptions must be narrowly construed against the employer and held instead that the analysis must be based on a "fair" reading of the statute. "Because the FLSA gives no 'textual indication' that its exemptions should be construed narrowly, 'there is no reason to give [them] anything other than a fair (rather than a "narrow") interpretation.'" *Encino Motorcars II*, 138 S. Ct. at 1142 (quoting Scalia, Reading Law, at 363). In *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117 (2016), Justices Thomas and Alito foreshadowed the Court's eventual holding and stated, "[t]here is no basis to infer that Congress means anything beyond what a statute plainly says simply because the legislation in question could be classified as 'remedial.'" *Id.* at 2131 (Thomas, J., dissenting).[2]

[2] In reaching this conclusion, these Justices recognized that the Ninth Circuit has in the past suggested that the narrow construction rule is proper, and they made clear that this is no longer the case: "Respondents also resist this natural reading of the exemption by invoking the made-up canon that courts must narrowly construe the FLSA exemptions. [Citation omitted]. The Ninth Circuit agreed with respondents on this score. 780 F.3d 1267, 1271–1272, n. 3 (2015). The court should not do so again on remand. We have declined to apply that canon on two recent occasions." 136 S. Ct. at 2131 (Thomas, J., dissenting).

The circuit courts have followed this holding. *See Mosquera v. MTI Retreading Co.*, No. 17-2366, 2018 WL 3860514, at *2 (6th Cir. Aug. 14, 2018) ("In construing [the FLSA] exemptions, we give them a 'fair (rather than a "narrow") interpretation.'"); *Carley v. Crest Pumping Technologies, L.L.C.*, 890 F.3d 575, 579 (5th Cir. 2018) ("The Supreme Court recently clarified that courts are to give FLSA exemptions 'a fair reading,' as opposed to the narrow interpretation previously espoused by this and other circuits.").

The Supreme Court's command applies equally to the regular rate exclusions. Just as the overtime exemptions "are as much a part of the FLSA's purpose as the overtime-pay requirement," *Encino Motorcars II*, 138 S. Ct. at 1142, the exclusions are as much as part of the FLSA's purpose as the regular rate provision. Indeed, the overtime/exemption and regular rate/exclusion provisions of the FLSA mirror each other in that they each set forth a general rule followed by enumerated exceptions to that general rule. The overtime provision of the FLSA, set forth at Section 7(a)(1), provides as follows:

> *Except as otherwise provided in this section, no employer shall* employ any of his employees . . . for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 207(a)(1) (emphasis added). And Section 13, which sets forth the overtime exemptions at issue in *Encino Motorcars II*, provides that "[t]he

provisions of section[. . .] 207 of this title *shall not apply* with respect to" the enumerated exemptions. 29 U.S.C. § 213 (emphasis added).

Similarly, the regular rate of pay is defined at 29 U.S.C. § 207(e): "As used in this section the 'regular rate' at which an employee is employed *shall be deemed to include* all remuneration for employment paid to, or on behalf of, the employee . . . ." The provision then goes on to enumerate the exceptions to this general rule: "[B]ut [the regular rate] *shall not be deemed to include*" any of the items set forth in subsections (1)-(8). *Id.* (emphasis added). Just like the overtime provision and the exemptions thereto, the statutory language defining what is and is not part of the regular rate creates two categories: what is included (the general rule) and what is not (the exclusions). As the Supreme Court held, these provisions contain no "textual indication" that the overtime exemptions should be construed narrowly, and therefore a fair reading—a reading that favors neither the employer nor the employee—is appropriate.

Although Plaintiff might respond that the regular rate exclusions operate against the background of a general rule including "all remuneration" in the regular rate, and that this provides the requisite "textual basis" to infer that a narrow construction of the exclusions is appropriate, the Supreme Court's analysis in *Encino Motorcars II* forecloses such an argument. The default proposition under the FLSA is that overtime pay is required for all covered employees, and it is only

if one of the enumerated exemptions applies that premium overtime compensation is not required. In other words, the exemptions operate against a background of a general rule requiring overtime pay. Yet the Supreme Court gave no credit to that fact in concluding that there was no textual basis to infer that narrow construction of the overtime exemptions was appropriate. *Encino Motorcars II*, 138 S. Ct. at 1142. Similarly, no such inference can be made as to the regular rate exclusions. Since there is no other textual basis from which to glean that narrow construction is appropriate, a fair reading of the exclusions, that favors neither employer nor employee, is required.

Fundamentally, "[t]he narrow-construction principle relies on the flawed premise that the FLSA pursues its remedial purpose at all costs." *Encino Motorcars II*, 138 S. Ct. at 1142 (internal quotation marks omitted). The Supreme Court has expressly cautioned against such an approach, noting that "[i]t is quite mistaken to assume ... that whatever might appear to further the statute's primary objective must be the law," because "[l]egislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage." *Id.* (quoting *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017)). Such compromises are evident in the legislative history of the 1949 amendments to the FLSA that, among other things, defined the regular rate of pay and enacted the exclusion that is now set forth in Section 7(e)(4).

At the time debate on the amendments began, the FLSA was less than ten years old, and several court decisions interpreting the original statute had led to unexpected outcomes. *See* Congressional Reversal of Supreme Court Decisions: 1945-1957, 71 Harv. L. Rev. 1324, 1327-30 (citing cases Congress sought to overrule or modify with the 1949 FLSA amendments, including *Bay Ridge*, 334 U.S. at 464-65 ("overtime on overtime" case), *Martino v. Michigan Window Cleaning Co.*, 327 U.S. 173, 176-77 (1946) (broadly construing FLSA coverage), *Roland Elec. Co. v. Walling*, 326 U.S. 657, 667 (1946) (narrowly construing "retail or service" exemption), and *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 759-60 (1949) (narrowly construing agricultural exemption)). Industry sought to undo some of these rulings and to make compliance with the law easier; meanwhile, labor sought a substantial increase in the minimum wage. *See* Fair Labor Standards Act Amendments: Hearings on S. 49, etc., Before the Labor Subcomm. of the Committee on Labor and Public Welfare, 80th Cong. 198 (1948) (setting forth testimony of and statements from numerous representatives of labor and industry); *The New Wage and Hour Law*, *supra*, at 5-10 (summarizing these groups' respective positions and describing the various phases of the legislative process).

Labor ultimately achieved its minimum wage increase, but at the price of several concessions to industry in terms of FLSA coverage, overtime exemptions,

and regular rate exclusions.[3] *The New Wage and Hour Law*, *supra*, at 6 ("To obtain the necessary votes for the higher minimum wage, [labor interests] had to make numerous concessions on coverage"); *id*. at 9 ("So evenly matched were the opposing groups that, at one point, the Administration appeared ready to abandon all proposals except that for an increase in the minimum wage. Eventually, it was able to salvage some of its other aims by making concessions on coverage and exemption changes to the coalition."). In other words, the 1949 amendments reflect compromise legislation and not the intention (let alone the actual textual proposition) that either side's benefit of the compromise should be any less valued. It follows that the resulting statutory language should be interpreted fairly, not with a presumption for or against either the employer or the employee.

B. GEICO's Plan Satisfies The Requirements Of The FLSA.

The statutory exclusion for benefit plan contributions set forth in Section 7(e)(4) excludes from the regular rate of pay "contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees."

[3] In making this observation, the Chamber does not mean to suggest that the regular rate exclusions at issue here for percentage bonuses and benefit plan contributions were opposed by labor. The point is a more general one about statutory construction.

GEICO's plan meets all of these requirements. The contributions are (1) irrevocably made, ER 113-14 (PSP § 10.4); (2) by an employer, *id.* 82, 101 (PSP §§ 1.6, 5.1); (3) to a trustee, *id.* 82, 85, 101 (PSP §§ 1.7, 1.30, 5.1(a)); (4) pursuant to a bona fide retirement plan, *id.* 105-08 (PSP art. VI).

Plaintiff's argument focuses on the manner in which the contributions are made. Relying exclusively on the guidance set forth in § 778.215(a)(3), Plaintiff contends that all of the various contributions at issue must made formulaically. But the only provision in the *statute* that speaks to the manner in which the contributions are made is the requirement that such contributions must be made irrevocably. 29 U.S.C. § 207(e)(4). The PSP itself makes clear—and Plaintiff does not dispute on appeal[4]—that the trust contributions under the PSP are made irrevocably.

C. Section 778.215(a)(3)'s Extra-Statutory Requirement Is Not Entitled To Deference.

Section 778.215(a)(3) is not entitled to any deference whatsoever because it runs contrary to the plain text of Section 7(e)(4) of the FLSA. *See, e.g.*, *Cleary ex rel. Cleary v. Waldman*, 167 F.3d 801, 808 (3d Cir. 1999) (to be persuasive, an

[4] Plaintiff had contended below that the contributions were not irrevocable because they could be forfeited for early departure, SER 4, but she has abandoned that argument on appeal, likely because it is plainly incorrect. *See* ER 113-14 (PSP § 10.4, providing that forfeited amounts are to be used first for administrative expenses and any excess redistributed to participants).

agency interpretation cannot run contrary to Congress's intent as reflected in a statute's plain language and purpose). Much of § 778.215 is tethered to the statute, including subsection (a)(1) (requiring that contributions be made pursuant to a plan), (a)(2) (requiring the plan to provide for retirement or similar benefits), and (a)(4) (requiring that contributions be made irrevocably to a trustee). Subsection (a)(3), however—a detailed provision with several very specific requirements—has no basis at all in the statute. Indeed, it appears to have been fashioned from whole cloth, not appearing in any form in administrative guidance known to Congress at the time the 1949 amendments were passed.

But even if the guidance were consistent with the FLSA, it is not entitled to any deference. Where, as here, a regulation does not purport to have the force of law, it is entitled only "to a measure of deference proportional to its power to persuade, in accordance with the principles set forth in *Skidmore v. Swift & Co.*, 323 U.S. 134 . . . (1944),'" and not to any greater form of deference, *Bamonte v. City of Mesa*, 598 F.3d 1217, 1228 (9th Cir. 2010). Any greater deference to mere agency guidance would unduly "validate the results of an informal process." *Madison*, 233 F.3d at 186.

Section 778.215(a)(3) is just such an informal agency interpretation. Section 778.1 explains that Part 778 of the Code of Federal Regulations "constitutes the official interpretation of the Department of Labor with respect to the meaning and

application of the maximum hours and overtime pay requirements contained in section 7 of the Act," which will "guide the Secretary of Labor and the Administrator . . . unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect." 29 C.F.R. § 778.1. In *Madison*, 233 F.3d at 185-87, the Third Circuit Court of Appeals addressed the history of § 778.215 and held that there was "no doubt" that it "is an interpretive guideline, issued on the advice of the Solicitor of Labor…, not an official regulation promulgated after notice-and-comment rule making." Following Supreme Court precedent, the court held that such guidance statements "'do not rise to the level of a regulation and do not have the effect of law'" but instead have only the power to persuade to the extent they are actually consistent with the pertinent statute and otherwise satisfy the *Skidmore* analysis. *Id*. at 185-87.

As this Court has also recognized, interpretive guidance of this kind is "entitled to respect" under S*kidmore* only to the extent that it has the "power to persuade." *Flores v. City of San Gabriel*, 824 F.3d 890, 903 (9th Cir. 2016), *abrogated on other grounds by Encino Motorcars II*, 138 S. Ct. 1142; *Tablada v. Thomas*, 533 F.3d 800, 806 (9th Cir. 2008).

In applying the *Skidmore* test, the Supreme Court has noted that agency interpretations issued contemporaneously with a statute are entitled to greater

deference. *See, e.g.*, *Public Citizen v. U. S. Department of Justice*, 491 U.S. 440, 463 n.12 (1989) (one reason deference was not due an agency interpretation was the passage of time between enactment of the statute and promulgation of the regulation in question). The persuasiveness of an agency's interpretation also is derived in part from the "thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements." *Skidmore*, 323 U.S. at 140.

Beyond the fact that it contravenes the plain language of the statute, § 778.215(a)(3) is not persuasive and therefore does not warrant deference here because (1) it was not a contemporaneous interpretation; and (2) all of the Skidmore factors indicate that deference is not warranted: the guidance is not thoroughly reasoned, the Wage and Hour Division has never offered any reason—much less a valid one—to justify this additional restriction on the exclusion for benefit plan contributions, and it is inconsistent with earlier pronouncements.

1. Section 778.215(a)(3) Was Not A Contemporaneous Interpretation.

Section 778.215(a)(3) does not enjoy the greater deference afforded contemporaneous interpretations because it was not part of the original guidance interpreting section 7(e)(4) of the FLSA. In the original, contemporaneous guidance issued in 1950, there was nothing to suggest that employer contributions

must be determined formulaically. *See* 29 C.F.R. § 778.6(g) (1950).[5] Indeed, the only discussion of the manner in which contributions must be made echoes the statute: The contributions must be irrevocably made. *Id.* § 778.6(g)(3). As explained below, it was only later that the guidance was amended to depart from the text of the FLSA.

2. Section 778.215(a)(3) Was Not Thoroughly Considered, Was Offered Without Any Reasoning, Much Less Valid Reasoning, And Was Inconsistent With Earlier Pronouncements.

Not only was the language in § 778.215(a)(3) entirely absent from the contemporaneous guidance interpreting Section 7(e)(4), but nothing in the history of § 778.215 shows that there was thorough consideration informing the interpretive guidance generally, and certainly not as to subsection (a)(3) in particular. When the original guidance was issued, no further explanation was provided beyond the text reprinted in the Addendum submitted herewith. *See* 15 Fed. Reg. 623, 629 (Feb. 4, 1950). While that guidance stated the position of the Wage and Hour Administrator, it did not explain the reasons for that position or how it was consistent with the newly enacted regular rate definition and exclusions. Notably, however, the four provisions of the original guidance either tracked the statutory language (i.e., subsections (1)-(3)) or restated interpretive

[5] The full text of the original guidance is reprinted in the Addendum submitted with this brief.

guidance that had predated the 1949 amendments that enacted the regular rate definition and associated exclusions.[6]

Years later, when the Wage and Hour Division added subsection (a)(3) to its interpretive guidance, it offered no reasoning whatsoever—much less valid reasoning—to justify adding a requirement that does not appear in the statute and then, yet later, applying that requirement to contributions made to IRS-qualified plans. Indeed, the guidance as it stands today is inconsistent with not just the original, but several subsequent versions of the guidance. Under these circumstances, *Skidmore* deference is not appropriate.

(a) The Original Guidance Was Changed Without Explanation To Require Formulaic Contributions, But Not For IRS-Qualified Plans.

When the language that now appears at § 778.215(a)(3) was first added as a new subsection (iii) to the original interpretive guidance set forth in § 778.6(g),

[6] The guidance incorporated as subsection (4) reflects the Administrator's view, articulated prior to passage of the 1949 amendments, that a plan was "bona fide" and thus the employer's contributions excludable only if the plan met two requirements: (1) the employee must not have the option to receive instead of benefits any part of the contributions of the employer; and (2) the employee must not have the right to assign the benefits or to receive a cash consideration in lieu of the benefits either on termination of the plan or his withdrawal from it voluntarily or through severance of employment with the particular employer. *See The New Wage and Hour Law*, *supra*, comment to § 7(d)(4) of 1949 Amendments, at Appendix-5; U.S. Dep't of Labor, Labor Information Bulletin, vol. 14, no. 10 (October 1947).

with the other subsections being renumbered accordingly, the change was made with *no explanation whatsoever*. *See* 18 Fed. Reg. 3293-94 (June 10, 1953). At the same time, a savings clause was added which provided that a plan that met the requirements for a qualified trust under the pertinent tax law would also be deemed meet the requirements for exclusion from the regular rate of pay. *See id.* at 3294 ("Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 165(a) of the Internal Revenue Code [(IRC)], in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in subparagraphs (3) (i) (iii) (iv) and (v) of this paragraph.").[7] A similar savings clause appeared in subsequent revisions to § 778.6(g). *See* 21 Fed. Reg. 4956 (June 27, 1956) (replacing the reference to § 165(a) of the IRC with a reference to § 401(a)).[8]

[7] The only remaining requirement under the guidance, subsection (ii), had to do with the "primary purpose" of the plan, i.e., that it be a retirement or other welfare plan. *See* 15 Fed. Reg. 623, 629 (Feb. 4, 1950).

[8] GEICO contended below that it had obtained a determination from the IRS that the PSP was a Qualified Plan under IRC Section 401, ER 33, but the District Court declined to take judicial notice of the IRS determination to that effect, noting that it did not need to rely on it in reaching its conclusion that the trust contributions satisfied the requirements of § 778.215. ER 17.

(b) The Guidance Was Changed Again Later—Again Without Explanation—To Require Formulaic Contributions Regardless of Compliance With Tax Rules.

The guidance was later changed to delete Section 778.6(g)(iii) from the savings clause—in 1958, nearly ten years after the statute was enacted—again with *no explanation whatsoever*. 23 Fed. Reg. 3301 (May 9, 1958). This was significant: Prior to 1958, if a welfare plan qualified under pertinent tax rules, no formulaic contribution was required by the interpretive guidance, either before or after passage of the 1949 amendments. But in 1958, the guidance changed course to state that any plan (even an IRS-qualified plan) that did not provide for formulaic contributions no longer qualified for the exclusion. Yet even then, no explanation was given as to why that change was appropriate or how it was consistent with the statutory language, which provides only that such contributions must be irrevocably made. The complete absence of any reasoning—much less valid reasoning—for adding the language of subsection (a)(3) in the first place, and then for deleting it from coverage by the savings clause, confirms that § 778.215(a)(3) does not warrant *Skidmore* deference.

D. Finding That The Exclusion Applies Here Would Not Undermine The Purpose Of The Law And Indeed Would Support It.

The purpose of the regular rate rule is to prevent employers from avoiding the obligation to pay premium overtime by using alternative methods of rewarding

hours worked that do not get factored into the overtime premium. Congress's intent was not to discourage employers from providing benefits to employees, and in fact, the exclusions were enacted to incentivize employers to do just that.[9]

The law itself recognizes that not all payments to employees are designed to compensate them for hours worked; the sheer number of regular rate exclusions reflects that reality. The trust contributions under GEICO's PSP are consistent with the intent expressed by this framework in that they are awarded across the board to all participants based on a percentage of wages, and benefits are paid out to employees at times when they are *not performing work* (e.g., retirement, disability).[10]

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[9] Fair Labor Standards Act Amendments: Hearings on S. 49, etc., Before the Labor Subcomm. of the Committee on Labor and Public Welfare, 80th Cong. 198 (1948) (statement of Archibald Cox, counsel to the Senate Committee on Labor and Public Welfare: "a number of court decisions [under the 1938 FLSA] make it impracticable, if not impossible, to comply with the law and at the same time set up profit-sharing plans or certain kinds of pension trusts. [Citations omitted.] The obstacle should be removed.").

[10] A number of senators made exactly this observation about Section 7(e)(4) during the debate on the 1949 amendments. *See* Statement of Majority of Senate Conferees, submitted to the Senate by Sen. Pepper (Oct. 19, 1949), *reprinted in The New Wage and Hour Law*, *supra*, at Appendices-93 ("This exclusion recognizes that the benefits received by employees as a result of the employer's contributions under such plans are generally received at periods when no work is being performed for the employer, rather than as compensation for hours worked.").

Fundamentally, there is no indication that the PSP is being used as a subterfuge to avoid the payment of premium overtime compensation. If employers were required to follow regular rate procedures simply because they wished to have discretion in the initial funding of plans like the PSP, they would be disincentivized from providing such benefits at all. Particularly in an economic environment where retirement savings rates are generally much lower than they need to be to provide adequate income during retirement,[11] this would be a bad outcome for employees as well as employers.

GEICO has done well by its employees here. GEICO has sought to provide its employees with an extra measure of financial security when they will need it most—after they are no longer working for the company. Congress has adopted exclusions to prevent a situation in which an employer, such as GEICO is punished for its good deed. Those exclusions apply here, and Plaintiff's claims should fail.

[11] *See, e.g.*, Adi Libson, *Confronting the Retirement Savings Problem: Redesigning the Saver's Credit*, 54 Harv. J. on Leg. 207, 212 ("there is ample evidence that individual do not save sufficient resources for retirement").

CONCLUSION

The District Court correctly concluded that Plaintiff's regular rate claims concerning cash payments and trust contributions under GEICO's PSP fail as a matter of law. This Court should affirm.

DATED: October 31, 2018 MUNGER, TOLLES & OLSON LLP

By: */s/ Katherine M. Forster*
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CERTIFICATE OF COMPLIANCE PURSUANT TO

FED. R. APP. 32(A)(7)(C) AND CIRCUIT RULE 32-1

Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief is proportionally spaced, has a typeface of 14 points and contains 6,998 words.

DATED: October 31, 2018

MUNGER, TOLLES & OLSON LLP

By: */s/ Katherine M. Forster*
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CASE NO. 18-55682

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARISHA RUSSELL, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiff and Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant and Appellee.

Appeal From The United States District Court,
Southern District of California, Case No. 3:17-cv-00672-JLS-WVG,
Hon. Janis L. Sammartino, Presiding

AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S ADDENDUM OF PERTINENT AUTHORITY

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FEDERAL REGULATIONS AND FEDERAL REGISTER

Welfare plans. Section 7(d)(4)[1] provides that the term "regular rate" shall not be deemed to include:

Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona-fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees

* * *

Such sums may not, however, be credited toward overtime compensation due under the act. In order for an employer's contribution to qualify for exclusion from the regular rate under this section the following conditions must be met:

(1) There must be a formal plan or system set up by the employer. This may be either a company-financed plan or an employer-employee contributory plan.

(2) The primary purpose of the plan must be that of providing systematically for the payment of definitely determinable benefits to employees on account of death, disability or retirement or to provide medical care, hospitalization benefits, and the like. (This type of plan will be referred to as a welfare plan.)

(3) The employer's contributions must be paid irrevocably to a third party according to a trust or other funded arrangement (such as an insurance plan). The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use. Where the payments are made to a single trustee, the trustee must be an individual other than the employer or an officer, affiliate or representative of the employer. If the payments are made to a group of trustees, the majority must not be officers, affiliates, or representatives of the employer.

(4) No employee has the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan. Provided, however, that if a plan otherwise qualifies as a bona fide welfare plan under this subsection, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit at the time of the severance of the employment relation due to causes other than retirement, disability or death, and even though, upon proper

[1] 7(d)(4) was later recodified at 7(e)(4).

termination of the plan, the amounts standing to the credit of participating employees are distributed to them at the time of termination.

The Administrator's position on the question of when an employer's contributions to a welfare plan may be excluded from the regular rate under this subsection is similar to that of the Bureau of Internal Revenue in determining what constitutes "wages" for social security tax purposes. If the payments in question are excluded from the category of wages under section 1420(a)(2) of the Federal Insurance Contributions Act and section 1607(b)(2) of the Federal Unemployment Tax Act, they would not be regarded by the Administrator as part of the regular rate of pay under section 7(d) of the Fair Labor Standards Act, as amended.

It should be emphasized that it is the employer's contribution to the fund or trust that is excluded from or included in the regular rate according to whether or not the plan meets the foregoing requirements. If the plan does not qualify as a bona fide welfare plan under section 7(d)(4) the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

29 C.F.R. § 778.6(g) (1950).

Heaters. Checked and set in safe operation position.
Instruments:
Engine—oil temperature and pressure. checked.
Engine—fuel supply and pressure checked.
Carburetor—temperature checked.
Cylinder head—temperature checked.
Flight instruments. Checked and reset if necessary.
Pressurization. Checked.

§ 61.304–1 *Pilot compartment (CAA interpretations which apply to § 61.304)*—Sections 4a.509 and 4b.421 (d) of the Civil Air Regulations provide that a door or an adequate openable window shall be provided between the pilot compartment and the passenger compartment. The "pilot compartment", as used in § 61.304 of the Civil Air Regulations, will be regarded by the Administrator as all of that area forward of such door or window.

(Sec. 205, 52 Stat. 984, as amended by Reorg. Plan IV of 1940, 5 F. R. 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 425. Interpret or apply secs. 601, 604, 605, 52 Stat. 1007, 1010, as amended by Reorg. Plans III and IV of 1940, 5 F. R. 2107, 2421, 3 CFR, Cum. Supp.; 49 U. S. C. 551, 554, 555)

These policies and interpretations shall become effective upon publication in the FEDERAL REGISTER.

[SEAL] DONALD W. NYROP,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 50-976; Filed, Feb. 3, 1950; 8:49 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[T. D. 5760]

PART 192—FERMENTED MALT LIQUOR

MISCELLANEOUS AMENDMENTS

Correction

In Federal Register Document 50-841, published at page 501 of the issue for Tuesday, January 31, 1950, the designation "§ 192.3" and the reference to § 192.3 as they appear in amendatory paragraph 4 should read "§ 192.1."

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

Subchapter B—Statements of General Policy or Interpretation Not Directly Related to Regulations

PART 778—OVERTIME COMPENSATION

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778.26 Effective date.
778.27 Retroactive effect.

AUTHORITY: §§ 778.0 to 778.27 issued under 52 Stat. 1060, as amended; 29 U. S. C. and Sup. 201 et seq.

§ 778.0 *Introductory statement*—(a) *Scope and significance of bulletin.* The Fair Labor Standards Act of 1938, as amended [1] (hereinafter referred to as the act), requires that no employer shall employ any of his employees (who is engaged in commerce or in the production of goods for commerce and who is not exempt from the overtime provisions pursuant to one or more of the specific exemptions provided in the act) for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed. What constitutes proper overtime compensation must be ascertained in the light of the definition of "regular rate" as well as other new provisions relating to overtime set forth in the act as amended by the Fair Labor Standards Amendments of 1949,[2] giving due regard to authoritative interpretations by the courts and to the legislative history of the act, as amended. Interpretations of the Administrator of the Wage and Hour Division with respect to overtime compensation are set forth herein to provide "a practical guide to employers and employees as to how the office representing the public interest in the enforcement of the law will seek to apply it." [3] These interpretations, with respect to the maximum hours and overtime provisions of the act, indicate the construction of the law which the Administrator believes to be correct and which will guide him in the performance of his administrative duties under the act unless and until he is otherwise directed by authoritative decisions of the courts or concludes, upon reexamination of an interpretation, that it is incorrect.

Under the Portal-to-Portal Act of 1947,[4] interpretations of the Administrator may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations contained in this bulletin are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act, so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. However, the omission to discuss a particular problem in this bulletin or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

(b) *Coverage and exemptions not discussed.* This bulletin does not deal with the general coverage of the act or various specific exemptions provided in the statute, under which certain employees within the general coverage of the wage and hours provisions are wholly or partially excluded from the protection of the act's minimum-wage and overtime-pay requirements. Some of these exemptions are self-executing; others call for definitions or other action by the Administrator. Regulations and interpretations relating to general coverage and specific exemptions may be found in other parts of this chapter.

(c) *Earlier interpretations superseded.* All general and specific interpretations issued prior to August 11, 1949, with respect to the overtime provisions of the act were rescinded and withdrawn by § 778.3 of the general statement on this subject, published in the FEDERAL REGISTER on that date as Part 778 of this chapter to the extent that they were inconsistent or in conflict with the principles stated therein.[5] To the extent

[1] Pub. No. 718, 75th Cong., 3d sess. (52 Stat. 1060), as amended by the act of June 26, 1940 (Pub. Res. No. 38, 76th Cong., 3d sess.); by Reorganization Plan No. 2 (60 Stat. 1095), effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); and by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Public Law 393, 81st Cong., 1st sess., 63 Stat. 910).

[2] Public Law 393, 81st Cong., 1st sess. (63 Stat. 910). These amendments, effective January 25, 1950, leave the existing law unchanged except as to provisions specifically amended and the addition of certain new provisions. Section 7 of the act was specifically amended as explained herein. The amendments made include the addition of the new subsections 7 (d), (e), (f) and (g).

[3] Skidmore v. Swift & Co., 323 U. S. 134.

[4] Public Law 49, 80th Cong., 1st sess. (61 Stat. 84), discussed in Part 790 of this chapter.

[5] 14 F. R. 4946. Certain prior interpretations were superseded earlier as explained in statements published in the FEDERAL REGISTER on August 6, 1948, 14 F. R. 4534, and June 8, 1949, F. R. 3077.

that interpretations contained in such general statement or in releases, opinion letters, and other statements issued on or after August 11, 1949, are inconsistent with the provisions of the Fair Labor Standards Amendments of 1949, they do not continue in effect after January 24, 1950.[4] Effective on January 25, 1950, this interpretative bulletin (§§ 778.0–778.27 of this part) replaces and supersedes the general statement previously published as Part 778 of this chapter, which statement is withdrawn. Effective on January 25, 1950, all other administrative rulings, interpretations, practices and enforcement policies relating to the overtime provisions of the act and not withdrawn prior to such date are, to the extent that they are inconsistent with or in conflict with the principles stated in this interpretative bulletin, rescinded and withdrawn.

§ 778.1 *Relation to other laws.* Various Federal, State and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretation announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words "regular rate at which he is employed" as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.

THE OVERTIME PAY REQUIREMENTS

§ 778.2 *The 40-hour maximum—(a) The statutory requirements.* Section 7 of the Fair Labor Standards Act deals with maximum hours and overtime compensation for employees who are covered by the act and are not exempt from its overtime requirements. Section 7 (a) provides that an employer may not employ any such employee for a workweek longer than 40 hours "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." The term "regular rate" is defined in section 7 (d) "to include all remuneration for employment paid to, or on behalf of, the employee" except payments of seven types which are specifically described and enumerated. These seven types of payments will hereafter be referred to as "statutory exclusions."[5]

(b) *The nature of statutory overtime limitations.* It is clear that there is no absolute limitation in section 7 of the Fair Labor Standards Act on the number of hours that an employee may work in any workweek. If he is paid time and a half his regular rate for the overtime hours, he may work as many hours a week as he and his employer sees fit. Section 7 contains no requirement for the payment of overtime compensation except for hours in excess of 40 in the workweek. It does not require that an employee be paid overtime compensation for hours in excess of eight per day, or for work on Saturdays, Sundays, holidays or regular days of rest. If no more than a total of 40 hours is actually worked in the workweek, overtime compensation need not be paid. Nothing in the act, however, will relieve an employer of any obligation he may have assumed by contract or of any obligation imposed by other Federal or State law to pay premium rates for work in excess of a daily standard or for work on Saturdays, Sundays, holidays, or other periods outside of or in excess of the normal or regular workweek or workday.[6]

(c) *The workweek.* If in any workweek an employee is covered by the act and is not exempt from its overtime-pay requirements, the employer must total all the hours worked by the employee for him in that workweek (even though two or more unrelated job assignments may have been performed), and pay overtime compensation for each hour worked in excess of 40 in the workweek. An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. For purposes of computing pay due under the Fair Labor Standards Act, the workweek may be established for the plant as a whole or different workweeks may be established for different employees or group of employees within the plant. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked by him. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the act.[7]

(d) *Each workweek stands alone.* The act takes a single workweek as its standard and does not permit averaging of hours over two or more weeks. Thus, if an employee works 30 hours one week and 50 hours the next, he must receive overtime compensation for the 10 overtime hours worked in the second week, even though the average number of hours worked in the two weeks is 40. This is true regardless of whether the employee works on a standard or swing-shift schedule and regardless of whether he is paid on a daily, weekly, biweekly, monthly or other basis. The rule is also applicable to pieceworkers. It is therefore necessary to determine the hours worked and the compensation earned by pieceworkers on a weekly basis.

(e) *Time of payment.* There is, however, no requirement that overtime compensation be paid weekly. Overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.[8] Where retroactive wage increases are made, retroactive overtime compensation is due at the time the increase is paid.[9]

§ 778.3 *Computing overtime pay based on the "regular rate"; definition—(a) "Regular rate" distinguished from "minimum rate."* Overtime must be compensated at a rate not less than one and one-half times the regular rate at which the employee is actually employed. The regular rate of pay at which the employee is employed may not be less than the statutory minimum.[10] If the employee's regular rate of pay is higher than the statutory minimum, his overtime compensation must be computed at a rate not less than time and one-half based on such higher rate.

(b) *The "regular rate" is an hourly rate.* The "regular rate" under the Fair Labor Standards Act is a rate per hour. The act does not require employers to compensate employees on an hourly rate basis; their earnings may be determined on a piece-rate, salary, commission or other basis, but in such case the overtime compensation due to em-

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[4] Section 16 (c) of the Fair Labor Standards Amendments of 1949 (63 Stat. 910) provides:

Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this act.

[5] These statutory exclusions are set forth in § 778.4 and discussed in §§ 778.4–778.8. Exceptions from the overtime requirements of section 7 (a) are set forth in subsections 7 (c) and 7 (f) of the act and discussed herein in §§ 778.18, 778.19 and 778.20.

[6] The effect of making such payments is discussed in §§ 778.5 and 778.7 (d).

[7] For a discussion of the proper method of computing overtime pay in a period in which a change in the time of commencement of the workweek is made, see § 778.10.

[8] When the correct amount of overtime compensation cannot be determined until some time after the regular pay period, the requirements of the act will be satisfied if the employer pays the excess overtime compensation as soon after the regular pay period as is practicable. Payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next pay day after such computation can be made.

[9] See § 778.11. For a discussion of overtime payments due because of increases by way of bonuses see § 778.6 (b).

[10] Except as to workers specially provided for in section 14 and workers in Puerto Rico and the Virgin Islands covered by wage orders issued by the Administrator pursuant to section 8 of the act, the statutory minimum is 75 cents per hour.

ployees must be computed on the basis of the hourly rate derived therefrom and, therefore, it is necessary to compute the regular hourly rate of such employees during each workweek.[13] The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid. A few examples of the proper method of determining the regular rate of pay in particular instances may be helpful:

(1) *Hourly rate employee.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight-time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus a $1.00 hourly rate will bring, for an employee who works 48 hours, a total weekly wage of $49.00 (46 hours @ $1 plus 6 hours @ 50 cents). In other words the employee is entitled to be paid an amount equal to $1 an hour for 40 hours and $1.50 an hour for the 6 hours of overtime, or a total of $49.

If, in addition to the earnings at the hourly rate, a production bonus of $4.60 is paid, the regular hourly rate of pay is $1.10 an hour (46 hours @ $1 yields $46. The addition of the $4.60 bonus makes a total of $50.60; this total divided by 46 hours yields a rate of $1.10). The employee is then entitled to be paid a total wage of $53.90 for 46 hours (46 hours @ $1.10 plus 6 hours @ 55 cents or 40 hours @ $1.10 plus 6 hours @ $1.65).

(2) *Pieceworker.* When an employee is employed on a piece rate basis, his regular hourly rate of pay is computed by adding together his total weekly earnings from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid to yield the pieceworker's "regular rate" for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week.[14] Only additional half-time pay is required in such cases since the employee has already received straight-time compensation at piece rates for all hours worked. Thus, if the employee has earned $46 at piece rates for 46 hours of productive work and in addition has been compensated at 75 cents an hour for 4 hours of waiting time, his total compensation—$49—must be divided by his total hours of work—50—to arrive at his regular hourly rate of pay—98 cents. For the 10 hours of overtime the employee is entitled to additional compensation of $4.90 (10 hours x 49 cents). For the week's work he is thus entitled to a total of $53.90 (which is equivalent to 40 hours @ 98 cents plus 10 overtime hours @ $1.47).

In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guarantee. Where the total piece-rate earnings for the week fall short of the amount that would be earned for the total hours at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guarantee which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed $1.10 an hour for productive working time, he would be paid $50.60 (46 x $1.10) for the 46 hours of productive work (instead of the $46 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional 55 cents (half time) for each of the 6 overtime hours worked, to bring his total compensation up to $53.90 (46 hours @ $1.10 plus 6 hours @ 55 cents or 40 hours @ $1.10 plus 6 hours @ $1.65). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the two hourly rates.[15]

(3) *Day rates and job rates.* If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of 40 in the workweek.

(4) *Salaried employees; general.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $40 and if it is understood that this salary is compensation for the regular workweek of 35 hours, the employee's regular rate of pay is $40 divided by 35 hours, or $1.14 an hour, and when he works overtime he is entitled to receive $1.14 for each of the first 40 hours and $1.71 (one and one-half times $1.14) for each hour thereafter. If an employee is hired at a salary of $40 for a 40-hour week, his regular rate is $1 an hour. If his salary is $40 for a 44-hour week, his regular rate is 91¢ per hour. Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above.[16] Under regulations of the Administrator, pursuant to the authority given to him in section 7 (j) (3) of the act, the parties may provide that the regular rate shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum of 75 cents per hour.

(5) *Salaried employees; irregular hours.* If an employee earns $46 per week with the understanding that the salary is to cover all hours worked and if his hours of work fluctuate from week to week, his regular rate of pay will vary from week to week and will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 46, 50, and 41 hours. His regular hourly rate of pay in each of these weeks is approximately $1.15, $1, 92 cents and $1.12, respectively. Since the employee has already received straight time compensation on a salary basis for all hours worked, only additional half-time is due. For the first week the employee is entitled to be paid $46; for the second week $49 ($46 plus 6 hours @ 50 cents) or (40 hours @ $1 plus 6 hours @ $1.50); for the third week $50.60 ($46 plus 10 hours @ 46 cents) or (40 hours @ 92 cents plus 10 hours @ $1.38); for the fourth week approximately $46.56 ($46 plus 1 hour @ 56 cents) or (40 hours @ $1.12 plus 1 hour @ $1.68).

(c) *Employees working at two rates.* Where an employee in a single workweek works at two or more different types of work for which different basic hourly rates (of not less than 75 cents) have been established, his regular rate for that week is the weighted average of such rates. That is, his total earnings (except statutory exclusions) from all such rates are divided by the total number of hours worked at all jobs.[17]

(d) *Payments other than cash.* Where payments are made to employees in the form of goods or facilities which are regarded as part of wages, the reasonable cost to the employer of such goods or of furnishing such facilities must be included in the regular rate.[18] Where, for example, an employer furnishes lodging to his employees in addition to cash wages, the reasonable cost of the lodging (per week) must be added to the cash wages before the regular rate is determined.

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[13] For a discussion of the exceptions to this rule under sections 7 (e) and 7 (f), see §§ 778.18, 778.19, and 778.20.

[14] For an alternative method of complying with the overtime requirements of the act as far as pieceworkers are concerned see § 778.19 (b).

[15] See § 778.3 (c).

[16] The regular rate of an employee who is paid a regular monthly salary of $130, or a regular semi-monthly salary of $65, is thus found to be 75¢ per hour. The Administrator has announced that, as an enforcement policy, he will consider that payment of such regular monthly or semi-monthly salary is in accordance with the minimum wage requirements of the act.

[17] For a discussion of the exceptions to this rule provided by section 7 (f) of the act see §§ 778.19 and 778.20.

[18] See §§ 777.7 and 777.12 (b) of this chapter for a discussion as to the inclusion of goods and facilities in wages and the method of determining reasonable cost.

WHAT PAYMENTS ARE EXCLUDED FROM THE "REGULAR RATE"

§ 778.4 *The statutory provisions.* Section 7 (d) provides as follows:

As used in this section the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency; [discussed in § 778.6 (e)]

(2) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; [discussed in § 778.7]

(3) Sums paid in recognition of services performed during a given period if either, (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly; or (b) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations which he shall issue, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or (c) the payments are talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs; [discussed in §§ 778.6 and 778.8]

(4) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees; [discussed in § 778.6 (g)]

(5) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or forty in a workweek or in excess of the employee's normal working hours or regular working hours, as the case may be; [discussed in § 778.5 (a) and (b)]

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or [discussed in § 778.5 (c) and (e)]

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours), where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek. [Discussed in § 778.5 (a) and (e)]

Section 7 (g) provides as follows:

Extra compensation paid as described in paragraphs (5), (6), and (7) of subsection (d) shall be creditable toward overtime compensation payable pursuant to this section.

It is important to determine the scope of these exclusions, since all remuneration for employment paid to employees which does not fall within one of these seven exclusionary clauses must be added into the total compensation received by the employee before his regular hourly rate of pay is determined.

§ 778.5 *Extra compensation paid for overtime*—(a) *General statement.* Certain premium payments made by employers for work in excess of or outside of specified daily or weekly standard work periods or on certain special days are regarded as overtime premiums. In such case, the extra compensation provided by the premium rates need not be included in the employee's regular rate of pay for the purpose of computing overtime compensation due under section 7 (a) of the Fair Labor Standards Act. Moreover, this extra compensation may be credited towards the overtime payments required by the act.

The three types of extra premium payments which may thus be treated as overtime premiums for purposes of the Fair Labor Standards Act, as amended are outlined in sections 7 (d) (5), (6) and (7) of the act as set forth in the preceding section. These are discussed in detail in the paragraphs following.

Section 7 (g) of the act specifically states that the extra compensation provided by these three types of payments may be credited toward overtime compensation due under section 7 for work in excess of 40 hours in a workweek. No other types of remuneration for employment may be so credited.

(b) *Premium pay for hours in excess of a daily or weekly standard.* Many employment contracts provide for the payment of overtime compensation for hours worked in excess of 8 per day or 40 per week. Under some contracts such overtime compensation is fixed at time and one-half the base rate; under others the overtime rate may be greater or less than time and one-half the base rate. If the payment of such contract overtime compensation is in fact contingent upon the employee's having worked 8 hours in a day or 40 hours in a week, the extra compensation is excluded from the regular rate and may be credited toward statutory overtime payments.*

Thus, if an employee is hired at the rate of $1 an hour and receives, as overtime compensation under his contract, of $1.40 per hour for each hour actually worked in excess of 8 per day, his employer may credit the total of the extra 40-cent payments thus made for daily overtime hours against the overtime compensation which is due under the statute for hours in excess of 40 in that workweek. If the same contract further provided for the payment of $1.75 for hours in excess of 12 per day, the extra 75-cent payments could likewise be credited toward overtime compensation due under the act. Similarly, where the employee's normal or regular daily or weekly working hours are greater or less than 8 hours and 40 hours respectively and his contract provides for the payment of premium rates for work in excess of such normal or regular hours of work for the day or week (such as 7 in a day or 35 in a week) the extra compensation provided by such premium rates, paid for excessive hours, is a true overtime premium to be excluded from the regular rate and it may be credited towards overtime compensation due under the act.*

Where payment at premium rates for hours worked in excess of a specified daily or weekly standard is made pursuant to the requirements of another applicable statute, the extra compensation provided by such premium rates will be regarded as a true overtime premium.

Extra premium compensation paid pursuant to contract or statute for work on the sixth or seventh day worked in the workweek is regarded in the same light as premiums paid for work in excess of 40 hours or the employee's normal or regular workweek.

(c) *Premium pay for work on Saturdays, Sundays, and other "special days".* Extra compensation provided by a premium rate of at least time and one-half which is paid for work on Saturdays, Sundays, holidays, or regular days of rest or on the sixth or seventh day of the workweek (hereinafter referred to as "special days") may be treated as an overtime premium for the purpose of the act. If the premium rate is less than time and one-half, the extra compensation provided by such rate must be included in determining the employee's regular rate of pay and cannot be credited toward statutory overtime due, unless it qualifies as an overtime premium under section 7 (d) (5).

The premium rate must be at least "one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days." Where an employee is hired on the basis of a salary for a fixed workweek or at a single hourly rate of pay, the rate paid for work on "special days" must be at least time and one-half his regular hourly rate in order to qualify under this section. If the employee is a pieceworker or if he works at more than

* In situations where it is the custom to pay employees for hours during which no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, as these terms are explained in § 778.7, it is permissible (but not required) to count these hours as hours worked in determining whether overtime pay is due for hours in excess of 8 per day or 40 per week.

* To qualify as overtime premiums under section 7 (d) (5) the daily overtime premium payments must be made for hours in excess of 8 hours per day or the employee's normal or regular working hours. If the normal workday is artificially divided into a "straight time" period to which one rate is assigned, followed by a so-called "overtime" period for which a higher "rate" is specified, the arrangement will be regarded as a device to contravene the statutory purposes and the premiums will be considered part of the regular rate. For a fuller discussion on this problem, see § 778.22.

one job for which different hourly or piece rates have been established and these are bona fide rates applicable to the work when performed during nonovertime hours, the extra compensation provided by a premium rate of at least one and one-half times either (1) the bona fide rate applicable to the type of job the employee performs on the "special days," or (2) the average hourly earnings in the week in question, will qualify as an overtime premium under this subsection."

The statute authorizes such premiums to be treated as overtime premiums only if they are actually based on "rates established in good faith." This phrase is used for the purpose of distinguishing the bona fide employment standards contemplated by section 7 (d) (6) from fictitious schemes and artificial or evasive devices.[28] Clearly, a rate which yields the employee less than time and one-half the minimum rate prescribed by the statute would not be a rate established in good faith.

To qualify as an overtime premium under this section, the extra compensation must be paid for work on the specified days. The term "holiday" is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion. A day of rest arbitrarily granted to employees because of lack of work is not a "holiday" within the meaning of this section, nor is it a "regular day of rest." The term "regular day of rest" means a day on which the employee in accordance with his regular prearranged schedule is not expected to report for work. In some instances the "regular day of rest" occurs on the same day or days each week for a particular employee; in other cases, pursuant to a swing shift schedule, the scheduled day of rest rotates in a definite pattern, such as six days of work followed by two days of rest. In either case the extra compensation provided by a premium rate for work on such scheduled days of rest (if such rate is at least one and one-half times the bona fide rate established for like work during non-overtime hours on other days) may be treated as an overtime premium and thus need not be included in computing the employee's regular rate of pay and may be credited toward overtime payments due under the act.

The premium must, however, be paid because work is performed on the days specified and not for some other reason which would not qualify the premium as an overtime premium under section 7 (d) (5), (6) or (7).[29] Thus a premium rate paid an employee only when he receives less than 24 hours' notice that he is required to report for work on his regular day of rest is not a premium paid for work on one of the specified days; it is a premium imposed as a penalty upon the employer for failure to give adequate notice and to compensate the employee for the inconvenience of disarranging his private life. The extra compensation is not an overtime premium. It is part of his regular rate of pay.

(d) *"Clock-pattern" premium pay.* Where a collective bargaining agreement or other applicable employment contract in good faith establishes certain hours of the day as the basic, normal or regular workday (not exceeding eight hours) or workweek (not exceeding 40 hours) and provides for the payment of a premium rate for work outside such hours, the extra compensation provided by such premium rate will be treated as an overtime premium if the premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during the basic, normal or regular workday or workweek.

To qualify as an overtime premium under this section the premium must be paid because the work was performed during hours "outside of the hours established * * * as the basic * * * workday or workweek" and not for some other reason. Thus, if the basic workday is established in good faith as the hours from 8 a. m. to 5 p. m. a premium of time and one-half paid for hours between 5 p. m. and 8 a. m. would qualify as an overtime premium. However, where the contract does not provide for the payment of a premium except for work between midnight and 6 a. m. the premium would not qualify under this section since it is not a premium paid for work outside the established workday but only for certain special hours outside the established workday, in most instances because they are undesirable hours. Similarly, where payment of premium rates for work are made after 5 p. m. only if the employee has not had a meal period or rest period they are not regarded as overtime premiums; they are premiums paid because of undesirable working conditions.

Premiums of the type which section 7 (d) (7) authorizes to be treated as overtime premiums, must be paid "in pursuance of an applicable employment contract or collective bargaining agreement," and the rates of pay and the daily and weekly work periods referred to must be established in good faith by such contract or agreement. Although as a general rule a collective bargaining agreement is a formal agreement which has been reduced to writing, an employment contract for purposes of section 7 (d) (7) may be either written or oral. Where there is a written employment contract and the practices of the parties differ from its provisions, it must be determined whether the practices of the parties have modified the contract. If the practices of the parties have modified the written provisions of the contract, the provisions of the contract as modified by the practices of the parties will be controlling in determining whether the requirements of section 7 (d) (7) are satisfied. The determination as to the existence of the requisite provisions in an applicable oral employment contract will necessarily be based on all the facts, including those showing the terms of the oral contract and the actual employment and pay practices thereunder.

(e) *Examples illustrating the application of section 7 (d) (6) and (7).*—(1) *Premiums for weekend and holiday work.* The application of section 7 (d) (6) may be illustrated by the following example. Suppose an agreement of employment calls for the payment of $1.50 an hour for all hours worked on a holiday or on Sunday in the operation of machines whose operators are paid a bona fide hourly rate of $1.00 for like work performed during nonovertime hours on other days. Suppose further that the workweek of such an employee begins at 12:01 a. m. Sunday, and in a particular week he works a schedule of 8 hours on Sunday and on each day from Monday through Saturday, making a total of 56 hours worked in the workweek.

Tuesday is a holiday. The payment of $64 to which the employee is entitled under the employment agreement will satisfy the requirements of the act since the employer may properly exclude from the regular rate the extra $4.00 paid for work on Sunday and the extra $4.00 paid for holiday work and credit himself with such amount against the statutory overtime premium required to be paid for the 16 hours worked over 40.

(2) *Premiums for work outside basic workday or workweek.* The effect of section 7 (d) (7) where "clock pattern" premiums are paid may be illustrated by reference to provisions typical of the applicable collective bargaining agreements traditionally in effect between employers and employees in the longshore and stevedoring industries. These agreements specify straight-time rates applicable during the hours established in good faith under the agreement as the basic, normal, or regular workday and workweek. Under one such agreement, for example, such workday and workweek are established as the first six hours of work, exclusive of mealtime, each day, Monday through Friday, between the hours of 8 a. m. and 5 p. m. Under another typical agreement, such workday and workweek are established as the hours between 8 a. m. and 12 noon and between 1 p. m. and 5 p. m., Monday through Friday. Work outside such workday and workweek is paid for at premium rates not less than one and one-half times the bona fide straight-time rates applicable to like work when performed during the basic, normal, or regular workday or workweek. The extra compensation provided by such premium rates will be excluded in computing the regular rate at which the employees so paid are employed and may be credited toward overtime compensation due under the Fair Labor Standards Act. For example, if an employee is paid $1.00 an hour under such an agreement for handling general cargo during the basic, normal, or regular workday and $1.50 per hour for like work outside of such workday, the extra 50 cents will be excluded from the regular rate and may be credited to overtime pay due under the act. Similarly, if the straight-time rate established in good faith by the contract

[28] For a fuller discussion of computation on the average rate, see § 778.3 (b) (2); on the rate applicable to the job, see § 778.19; on the "established" rate, see § 778.20.

[29] For further discussion of such devices, see § 778.21 and following.

[30] For examples distinguishing pay for work on a holiday from idle holiday pay, see § 778.7 (d) (2).

should be higher because of handling dangerous or obnoxious cargo, recognition of skill differentials, or similar reasons, so as to be $1.50 an hour during the hours established as the basic or normal or regular workday or workweek, and a premium rate of $2.25 an hour is paid for the same work performed during other hours of the day or week, the extra 75 cents may be excluded from the regular rate of pay and may be credited toward overtime pay due under the act. Similar principles are applicable where agreements following this general pattern exist in other industries.

(f) *Other types of contract premium pay distinguished.* The various types of contract premium rates which provide extra compensation qualifying as overtime premiums to be excluded from the regular rate (under section 7 (d) (5), (6), and (7)) and credited toward statutory overtime pay requirements (under section 7 (g)) have been described in paragraphs (a) through (e) of this section. The plain wording of the statute makes it clear that extra compensation provided by premium rates other than those described cannot be treated as overtime premiums. Wherever such other premiums are paid, they must be included in the employee's regular rate before statutory overtime compensation is computed; no part of such premiums may be credited toward statutory overtime pay.

Thus, the act requires the inclusion in the regular rate of such extra premiums as night shift differentials (whether they take the form of a percent of the base rate or an addition of so many cents per hour) and premiums paid for hazardous, arduous or dirty work. It also requires inclusion of any extra compensation which is paid as an incentive for the rapid performance of work, and since any extra compensation in order to qualify as an overtime premium must be provided by a premium rate per hour,[24] lump sum premiums which are paid without regard to the number of hours worked are not overtime premiums and must be included in the regular rate. For example, where an employer pays 8 hours' pay for a particular job whether it is performed in 8 hours or in less time, the extra premium of two hours' pay received by an employee who completes the job in six hours must be included in his regular rate. Similarly, where an employer pays for 8 hours at premium rates for a job performed during the overtime hours whether it is completed in 8 hours or less, no part of the premiums paid qualify as overtime premiums under section 7 (d) (5), (6), or (7).[25]

§ 778.6 *Bonuses* — (a) *Introduction.* Section 7 (d) of the act requires the inclusion in the regular rate of all remuneration for employment except seven specified types of payments. Among these are discretionary bonuses, gifts and payments in the nature of gifts on special occasions, contributions by the employer to certain welfare plans and payments made pursuant to certain profit-sharing, thrift and savings plans. These are discussed in paragraphs (d) through (g) of this section. Bonuses which do not qualify for exclusion from the regular rate as one of these types must be totaled in with other earnings to determine the regular rate on which overtime pay must be based.

(b) *Method of inclusion of bonus in regular rate.* Where a bonus payment is considered a part of the regular rate at which an employee is employed, it must be included in computing his regular hourly rate of pay and overtime compensation. No difficulty arises in computing overtime compensation if the bonus covers only one weekly pay period. The amount of the bonus is merely added to the other earnings of the employee (except statutory exclusions) and the total divided by total hours worked. Under many bonus plans, however, calculation of the bonus may necessarily be deferred over a period of time longer than a workweek. In such a case the employer may disregard the bonus in computing the regular hourly rate until such time as the amount of the bonus can be ascertained. Until that is done he may pay compensation for overtime at one and one-half times the regular rate paid the employee, exclusive of the bonus. When the amount can be ascertained, it must be apportioned back over the workweeks of the period during which it may be said to have been earned. The employee must then receive an additional amount of compensation for each week that he worked overtime during the period equal to one-half of the hourly rate of pay allocable to the bonus for that week multiplied by the number of overtime hours worked during the week. If it is impossible to allocate the bonus among the workweeks of the period in proportion to the amount of the bonus actually earned each week, some other reasonable and equitable method of allocation must be adopted. For example, it may be assumed that the employee earned an equal amount of bonus each hour of the pay period and the resultant hourly increase may be determined by dividing the total bonus by the number of hours worked by the employee during the period for which it is paid. The additional compensation due for overtime may then be computed by multiplying the total number of overtime hours worked during the period by one-half this hourly increase.

(c) *Percentage of total earnings as bonus.* In some instances the contract or plan for the payment of a bonus may also provide for the simultaneous payment of overtime compensation due on the bonus. For example, a contract made prior to the performance of services may provide for the payment of additional compensation in the way of a bonus at the rate of 10 percent of the employee's straight time earnings, and 10 percent of his overtime earnings.[26] In such instances, of course, payments according to the contract will satisfy in full the overtime provisions of the act and no recomputation will be required.

(d) *Discretionary bonuses.* Section 7 (d) (3) (a) provides that the regular rate shall not be deemed to include "Sums paid in recognition of services performed during a given period if * * * (a) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly * * *."

Such sums may not, however, be credited toward overtime compensation due under the act.[27]

In order for a bonus to qualify for exclusion under this subsection the employer must retain discretion both as to the fact of payment and as to the amount until a time quite close to the end of the period for which the bonus is paid. The sum, if any, to be paid as a bonus is determined by the employer without prior promise or agreement. The employee has no contract right, express or implied, to any amount. If the employer promises in advance to pay a bonus, he has abandoned his discretion with regard to it. Thus, if an employer announces to his employees in January that he intends to pay them a bonus in June, he has thereby abandoned his discretion regarding the fact of payment by promising a bonus to his employees. Such a bonus would not be excluded from the regular rate under this subsection. Similarly, an employer who promises to sales employees that they will receive a monthly bonus computed on the basis of allocating 1 cent for each item sold whenever, in his discretion, the financial condition of the firm warrants such payment, has abandoned discretion with regard to the amount of the bonus though not with regard to the fact of payment. Such a bonus would not be excluded from the regular rate. On the other hand, if a bonus such as the one just described were paid without prior contract, promise or announcement and the decision as to the fact and amount of payment lay in the employer's sole discretion, the bonus would be properly excluded from the regular rate.

The bonus, to be excluded, must not be paid "pursuant to any prior contract, agreement, or promise." For example, any bonus which is promised to employees upon hiring or which is the result of collective bargaining would not be excluded from the regular under this subsection. Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and

[24] Except in the special case of pieceworkers as discussed in § 778.19.

[25] For a further discussion of this and related problems see §§ 778.14 and 778.15.

[26] But compare the use of this form of payment as a device to evade the overtime requirements of the act, as described in § 778.23.

[27] Bonus payments are payments made in addition to the regular earnings of an employee. For a discussion of the bonus form as an evasive bookkeeping device, see § 778.23.

the like are in this category. They must be included in the regular rate of pay.

(e) *Gifts, Christmas and special occasion bonuses.* Section 7 (d) (1) provides that the term "regular rate" shall not be deemed to include:

Sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency * * *.

Such sums may not, however, be credited toward overtime compensation due under the act.

To qualify for exclusion under this section the bonus must be actually a gift or in the nature of a gift. If it is measured by hours worked, production or efficiency, the payment is geared to wages and hours during the bonus period and is no longer to be considered as in the nature of a gift. If the payment is so substantial that it can be assumed that employees consider it a part of the wages for which they work, the bonus cannot be considered to be in the nature of a gift. Obviously, if the bonus is paid pursuant to contract (so that the employee has a legal right to the payment and could bring suit to enforce it), it is not in the nature of a gift.

If the bonus paid at Christmas or on other special occasion is a gift or in the nature of a gift, it will be excluded from the regular rate under this subsection even though it is paid with regularity so that the employees are led to expect it and even though the amounts paid to different employees or groups of employees vary with the amount of the salary or regular hourly rate of such employees or according to their length of service with the firm so long as the amounts are not measured by or directly dependent upon hours worked, production or efficiency. A Christmas bonus paid (not pursuant to contract) in the amount of two weeks' salary to all employees and an equal additional amount for each 5 years of service with the firm, for example, would be excluded from the regular rate under this category.

(f) *Profit-sharing, thrift and savings plans.* Section 7 (d) (3) (b) provides that the term "regular rate" shall not be deemed to include:

Sums paid in recognition of services performed during a given period if * * * the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the Administrator set forth in appropriate regulations * * *.

Such sums may not, however, be credited toward overtime compensation due under the act. The Administrator has issued regulations under this section which are published in the FEDERAL REGISTER as Part 549. Payments made pursuant to plans which meet the requirements of the regulations in this part will be properly excluded from the regular rate.

(g) *Welfare plans.* Section 7 (d) (4) provides that the term "regular rate" shall not be deemed to include:

Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees * * *.

Such sums may not, however, be credited toward overtime compensation due under the act.

In order for an employer's contribution to qualify for exclusion from the regular rate under this section the following conditions must be met:

(1) There must be a formal plan or system set up by the employer. This may be either a company-financed plan or an employer-employee contributory plan.

(2) The primary purpose of the plan must be that of providing systematically for the payment of definitely determinable benefits to employees on account of death, disability or retirement or to provide medical care, hospitalization benefits, and the like. (This type of plan will be referred to as a welfare plan.)

(3) The employer's contributions must be paid irrevocably to a third party according to a trust or other funded arrangement (such as an insurance plan). The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the funds to his own use. Where the payments are made to a single trustee, the trustee must be an individual other than the employer or an officer, affiliate or representative of the employer. If the payments are made to a group of trustees, the majority must not be officers, affiliates, or representatives of the employer.

(4) No employee has the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan. *Provided, however,* That if a plan otherwise qualifies as a bona fide welfare plan under this subsection, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit at the time of the severance of the employment relation due to causes other than retirement, disability or death, and even though, upon proper termination of the plan, the amounts standing to the credit of participating employees are distributed to them at the time of termination.

The Administrator's position on the question of when an employer's contributions to a welfare plan may be excluded from the regular rate under this subsection is similar to that of the Bureau of Internal Revenue in determining what constitutes "wages" for social security tax purposes. If the payments in question are excluded from the category of wages under section 1426 (a) (2) of the Federal Insurance Contributions Act and section 1607 (b) (2) of the Federal Unemployment Tax Act, they would not be regarded by the Administrator as part of the regular rate of pay under section 7 (d) of the Fair Labor Standards Act, as amended.

It should be emphasized that it is the employer's contribution to the fund or trust that is excluded from or included in the regular rate according to whether or not the plan meets the foregoing requirements. If the plan does not qualify as a bona fide welfare plan under section 7 (d) (4), the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

§ 778.7 *Payments not for hours worked.*—(a) *The statutory provision.* Section 7 (d) (2) provides that the term "regular rate" shall not be deemed to include:

payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment * * *.

However, since such payments are not compensation for work, no part of such payments can be credited toward overtime compensation due under the act.

(b) *Reimbursement for expenses.* Where an employee incurs expenses on his employer's behalf or where he is required to expend sums solely by reason of action taken for the convenience of his employer, reimbursement for such expenses is not included in the employee's regular rate (if the amount of the reimbursement reasonably approximates the expenses incurred). Such payment is not compensation for services rendered.

Payment by way of reimbursement for the following types of expenses will not be regarded as part of the employee's regular rate:

(1) The actual amount expended by an employee in purchasing supplies, tools, materials, or equipment on behalf of his employer.

(2) The actual or reasonably approximate amount expended by an employee in purchasing, laundering, or repairing uniforms or special clothing which his employer requires him to wear.

(3) The actual or reasonably approximate amount expended by an employee, who is travelling "over the road" on his employer's business, for transportation (whether by private car or common carrier) and living expenses away from home; other travel expenses, such as taxicab fares, incurred while travelling on the employer's business.

(4) "Supper money"—a reasonable amount given to an employee, who ordinarily works the day shift and can ordinarily return home for supper, to cover the cost of supper when he is

requested by his employer to continue work during the evening hours.

(5) The actual or reasonably approximate amount expended by an employee as temporary excess home-to-work travel expenses incurred (i) because the employer has moved the plant to another town before the employee has had an opportunity to find living quarters at the new location or (ii) because the employee, on a particular occasion, is required to report for work at a place other than his regular workplace.

The foregoing list is intended to be illustrative rather than exhaustive.

It should be noted that only the actual or reasonably approximate amount of the expense is excluded from the regular rate. If the amount paid as "reimbursement" is disproportionately large, the excess amount will be included in the regular rate.

The expenses for which reimbursement is made must, in order to merit exclusion from the regular rate under this section, be expenses incurred by the employee on the employer's behalf or for his benefit or convenience. If the employer reimburses the employee for expenses normally incurred by the employee for his own benefit, he is, of course, increasing the employee's regular rate thereby. An employee normally incurs expenses in traveling to and from work, buying lunch, paying rent, and the like. If the employer reimburses him for these normal everyday expenses, the payment is not excluded from the regular rate as "reimbursement for expenses." Whether the employer "reimburses" the employee for such expenses or furnishes the facilities (such as free lunches or free housing), the amount paid to the employee (or the reasonable cost to the employer where facilities are furnished) enters into the regular rate of pay.[28]

(c) *Pay for certain idle hours.* Payments which are made for occasional periods when the employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, where the payments are in amounts approximately equivalent to the employee's normal earnings for a similar period of time, are not made as compensation for his hours of employment. Therefore, such payments are excluded from the regular rate of pay and, for the same reason, no part of such payments may be credited toward overtime compensation due under the act.

This section deals with the type of absences which are infrequent or sporadic or unpredictable. It has no relation to regular "absences" such as lunch periods nor to regularly scheduled days of rest. Sundays may not be workdays in a particular plant, but this does not make them either "holidays" or "vacations," or days on which the employee is absent because of the failure of the employer to provide sufficient work. The term holiday is read in its ordinary usage to refer to those days customarily observed in the community in celebration of some historical or religious occasion; it does not refer to days of rest given to employees in lieu of or as an addition to compensation for working on other days.

The term "failure of the employer to provide sufficient work" is intended to refer to occasional, sporadically recurring situations where the employee would normally be working but for such a factor as machinery breakdown, failure of expected supplies to arrive, weather conditions affecting the ability of the employee to perform the work and similarly unpredictable obstacles beyond the control of the employer. The term does not include reduction in work schedule,[29] ordinary temporary lay-off situations or any type of routine, recurrent absence of the employee.

The term "other similar cause" refers to payments made for periods of absence due to factors like holidays, vacations, sickness and failure of the employer to provide work. Examples of "similar causes" are absences due to jury service, reporting to a draft board, attending a funeral of a family member, inability to reach the workplace because of weather conditions. Only absences of a non-routine character which are infrequent or sporadic or unpredictable are included in the "other similar cause" category.

(d) *Pay for foregoing holidays and vacations.* As stated in paragraph (c) of this section, certain payments made to an employee for periods during which he performs no work because of a holiday or vacation are not required to be included in the regular rate because they are not regarded as compensation for working. Suppose an employee who is entitled to such a paid idle holiday or paid vacation foregoes his holiday or vacation and performs work for the employer on the holiday or during the vacation period. If, under the terms of his employment he is entitled to a certain sum as holiday or vacation pay, whether he works or not, and receives pay at his customary rate (or higher) in addition for each hour that he works on the holiday or vacation day, the certain sum allocable to holiday or vacation pay is still to be excluded from the regular rate. It is still not regarded as compensation for hours of work if he is otherwise compensated at his customary rate (or at a higher rate) for his work on such days. Since it is not compensation for work it may not be credited toward overtime compensation due under the act. Two examples may serve to illustrate this principle:

(1) An employee whose rate of pay is $1 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—$48. He foregoes his vacation and works 50 hours in the week in question. He is owed $50 as his total straight-time earnings for the week, and $48 in addition as his vacation pay. Under the statute he is owed an additional $5 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1 per hour has not been increased by virtue of the payment of $48 vacation pay, but no part of the $48 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $48 or any other sum as vacation pay.[30] This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $48 vacation pay.)

(2) An employee, who is entitled, under his employment contract, to 8 hours' pay at his rate of $1 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid, under his contract, $50 as straight-time compensation for 50 hours plus $8 as idle holiday pay. He is owed, under the statute, an additional $5 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1 per hour has not been increased by virtue of the holiday pay but no part of the $8 holiday pay may be credited toward statutory overtime compensation due.

The latter example should be distinguished from a situation in which an employee is entitled to idle holiday pay only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay. The typical situation is one in which an employee is entitled, by contract to 8 hours' pay at his rate of $1 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $1.50 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, $13.50 (9×$1.50) for the holiday work and $41 for the other 41 hours worked in the week, a total of $54.50. Under the statute (which does not require premium pay for a holiday) he is owed $55 for a workweek of 50 hours at a rate of $1 an hour. Since the holiday premium qualifies as an overtime premium under section 7 (d) (6) [31] the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of 50 cents to meet the statutory requirements.

If all other conditions remained the same but the contract called for the payment of $2 (double time) for each hour worked on the holiday, the employee would receive, under his contract, $18 (9×$2.00) for the holiday work in addition to $41 for the other 41 hours worked, a total of $59. Since this holiday premium is an overtime premium under section 7 (d) (6), the employer may credit

[28] See also § 778.3 (d) and the footnote thereto.

[29] See § 778.9 for discussion of reduction in work schedule.

[30] On the requirements of the act, see Part 777 as to minimum wage; § 778.2 (b) of this chapter as to overtime pay.

[31] See § 778.5 (c) of this bulletin.

it toward statutory overtime compensation due. Since the total paid exceeds the statutory requirements, no additional compensation is due under the act. In distinguishing this situation from that in example (2) above, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $17 attributable to the holiday (8 hours' idle holiday pay at $1 an hour and $9 pay for 9 hours' work on the holiday). In the situation discussed in this paragraph the employee received $18 pay for the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

(c) *"Show-up" and "call-back" pay.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight-time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular workday or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide expected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their men in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in §§ 778.3 to 778.5, that portion of such payment which represents compensation at the applicable rates for the straight-time or overtime hours actually worked, if any, during such period may be credited as straight-time or overtime compensation, as the case may be, in computing overtime compensation due under the act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

To illustrate, assume that an employee whose workweek begins on Monday and who is paid $1 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive, making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the $2 earned in the 2 hours of work on Monday but an extra 2 hours' "show-up" pay, or $2 by reason of this agreement. However, since this $2 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains $1 and the overtime requirements of the act are satisfied if he receives, in addition to the $42 straight-time pay for 42 hours and the $2 "show-up" payment, the sum of $1 as extra compensation for the 2 hours of overtime work on Saturday.

In the interest of simplicity and uniformity, these principles will be applied also with respect to typical minimum "call-back" or "call-out" payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours' pay at the applicable straight-time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

The application of these principles to "call-back" payments may be illustrated as follows: An employment agreement provides a minimum 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of $1 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or $4.50, under the "call-back" provision, in addition to $40 for working his regular schedule and $1.50 for the overtime worked on Monday evening.

In computing overtime compensation due this employee under the act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $43 pay at the $1 rate for all these hours, he has received under the agreement a premium of 50 cents for the one overtime hour on Monday and of $1 for the 2 hours of overtime work on the call, plus an extra sum of $1.50 paid by reason of the provision for minimum "call-back" pay. For purposes of the act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $1.50) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward overtime compensation due under the act, but the extra $1.50 received under the "call-back" provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the act. The regular rate of the employee, therefore, remains $1.00, and he has received an overtime premium of 50 cents an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the act. The same would be true, of course, if, in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

(f) *Pay for non-productive hours distinguished.* Under the Fair Labor Standards Act an employee must be compensated for all hours worked. As a general rule the term "hours worked" will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or at a prescribed workplace and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. Thus, working time is not limited to the hours spent in active productive labor, but includes time given by the employee to the employer even though part of the time may be spent in idleness. Some of the hours spent by employees, under certain circumstances, in such activities as waiting for work, remaining "on call", traveling on the employer's business or to and from workplaces, and in meal periods and rest periods are regarded as working time and some are not.[*] To the extent that these hours are regarded as working time, payment made as compensation for these hours obviously cannot be characterized as "payments not for hours worked." Such compensation is treated in the same manner as compensation for any other working time and is, of course, included in the regular rate of pay. Where payment is ostensibly made as compensation for such of these hours as are not regarded as working time under the Fair Labor Standards Act, the payment is nevertheless included in the regular rate of pay unless it qualifies for exclusion from the regular rate under section 7 (d) (2) as one of a type of "payments made for occasional periods when no work is performed due to * * * failure of the employer to provide sufficient work, or other similar cause" as discussed in § 778.7 (c). For example, an employment contract may provide that employees who are assigned to take calls for specific periods will receive a payment of $2 for each 8-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls. If the employees who are thus on call are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave a telephone number at which they may be reached, the hours spent "on call" are

[*] See Part 785 of this chapter which will replace Interpretative Bulletin No. 13 as a statement of the principles for determining hours worked under the Fair Labor Standards Act, as amended. For a discussion of travel time in particular and preliminary and postliminary activities in general as working time see Part 790 of this chapter.

not considered as hours worked. The payment received by such employees for such "on call" time is, therefore, not allocable to any specific hours of work, although it is clearly paid as compensation for performing a duty involved in the employee's job. The payment must therefore be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

(g) *"Other similar payments"; general.* The preceding paragraphs of this section have enumerated and discussed the basic types of payments which are excluded from the regular rate under section 7 (d) (2) because they are not made as compensation for hours of work. Since a variety of miscellaneous payments are paid by an employer to an employee under peculiar circumstances, it was not considered feasible to attempt to list them. It is clear that the clause was not intended to permit the exclusion from the regular rate of payments such as bonuses or the furnishing of facilities like board and lodging which, though not directly attributable to any particular hours of work are, nevertheless, clearly understood to be compensation for services.

A few examples may serve to illustrate the type of payments intended to be excluded as "other similar payments":

Sums paid to an employee for the rental of his truck or car.

Loans or advances made by the employer to the employee.

The cost to the employer of conveniences furnished to the employee such as parking space, restrooms, lockers, on-the-job medical care and recreational facilities.

§ 778.8 *Talent fees in the radio and television industry.* Section 7 (d) (3) provides for the exclusion from the regular rate of "talent fees (as such talent fees are defined and delimited by regulations of the Administrator) paid to performers, including announcers, on radio and television programs." Regulations defining "talent fees" have been issued and published in the FEDERAL REGISTER as Part 550 of this chapter. Payments which accord with this definition are excluded from the regular rate.

SPECIAL PROBLEMS

§ 778.9 *Reduction in workweek schedule with no change in pay*—(a) *General statement.* Since the regular rate of pay is the average hourly rate at which an employee is actually employed, and since this rate is determined by dividing his total remuneration for employment (except statutory exclusions) for a given workweek by the total hours worked in that workweek for which such remuneration was paid, it necessarily follows that if the schedule of hours is reduced while the pay remains the same, the regular rate has been increased.

(b) *Effect on salary for fixed workweek.* If an employee was hired at a salary of $40 for a fixed workweek of 40 hours, his regular rate at the time of hiring was $1 per hour. If his workweek is later reduced to a fixed workweek of 35 hours while his salary remains the same, it is the fact that it now takes him only 35 hours to earn $40, so that he earns his salary at the average rate of $1.14 per hour. His regular rate thus becomes $1.14 per hour; it is no longer $1 an hour. Overtime pay is due under the Act only for hours worked in excess of 40, not 35, but if the understanding of the parties is that the salary of $40 now covers 35 hours of work and no more, the employee would be owed $1.14 per hour under his employment contract for each hour worked between 35 and 40. He would be owed time and one-half of $1.14 ($1.71) per hour, under the statute, for each hour worked in excess of 40 in the workweek. In weeks in which no overtime is worked only the provisions of section 6 of the act, requiring the payment of not less than 75 cents per hour, apply, so that the employee's right to receive $1.14 per hour is enforceable only under his contract. However, in overtime weeks the Administrator has the duty to insure the payment of time and one-half the employee's regular rate of pay for hours in excess of 40 and overtime cannot be said to have been paid until all straight time compensation due the employee under the statute or his employment contract has been paid. Thus if the employee works 41 hours in a particular week, he is owed his salary for 35 hours—$40, 5 hours' pay at $1.14 per hour for the 5 hours between 35 and 40—$5.70, and one hour's pay at $1.71 for the one hour in excess of 40—$1.71, or a total of $47.41 for the week.

(c) *Effect if salary is for variable workweek.* The discussion in the prior paragraph sets forth one result of reducing the workweek from 40 to 35 hours. It is not either the necessary result or the only possible result. As in all cases of employees hired on a salary basis, the regular rate depends in part on the agreement of the parties as to what the salary is intended to compensate. In reducing the workweek to 35 hours the parties may agree to change the basis of the employment arrangement by providing that the salary which formerly covered a fixed workweek of 40 hours now covers a variable workweek up to 40 hours. If this is the new agreement, the employee receives $40 for workweeks of varying lengths, such as 35, 36, 38, 40 hours. His rate thus varies from week to week, but in weeks of 40 hours or over, it is $1 per hour (since the agreement of the parties is that the salary covers up to 40 hours and no more) and his overtime rate, for hours in excess of 40, thus remains $1.50 per hour. Such a salary arrangement presumably contemplates that the salary will be paid in full for any workweek of 40 hours or less. The employee would thus be entitled to his full salary if he worked only 25 or 30 hours. No deductions for hours not worked in short workweeks would be made.[33]

(d) *Effect on hourly rate employees.* A similar situation is presented where employees have been hired at an hourly rate of pay and have customarily worked a fixed workweek. If the workweek is reduced from 40 to 35 hours without reduction in total pay, the average hourly rate is thereby increased as in paragraph (b) of this section. If the reduction in work schedule is accompanied by a new agreement altering the mode of compensation from an hourly rate basis to a fixed salary for a variable workweek up to 40 hours, the results described in paragraph (c) of this section follow.

(e) *Effect on salary covering more than 40 hours' pay.* The same reasoning applies to a salary covering straight time pay for a longer workweek. If an employee was hired at a fixed salary of $55 for 55 hours of work, he was entitled to statutory overtime for the 15 hours in excess of 40 at the rate of 50 cents per hour (half time) in addition to his salary. If the workweek is later reduced to 50 hours, with the understanding between the parties that the salary covers all hours up to 55, his regular rate in any week of 55 hours or less is determined by dividing the salary by the number of hours worked to earn it in that particular week, and additional half time, at that rate, is due for each hour in excess of 40. In weeks of 55 hours or more, his regular rate is $1 per hour. If the understanding of the parties is that the salary now covers a fixed workweek of 50 hours, his regular rate is $1.10 per hour in all weeks. This assumes that when an employee works less than 50 hours in a particular week, deductions are made at the rate of $1.10 per hour for the hours not worked.

The reasoning does not, of course, apply to a situation in which the former earnings at both straight time and overtime are paid to the employee for the reduced workweek. Suppose an employee was hired at an hourly rate of $1 an hour and regularly worked 50 hours, earning $55 as his total straight time and overtime compensation, and the parties now agree to reduce the workweek to 46 hours without any reduction in take-home pay. The parties in such a situation may agree to an increase in the hourly rate from $1 per hour to $1.12½ so that for a workweek of 46 hours (the reduced schedule) the employee's straight time and overtime earnings will be $55. The parties cannot, however, agree that the employee is to receive exactly $55 as total compensation (including overtime pay) for a workweek varying, for example, up to 50 hours, unless he does so pursuant to contracts specifically permitted in section 7 (e) of the act, as discussed in § 778.18. An employer cannot otherwise discharge his statutory obligation to pay overtime compensation to an employee who does not work the same fixed hours each week by paying a fixed amount purporting to cover both straight time and overtime compensation for an "agreed" number of hours. To permit such a practice without proper statutory safeguards would result in sanctioning the circumvention of the provisions of the act which require that an employee who works more than 40 hours in any workweek be compensated, in accordance with express congressional intent, at time and one-half his regular rate of pay for the burden of working long hours. In arrangements of this type, no additional financial pressure would fall upon the employer and no additional compen-

[33] For a discussion of the effect of deductions on the regular rate see § 778.12.

sation would be due to the employee under such a plan until the workweek exceeded 50 hours.

(f) *Temporary or sporadic reduction in schedule.* The problem of reduction in the workweek is somewhat different where a temporary reduction is involved. Reductions for the period of a dead or slow season follow the rules announced above. However, reduction on a more temporary or sporadic basis presents a different problem. It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight time rate no matter how many hours he worked. If he set the rate at $1 per hour for all workweeks in which the employee worked 40 hours or less, 98½ cents per hour for workweeks of 41 hours, 95 cents for workweeks of 42 hours, 91 cents for workweeks of 50 hours and so on, the employee would always receive (for straight time and overtime at these "rates") precisely $1 an hour and no more regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal non-overtime week—in this case, $1 per hour.

The situation is different in degree but not in principle where employees who have been hired at a bona fide 80-cent rate usually working 50 hours and taking home $44 as total straight time and overtime for the week are, during occasional weeks, cut back to 42 hours. If the employer raises their rate to $1 for such weeks so that their total compensation is $43 for a 42-hour week the question may properly be asked, when they return to the 50-hour week, the 80-cent rate and the gross pay of $44, whether the 80-cent rate is really their regular rate. Are they putting in 8 additional hours of work for that extra dollar or is their "regular" rate really now $1 an hour since this is what they earn in the short workweek? It seems clear that where different rates are paid from week to week for the same work and where the difference is justified by no factor other than the number of hours worked by the individual employee—the longer he works the lower the rate—the device is evasive and the rate actually paid in the shorter or non-overtime week is his regular rate for overtime purposes in all weeks.

(g) *Plan for gradual permanent reduction in schedule.* In some cases, pursuant to a definite plan for the permanent reduction of the normal scheduled workweek from say, 48 hours to 40 hours, an agreement is entered into with a view to lessening the shock caused by the expected reduction in take-home wages. The agreement may provide for a rising scale of rates as the workweek is gradually reduced. The varying rates established by such agreement will be recognized as bona fide in the weeks in which they are respectively operative provided that (1) the plan is bona fide and there is no effort made to evade the overtime requirements of the act; (2) there is a clear downward trend in the duration of the workweek throughout the period of the plan even though fluctuations from week to week may not be constantly downward; and (3) the various rates are operative for substantial periods under the plan and do not vary from week to week in accordance with the number of hours which any particular employee or group happens to work.

(h) *Alternating workweeks of different fixed lengths.* In some cases an employee is hired on a salary basis with the understanding that his weekly salary is intended to cover the fixed schedule of hours (and no more) and that this fixed schedule provides for alternating workweeks of different fixed lengths. For example, many offices operate with half staff on Saturdays and, in consequence, employees are hired at a fixed salary covering a fixed working schedule of 7 hours a day Monday through Friday and 5 hours on alternate Saturdays. The parties agree that extra compensation is to be paid for all hours worked in excess of the schedule in either week, at the base rate for hours between 35 and 40 in the short week and at time and one-half such rate for hours in excess of 40 in all weeks. Such an arrangement results in the employee's working at two different rates of pay—one thirty-fifth of the salary in short workweeks and one-fortieth of the salary in the longer weeks. If the provisions of such a contract are followed, if the non-overtime hours are compensated in full at the applicable regular rate in each week and overtime compensation is properly computed for hours in excess of 40 at time and one-half the rate applicable in the particular workweek, the overtime requirements of the Fair Labor Standards Act will be met. While this situation bears some resemblance to the one discussed in paragraph (f) of this section there is this significant difference: the arrangement is permanent, the length of the respective workweeks and the rates for such weeks are fixed on a permanent-schedule basis far in advance and are therefore not subject to the control of the employer and do not vary with the fluctuations in business. In an arrangement of this kind, if the employer required the employee to work on Saturday in a week in which he was scheduled for work only on the Monday through Friday schedule, he would be paid at his regular rate for all the Saturday hours in addition to his salary.

§ 778.10 *Change in the beginning of the workweek.* As stated in § 778.2 (c), the beginning of the workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act. A change in the workweek necessarily results in a situation in which one or more hours or days fall in both the "old" workweek as previously constituted and the "new" workweek. Thus, if the workweek in the plant commenced at 7 a. m. on Monday and it is now proposed to begin the workweek at 7 a. m. on Sunday, the hours worked from 7 a. m. Sunday to 7 a. m. Monday will constitute both the last hours of the old workweek and the first hours of the newly established workweek.

If the hours which fall within both workweeks are hours in which the employee does no work, his statutory compensation for each workweek is, of course, determinable in precisely the same manner as it would be if no overlap existed. If, on the other hand, some of the employee's working time falls within hours which are included in both workweeks, the Wage and Hour Division, as an enforcement policy, will assume that the overtime requirements of section 7 of the act have been satisfied if computation is made as follows:

(1) Assume first that the overlapping hours are to be counted as hours worked only in the "old" workweek and not in the new; compute straight time and overtime compensation due for each of the two workweeks on this basis and total the two sums.

(2) Assume now that the overlapping hours are to be counted as hours worked only in the new workweek and not in the old, and complete the total computation accordingly.

(3) Compare the two totals and pay the higher.

Suppose that, in the example given, the employee worked 5 hours on Sunday, March 12, 1950. His workweek commenced at 7 a. m. on Monday, March 6th and he worked 40 hours March 6th through 11th so that for that week he would be owed straight time and overtime compensation for 45 hours. The proposal is to commence the workweek at 7 a. m. on March 12th. In the week from Sunday, March 12 through Saturday, March 18 the employee worked a total of 40 hours, including the 5 hours worked on Sunday. It is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid (if his rate were $1 an hour) $47.50 for the period from March 6th through March 12th and $35 for the period from March 13th through March 18th.

The fact that this method of compensation is permissible under the Fair Labor Standards Act will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

§ 778.11 *Retroactive pay increases.* Where a retroactive pay increase is awarded to employees as a result of collective bargaining or otherwise, it operates to increase the regular rate of pay of the employee for the period of its retroactivity. Thus, if an employee is awarded a retroactive increase of 10 cents per hour, he is owed, under the Fair Labor Standards Act, a retroactive increase of 15 cents for each overtime hour he has worked during the period, no matter what the agreement of the parties may be. A retroactive pay increase in the form of a lump sum for a particular period must be prorated back over the hours of the period to which it is allocable to determine the resultant increases in

the regular rate, in precisely the same manner as a lump-sum bonus.[31]

§ 778.12 *How deductions affect the regular rate.* The word "deduction" is often loosely used to cover reductions in pay resulting from several causes:

(1) Deductions to cover the cost to the employer of furnishing board, lodging and other facilities, within the meaning of section 3 (m) of the act.

(2) Deductions for other items such as tools and uniforms which are not regarded as "facilities."

(3) Deductions authorized by the employee (such as union dues) or required by law (such as taxes and garnishments).

(4) Reductions in a fixed salary paid for a fixed workweek in weeks in which the employee fails to work the full schedule.

(5) Deductions for disciplinary reasons.

It may be briefly stated that the regular rate of pay of an employee whose earnings are subject to deductions of types (1), (2), and (3) is determined by dividing his total compensation (except statutory exclusions) before deductions by the total hours worked in the workweek.[32]

The reductions in pay described in category (4) are not properly speaking, "deductions" at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of $40 for a 40-hour week, his hourly rate is $1. When he works only 36 hours he is therefore entitled to $36. The employer makes a "deduction" of $4 from his salary to achieve this result. The rate is not altered.

When an employee is paid a fixed salary for a workweek of variable hours (or a guarantee of pay under the provisions of section 7 (e) of the act[33]), the understanding is that the salary is due the employee in short workweeks as well as in longer ones and "deductions" of this type are not made. Therefore, in cases where the understanding of the parties is not clearly shown as to whether a fixed salary is intended to cover a fixed or a variable workweek, the practice of making "deductions" from the salary for hours not worked in short weeks will be considered strong, if not conclusive, evidence that the salary covers a fixed workweek.

Where deductions are made for disciplinary reasons (category (5)), the regular rate of an employee is computed before deductions are made, as in the case of deductions of types (1), (2), and (3) above. Thus where disciplinary deductions are made from a pieceworker's earnings, the earnings at piece rates must be totaled and divided by the total hours worked to determine the regular rate before the deduction is applied. It should be noted that although an employer may penalize an employee for lateness by deducting a half hour's straight time pay from his wages, for example, for each half hour, or fraction thereof, of his lateness, the employer must still count as hours worked all the time actually worked by the employee in determining the amount of overtime compensation due for the workweek. In no event may such deductions (or deductions of type (2)) reduce the earnings below an average of 75¢ for the first 40 hours nor cut into any part of the overtime compensation due the employee.[34]

§ 778.13 *Prizes as bonuses*—(a) *General statement.* All compensation (except statutory exclusions) paid by or on behalf of an employer to an employee as remuneration for employment must be included in the regular rate, whether paid in the form of cash or otherwise. Prizes are therefore included in the regular rate if they are paid to an employee as remuneration for employment. If therefore it is asserted that a particular prize is not to be included in the regular rate, it must be shown either that the prize was not paid to the employee for employment, or that it is not a thing of value which is part of wages.

(b) *Contests and awards.* Where the prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks (whether on the employer's premises or elsewhere) it is obviously paid as additional remuneration for employment. Thus prizes paid for cooperation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay. If the prize is paid in cash, the amount paid must be allocated over the period during which it was earned to determine the resultant increase in the average hourly rate for each week of the period.[35] If the prize is merchandise, the cost to the employer is the sum which must be allocated. Where the prize is either cash or merchandise, with the choice left to the employee, the amount to be allocated is the amount (or the cost) of the actual prize he accepts.

Where the prize is awarded for activities outside the customary working hours of the employee, beyond the scope of his customary duties or away from the employer's premises, the question of whether the compensation is remuneration for employment will depend on such factors as the amount of time, if any, spent by the employee in competing, the relationship between the contest activities and the usual work of the employee, whether the competition involves work usually performed by other employees for employers, whether an employee is specifically urged to participate or led to believe that he will not merit promotion or advancement unless he participates.

By way of example, a prize paid for work performed in obtaining new business for an employer would be regarded as remuneration for employment. Although the duties of the employees who participate in the contest may not normally encompass this type of work, it is work of a kind normally performed by salesmen for their employers.[36] On the other hand, a prize or bonus paid to an employee when a sale is made by the company's sales representative to a person whom he recommended as a good sales prospect would not be regarded as compensation for services if in fact the prize-winner performed no work in securing the name of the sales prospect and spent no time on the matter for the company in any way.

(c) *Suggestion system awards.* In this connection, the question has been raised whether awards made to employees for suggestions submitted under a suggestion system plan are to be regarded as part of the regular rate. There is no hard and fast rule on this point as the term "suggestion system" has been used to describe a variety of widely differing plans. It may be generally stated, however, that prizes paid pursuant to a bona fide suggestion system plan may be excluded from the regular rate at least in situations where it is the fact that:

(1) The amount of the prize has no relation to the earnings of the employee at his job but is rather geared to the value to the company of the suggestion which is submitted; and

(2) The prize represents a bona fide award for a suggestion which is the result of additional effort or ingenuity unrelated to and outside the scope of the usual and customary duties of any employee of the class eligible to participate and the prize is not used as a substitute for wages; and

(3) No employee is required or specifically urged to participate in the suggestion system plan or led to believe that he will not merit promotion or advancement (or retention of his existing job) unless he submits suggestions; and

(4) The invitation to employee to submit suggestions is general in nature and no specific assignment is outlined to employees (either as individuals or as a group) to work on or develop; and

(5) There is no time limit during which suggestions must be submitted; and

(6) The employer has, prior to the submission of the suggestion by an employee, no notice or knowledge of the

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[31] For a discussion of the method of allocating bonuses to the hours of the period during which they were earned see § 778.6 (b).

[32] For a full discussion of deductions on categories (1), (2), and (3), see §§ 777.11 to 777.15 of this chapter.

[33] Discussed in section 778.15 of this bulletin.

[34] For a full discussion of the limits placed on such deductions, see §§ 777.11 and 777.12 of this chapter. The principles set forth with relation to deductions have no application to situations involving refusal or failure to pay the full amount of wages due. See, ibid., § 777.12; also § 778.16.

[35] For the method of allocation, see § 778.6 (b).

[36] The time spent by the employee in competing for such a prize (whether successfully or not) is working time and must be counted as such in determining overtime compensation due under the act. This subject will be more fully dicussed in Part 785 of this chapter, which will replace Interpretative Bulletin No. 13 as a statement of the principles for determining hours worked under the Fair Labor Standards Act.

fact that an employee is working on the preparation of a suggestion under circumstances indicating that the company approved the task and the schedule of work undertaken by the employee.

§ 778.14 *Lump sum attributed to overtime.* Section 7 of the act requires the payment of overtime compensation for hours worked in excess of 40 at a rate not less than one and one-half times the regular rate. The overtime rate is a rate per hour.

Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7 (d) (5), (6) or (7), however, the extra compensation must be paid pursuant to a premium rate which is a rate per hour.[40] To qualify under section 7 (d) (5) this rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the rate, such as time and one-third. To qualify under section 7 (d) (6) or (7) the rate may not be less than time and one-half the bona fide rate established in good faith for like work performed during non-overtime hours. It may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for example, double time); or it may be a fixed sum of money per hour which is, as an arithmetical fact, at least time and one-half the regular rate (for example, if the regular rate is $2 per hour, the overtime rate may not be less than $3 but it may be set at a higher arbitrary figure such as $3.20 per hour).

Where an employee works a regular fixed number of hours each week, it is, of course, proper to pay him a fixed sum, for his overtime work, determined by multiplying his overtime rate by the number of overtime hours regularly worked. However, a premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per-hour basis. For example, an agreement that provides for the payment of a flat sum of $15 to employees who work on Sunday does not provide a premium which will qualify as an overtime premium, even though the employee's straight-time rate is $1 an hour and the employee always works less than 10 hours on Sunday. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $15 or time and one-half the employee's regular rate for all hours worked on Sunday, whichever is greater, the $15 guaranteed payment is not an overtime premium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed salary regardless of the number of hours worked in excess of 40 in the workweek could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum number of hours that would be worked. The Congressional purpose to effectuate a maximum hours standard by placing a penalty upon the performance of excessive overtime work would thus be defeated. For this reason, where extra compensation is paid in the form of a lump sum for work performed in overtime hours, it must be included in the regular rate and may not be credited against statutory overtime compensation due.

The same reasoning applies where employees are paid a flat rate for a special job performed during overtime hours, without regard to the time actually consumed in the performance.[41] The total amount paid must be included in the regular rate; no part of the amount may be credited toward statutory overtime compensation due.

It may be helpful to give a specific example illustrating the results of paying an employee on the basis under discussion.

An employment agreement calls for the payment of $1 per hour for work during the hours established in good faith as the basic workday or workweek; it provides for the payment of $1.50 per hour for work during hours outside the basic workday or workweek. It further provides that employees doing a special task outside the basic workday or workweek shall receive 8 hours' pay at the rate of $1.50 per hour (a total payment of $9) regardless of the time actually consumed in performance.

Suppose an employee works the following schedule. (The hours marked by an asterisk were spent in the performance of the special work.)

	M	T	W	T	F	S	S
Hours within basic workday	8	8	7	8	8	0	0
Pay under contract	$8	$8	$7.00	$8	$8	0	0
Hours outside basic workday	2	2	1	0	0	4	0
Pay under contract	$3	$9	$1.50	0	0	$6	0

To determine the regular rate, the total compensation (except statutory exclusions) must be divided by the total number of hours worked. The only sums to be excluded in this situation are the extra premiums provided by a premium rate (a rate per hour) for work outside the basic workday and workweek, which qualify for exclusion under section 7 (d) (7) of the act.[42] The $3 paid on Monday, the $1.50 paid on Wednesday and the $6 paid on Saturday are paid pursuant to rates which qualify as premium rates under section 7 (d) (7) of the act. The total extra compensation (over the straight-time pay for these hours) provided by these premium rates is $3.50. The sum of $3.50 should be subtracted from the total of $58.50 paid to the employee. No part of the $9 paid for the special work performed on Tuesday qualifies for exclusion. The remaining $55 must thus be divided by 48 hours to determine the regular rate—$1.146 per hour. The employee is owed one-half this rate for each of 8 overtime hours worked—$4.58. The extra compensation in the amount of $3.50 paid pursuant to premium rates which qualify as overtime premiums may be credited toward the $4.58 owed. No part of the $9 premium may be so credited. The employer must pay the employee an additional $1.08 as statutory overtime—a total of $59.58 for the week.

§ 778.15 *"Task" basis of payment.* Under some employment agreements employees are paid according to a job or task rate without regard to the number of hours consumed in completing the task. Such agreements take various forms but the two most usual forms are these:

(a) It is determined (sometimes on the basis of a time study) that an employee (or group) should complete a particular task in 8 hours. Upon the completion of the task the employee is credited with 8 "hours" of work though in fact he may have worked more or less than 8 hours to complete the task. At the end of the week the employee is paid at an established hourly rate for the first 40 of the "hours" so credited and at time and one-half such rate for the "hours" so credited in excess of 40. The number of "hours" credited to the employee bears no necessary relationship to the number of hours actually worked. It may be greater or less. "Overtime" may be payable in some cases after 20 hours of work; in others only after 50 hours or any other number of hours.

(b) A similar task is set up and 8 hours' pay at the established rate is credited for the completion of the task in 8 hours or less. If the employee fails to complete the task in 8 hours he is paid at the established rate for each of the first 8 hours he actually worked. For work in excess of 8 hours or after the task is completed (whichever occurs first) he is paid time and one-half the established rate for each hour worked. He is paid weekly overtime compensation for hours in excess of 40 actual or "task" hours (or combination thereof) for which he received pay at the established rate. "Overtime" pay under this plan may be due after 20 hours of work, 25 or any other number up to 40.

These employees are in actual fact compensated on a daily rate of pay basis. In plans of the first type, the established hourly rate never controls the compensation which any employee actually receives. Therefore the established rate cannot be his regular rate. In plans of the second type the rate is operative only for the slower employees who exceed the time allotted to complete the task; for them it operates in a manner similar to a minimum hourly guarantee for piece workers.[43] On such days as it is opera-

[40] Sections 7 (e) and 7 (f) of the act provide for special exceptions from this rule. These are discussed in §§ 778.10, 778.19 and 778.20.

[41] This situation is to be distinguished from "show-up" and "call-back" pay situations discussed in § 778.7 (e). It is also to be distinguished from payment at time and one-half the applicable rate to pieceworkers for work performed during overtime hours, as discussed in § 778.19.

[42] As discussed in § 778.5 (d).

[43] See § 778.3 (b) example (2).

tive it is a genuine rate; at other times it is not.

Since the premium rates (at time and one-half the established hourly rate) are payable under both plans for hours worked within the basic or normal workday (if one is established) and without regard to whether the hours are or are not in excess of 8 per day or 40 per week, they cannot qualify as overtime premiums under section 7 (d) (5), (6) or (7) of the act. They must therefore be included in the regular rate and no part of them may be credited against statutory overtime compensation due. Under plans of the second type, however, where the pay of an employee on a given day is actually controlled by the established hourly rate (because he fails to complete the task in the 8-hour period) and he is paid at time and one-half the established rate for hours in excess of 8 hours actually worked, the premium rate paid on that day will qualify as an overtime premium under section 7 (d) (5).

An example of the operation of a plan of the second type may serve to illustrate the effects of payment on a task basis.

The employment agreement establishes a basic hourly rate of $1 per hour, provides for the payment of $1.50 per hour for overtime work (in excess of the basic workday or workweek) and defines the basic workday as 8 hours, and the basic workweek as 40 hours, Monday through Friday. It further provides that the assembling of a machine constitutes a day's work. An employee who completes the assembling job in less than 8 hours will be paid 8 hours' pay at the established rate of $1 per hour and will receive pay at the "overtime" rate for hours worked after the completion of the task.

Suppose an employee works the following hours in a particular week:

	M	T	W	T	F	S	S
Hours spent on task	6	7	7	9	8½	6	0
Day's pay under contract	$8	$8	$8	$8.00	$8.00	$12	0
Additional hours	2	---	2	------	½	----	---
Additional pay under contract	$3	---	$3	$1.50	$1.50	----	---

The employee has actually worked a total of 48 hours and has received a total of $61.00 for the week. The only sums which can be excluded from this total before the regular rate is determined are the extra 50-cent payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The other premium rates were paid either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Only the sum of $1 is excluded from the total. The remaining $60 is divided by 48 hours to determine the regular rate—$1.25 per hour. One-half this rate is due as extra compensation for each of the 8 overtime hours—$5.00. The $1 paid for excessive hours may be credited and the balance—$4.00—is owed in addition to the $61 due under the contract.

§ 778.16 *Effect of failure to count or pay for certain working hours.* In determining the number of hours for which overtime compensation is due, all hours worked by an employee for an employer in a particular workweek must be counted.[44] Overtime compensation, at time and one-half the regular rate of pay, must be paid for each hour worked in excess of 40. Overtime compensation cannot be said to have been paid to an employee unless all the straight-time compensation due him under his contract (express or implied) or under any applicable statue has been paid.

While it is permissible for an employer and an employee to agree upon different base rates of pay for different types of work, it has already been pointed out that where a rate has been agreed upon as applicable to a particular type of work the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during overtime hours, or during a week in which overtime is worked.[45] Since a lower rate cannot lawfully be set for overtime hours it is obvious that the parties cannot lawfully agree that the working time will not be paid for at all. An agreement that only the first 8 hours of work on any days or only the hours worked between certain fixed hours of the day or only the first 40 hours of any week will be counted as working time will clearly fail of its evasive purpose. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be compensated unless authorized in advance, will not impair the employee's right to compensation for work which he is actually suffered or permitted to perform.

An agreement not to compensate employees for certain non-overtime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee $1 an hour for the first 35 hours, nothing for the hours between 35 and 40 and $1.50 an hour for the hours in excess of 40 would not meet the overtime requirements of the act. The employee would have to be paid $5 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the act.

Some agreements provide for payment only for the hours spent in productive work; the hours spent in waiting time, time spent in travel on the employer's behalf or similar nonproductive time are not compensable and in some cases are neither counted nor compensated.

Payment pursuant to such an agreement will not comply with the Fair Labor Standards Act; such nonproductive working hours must be counted and paid for. The parties may agree to compensate nonproductive hours at a rate (at least the minimum) which is lower than the rate applicable to productive work. In such a case, the regular rate is the weighted average of the two rates,[46] and the employee is owed compensation at his regular rate for all of the first 40 hours and at time and one-half this rate for all hours in excess of 40. In the absence of any agreement setting a different rate for nonproductive hours, the employee would be owed compensation at the regular hourly rate set for productive work for all hours up to 40 and at time and one-half that rate for hours in excess of 40.

The situation is to be distinguished from one in which such nonproductive hours are properly counted as working time but no special hourly rate is assigned to such hours because it is understood by the parties that the other compensation received by the employee is intended to cover pay for such hours. For example, while it is not proper for an employer to agree with his pieceworkers that the hours spent in down-time (waiting for work) will not be paid for or will be neither paid for nor counted, it is permissible for him to agree that the pay the employees will earn at piece rates is intended to compensate them for all hours worked, the productive as well as the nonproductive hours. If this is the agreement of the parties, the regular rate of the pieceworker will be the rate determined by dividing the total piecework earnings by the total hours worked (both productive and nonproductive) in the workweek.

Extra compensation (one-half the rate as so determined) would, of course, be due for each hour worked in excess of 40 in the workweek.

§ 778.17 *Effect of paying for but not counting certain hours.* In some contracts provision is made for payment for certain hours, which constitute working time under the act, coupled with a provision that these hours will not be counted as working time. Such a provision is a nullity. If the hours in question are hours worked, they must be counted as such in determining whether more than 40 hours have been worked in the workweek. If more than 40 hours have been worked, the employee must be paid overtime compensation at time and one-half his regular rate for all overtime hours.

A provision that certain hours will be compensated only at straight-time rates is likewise invalid. If the hours are actually hours worked in excess of 40, extra half-time compensation will be due, regardless of any agreement to the contrary.

In certain cases an agreement provides for compensation for hours spent in certain types of activities which would not be regarded as working time under the act if no compensation were provided. Preliminary and postliminary activities, time spent in travel outside the hours of the normal workday and time spent in eating meals between working hours fall in this category. The agreement of the parties to provide compensation for such hours implies an agreement to regard them as working time although they are not otherwise required to be so regarded under the act. The agreement of the

[44] As to what hours must be counted as hours worked for an employer, see § 778.7 (f) and the footnote thereto.

[45] See § 778.9.

[46] Discussed in § 778.3 (c). See also § 778.19 (c) for the method of computing overtime pay on the applicable rate.

parties will be respected, if reasonable.[17] However, the compensation paid for such hours will, in any event be regarded as part of the regular rate of pay.

§ 778.13 *Guaranteed compensation which includes overtime pay (sec. 7 (e)).*—(a) *The statutory exception.* Sec. 7 (e) of the act provides:

> No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section 6 (a) and compensation at not less than one and one-half times such rate for all hours worked in excess of forty in any workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

This is the only provision in the act which allows an employer to pay the same total compensation each week to an employee who works overtime and whose hours of work vary from week to week.[18] Unless the pay arrangements in a particular situation meet the requirements of section 7 (e) as set forth, all the compensation received by the employee under a guaranteed pay plan is included in his regular rate and no part of such guaranteed pay may be credited toward overtime compensation due under the act.

The exception is designed to provide a means whereby the employer of an employee whose duties necessitate irregular hours of work and whose total wages, if computed on an hourly rate basis would of necessity vary widely from week to week, may guarantee the payment week-in, week-out of at least a fixed amount based on his regular hourly rate. Such a contract affords to the employee the security of a regular weekly income and benefits the employer by enabling him to anticipate and control in advance at least some part of his labor costs. However, a guaranteed wage plan also provides a means of limiting overtime costs so that wide leeway is provided for working employees overtime without increasing the cost to the employer, which he would otherwise incur under the act for working employees in excess of the statutory maximum of 40 hours. Recognizing both the inherent advantages and disadvantages of guaranteed wage plans, when viewed in this light, Congress sought to strike a balance between them which would, on the one hand, provide a feasible method of guaranteeing pay to employees who needed this protection without, on the other hand, nullifying the overtime requirements of the act. The provisions of section 7 (e) set forth the conditions under which, in the view of Congress, this may be done. Plans which do not meet these conditions were not thought to provide sufficient advantage to the employee to justify Congress in relieving employers of the overtime liability of section 7 (a).[19]

Section 7 (e) is an exemption from the overtime provisions of the act. No employer will be exempt from the duty of computing overtime compensation for an employee under section 7 (a) unless the employee is paid pursuant to a plan which actually meets all the requirements of the exemption. These requirements will be discussed separately in the ensuing paragraphs.

(b) *What types of employees are affected.* The type of employment agreement permitted under section 7 (e) can be made only with (or by his representatives on behalf of) an employee whose "duties * * * necessitate irregular hours of work." It is clear that no contract made with an employee who works a regularly scheduled workweek or whose schedule involves alternating fixed workweeks will qualify under this subsection. Even if an employee does in fact work a variable workweek, the question must still be asked whether his duties necessitate irregular hours of work. The subsection is not designed to apply in a situation where the hours of work vary from week to week at the discretion of the employer or the employee, nor to a situation where the employee works an irregular number of hours according to a predetermined schedule. The nature of the employee's duties must be such that neither he nor his employer can either control or anticipate with any degree of certainty the number of hours he must work from week to week. Some examples of the types of employees who may meet this criterion would be outside buyers, on-call servicemen, insurance adjusters, newspaper reporters and photographers, propmen, script girls and others engaged in similar work in the motion picture industry, fire fighters, troubleshooters and the like. There are some employees in these groups whose hours of work are conditioned by factors beyond the control of their employer or themselves. However, the mere fact that an employee is engaged in one of the jobs just listed, for example, does not mean that his duties necessitate irregular hours. It is always a question of fact whether the particular employee's duties do or do not necessitate irregular hours. Many employees not listed here may qualify. Office employees whose duties compel them to work variable hours could also be in this category. For example, the confidential secretary of a top executive whose hours of work are irregular and unpredictable might also be compelled by the nature of her duties to work variable and unpredictable hours. This would not ordinarily be true of a stenographer or file clerk, nor would an employee who only rarely or in emergencies is called upon to work outside a regular schedule qualify for this exemption.

(c) *The nature of the contract.* Payment must be made "pursuant to a bona fide individual contract or pursuant to an agreement made as a result of collective bargaining by representatives of employees." It cannot be a one-sided affair determinable only by examination of the employer's books. The employee must not only be aware of but must have agreed to the method of compensation in advance of performing the work. Collective bargaining agreements in general are formal agreements which have been reduced to writing, but an individual employment contract may be either oral or written. While there is no requirement in section 7 (e) that the agreement or contract be in writing, it is certainly desirable to reduce the agreement to writing, since a contract of this character is rather complicated and proof both of its existence and of its compliance with the various requirements of the section may be difficult if it is not in written form. Furthermore, the contract must be "bona fide". This implies that both the making of the contract and the settlement of its terms were done in good faith.

(d) *The specified regular rate.* The contract must specify " a regular rate of pay of not less than the minimum hourly rate provided in section 6 (a)." The word "regular" describing the rate in this provision is not to be treated as surplusage. To understand the nature of this requirement it is important to consider the past history of this type of agreement in the courts. In both of the two cases before it, the Supreme Court found that the relationship between the hourly rate specified in the contract and the amount guaranteed was such that the employee in a substantial portion of the workweeks of the period examined by the court worked sufficient hours to earn in excess of the guaranteed amount and in those workweeks was paid at the specified hourly rate for the first 40 hours and at time and one-half such rate for

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[17] The Portal Act requires the counting of preliminary and postliminary activities which are compensable. See Part 790 of this chapter.

[18] See §§ 778.5 (f), 778.9, 778.14, and 778.15 for further discussion of this basic approach. See also Part 781 of this chapter which discusses guaranteed wage plans submitted under certain types of collective bargaining agreements pursuant to section 7 (b) (1) and (2) of the act.

[19] This section of the act is based in part on the decision of the Supreme Court in the cases of Walling v. A. H. Belo Company, 316 U. S. 624, and Walling v. Halliburton Oil Well Cementing Co., 325 U. S. 427, where the Court approved the payment of guaranteed amounts to employees. In these cases the Court found as a fact that the rates specified in the contracts were the regular rates of pay of the employees, bearing a reasonable relation to the amount guaranteed (as opposed to arbitrary or artificial rates) and that the hours of work of the employees varied widely. In the Belo case the employees were newspaper reporters whose workweek fluctuated from 30 to over 100 hours of work; in the Halliburton case the employees were outside field service employees of a company engaged in the business of cementing, testing and otherwise servicing oil wells. In the Belo case employees were guaranteed an amount covering compensation for less than 60 hours but in the Halliburton case employees had to work in excess of 84 hours per week before any additional overtime pay (over and above the guaranteed amount) was due in any workweek. In both cases the employees did actually exceed the number of hours for which pay was guaranteed on fairly frequent occasions, so that the hourly rate stipulated in the contract in each case was often operative and did actually control the compensation received by the employees.

hours in excess of 40." The fact that section 7 (e) requires that a contract, to qualify an employee for exemption under section 7 (e), must specify a "regular rate", indicates that this criterion of these two cases is still important.

The regular rate of pay specified in the contract may not be less than the minimum rate. There is no requirement, however, that the regular rate specified be equal to the regular rate at which the employee was formerly employed before the contract was entered into. The specified regular rate may be any amount (at least 75 cents) which the parties agreed to and which can reasonably be expected to be operative in controlling the employee's compensation.

The rate specified in the contract must also be a "regular" rate which is operative in determining the total amount of the employee's compensation. Suppose, for example, that the compensation of an employee is normally made up in part by regular bonuses, commissions, or the like. In the past he has been employed at an hourly rate of $1.50 per hour in addition to which he has received a cost-of-living bonus of $5 a week and a 2 percent commission on sales which averaged $18 per week. It is now proposed to employ him under a guaranteed pay contract which specifies a rate of $1.50 per hour and guarantees $70 per week, but he will continue to receive his cost-of-living bonus and commissions in addition to the guaranteed pay. Bonuses and commissions of this type are, of course, included in the "regular rate" as defined in section 7 (d). It is also apparent that the $1.50 rate specified in the contract is not a "regular rate" under the requirements of section 7 (e) since it never controls or determines the total compensation he receives. For this reason, it is not possible to enter into a guaranteed pay agreement of the type permitted under section 7 (e) with an employee whose regular weekly earnings are made up in part by the payment of regular bonuses and commissions of this type. This is so because even in weeks in which the employee works sufficient hours to exceed, at his hourly rate, the sum guaranteed, his total compensation is controlled by the bonus and the amount of commissions earned as well as by the hourly rate.

In order to qualify as a "regular rate" under section 7 (e) the rate specified in the contract together with the guarantee must be the actual measure of the regular wages which the employee receives. However, the payment of extra compensation, over and above the guaranteed amount, by way of extra premiums for work on holidays, or for extraordinarily excessive work (such as for work in excess of 16 consecutive hours in a day, or for work in excess of six consecutive days of work), year-end bonuses and similar payments which are not regularly paid as part of the employee's usual wages will not invalidate a contract which otherwise qualifies under section 7 (e).

(e) *Provision for overtime pay.* The contract must provide for compensation at not less than one and one-half times the specified regular rate for all hours worked in excess of 40 in the workweek. All excessive hours, not merely those covered by the guarantee, must be compensated at time and one-half (or a higher multiple) of the specified regular rate. A contract which guaranteed a weekly salary of $75, specified a rate of $1.50 per hour, and provided that not less than time and one-half such rate would be paid only for all hours up to and including 46⅔ hours would not qualify under this section. The contract must provide for payment at time and one-half (or more) for all hours in excess of 40 in any workweek. A contract may provide a specific overtime rate greater than time and one-half the specified rate for example, double time. If it does provide a specific overtime rate it must provide that such rate will be paid for all hours worked in excess of 40.

(f) *The guaranty.* The statute provides that the guaranty must be a weekly guaranty. A guaranty of monthly, semi-monthly or bi-weekly pay (which would allow averaging wages over more than one workweek) does not qualify under this subsection. Obviously guarantees for periods less than a workweek do not qualify. Whatever sum is guaranteed must be paid in full in all workweeks, however short, in which the employee performs any amount of work for the employer. The amount of the guaranty may not be subject to proration or deduction in short weeks.

The contract must provide a guaranty of pay. The amount must be specified. A mere guaranty to provide work for a particular number of hours does not qualify under this section.

The pay guaranteed must be "for not more than 60 hours based on the rates so specified."

The amount of weekly pay guaranteed may not exceed compensation due at the specified regular rate for 40 hours and at the specified overtime rate for 20 additional hours. Thus, if the specified regular rate is $1 an hour, the weekly guaranty cannot be greater than $70. This does not mean that an employee employed pursuant to a guaranteed pay contract under this section may not work more than 60 hours in any week; it means merely that pay in an amount sufficient to compensate for a greater number of hours cannot be covered by the guaranteed pay. If he works in excess of 60 hours he must be paid, for each hour worked in excess of 60, overtime compensation as provided in the contract, in addition to the guaranteed amount.

While the guaranteed pay may not cover more than 60 hours, the contract may guarantee pay for a lesser number of hours. In order for a contract to qualify as a bona fide contract for an employee whose duties necessitate irregular hours of work, the number of hours for which pay is guaranteed must bear a reasonable relation to the number of hours the employee may be expected to work. A guaranty of pay for 60 hours to an employee whose duties necessitate irregular hours of work which can reasonably be expected to range no higher than 50 hours would not qualify as a bona fide contract under this section. The rate specified in such a contract would be wholly fictitious and therefore would not be a "regular rate" as discussed above. When the parties enter into a guaranteed pay contract, therefore, they should determine, as far as possible, the range of hours the employee is likely to work. In deciding the amount of the guaranty they should not choose a guaranty of pay to cover the maximum number of hours which the employee will be likely to work at any time but should rather select a figure low enough so that it may reasonably be expected that the rate will be operative in a significant number of workweeks. Contracts should be re-examined periodically (at least every six months) to determine whether the employee's rate is a bona fide rate in that it has in fact been operative in a significant number of workweeks. If the reasonable expectation of the parties has not been borne out, the contract should be amended accordingly.

The guaranty of pay must be "based on the rates so specified" in the contract. If the contract specifies a regular rate of $1.00, and an overtime rate of $1.50 and guarantees pay for 50 hours, the amount of the guaranty must be $55, if it is to be based on the rates so specified. A guaranty of $75 in such a situation would not, obviously, be based on the rates specified in the contract.

Moreover, a contract which provides a variety of different rates for shift differentials, arduous or hazardous work, stand-by time, piece-rate incentive bonuses, commissions or the like in addition to a specified regular rate and a specified overtime rate with a guaranty of pay of, say, $75 from all sources would not qualify under this section, since the guaranty of pay in such a case is not based on the regular and overtime rates specified in the contract.

(g) *"Approval" of contracts under section 7 (e).* There is no requirement that a contract, to qualify under section 7 (e), must be approved by the Administrator. The question of whether a contract which purports to qualify an employee for exemption under section 7 (e) meets the requirements is a matter for determination by the courts. This determination will in all cases depend not merely on the wording of the contract but upon the actual practice of the parties thereunder. It will turn on the question of whether the duties of the employee in fact necessitate irregular hours, whether the rate specified in the contract is a "regular rate"—that is, whether it was designed to be actually operative in determining the employee's compensation—whether the contract was entered into in good faith, whether the guaranty of pay is in fact based on the regular and overtime rates specified in the contract. While the Administrator does have the authority to issue an advisory opinion as to whether or not a pay arrangement accords with the requirements of section 7 (e) he can do so only if he has knowledge of these facts.

[*] See footnote 49. As the Supreme Court said in the Halliburton case: "In *Belo* itself, the specified basic hourly rate was held to be the actual regular rate because, as to weeks in which employees worked more than 54½ hours, the specified rate determined the amount of compensation actually payable; * * *".

As a guide to employers, it may be helpful to describe a fact situation in which the making of a guaranteed salary contract would be appropriate and to set forth the terms of a contract which would comply, in the circumstances described, with the provisions of section 7 (e). *Example:* An employee is employed as an insurance claims adjuster; because of the fact that he must visit claimants and witnesses at their convenience, it is impossible for him or his employer to control the hours which he must work to perform his duties. During the past six months his hours of work have varied from a low of 30 hours to a high of 58 hours. His average workweek for the period was 48 hours. In about 80 percent of the workweeks he worked less than 52 hours. It is expected that his hours of work will continue to follow this pattern. The parties agree upon a regular rate of $1.30 per hour. In order to provide for the employee the security of a regular weekly income the parties further agree to enter into a contract which provides a weekly guaranty of pay. A guaranty of pay for a workweek somewhere between 48 hours (his average week) and 52 would be reasonable. In the circumstances described, the following contract would be appropriate.

The X company hereby agrees to employ John Doe as a claims adjuster at a regular hourly rate of pay of $1.30 per hour for the first 40 hours in any workweek and at the rate of $1.95 per hour for all hours in excess of 40 in any workweek, with the guarantee that John Doe will receive, in any week in which he performs any work for the company, the sum of $71.50 as total compensation, for all work performed up to and including 50 hours in such workweek.

The foregoing is merely an example and nothing herein is intended to imply that contracts which differ from the example will not meet the requirements of section 7 (e).

§ 778.19 *Computing overtime pay on the rate applicable to the type of work performed in overtime hours (sec. 7 (f) (1) and (2)—(a) The statutory provisions.* Sections 7 (f) (1) and (2) of the act provide:

> No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of forty hours—
>
> (1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or
>
> (2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; * * *
>
> and if (3) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (4) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

The purpose of these provisions is to provide an exception from the requirement of computing overtime pay at time and one-half the regular rate for hours worked after 40 in the workweek and to allow, under specified conditions, a simpler method of computing overtime pay for employees paid on the basis of a piece rate, or at a variety of hourly rates or piece rates, or a combination thereof. This provision is not designed to exclude any group of employees from the overtime benefits of the act. The intent of the provision is merely to simplify the method of computation while insuring the receipt by the affected employees of substantially the same amount of overtime compensation.

First, in order to insure that the method of computing overtime pay permitted in this section will not in any circumstances be seized upon as a device for avoiding payment of the minimum wage due for each hour, the requirement must first be met that the employee's average hourly earnings for the workweek (exclusive of overtime pay and of all other pay which is excluded from the regular rate) are not less than the minimum. This requirement insures that the employer cannot pay subminimum nonovertime rates with a view to offsetting part of the compensation earned during the overtime hours against the minimum wage due for the workweek.

Second, in order to insure that the method of computing overtime pay permitted in this section will not be used to circumvent or avoid the payment of proper overtime compensation due on other sums paid to employees, such as bonuses which are part of the regular rate, the section requires that extra overtime compensation must be properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(b) *Pieceworkers.* Under this section an employee who is paid on the basis of a piece rate for the work performed during nonovertime hours, may agree with his employer in advance of the performance of the work that he shall be paid at the rate of time and one-half this piece rate for each piece produced during the overtime hours. No additional overtime pay will be due under the act provided that the general conditions discussed in paragraph (a) of this section are met and:

(1) The piece rate is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7 (d) (5), (6), or (7);

(3) The number of overtime hours for which time and one-half the piece rate is paid equals or exceeds the number of hours worked in excess of 40 in the workweek; and

(4) The compensation paid for the overtime hours is at least equal to time and one-half the minimum rate ($1.125 per hour) for the total number of hours worked in excess of 40.

The piece rate will be regarded as bona fide if it is the rate actually paid for work performed during the nonovertime hours and if it is sufficient to yield at least the minimum wage per hour.

If a pieceworker works at two or more kinds of work for which different straight time piece rates have been established, and if by agreement he is paid at time and one-half whichever straight time piece rate is applicable to the work performed during the overtime hours, such piece rate or rates must meet all the tests set forth in this paragraph and the general tests set forth in paragraph (a) of this section in order to satisfy the overtime requirements of the act under section 7 (f).

(c) *Hourly workers employed at two or more jobs.* Under section 7 (f) (2) an employee who performs two or more different kinds of work, for which different straight time hourly rates are established, may agree with his employer in advance of the performance of the work that he will be paid during overtime hours time and one-half the rate established for the type of work he is performing during such hours. No additional overtime pay will be due under the act provided that the general requirements set forth in paragraph (a) of this section are met and:

(1) The hourly rate upon which the overtime rate is based is a bona fide rate;

(2) The overtime hours for which the overtime rate is paid qualify as overtime hours under section 7 (d) (5), (6) or (7); and

(3) The number of overtime hours for which the overtime rate is paid equals or exceeds the number of hours worked in excess of 40 in the workweek.

An hourly rate will be regarded as a bona fide rate for a particular kind of work if it is equal to or greater than the minimum and if it is the rate actually paid for such work when performed during the nonovertime hours.

(d) *Combined hourly rates and piece rates.* Where an employee works at a combination of hourly and piece rates, the payment of time and one-half the hourly or piece rate applicable to the type of work being performed during the overtime hours will meet the overtime requirements of the act if the provisions concerning piece rates (as discussed in paragraph (b) of this section) and those concerning hourly rates (as discussed in paragraph (c) of this section) are respectively met.

(e) *Offset hour for hour.* Where overtime rates are paid pursuant to statute or contract for hours in excess of 8 in a day or 40 in a week or in excess of the employees' normal working hours or regular working hours (as under section 7 (d) (6)), or pursuant to an applicable employment agreement for work outside of the hours established in good faith by the agreement as the basic, normal or regular workday (not exceeding 8 hours) or workweek (not exceeding 40 hours) (under section 7 (d) (7)), the requirements of section 7 (f) (1) and 7 (f) (2) will be met if the number of such hours during which overtime rates were paid equals or exceeds the number of hours

worked in excess of 40 in the workweek. It is not necessary to determine whether the total amount of compensation paid for such hours equals or exceeds the amount of compensation which would be due at the applicable rates for work performed during the hours after the fortieth in any workweek.

§ 778.20 *Computing overtime pay on an "established" rate (sec. 7 (f) (3)).* Section 7 (f) (3) of the act provides:

(f) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of forty hours if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to an employee for the number of hours worked by him in such workweek in excess of forty hours * * *

(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: *Provided*, That the rate so established shall be authorized by regulation by the Administrator as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if (1) the employee's average hourly earnings for the workweek exclusive of payments described in paragraphs (1) through (7) of subsection (d) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

Regulations issued pursuant to this section will be published in the FEDERAL REGISTER as Part 548 of this chapter. Payments made in conformance with the regulations in this part satisfy the overtime requirements of the act.

PAY PLANS WHICH CIRCUMVENT THE ACT

§ 778.21 *Artificial regular rates.* Since the term "regular rate" is defined to include all remuneration for employment (except statutory exclusions) whether derived from hourly rates, piece rates, production bonuses or other sources, the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the "regular rate" to an employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial "regular" rate will not result in compliance with the overtime provisions of the act.

It may be helpful to describe a few schemes that have been attempted and to indicate the pitfalls inherent in the adoption of such schemes. The device of the varying rate which decreases as the length of the workweek increases has already been discussed in § 778.9 (a) (6). It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of 40 cannot be lower than the rate paid for the first 40 hours nor can the hourly rate vary from week to week inversely with the length of the workweek. It has been pointed out that, except in limited situations under contracts which qualify under section 7 (e), it is not possible for an employer lawfully to agree with his employees that they will receive the same total sum, comprising both straight time and overtime compensation, in all weeks without regard to the number of overtime hours (if any) worked in any workweek. The result cannot be achieved by the payment of a fixed salary or by the payment of a lump sum for overtime or by any other method or device.

Where the employee is hired at a low hourly rate supplemented by facilities furnished by the employer, bonuses (other than those excluded under section 7 (d)), commissions, pay ostensibly (but not actually) made for idle hours, or the like, his regular rate is not the hourly rate but is the rate determined by dividing his total compensation from all these sources in any workweek by the number of hours worked in the week. Payment of overtime compensation based on the hourly rate alone in such a situation would not meet the overtime requirements of the act.

One scheme to evade the full penalty of the act was that of setting an arbitrary low hourly rate upon which overtime compensation at time and one-half would be computed for all hours worked in excess of 40; coupled with this arrangement was a guarantee that if the employee's straight time and overtime compensation, based on this rate, fell short, in any week, of the compensation that would be due on a piece rate basis of x cents per piece, the employee would be paid on the piece rate basis instead. The hourly rate was set so low that it never (or seldom) was operative. This scheme was found by the Supreme Court to be violative of the overtime provisions of the act in the case of Walling v. Youngerman-Reynolds Hardwood Co., 325 U. S. 427. The regular rate of the employee involved was found to be the quotient of total piece rate earnings paid in any week divided by the total hours worked in such week.

The scheme is no better if the employer agrees to pay straight time and overtime compensation on the arbitrary hourly rates and to make up the difference between this total sum and the piece-rate total in the form of a bonus to each employee.[5]

§ 778.22 *The "split-day" plan.* Another device designed to evade the overtime requirements of the act was a plan known as the "Poxon" or "split-day" plan. Under this plan the normal or regular workday is artificially divided into two portions one of which is arbitrarily labeled the "straight time" portion of the day and the other the "overtime" portion. Under such a plan, an employee who would ordinarily command an hourly rate of pay well in excess of the minimum for his work is assigned a low hourly rate (often the minimum) for the first hour (or the first 2 or 4 hours) of each day. This rate is designated as the regular rate; time and one-half such rate is paid for each additional hour worked during the workday. Thus, for example, an employee is arbitrarily assigned an hourly rate of $1.00 per hour under a contract which provides for the payment of so-called "overtime" for all hours in excess of 4 per day. Thus, for the normal or regular 8-hour day the employee would receive $4 for the first 4 hours and $6 for the remaining 4 hours; a total of $10 for 8 hours. (This is exactly what he would receive at the straight-time rate of $1.25 per hour.) On the sixth 8-hour day the employee likewise receives $10 and the employer claims to owe no additional overtime pay under the statute since he has already compensated the employee at "overtime" rates for 20 hours of the workweek.

Such a division of the normal 8-hour workday into 4 straight-time hours and 4 overtime hours is purely fictitious. The employee is not paid at the rate of $1.00 an hour and the alleged overtime rate of $1.50 per hour is not paid for overtime work. It is not geared either to hours "in excess of the employee's normal working hours or regular working hours" (section 7 (d) (6)) or for work "outside of the hours established in good faith * * * as the basic, normal or regular workday" (section 7 (d) (7)) and it cannot therefore qualify as an overtime rate. The regular rate of pay of the employee in this situation is $1.25 per hour and he is owed additional overtime compensation, based on this rate, for all hours in excess of 40. This rule was settled by the Supreme Court in the case of Walling v. Helmerich & Payne, 323 U. S. 37, and its validity has been re-emphasized by the definition of the term "regular rate" in section 7 (d) of the act as amended.

§ 778.23 *Pseudo-bonuses*—(a) *Artificially labeling part of the regular wages a "bonus."* The term "bonus" is properly applied to a sum which is paid as an addition to total wages, usually because of extra effort of one kind or another, or as a reward for loyal service or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract.

For example, if an employer has agreed to pay an employee $50.00 a week without regard to the number of hours worked, the regular rate of pay of the employee is determined each week by dividing the $50.00 salary by the number of hours worked in the week. The situation is not altered if the employer continues to pay the employee the same $50.00 each week but arbitrarily breaks the sum down into wages for the first 40 hours at an hourly rate of 75 cents an hour, overtime compensation at $1.125 per hour and labels the balance a "bonus" (which will vary from week to week, becoming smaller as the hours increase and vanishing entirely in any week in which the employee works 57½ hours or more). The situation is in no way bettered if the employer, standing by the logic of his labels, proceeds to compute and pay overtime compensation due on this "bonus" by prorating it back over the hours of

[5] For further discussion of the refinements of this plan see § 778.23.

the workweek. Overtime compensation has still not been properly computed for this employee at his regular rate.

An illustration of how the plan works over a three-week period may serve to illustrate this principle more clearly:

In the first week the employee works 40 hours and receives $50.00. The books show he has received $30.00 (40 hours×75 cents an hour) as wages and $20.00 as bonus. No overtime has been worked so no overtime compensation is due.

In the second week he works 50 hours and receives $50.00. The books show he has received $30.00 for the first 40 hours and $11.25 (10 hours×$1.125 an hour) for the 10 hours over 40, or a total of $41.25 as wages, and the balance as a bonus of $8.75. Overtime compensation is then computed by the employer by dividing $8.75 by 50 hours to discover the average hourly increase resulting from the bonus—18 cents per hour—and half this rate is paid for the 10 overtime hours—$1.80. This is improper. The employee's regular rate in this week is $1.00 per hour. He is owed $55.00, not $51.80.

In the third week the employee works 55 hours and is paid $50.00. The books show that the employee received $30.00 for the first 40 hours and $16.88 (15 hours×$1.125 per hour) for the 15 hours over 40, or a total of $46.88, and the balance as a bonus of $3.22. Overtime pay due on the "bonus" is found to be 45 cents. This is improper. The employee's regular rate in this week is 91 cents and he is owned $56.82, not $50.45.

Similar schemes have been devised for piece-rate employees. The method is the same. An employee is assigned an arbitrary hourly rate (usually the minimum) and it is agreed that his straight-time and overtime earnings will be computed on this rate but that if these earnings do not amount to the sum he would have earned had his earnings been computed on a piece-rate basis of "x" cents per piece, he will be paid the difference as a "bonus". This subterfuge does not serve to conceal the fact that this employee is actually compensated on a piece-rate basis, that there is no bonus and that his regular rate is the quotient of piece-rate earnings divided by hours worked.[52]

The general rule may be stated that whenever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and the rules for determining overtime due on bonuses do not apply.

(b) *Pseudo "percentage bonuses".* The device does not improve when it becomes more complex. If no true bonus in a flat sum amount can be legitimately separated out of the employee's wages, certainly no bonus in the form of a percentage or total earnings can be so derived. Yet some employers, seeking to evade the overtime requirement of the act entirely while apparently complying with every requirement, have devised schemes of this kind. Like the employer described in the preceding subsection, such an employer pays his employee $50 a week without regard to the number of hours worked. He also sets up a fictitious regular rate of 75 cents an hour. In a week in which the employee works 50 hours his records show the following:

(The material in brackets does not usually appear in the final records):

Straight time for 40 hours @ 75¢ an hour	$30.00
Overtime for 10 hours @ $1.125 an hour	11.25
	41.25
[$50—$41.25=$8.75, total amount to be distributed as a bonus. $8.75/$41.25=21.2%]	
Percentage of total earnings bonus @ 21.2% of $41.25	8.75
Total	50.00

Obviously this employee can no more be said to be receiving proper overtime than the employee in the previous example. This employee's regular rate in this week is $1.00 per hour and he is owed a total of $55 for the week.

No better claim of compliance can be made by an employer who arbitrarily pieces out a bonus from all or a part of group wages. The scheme tends to be more complex, but the principle is the same and the same results follow.

One relatively simple example of such a scheme is the following:

Two employees are hired as salesmen on an hourly-rate-plus-commission basis. Each is hired at the rate of $1.00 an hour for the first 40 hours and $1.50 an hour for overtime and, in addition, is entitled to a share in commissions earned by each at the rate of one percent of sales. In a given week one employee works 40 hours and the other works 50. Together they sell $950 worth of merchandise and are thus entitled to $9.50 as commissions. In order to avoid payment of overtime on the commissions, the employer decides to distribute the $9.50 in the form of a percentage of total earnings. The total wages of the two employees is $95.00 in the particular week. The $9.50 commissions represent 10 percent of this figure. The employer therefore pays a 10-percent "bonus" to each employee on his total earnings. One receives $4.00 as bonus, the other $5.50. The employer claims that no additional overtime is due because the "bonus" was a percentage of total earnings and the percentage was determined before the amount due any individual employee had been determined.

If the commissions were a bonus at all, the method of distribution might be proper. But a bonus, as has been stated, is a sum paid in addition to regular wages and not as a part of such wages. The employees have contracted to work on a wage-plus-group-commission basis. No extra pay—over and above the contract wage—is involved. As a regular part of their duties, the employees make sales and regularly receive a one-percent commission on the amount of the sale. Moreover, since the employees are owed the commissions in an amount related only to the amount of total sales and without regard to the number of hours worked, no part of such commissions is paid as overtime compensation.

In the example just given the employer sought only to relieve himself of the burden of paying proper overtime on part of the wages. The example must grow more complex but the principle does not change when the employer seeks to relieve himself of the entire burden of overtime by a fictitious division of regular group wages into hourly earnings and "bonus." This scheme is usually tried with respect to employees who work solely on a group piece rate or group commission basis. For simplicity we will assume that the two employees in the previous example receive no base hourly rate but are working solely on a commission basis—11 percent of total sales. In order for the scheme to function the employer must provide a minimum hourly guarantee. The minimum rate of 75 cents is best suited to his purpose for it provides the greatest leeway as to the number of hours that may be worked without payment of any additional overtime compensation whatever, but purely for simplicity in computation, the rate of $1.00 will be used in this example. In a week in which the total sales amount to $950 the two employees are together entitled to $104.50 (11%). They will receive this amount regardless of the number of hours they have worked individually or collectively. If they work the same number of hours each will get half—$52.25. This would be true whether the hours worked by each were 40, 43, 45 or 48 hours. Only the bookkeeping is altered. If each works 40 hours the record will show for each:

Wages @ $1.00 per hour	$40.00
Bonus	12.25
Total	52.25

If each works 45 hours, the record will show:

Wages @ $1 per hour for 40 hours	$40.00
Overtime pay @ $1.50 per hour for 5 hours	7.50
Bonus @ 10% of total earnings (10% of $47.50)	4.75
Total	52.25

The total amount earned by each employee is exactly the same in each of the two weeks because it is determined not by the hours he works nor by the established rate but only by two unrelated factors: the total amount of sales and the relation between his hours of work and those of the other employees;—not the total hours worked by either or both but merely the ratio of the two.

This will become apparent if we look at a workweek in which one works 40 hours and the other 50. The books then read this way:

1st employee:	
Wages @ $1 per hour for 40 hours	$40.00
Bonus @ 10% of total earnings	4.00
Total	44.00
2d employee:	
Wages @ $1 per hour for 40 hours	$40.00
Overtime pay @ $1.50 per hour for 10 hours	15.00
Bonus @ 10% of total earnings (10% of $55)	5.50
Total	60.50

Note that in each case, as long as the amount of sales remains constant, the two employees together earn $104.50 regardless of whether either works overtime, or both do, and regardless of the number of hours of overtime worked. The first employee worked 40 hours in the first week and received $52.25, yet he received only $44 for a 40-hour week in the third week of the series. The only reason for this was that in the third

[52] See Walling v. Youngerman-Reynolds Hardwood Co. 325 U. S. 419, where this scheme was struck down by the Supreme Court.

week the other employee worked 10 hours of overtime for which someone had to pay. The employer had invented the scheme so that he, the employer, would not have to pay. The burden would devolve in part on the overtime worker himself. The latter worked 10 hours overtime yet he received only $8.35 more than he received in a 40-hour week.

The system is an ingenious bookkeeping device but obviously it must fail of its purpose. It is only a more elaborate method of claiming that a rate—whether a salary or a piece rate or a commission—somehow "includes" overtime even though it is paid regularly when no overtime is worked and without regard to the amount of overtime worked.

The examples dealt with two employees. It is the same for two as for one or for twenty. A "bonus" which is derived by subtraction of compensation, based on an assigned rate, from the total amount agreed to be paid to an employee or a group is not a bonus and cannot be treated as such.

Regardless of bookkeeping devices, the regular rate of pay of employees employed on group piece rate or commissions is determined first by ascertaining the total amount which is due to a particular employee under the contract and then dividing this sum by the number of hours he worked in the week. Extra overtime compensation, at half the rate thus determined, is due for each hour in excess of 40.

MISCELLANEOUS

§ 778.24 *Veterans' subsistence allowances.* Subsistence allowances paid under Public Law 346 (commonly known as the G. I. Bill of Rights) to a veteran employed in on-the-job training program work may not be used to offset the wages to which he is entitled under the Fair Labor Standards Act. The subsistence allowances provided by Public Law 346 for payment to veterans are not paid as compensation for services rendered to an employer nor are they intended as subsidy payments for such employer. In order to qualify as wages under either section 6 or section 7 of the Fair Labor Standards Act, sums paid to an employee must be paid by or on behalf of the employer. Since veterans' subsistence allowances are not so paid, they may not be used to make up the minimum wage or overtime pay requirements of the act nor are they included in the regular rate of pay under section 7.

§ 778.25 *Special overtime provisions under section 7 (b).* Section 7 (b) of the act provides a partial exemption from the overtime provisions under subsections (1) and (2) for employees employed pursuant to certain collective bargaining agreements[45] and in subsection (3), for a period of not more than fourteen workweeks in the aggregate in any calendar year, for employees in an industry found by the Administrator to be of a seasonal nature.[46] The exemption, in each case, is conditioned upon the payment to employees of overtime compensation at not less than one and one-half times their regular rate of pay for employment "in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be."

Under this provision, where an employee works both in excess of twelve hours in a day and in excess of fifty-six hours in the aggregate in a particular workweek, the employer must pay overtime compensation computed on either the daily or the weekly basis, whichever is greater, but not both. It may be helpful to illustrate this opinion by specific examples.

(a) Suppose an employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	16	14	14	14	10	0	0

On a daily basis the employee is entitled to 8 hours of overtime pay, or a total of $70, for the week (12 hours @ $1 plus 2 hours @ $1.50 for each of the first 4 days ($60) plus 10 hours @ $1 for the fifth day). On a weekly basis the employee is entitled to 10 hours of overtime pay, or a total of $71, for the week (56 hours @ $1 plus 10 hours @ $1.50). The employer must pay $71 to satisfy the requirements of the act.

(b) Suppose the employee paid $1 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	16	14	14	14	6	0	0

On a daily basis the employee is entitled to 10 hours of overtime pay, or a total of $69, for the week. On a weekly basis the employee is entitled to 8 hours of overtime pay, or a total of $68, for the week (56 hours @ $1 plus 8 hours @ $1.50). The employer must pay $69 to satisfy the requirements of the act.

EFFECTIVE DATE; RETROACTIVITY

§ 778.26 *Effective date.* The effective date of the amendments provided by section 7 (d), (e), (f) and (g) is January 25, 1950.

§ 778.27 *Retroactive effect.* Section 16 (e) of Public Law 393 (81st Cong., 1st Session—Chap. 736) provides:

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or after the effective date of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had section 7 (d) (6) and (7) and section 7 (g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

For the period between July 20, 1949, and January 25, 1950, the provisions of the former section 7 (e) of the act, as added by the act of July 20, 1949 (Pub. No. 177, 81st Cong., 1st Sess.), provided virtually identical protection.

Signed at Washington, D. C. this 31st day of January 1950.

WM. R. MCCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 50-973; Filed, Feb. 3, 1950; 8:45 a. m.]

[45] Discussed in Part 781 of this chapter.
[46] Discussed in Part 780, Subpart A of this chapter.

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter A—Aid of Civil Authorities and Public Relations

PART 512—PRISONERS

MAIL

Paragraph (a) of § 512.3 is changed to read as follows:

§ 512.3 *Mail—(a) Outgoing.* (1) Each sentenced prisoner confined in an Army confinement facility will be permitted to write authorized persons a minimum of one letter each week, except those in isolation or solitary confinement, who will be permitted to write at least one letter each 2 weeks. All letters will be submitted unsealed for inspection.

(2) No limitation will be placed on the number of letters which may be written by prisoners not serving sentences to confinement. All letters will be submitted unsealed for inspection.

* * * * * *

[C2, AR 600-375, Jan. 16, 1950] (Sec. 2, 38 Stat. 1085, as amended; 10 U. S. C. 1453. Interprets or applies secs. 1, 2, 38 Stat. 1074, 1075, 1085, 1086; 10 U. S. C. 1455, 1457, 1457a, 1457b, 1458)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. A.,
The Adjutant General.

[F. R. Doc. 50-1007; Filed, Feb. 3, 1950; 8:51 a. m.]

Chapter VII—Department of the Air Force

PART 812—PRISONERS

MAIL

CROSS REFERENCE: For amendment of regulations with respect to prisoners, see Part 512 of Chapter V, *supra*, which was made applicable to the Department of the Air Force at 13 F. R. 8751.

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 27—LETTER, CALL, AND LOCK BOXES, AND KEY DEPOSITS

RENT OF BOXES

In § 27.7 *Rent of boxes* (13 F. R. 8881) amend paragraph (c) to read as follows:

(c) *Payment of rent by Federal Government agencies.* (1) Agencies of the Federal Government through their proper officers are permitted to pay rental on post office boxes for not more than one full fiscal year in advance, or for the remaining one, two, or three quarters of each fiscal year. When boxes have been rented under these conditions, postmasters shall give notice on Form 3908, card notice of box rent due, 15 days in advance of the expiration of the period for which rental has been paid. A notation showing the amount of rental for one year and the post office box number shall be placed in the upper right corner of Form 3908. The form

service or minimum schedule of hours or days of work which are specified in the plan or trust, and further, that eligibility need not extend to officers of the employer; or

(2) To such classifications of employees as the employer may designate with the approval of the Administrator upon a finding, after notice to interested persons, including employee representatives, and an opportunity to present their views either orally or in writing, that it is in accord with the meaning and intent of the provisions of section 7 (d) (3) (b) of the act and this part. The Administrator may give such notice by requiring the employer to post a notice approved by the Administrator for a specified period in a place or places where notices to employees are customarily posted or at such other place or places designated by the Administrator, or he may require notice to be given in such other manner as he deems appropriate.

(e) The amounts paid to individual employees are determined in accordance with a definite formula or method of calculation specified in the plan or trust. The formula or method of calculation may be based on any one or more of such factors as straight-time earnings, total earnings, base rate of pay of the employee, straight-time hours or total hours worked by employees, or length of service, or distribution may be made on a per capita basis.

(f) An employee's total share determined in accordance with paragraph (e) of this section may not be diminished because of any other remuneration received by him.

(g) Provision is made either for payment to the individual employees of their respective shares of profits within a reasonable period after the determination of the amount of profits to be distributed, or for the irrevocable deposit by the employer of his employees' distributive shares of profits with a trustee for deferred distribution to such employees of their respective shares after a stated period of time or upon the occurrence of appropriate contingencies specified in the plan or trust: *Provided, however* That the right of an employee to receive his share is not made dependent upon his continuing in the employ of the employer after the period for which the determination of profits has been made.

§ 549.2 *Disqualifying provisions.* No plan or trust which contains any one of the following provisions shall be deemed to meet the requirements of a bona fide profit-sharing plan or trust under section 7 (d) (3) (b) of the act:

(a) If the share of any individual employee is determined in substance on the basis of attendance, quality or quantity of work, rate of production, or efficiency;

(b) If the amount to be paid periodically by the employer into the fund or trust to be distributed to the employees is a fixed sum;

(c) If periodic payments of minimum amounts to the employees are guaranteed by the employer;

(d) If any individual employee's share, by the terms of the plan or trust, is set at a predetermined fixed sum or is so limited as to provide in effect for the payment of a fixed sum, or is limited to or set at a predetermined specified rate per hour or other unit of work or worktime;

(e) If the employer's contributions or allocations to the fund or trust to be distributed to the employees are based on factors other than profits such as hours of work, production, efficiency, sales or savings in cost.

§ 549.3 *Distinction between plan and trust.* As used in this part:

(a) "Profit-sharing plan" means any such program or arrangement as qualifies hereunder which provides for the distribution by the employer to his employees of their respective shares of profits;

(b) "Profit-sharing trust" means any such program or arrangement as qualifies under this part which provides for the irrevocable deposit by the employer of his employees' distributive shares of profits with a trustee for deferred distribution to such employees of their respective shares.

§ 549.4 *Petition for amendment of regulations.* Any person wishing a revision of any of the terms of the foregoing regulations in this part 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 in this part 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 in support of or in opposition to the proposed changes.

Signed at Washington, D. C., this 3d day of June 1953.

WM. R. McCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 53-5121; Filed, June 9, 1953; 8:46 a. m.]

PART 778—OVERTIME COMPENSATION

BONUSES; BENEFIT PLANS

Pursuant to authority under the Fair Labor Standards Act of 1938, as amended, § 778.6 (g) of this part is hereby revised to read as follows, effective upon publication of this document in the FEDERAL REGISTER:

§ 778.6 *Bonuses*—* * *

(g) *Benefit plans; including profit-sharing plans or trusts providing similar benefits.* (1) Section 7 (d) (4) of the act provides that the term "regular rate" shall not be deemed to include:

contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees * * * Such sums may not, however, be credited toward overtime compensation due under the act.

(2) Plans for providing benefits of the kinds described in section 7 (d) (4) are referred to herein as "benefit plans." It is section 7 (d) (4) which governs the status for regular rate purposes of any contributions made by an employer pursuant to a plan for providing the described benefits. This is true irrespective of any other features the plan may have. Thus, it makes no difference whether or not the benefit plan is one financed out of profits or one which by matching employee contributions or otherwise encourages thrift or savings. Where such a plan or trust is combined in a single program (whether in one or more documents) with a plan or trust for providing profit-sharing payments to employees, the profit-sharing payments may be excluded from the regular rate if they meet the requirements of the Profit-Sharing Regulations, Part 549 of this chapter, and the contributions made by the employer for providing the benefits described in section 7 (d) (4) of the act may be excluded from the regular rate if they meet the tests set forth in this paragraph.

(3) In order for an employer's contribution to qualify for exclusion from the regular rate under section 7 (d) (4) the following conditions must be met:

(i) The contributions must be made pursuant to a specific plan or program adopted by the employer, or by contract as a result of collective bargaining, and communicated to the employees. This may be either a company-financed plan or an employer-employee contributory plan.

(ii) The primary purpose of the plan must be to provide systematically for the payment of benefits to employees on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, and the like.

(iii) In the plan or trust, either:

(*a*) The benefits must be specified or definitely determinable on an actuarial basis; or

(*b*) There must be both a definite formula for determining the amount to be contributed by the employer and a definite formula for determining the benefits for each of the employees participating in the plan; or

(*c*) There must be both a formula for determining the amount to be contributed by the employer and a provision for determining the individual benefits by a method which is consistent with the purposes of the plan or trust under section 7 (d) (4) of the act.

(iv) The employer's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the employer be able to recapture any of the contributions paid in nor in any way divert the

funds to his own use or benefit.[27a] Although an employer's contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the employer of sums which he has paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the employer. In such a case the return by the insurance company to the employer of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the employer, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan.

(v) The plan must not give an employee the right to assign his benefits under the plan nor the option to receive any part of the employer's contributions in cash instead of the benefits under the plan: *Provided, however* That if a plan otherwise qualifies as a bona fide benefit plan under section 7 (d) (4) of the act, it will still be regarded as a bona fide plan even though it provides, as an incidental part thereof, for the payment to an employee in cash of all or a part of the amount standing to his credit (*a*) at the time of the severance of the employment relation due to causes other than retirement, disability, or death, or (*b*) upon proper termination of the plan, or (*c*) during the course of his employment under circumstances specified in the plan and not inconsistent with the general purposes of the plan to provide the benefits described in section 7 (d) (4) of the act.

(4) *Plans under section 165 (a) of the Internal Revenue Code.* Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 165 (a) of the Internal Revenue Code, in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in subparagraphs (3) (i) (iii) (iv) and (v) of this paragraph.

(5) It should be emphasized that it is the employer's contribution made pursuant to the benefit plan that is excluded from or included in the regular rate according to whether or not the requirements set forth in subparagraph (3) of this paragraph are met. If the contribution is not made as provided in section 7 (d) (4) or if the plan does not qualify as a bona fide benefit plan under that section, the contribution is treated the same as any bonus payment which is part of the regular rate of pay, and at the time the contribution is made the amount thereof must be apportioned back over the workweeks of the period during which it may be said to have accrued. Overtime compensation based upon the resultant increases in the regular hourly rate is due for each overtime hour worked during any workweek of the period. The subsequent distribution of accrued funds to an employee on account of severance of employment (or for any other reason) would not result in any increase in his regular rate in the week in which the distribution is made.

(52 Stat. 1060, as amended; 29 U. S. C. 201–219)

Signed at Washington, D. C., this 3d day of June 1953.

WM. R. MCCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 53-5122; Filed, June 9, 1953; 8:47 a. m.]

[27a] It should also be noted that in the case of joint employer-employee contributory plans, where the employee contributions are not paid over to a third person or to a trustee unaffiliated with the employer, violations of the act may result if the employee contributions cut into the required minimum or overtime wages. See the interpretative bulletin on Methods of Payment, Part 777 of this chapter, §§ 777.10, 777.11, 777.12 and 777.13.

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XI—Defense Electric Power Administration, Department of the Interior

[DEPA Order EO-3, Revocation]

EO-3—NONUTILITY ELECTRIC POWER PROJECTS; INFORMATION TO BE FILED

REVOCATION

Order EO-3 is hereby revoked. This revocation does not relieve any person of any obligation or liability incurred under EO-3, nor deprive any person of any rights received or accrued under said order prior to the effective date of this revocation.

(64 Stat. 816; 50 U. S. C. App. 2154)

This revocation shall take effect immediately.

JAMES F DAVENPORT,
Administrator
Defense Electric Power Administration.

[F. R. Doc. 53-5182; Filed, June 9, 1953; 8:54 a. m.]

Chapter XXI—Office of Rent Stabilization, Economic Stabilization Agency

[Rent Regulation 1, Amdt. 143, to Schedule A]

[Rent Regulation 2, Amdt. 141 to Schedule A]

RR 1—HOUSING

RR 2—ROOMS IN ROOMING HOUSES AND OTHER ESTABLISHMENTS

SCHEDULE A—DEFENSE-RENTAL AREAS

TEXAS

Effective June 10, 1953, Rent Regulation 1 and Rent Regulation 2 are amended so that item 303 of Schedules A reads as set forth below.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

Issued this 5th day of June 1953.

GLENWOOD J. SHERRARD,
Director of Rent Stabilization.

(303) [Revoked and decontrolled.]

These amendments decontrol the following on the initiative of the Director of Rent Stabilization under section 204 (c) of the act:

The Howard County Defense-Rental Area in the State of Texas.

[F. R. Doc. 53-5143; Filed, June 9, 1953; 8:51 a. m.]

[Rent Regulation 3, Amdt. 135 to Schedule A]

[Rent Regulation 4, Amdt. 78 to Schedule A]

RR 3—HOTELS

RR 4—MOTOR COURTS

SCHEDULE A—DEFENSE-RENTAL AREAS

TEXAS

Effective June 10, 1953, Rent Regulation 3 and Rent Regulation 4 are amended so that item 303 of Schedules A reads as set forth below.

(Sec. 204, 61 Stat. 197, as amended; 50 U. S. C. App. Sup. 1894)

Issued this 5th day of June 1953.

GLENWOOD J. SHERRARD,
Director of Rent Stabilization.

(303) [Revoked and decontrolled.]

These amendments decontrol the following on the initiative of the Director of Rent Stabilization under section 204 (c) of the act:

The Howard County Defense-Rental Area in the State of Texas.

[F. R. Doc. 53-5144; Filed, June 9, 1953; 8:51 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans' Administration

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

SUBPART E—VETERANS' READJUSTMENT ASSISTANCE ACT OF 1952

MISCELLANEOUS AMENDMENTS

1. In § 21.2066, paragraph (f) (1) is amended and a new paragraph (h) (4) is added as follows:

§ 21.2066 *Measurement of full- or part-time courses.* * * *

(f) *Law course.* (1) An accredited law course pursued in an accredited law school for the LL.B. degree where, as is usual, the units of credit are of greater value than the standard units of credit for other courses leading to undergraduate degrees in other schools shall be measured as in paragraph (e) of this section, except that an accredited 4-year night law course unless approved as a full-time course pursuant to the standards established by the American Bar

Association shall be considered part time and shall be measured as not more than ¾ time.

* * * * *

(h) *Cooperative course.* * * *

(4) Most cooperative courses of college level are organized on a 5-year plan and usually include a period devoted exclusively to academic instruction occurring at both the beginning and the end of the course, such periods being the equivalent to at least a semester in length. The intervening period—usually 3 years or more—consists of a series of cycles of relatively equal alternating periods of classroom instruction and occupational experience, i. e., during this period the institutional portion of the course is supplemented by on-the-job training. For example, in one course the first period extending from September to April of the freshman year is devoted to academic instruction only. Following the series of cycles of alternating classroom instruction and occupational experience the final 6 months of the senior year are devoted exclusively to classroom instruction. In another course the first 2 school years and the final semester of the fifth year are devoted exclusively to classroom instruction. When the course is not comprised in its entirety of cycles of alternating academic instruction and occupational experience, the veteran shall receive the education and training allowance set forth in § 21.2052 (b) for that portion of the course during which the on-the-job training supplements the institutional portion, that is, for that portion consisting of cycles of alternating academic instruction and occupational experience. The veteran shall receive the education and training allowance set forth in § 21.2052 (a) for those periods equivalent to at least a semester in length which are devoted exclusively to academic instruction and which either precede or follow the series of cycles. Where the course is comprised in its entirety of cycles of alternating academic instruction and occupational experience or where the period devoted exclusively to academic instruction at the beginning or end of the course is less than the equivalent of a semester in length, the veteran shall be paid the education and training allowance set forth in § 21.2052 (b) If the veteran interrupts his training under the law for that part of a cycle devoted to occupational experience, he shall not receive any education and training allowance during the period of such interruption, and the fact of such interruption will not operate to make the veteran entitled to the rate set forth in § 21.2052 (a) for the part of the cycle devoted exclusively to academic instruction.

* * * * *

2. In § 21.2151, paragraphs (d) and (e) are amended and a new paragraph (f) is added as follows:

§ 21.2151 *Approval of courses under Public Law 550, 82d Congress.* * * *

(d) The assistant administrator for vocational rehabilitation and education is hereby delegated the authority to approve or disapprove, subject to the provisions of the law and Veterans' Administration regulations, the applications for approval of courses of education or training which are submitted for approval by the Administrator under the provisions of paragraph (c) of this section. The manager of the regional office is hereby delegated like authority to approve or disapprove, subject to review on appeal to the assistant administrator for vocational rehabilitation and education, the applications for courses of education or training offered by institutions or establishments within the area of his jurisdiction which are sponsored by or are under the control of a Federal agency in the following instances:

(1) In all local installations of a Federal agency which does not have standard training programs applicable to all installations but which allows the local installations to develop their own courses of apprentice or other on-the-job training.

(2) In all educational institutions, including hospitals which offer residency, internship, nursing, or technician courses.

(e) Applications for approval of courses as provided in paragraph (d) of this section shall be submitted in accordance with the law and Veterans' Administration regulations and shall contain the information as required by Veterans' Administration regulations with respect to applications to a State approving agency.

(f) Upon notification that the appropriate State approving agency does not intend to act upon the application of any educational institution or training establishment desiring to offer education or training under the law, such institution or establishment may submit to the Administrator an appropriate application for approval. Such application should be supported by explanation of the reasons for failure of the State approving agency to act.

3. In § 21.2153, paragraph (b) (5) is amended to read as follows:

§ 21.2153 *Reimbursement of expenses under Public Law 550, 82d Congress.* * * *

(b) *Reimbursement.* * * *

(5) *On-the-job and apprentice training courses.* The law does not authorize the Veterans' Administration to reimburse a State or Federal agency for expenses incurred by such agency which are in connection with duties normally a function and responsibility of the State or Federal Government or agency thereof and which would normally be performed without reference to the veterans' program. Except as provided in this subparagraph, State approving agencies will be reimbursed for necessary salaries and travel expense in connection with the inspection, approval, and supervision of establishments offering apprentice or other on-the-job training courses to veterans enrolled under this law and for furnishing at the request of the Veterans' Administration any other services in connection with Title II of this law. Where apprentice courses are registered with and are under the supervision of either a State Apprenticeship agency or the Federal Bureau of Apprenticeship, and where approval or supervisory visits in addition to those, if any, made under the regular State or Federal program to establishments offering such courses under Public Law 550 are made by personnel of the State approving agency, the appropriate State approving agency will be reimbursed for the necessary salaries and travel expense for making one such visit each year and for any additional visits made at the request of the Veterans' Administration. Where the designated State approving agency for the approval of apprenticeship courses is the State apprenticeship agency, reimbursement for services in connection with apprentice programs will be made for the clerical salary expense incurred in processing the applications submitted by training establishments and furnishing notices of approval as provided in § 21.2207.

* * * * *

4. In § 21.2203, paragraph (a) (4) (iii) is amended to read as follows:

§ 21.2203 *Approval of accredited courses.*—(a) *Accredited courses.* * * *

(4) * * *

(iii) Credit for the course is awarded in terms of standard semester or quarter hours.

(Sec. 281, 63 Stat. 663)

This regulation is effective June 10, 1953.

[SEAL] H. V. STIRLING,
Deputy Administrator.

[F. R. Doc. 53-5115; Filed, June 9, 1953; 8:45 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 31—UNIFORM SYSTEM OF ACCOUNTS, CLASS A AND B TELEPHONE COMPANIES

EDITORIAL CHANGES

In the matter of amendment of Part 31 of the Commission's rules and regulations to effect certain editorial changes therein.

The Commission having under consideration the desirability of making certain editorial changes in Part 31 of its rules and regulations; and

It appearing, that the amendments adopted herein are editorial in nature, and therefore, prior publication of notice of proposed rule making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendments may become effective immediately; and

It further appearing, that the amendments adopted herein are issued pursuant to authority contained in sections 4 (i) 5 (d) (1) and 303 (r) of the Communications Act of 1934, as amended,

and paragraph F-6 of the Commission's Order Defining the Functions and Establishing the Organizational Structure of the Office of the Secretary dated February 14, 1952, as amended:

It is ordered, This 2d day of June 1953 that, effective immediately, Part 31 of the Commission's rules and regulations is revised as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: June 3, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

Directions for altering text:

Reference	Delete	Substitute
Section designated as § 31.09-9A	31.09-9A	31.01-9A.
In the last line of paragraph (a) of § 31.1-13	31.1-16a	31.1-16A.
Four places in paragraph (d) (1) of § 31.122	units of property	retirement units
In eighth line of paragraph (d) (1) of § 31.122	31.2-25 (d)	31.2-25 (e).
In fourth line of § 31.168	debts	debt.
In the last line of paragraph (a) of § 31.172	31.2-25 (e)	31.2-25 (f).
In sixth line of paragraph (b) of § 31.173	of	or.
In the last line of paragraph (a) of § 31.211	31.2-25 (c)	31.2-25 (d).
Item preceding "Frames" in list for § 31.221	Generators	Engines.
In the last line of § 31.277	31.2-25 (f)	31.2-25 (g).
In third line of § 31.401	§§ 31.2-25 (c), 31.2-25 (f)	§ 31.2-25 (d) and (g).
In third line of § 31.410	§ 31.2-25 (c), (f)	§ 31.2-25 (d) and (g).
In the tenth item of § 31.413	31.1-16a	31.1-16A.
In the fourteenth item of § 31.620	attendance	attendants.
In the first line of Note B to § 31.649	of	or.
In second line of paragraph (c) of § 31.672	plant	plan.
Under *"232 Station installations"* of § 31.8	(b)	(c).
Under *"233 Drop and block wires"* of § 31.8	(b)	(c).

[F. R. Doc. 53-5140; Filed, June 9, 1953; 8:50 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Bureau of Animal Industry

[9 CFR Parts 112, 114, 117, 119]

VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS, AND CERTAIN ORGANISMS AND VECTORS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, in accordance with section 4 (a) of the Administrative Procedure Act (5 U. S. C. 1003 (a)) that the Secretary of Agriculture, pursuant to the authority vested in him by the Virus-Serum-Toxin Act of March 4, 1913 (21 U. S. C. 151 et seq.) and section 2 of the act of February 2, 1903, as amended (21 U. S. C. 111) is considering amending §§ 112.2, 112.27, 114.2 (a) 114.5, 114.6, 117.4, and 119.4 of the regulations relating to viruses, serums, toxins, and analogous products, and certain organisms and vectors (9 CFR 112.2, 112.27, 114.2 (a) 114.5, 114.6, 117.4, and 119.4), in the following respects:

1. Section 112.2 would be amended to read.

§ 112.2 *Required and permitted information.* (a) Except as provided by the Chief, each label of a biological product prepared at a licensed establishment or imported shall include the following:

(1) The true name of the product which name shall be identical with that shown in the license or permit under which the product is prepared or imported and shall be prominently lettered and placed giving equal emphasis to each word composing it;

(2) The name and address of the licensee or permittee: *Provided,* That when the licensee has more than one establishment, one street address only shall be given, although the general location of each licensed establishment in such case may be stated;

(3) The license or permit number assigned by the Department which shall be shown only in one of the following forms, respectively: "U. S. Veterinary License No. ____," or "U. S. Vet. License No. ____," or "U. S. Veterinary Permit No. ____," or "U. S. Vet. Permit No. ____".

(4) A serial number by which the product can be identified with the manufacturer's records of preparation;

(5) A permitted expiration date affixed before the product is removed from the manufacturer's establishment;

(6) A dosage table and full instructions for the proper use of the product or a statement in the case of very small labels as to where such information is to be found;

(7) The quantity of the contents of each immediate or true container in cubic centimeters, units, grams, or milligrams;

(8) Instructions to keep the product at a temperature of not over 45° F.. *Provided,* That all labels, circulars, and the like for liquid Brucella abortus vaccine and rabies vaccine shall include a warning against freezing and instructions to keep the product under refrigeration at 35° to 45° F.,

(9) In the case of a multiple-dose container, a warning that all of the product should be used at the time the container is first opened, except as provided in subparagraph (13) of this paragraph;

(10) In the case of a product composed of viable or dangerous organisms or viruses, the notice "Burn this container and all unused contents" prominently placed and lettered and affixed to the immediate or true container of such product, except as provided in subparagraph (13) of this paragraph;

(11) In the case of subcutaneous tuberculin, a statement indicating the quantity of Koch's old tuberculin (K. O. T.) in each cubic centimeter, disk, or the like of the product, and recommendations regarding the minimum dose to be administered. *Provided,* That this dose for subcutaneous use shall be not less than the equivalent of 0.5 gram K. O. T.,

(12) In the case of a product which contains an antibiotic added during the production process, the statement "Contains _____ as a preservative", or an equivalent statement, including the antibiotic added;

(13) (i) In the case of a diluent which is to be removed from its container and entirely added to a desiccated biological product, the label of such diluent is exempt from the provisions of subparagraphs (9) and (10) of this paragraph;

(ii) In the case of a diluent with which a desiccated biological product is to come in contact while the diluent is in its original container, the label of such diluent must conform to the provisions of subparagraphs (9) and (10) of this paragraph;

(iii) In the case of a desiccated biological product which is to be added to a diluent and never returned to the original container, the label of such desiccated biological product shall conform to the provisions of subparagraph (10) of this paragraph but is exempt from the provisions of subparagraph (9) of this paragraph; and

(14) All other similar information required by the Chief.

(b) Labels of biological products prepared at licensed establishments or imported may also include any other statement which is not false or misleading.

(c) Labels of biological products prepared at licensed establishments or imported shall not include any statement, design, or device which overshadows the true name of the product as licensed or which is false or misleading in any particular or which may otherwise deceive the purchaser.

2. Section 112.27 would be amended to read:

§ 112.27 *Selection, marketing, testing, and holding by licensee.* (a) Representative samples of each batch of every biological product, except anti-hog-cholera serum, hog-cholera vaccine, and hog-cholera virus, shall be selected at random from packages finished for marketing by designated laboratory employees in each licensed establishment. Said representative samples shall include two samples reserved for Bureau call and such other samples as may be re-

quired by the licensee for examination and testing. Each sample reserved for Bureau call shall (1) consist of two or more containers and the package (or packages) shall be sealed, dated, and initialed when taken; (2) be adequate in quantity for appropriate examination and testing; (3) be truly representative of the batch which is to be marketed and be in true containers; and (4) be held by the licensee at least 6 months after the latest expiration date stated on the labels.

(b) A special compartment or the equivalent shall be set aside by the licensee for the exclusive holding of the two samples reserved for Bureau call under refrigeration at 35° to 45° F. The samples shall be stored systematically for ready reference and procurement if and when requested by the Bureau.

3. Paragraph (a) of § 114.2 would be amended to read:

§ 114.2 *Methods.* (a) All biological products shall be prepared, handled, stored, marked, treated, and tested by licensees in accordance with methods described in the licensees' outlines provided for under this section, unless other methods are prescribed or permitted by the Chief in which case such other methods shall be used.

4. Section 114.5 would be amended to read:

§ 114.5 *Brucella abortus vaccine; marketing and use.* (a) Licensees' production outlines for Brucella abortus vaccine shall specify, among other things, the minimum number of viable Brucella abortus organisms per cubic centimeter that shall be present in the product until the end of the period of use indicated by the expiration date. The expiration date for the liquid form of this vaccine shall not exceed 3 months from the date of production (harvesting) and for the desiccated form shall not exceed 15 months from the date of production (harvesting). The vaccine shall be marketed only in vials of resistant glass of low alkalinity and uniform stability, and all other glass containers used in preparation of the product shall be of like resistance.

(b) Freshly prepared Brucella abortus vaccine shall contain, when subjected to testing, not less than 10 billion viable Brucella abortus organisms per cubic centimeter. The vaccine also shall contain not less than 5 billion viable Brucella abortus organisms per cubic centimeter until the end of the period of use as indicated by the expiration date recorded on all labels used on or in connection with each immediate or true container of the same mixture or batch.

5. Section 114.6 would be amended to read:

§ 114.6 *Fowl-pox vaccine, laryngotracheitis vaccine, and Newcastle disease vaccine.* Licensed establishments shall test each batch of fowl-pox vaccine, including pigeon pox, laryngotracheitis vaccine, and Newcastle disease vaccine as provided in this section to determine whether it is free from the causative agents of extraneous diseases.

(a) *Fowl-pox vaccine.* For testing each batch of fowl-pox vaccine, 12 healthy cockerels or other suitable young chickens of the same source shall be made available at the same time. This group shall have been immunized for at least 21 days with fowl-pox vaccine, previously tested and found satisfactory.

(1) Three of the test birds selected shall be injected subcutaneously with 10 times the field dose of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from other viruses and etiological agents of septicemic diseases.

(2) Three of the test birds selected shall be injected intratracheally with 10 times the field dose of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from the etiological agents of laryngotracheitis and similar diseases.

(3) Three of the test birds selected shall be injected intranasally with 0.2 cc. of the vaccine prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from the etiological agents of coryza and similar diseases.

(4) The three remaining birds selected shall be isolated and held as controls under observation for at least 21 days.

(5) All the treated birds shall be observed daily for at least 21 days. All the test birds that succumb shall be subjected to a careful post mortem examination by a competent veterinarian. The product shall be withheld from the market until it and the test birds are shown to be free of the causative agents of any extraneous disease. No bird shall be used more than once in making tests, and only healthy birds shall be removed from the premises.

(b) *Laryngotracheitis vaccine.* For testing each batch of laryngotracheitis vaccine, 12 healthy cockerels or other suitable young chickens of the same source shall be made available at the same time. This group shall have been immunized for at least 14 days with laryngotracheitis vaccine previously tested and found satisfactory.

(1) Three of the test birds selected shall be injected subcutaneously with 10 times the field dose of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from other viruses and etiological agents of septicemic diseases.

(2) Three of the test birds selected shall be treated by applying at least 10 times the field dose of the vaccine to be tested to a scarified area of at least 1 square centimeter on the comb of each bird. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from the virus of fowl-pox.

(3) Three of the test birds selected shall be injected intranasally with 0.2 cc. of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from the etiological agents of coryza and similar diseases.

(4) The three remaining birds selected shall be isolated and held as controls under observation for at least 21 days.

(5) All the treated birds shall be observed daily for at least 21 days. All the test birds that succumb shall be subjected to a post mortem examination by a competent veterinarian. The product shall be withheld from the market until it and the test birds are shown to be free of the causative agents of any extraneous diseases. No bird shall be used more than once in making tests, and only healthy birds shall be removed from the premises.

(c) *Newcastle disease vaccine.* For testing each batch of Newcastle disease vaccine, 15 healthy cockerels or other suitable young chickens of the same source shall be made available at the same time. This group shall have been immunized for at least 14 days with Newcastle disease vaccine previously tested and found satisfactory.

(1) Three of the test birds selected shall be injected subcutaneously with 10 times the field dose of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from other viruses and etiological agents of septicemic diseases.

(2) Three of the test birds selected shall be injected intratracheally with 10 times the field dose of the vaccine to be tested. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from viruses of laryngotracheitis and similar diseases.

(3) Three of the test birds selected shall be injected intranasally with 0.2 cc. of the vaccine prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from viruses of coryza and similar diseases.

(4) Three of the test birds selected shall be treated by applying at least 10 times the field dose of the vaccine to be tested to a scarified area of at least 1 square centimeter on the comb of each bird. The vaccine as tested shall be prepared exactly as the product is to be used in the field. This group should serve to indicate whether the product is free from the virus of fowl-pox.

(5) The three remaining birds selected shall be isolated and held as controls under observation for at least 21 days.

(6) All the treated birds shall be observed daily for at least 21 days. All the test birds that succumb shall be subjected to a post mortem examination by a competent veterinarian. The product shall be withheld from the market until it and the test birds are shown to be free of the causative agents of any extraneous diseases. No bird shall be used more than once in making tests, and only

healthy birds shall be removed from the premises.

6. Section 117.4 would be amended to read:

§ 117.4 *Time held in contact.* (a) Except as otherwise provided in § 117.6, each group of 200 or less sheep or goats and each group of 20 or less cattle at licensed establishments shall be held in the contact pens for at least 2 days in contact with not less than 2 contact calves, and each animal shall be allowed free range and contact with said contact calves and the other animals in the group.

(b) Except as otherwise provided in § 117.6, each group of hogs which arrives at a licensed establishment in the same conveyance shall be held in the contact pens for at least 1 day in contact with not less than 2 contact calves, except that in the case of pigs used in testing the potency and purity of anti-hog-cholera serum, 6 hours will be sufficient. More than 1 group of such animals may be placed in the same contact pen providing the total number of hogs in the pen does not exceed 200. Each animal shall be allowed free range and contact with said contact calves and the other animals in the group. Hogs immune to hog cholera may be removed from the contact pens for hyperimmunization at any time while being held as aforesaid: *Provided*, They are returned to said pens immediately after this operation.

7. Section 119.4 would be amended to read:

§ 119.4 *Health and weight when hyperimmunized.* Hogs which are used to produce anti-hog-cholera serum at licensed establishments shall be healthy at the time of hyperimmunization, and this fact shall be determined by a thorough veterinary inspection. The weight of each animal in a given group shall be determined and recorded accurately by the licensee before hyperimmunization of the group.

The primary purposes of the foregoing proposed amendments are to clarify the provisions of the regulations with respect to labeling of desiccated products, to require safety tests for Newcastle disease vaccine, to restate minimum requirements for Brucella abortus vaccine in order to provide for multiple dose containers, to provide a more practical system for the contacting of hogs in serum plants, and to clarify certain other provisions of the regulations.

Any person who wishes to submit written data, views, or arguments concerning the foregoing proposed amendments may do so by filing them with the Chief of the Bureau of Animal Industry, Agricultural Research Administration, U. S. Department of Agriculture, Washington 25, D. C., within ten days after the date of publication of this notice in the FEDERAL REGISTER.

Done at Washington, D. C., this 5th day of June 1953.

[SEAL] E. T. BENSON,
Secretary of Agriculture.

[F. R. Doc. 53-5147; Filed, June 9, 1953; 8:52 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 10492]

STANDARD BROADCAST STATIONS

NOTICE OF EXTENSION OF TIME FOR FILING COMMENTS

In the matter of amendment of the Standards of Good Engineering Practice concerning Standard Broadcast Stations, Docket No. 10492.

1. On May 8, 1953, the Commission issued a notice of proposed rule making (FCC 53-521) in the above-entitled matter which specified that comments were to be filed on or before May 29, 1953. The Association of Federal Communications Consulting Engineers has requested that consideration in this matter be postponed until the Association can collate the opinions of its members; and that a further time for filing comments be permitted.

2. In view of the above request notice is hereby given that time for filing comments in the above-entitled matter is extended to June 29, 1953. Replies to such comments may be filed on or before July 9, 1953.

Adopted: June 2, 1953.

Released: June 3, 1953.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 53-5137; Filed, June 9, 1953; 8:50 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Office of the Secretary

VESICULAR EXANTHEMA, A DISEASE OF SWINE

DECLARATION AND STATEMENT OF POLICY

On April 22, 1953, there was published in the FEDERAL REGISTER (18 F R. 2358) a Declaration and Statement of Policy regarding vesicular exanthema, a disease of swine, in which it was stated, in effect, that this Department will not join with the States in the payment of indemnities to owners of swine destroyed in connection with an outbreak of the disease after June 1, 1953, associated with the feeding of raw garbage.

At the time of the issuance of the above document, it was contemplated that the revised regulations restricting the interstate movement of swine and swine products because of vesicular exanthema would become effective on June 1, 1953. It is now proposed to issue such regulations effective on July 1, 1953. Furthermore, under the laws of various States, their control programs cannot become effective until July 1, 1953. In view of these circumstances, the said Declaration and Statement of Policy is hereby amended by changing the date in paragraph number 3 thereof from June 1, 1953, to July 1, 1953.

Done at Washington, D. C., this 5th day of June 1953.

[SEAL] TRUE D. MORSE,
Secretary of Agriculture.

[F. R. Doc. 53-5134; Filed, June 9, 1953; 8:49 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

LEARNER EMPLOYMENT CERTIFICATES

ISSUANCE TO VARIOUS INDUSTRIES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1068, as amended; 29 U. S. C. and Sup. 214) and Part 522 of the regulations issued thereunder (29 CFR Part 522) special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates applicable under section 6 of the act have been issued to the firms listed below. The employment of learners under these certificates is limited to the terms and conditions therein contained and is subject to the provisions of Part 522. The effective and expiration dates, occupations, wage rates, number or proportion of learners, and learning period for certificates issued under the general learner regulations (§§ 522.1 to 522.14) are as indicated below; conditions provided in certificates issued under special industry regulations are as established in these regulations.

Single Pants, Shirts and Allied Garments, Women's Apparel, Sportswear and Other Odd Outerwear, Rainwear, Robes and Leather and Sheep-Lined Garments Divisions of the Apparel Industry Learner Regulations (29 CFR 522.160 to 522.166, as amended December 31, 1951, 16 F R. 12043, and June 2, 1952, 17 F R. 3818)

Ann Lee Frocks, 631 Fellows Avenue, Hanover Township, Lyndwood, Pa., effective 6-2-53 to 6-1-54; for normal labor turnover 10 learners (dresses).

G. Forest Braithwaite, 105 West Main Street, Ripley, N. Y., effective 5-28-53 to 5-27-54; 5 learners for normal labor turnover purposes (foundation garments).

Carbon Sportswear, Inc., 37 West Bertsch Street, Lansford, Pa., effective 6-20-53 to 5-28-54; for normal labor turnover, 10 learners (ladies' sportswear and dresses).

Carter & Churchill Co., Lebanon, N. H., effective 6-4-53 to 6-3-54; 5 learners for normal labor turnover (flannel shirts, ski clothing, hunting and utility clothing).

Cata Garment Co., 712 Linden Street, Allentown, Pa., effective 6-2-53 to 6-1-54; 5 learners for normal labor turnover (blouses and sportswear).

Colonial Shirt Corp., Woodbury, Tenn., effective 6-19-53 to 6-18-54; 10 percent of the factory production workers for normal labor turnover purposes (men's cotton and rayon dress and sport shirts).

Colonial Shirt Corp., Woodbury, Tenn., effective 6-1-53 to 11-30-53; 50 learners for expansion purposes (men's cotton and rayon dress and sport shirts).

Forest City Manufacturing Co., DuQuoin, Ill., effective 5-28-53 to 10-18-53; 30 learners for expansion purposes (junior and misses' dresses).

Frackville Manufacturing Co., Inc., Frackville, Pa., effective 5-28-53 to 5-27-54; 10 percent of the factory production workers for normal labor turnover purposes (flannelette and cotton rayon nightshirts).

Harbor View Sportswear Co., 405 Main Street, Gloucester, Mass., effective 5-28-53 to 5-27-54; 5 learners for normal labor turnover (men's and boys' sportswear).

Jaco Pants Inc., Ashburn, Ga., effective 5-28-53 to 5-27-54; 10 percent of the factory production workers for normal labor turnover purpcses (men's dress pants).

W. Kotkes & Son Inc., 1305 Main Street Lynchburg, Va., effective 6-2-53 to 6-1-54; 10 percent of the factory production workers (nurses and maids uniforms).

Linwood Mills Inc., LaFayette, Ga., effective 5-29-53 to 11-28-53; 10 learners for expansion purposes (sports shirts).

The Moyer Manufacturing Co., 18-24 North Walnut Street, Youngstown, Ohio, effective 5-29-53 to 5-28-54; 10 percent of the factory production workers for normal labor turnover purposes (men's slacks).

Shelby Manufacturing Co., 660 East Jackson Street, Shelbyville, Ind., effective 5-26-53 to 5-25-54; 10 percent of the factory production workers for normal labor turnover purposes (ladies cotton wash dresses).

Shenan Dress Corp., North Bower and Washington Streets, Shenandoah, Pa., effective 6-2-53 to 6-1-54; 10 percent of the factory production workers for normal labor turnover (ladies' and misses' dresses).

Siceloff Manufacturing Co., Inc., East Second Avenue, Lexington, N. C., effective 6-2-53 to 6-1-54; 10 percent of the factory production workers for normal labor turnover (work pants, bib overalls, dungarees, work shirts).

Spruce Manufacturing Corp., Second and Spruce Streets, Sunbury, Pa., effective 6-12-53 to 6-11-54; 10 percent of the factory production workers for normal labor turnover (ladies' underwear).

Hosiery Industry Learner Regulations (29 CFR 522.40 to 522.51, as revised November 19, 1951, 16 F. R. 10733)

Russell-Harvelle Hosiery Mills, Inc., Plant No. 2, Mount Gilead, N. C., effective 6-2-53 to 2-1-54; 45 learners for expansion purposes.

Russell-Harvelle Hosiery Mills, Inc., Plant No. 2, Mount Gilead, N. C., effective 6-2-53 to 6-1-54; 5 learners.

Knitted Wear Industry Learner Regulations (29 CFR 522.68 to 522.79, as amended January 21, 1952; 16 F. R. 12868)

Richland Knitting Mills, Inc., Richland, Pa., effective 5-28-53 to 5-27-54; 5 learners (men's and boys' knit polo shirts).

Van Raalte Co., Inc., Main Street, Bristol, Vt., effective 6-15-53 to 6-14-54; 5 percent of the total number of factory production workers (not including office and sales personnel) (women's nylon underwear garments).

Shoe Industry Learner Regulations (29 CFR 522.250 to 522.260, as amended March 17, 1952; 17 F. R. 1500)

Avonnac Shoe Co., Beachdale, Ind., effective 6-2-53 to 6-1-54; 10 learners for normal labor turnover.

The following special learner certificate was issued in Puerto Rico to the company hereinafter named. The effective and expiration dates, the number of learners, the learner occupations, the length of the learning period and the learner wage rates are indicated, respectively.

Pan Am Textiles Inc., Caguas, P. R., effective 5-27-53 to 10-16-53; 50 learners; knitters, 160 hours at 30 cents per hour, 320 hours at 32 cents per hour, 320 hours at 35 cents per hour; seamers, 160 hours at 30 cents per hour, 320 hours at 32 cents per hour, 320 hours at 35 cents per hour; examiners, 120 hours at 32 cents per hour, 120 hours at 35 cents per hour; menders, 160 hours at 30 cents per hour, 160 hours at 32 cents per hour, 160 hours at 35 cents per hour (full fashioned hosiery) (replacement certificate).

Each certificate has been issued upon the employer's representation that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be cancelled in the manner provided in the regulations and as indicated in the certificates. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of Part 522.

Signed at Washington, D. C., this 1st day of June 1953.

MILTON BROOME,
Authorized Representative of the Administrator.

[F. R. Doc. 53-5120; Filed, June 9, 1953; 8:46 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 5031 et al.]

TRANS-PACIFIC CERTIFICATE RENEWAL CASE

NOTICE OF HEARING

In the matter of the proceeding known as the Trans-Pacific Certificate Renewal Case.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 205 (a) and 1001 of that act, that a hearing in the above-entitled proceeding is assigned to be held on June 22, 1953 at 10 a. m., e. d. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Thomas L. Wrenn.

Without limiting the scope of the issues presently in this proceeding, particular attention will be directed to:

1. Whether the temporary Trans-Pacific services now certificated will be renewed as authorized or modified and amended; and if so, whether such services should be operated by the carriers presently certificated for such services or by other carriers; and

2. Whether new and additional services, as proposed by some of the applicants, are required by the public convenience and necessity.

Notice is further given that any person not a party to the proceeding desiring to be heard in opposition to the matters set forth in the case must file with the Board on or before June 22, 1953, a statement setting forth issues of fact or law which he desires to contest. Any person filing such a statement may appear and participate at the hearing in accordance with § 302.14 of the Procedural Regulations under Title IV of the Civil Aeronautics Act, as amended.

For further details of the proceeding and issues involved, interested persons are referred to the applications in the consolidated proceeding, Board Orders Nos. E-7038 and E-7333, and to the reports of the prehearing conference on file with the Civil Aeronautics Board.

Dated at Washington, D. C., June 6, 1953.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 53-5142; Filed, June 9, 1953; 8:51 a. m.]

[Docket No. SA-278]

ACCIDENT OCCURRING NEAR MARSHALL, TEX.

NOTICE OF HEARING

In the matter of investigation of accident involving aircraft of United States Registry N 28345, which occurred near Marshall, Texas, on May 17, 1953.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly section 702 of said act, in the above-entitled proceeding that hearing is hereby assigned to be held on June 17, 1953, at 9:00 a. m. (local time) in the auditorium, Mercantile Bank Building, 106 South Ervay Street, Dallas, Texas.

Dated at Washington, D. C., June 2, 1953.

[SEAL] ROBERT W CHRISP,
Presiding Officer.

[F. R. Doc. 53-5141; Filed, June 9, 1953; 8:50 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 10471, 10472, 10473]

SOUTHERN TELEVISION, INC., ET AL.

ORDER CONTINUING HEARING

In re applications of Southern Television, Inc., Chattanooga, Tennessee, Docket No. 10471, File No. BPCT-931, Tri-State Telecasting Corporation, Chattanooga, Tennessee, Docket No. 10472, File No. BPCT-983; WDEF Broadcasting ing Company, Chattanooga, Tennessee, Docket No. 10473, File No. BPCT-939; for

construction permits for new television stations.

The hearing in this proceeding was commenced pursuant to § 1.841 on Monday, May 25, 1953, and various matters were discussed and certain actions were tentatively decided upon. An order after pre-hearing conference will be prepared at or after the further conference which is hereinafter ordered to be held on June 15, 1953.

Counsel for all parties and for the Chief of the Broadcast Bureau agreed to participate cooperatively in the preparation of written stipulations of facts concerning: the identity, business interests and backgrounds of the principals who compose the several applicants; the program service proposed by each applicant as affected by the assumed availability of network affiliation agreements; and other factual and procedural matters which can be so agreed upon as to dispense with or limit the extent and nature of proof to be offered at the hearing. The proposed stipulations will be considered at the further conference.

All counsel will also participate cooperatively in the preparation and submission of a draft of an order after prehearing conference which will be considered at the further conference hereinafter ordered.

Each applicant plans to take depositions to be completed by July 3, 1953, it being tentatively contemplated that the hearing of testimony may be commenced on or after July 20, 1953.

A petition for leave to amend filed by Tri-State Telecasting Corporation on May 22, 1953, is pending, and it was agreed that the parties may have until Monday, June 1, in which to file opposition thereto.

Many other procedural and substantive matters involved in this proceeding were extensively discussed, but the delineation of those matters and the results of the discussions will be set out in the contemplated order after pre-hearing conference. A further conference is necessary to achieve the objectives of § 1.841, and therefore:

It is ordered, This 29th day of May 1953, that this matter is continued for further conference until Monday, June 15, 1953, at the hour then established by Commission policy and practice for the commencement of hearing proceedings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 53-5138; Filed, June 9, 1953; 8:50 a. m.]

[Change List No. 14]

DOMINICAN REPUBLIC BROADCAST STATIONS

LIST OF CHANGES IN ASSIGNMENTS

APRIL 29, 1952.

Notification of changes in Dominican Broadcasting Stations:

DOMINICAN REPUBLIC

Call letters	Location	Power (kw)	Time designation	Radiation	Class	Probable date to commence operation
HI8B	Bella Vista (Santiago), 19-28 N., 70-42 W. (Present Assignment: 0.1N/1D, 1360 kc, III/D, IV/N).	*610 kilocycles* 1	U	ND	II	June 1, 1952.
HI3J	San Pedro De Macoris, 18-26 N., 68-18 W (Present Assignment: 0.5 kw, 1380 kc, III).	*1360 kilocycles* 0.5	U	ND	III	January, 1953.
HI6T	Santiago, 19-28 N., 70-42 W (Present Assignment: 1 kw, 610 kc, II).	*1360 kilocycles* 0.5N/1D	U	ND	III	June 1, 1952.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

[F. R. Doc. 53-5139; Filed, June 9, 1953; 8:50 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6476]

COMMUNITY PUBLIC SERVICE CO.

NOTICE OF EXTENSION OF TIME

JUNE 3, 1953.

Upon consideration of the request of Community Public Service Company, filed June 3, 1953, notice is hereby given that an extension of time is granted to and including July 3, 1953, within which Applicant shall consummate the transactions authorized by the order entered March 5, 1953 and issued March 6, 1953, in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5135; Filed, June 9, 1953; 8:49 a. m.]

[Docket No. E-6498]

IOWA PUBLIC SERVICE CO.

NOTICE OF SUPPLEMENTAL ORDER

JUNE 4, 1953.

Notice is hereby given that on June 3, 1953, the Federal Power Commission issued its order adopted June 3, 1953, authorizing issuance of securities in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5123; Filed, June 9, 1953; 8:47 a. m.]

[Docket Nos. G-2115, G-2146]

EL PASO NATURAL GAS CO. AND EAST TENNESSEE NATURAL GAS CO.

NOTICE OF FINDINGS AND ORDERS

JUNE 4, 1953.

Notice is hereby given that on June 3, 1953, the Federal Power Commission issued its orders adopted June 2, 1953, issuing certificates of public convenience and necessity in the above-entitled matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5124; Filed, June 9, 1953; 8:47 a. m.]

[Docket No. G-2153]

MISSISSIPPI RIVER FUEL CORP.

NOTICE OF OPINION NO. 253 AND ORDER

JUNE 4, 1953.

Notice is hereby given that on June 3, 1953, the Federal Power Commission issued its memorandum opinion and order adopted June 2, 1953, in the above-entitled matter, accepting proposed settlement, making effective tariff changes, and terminating proceeding, upon conditions specified in the order.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5125; Filed, June 9, 1953; 8:47 a. m.]

[Project No. 1250]

CITY OF PASADENA, CALIF

NOTICE OF ORDER GRANTING EXEMPTION FROM PAYMENT OF ANNUAL CHARGES

JUNE 4, 1953.

Notice is hereby given that on June 3, 1953, the Federal Power Commission issued its order adopted June 2, 1953, granting exemption from payment of annual charges in the above-entitled matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 53-5126; Filed, June 9, 1953; 8:47 a. m.]

[Project Nos. 2000, 2121]

POWER AUTHORITY OF THE STATE OF NEW YORK AND PUBLIC POWER AND WATER CORP.

ORDER FOR ORAL ARGUMENT

Exceptions to the decision of the Presiding Examiner in the matters of the applications of the Power Authority of the State of New York, Project No. 2000, and Public Power and Water Corporation, Project No. 2121, issued May 12, 1953, have raised many issues of law and fact with respect to the denial of the application for license for Project No. 2121 to the above-named company and the granting of license for Project No. 2000 to the Power Authority of the State

of New York, under the Federal Power Act.

In view of the many and important issues raised of law and fact in the briefs and exceptions filed by the numerous interveners and the parties to the respective applications, and in order to become more fully appraised of the merits of the issues presented, the Commission finds: It is in the best interest of the public that oral arguments be heard before the Commission.

The Commission orders: Oral arguments on the exceptions taken to the Presiding Examiner's decision in the above-entitled matters be held before the Commission on June 15, 1953 at 10:00 a. m., e. d. s. t., in the Commission's Hearing Room, 441 G Street NW., Washington, D. C.

Adopted: June 2, 1953.

Issued: June 4, 1953.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 53-5127; Filed, June 9, 1953; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3036]

NEW JERSEY POWER & LIGHT CO.

ORDER AUTHORIZING ISSUANCE AND SALE OF BONDS

JUNE 4, 1953.

New Jersey Power & Light Company ("NJP&L") a public utility subsidiary of General Public Utilities Corporation ("GPU") a registered holding company, having filed an application and amendments thereto, pursuant to the Public Utility Holding Company Act of 1935 ("act") particularly section 6 (b) thereof and Rule U-50 thereunder with respect to the following proposed transactions:

NJP&L proposes to issue and sell, subject to the competitive bidding requirements of Rule U-50, $5,500,000 principal amount of First Mortgage Bonds, __ Percent Series, due May 1, 1983, to be issued under and secured by NJP&L's indenture dated as of March 1, 1944, as heretofore supplemented and to be supplemented by an indenture to be dated as of May 1, 1953. The interest rate and the price to be paid to NJP&L are to be determined by the competitive bidding, except that the invitation for bids will specify that the price to the company shall be not less than 100% nor more than 102.75% of the principal amount.

The filing states that the proceeds from the sale of the bonds will be used to repay $3,545,000 of short-term notes and to finance, in part, NJP&L's construction program, including the reimbursement of its treasury for expenditures made therefrom for such purpose.

The estimated fees and expenses to be incurred in connection with the proposed transactions aggregate $57,000, including legal fees and expenses of company counsel in the amount of $8,000; printing, $27,000; accounting fees and expenses, $3,500; Trustees Fees, $0,000; filing fees and Federal issue tax, $7,000 and miscellaneous expenses, $5,500.

The filing also states that no State or Federal regulatory body, other than the Board of Public Utility Commissioners of the State of New Jersey and this Commission, has jurisdiction over the proposed transaction and that the issuance and sale of bonds will be solely for the purpose of financing the business of NJP&L, and has been expressly authorized by the Board of Utility Commissioners of the State of New Jersey, subject to the issuance by such State commission of a further certificate in the light of the results of competitive bidding. It is requested that the Commission's order become effective upon issuance.

Due notice having been given of the filing of the application and amendments thereto, and a hearing not having been requested or ordered by the Commission; and it appearing that further data is required with respect to the fees and expenses of counsel for NJP&L and of counsel for the successful bidder for the bonds; and the Commission finding with respect to said application, as amended, that the applicable standards of the act and the rules are satisfied and that it is not necessary to impose any terms or conditions other than those set forth below, and the Commission deeming it appropriate that said application, as amended, be granted forthwith, subject to the reservation of jurisdiction hereinafter provided:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the Act, that said application, as amended, be, and it hereby is, granted forthwith, subject to the conditions prescribed in Rule U-24 and to the following additional terms and conditions:

(1) That the proposed issuance and sale by NJP&L of bonds shall not be consummated until the results of competitive bidding shall have been made a matter of record in this proceeding and a further order shall have been issued in the light of the record so completed, which order may contain such further terms or conditions as may then be deemed appropriate;

(2) That jurisdiction be reserved with respect to the fees and expenses of counsel for NJP&L and of counsel for the successful bidder for the bonds.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 53-5129; Filed, June 9, 1953; 8:48 a. m.]

[File No. 70-3070]

AMESBURY ELECTRIC LIGHT CO. ET AL.

NOTICE REGARDING PROPOSED NOTE ISSUES BY SUBSIDIARIES AND ACQUISITION OF SAID NOTES BY PARENT COMPANY

JUNE 4, 1953.

In the matter of Amesbury Electric Light Company, Attleboro Steam and Electric Company, Haverhill Electric Company, Quincy Electric Light and Power Company, Weymouth Light and Power Company, Worcester County Electric Company, New England Electric System; File No. 70-3070.

Notice is hereby given that a joint declaration has been filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 (the "act") by New England Electric System ("NEES") a registered holding company, and by its above named subsidiary companies, hereinafter individually referred to as "Amesbury" "Attleboro" "Haverhill" "Quincy" "Weymouth" and "Worcester" and collectively referred to as the "borrowing companies" Sections 6 (a) 7, 9 (a) 10, and 12 (f) of the act and Rules U-23, U-42 (b) (2) U-43 (a), U-45 (b) (1) and U-50 (a) (3) thereunder have been designated by the Declarants as applicable to the proposed transactions, which are summarized as follows:

The borrowing companies propose to issue to NEES, from time to time but not later than July 31, 1953, unsecured promissory notes in the aggregate principal amount of $7,500,000 and in the following individual amounts: Amesbury, $515,000; Attleboro, $555,000; Haverhill, $800,000; Quincy, $1,000,000; Weymouth, $1,050,000; and Worcester, $3,500,000.

As at May 20, 1953, the borrowing companies had outstanding notes payable to banks in the aggregate principal amounts of $7,390,000 and, with the exception of Amesbury, are authorized by the Commission to make, and propose to make, additional borrowings from banks prior to June 30, 1953. The proceeds to be derived from the notes proposed to be issued to NEES will be used by the borrowing companies to pay such note indebtedness to banks and after said issuance of notes to NEES, none of the borrowing companies will have, or will be authorized by this Commission to have, any such note indebtedness to banks, except Worcester, which will have $1,100,000 principal amount of such notes outstanding with three local banks.

Each of the notes proposed to be issued to NEES will mature six months from the issue date thereof and will bear the same interest rate as the notes being paid off as long as such notes would have been outstanding by their terms and thereafter each of the proposed notes will bear interest at the prime interest rate at the issue date thereof. It is stated that 3¼ percent per annum is the present prime interest rate charged by banks on notes similar to the proposed notes. In the event that such prime interest rate is in excess of 3½ percent per annum at the time any of the proposed notes are to be issued, at least five days prior to the issuance of said note or notes the issuing company or companies and NEES will file an amendment to this filing setting forth the terms of the note or notes and the rate of interest. It is requested that any such amendment become effective at the end of said five day period unless prior thereto, the Commission notifies NEES or the issuing company or companies to the contrary.

Each of the borrowing companies proposes that if any permanent financing is done before the maturity date of any

of the notes proposed to be issued, it will apply the proceeds therefrom in reduction of, or in total payment of, notes then outstanding, and the amount of authorized but unissued notes, if any, will be reduced by the amount, if any, by which such permanent financing exceeds the principal amount of the then outstanding notes.

It is stated that incidental services in connection with the proposed note issues will be performed, at cost, by New England Power Service Company, an affiliated service company, such cost being estimated not to exceed $150 for NEES and each of the subsidiary companies, or an aggregate of $1,050. It is further stated, that no State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It is requested that the Commission's Order herein become effective forthwith upon issuance.

Notice is further given that any interested person may, not later than June 22, 1953, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reason or reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, the joint declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 and U-100 thereof.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 53-5128; Filed, June 9, 1953; 8:48 a. m.]

[File No. 70-3080]

COLUMBIA GAS SYSTEM, INC., AND UNITED FUEL GAS CO.

NOTICE REGARDING CASH CAPITAL CONTRIBUTION BY PARENT COMPANY AND ACQUISITION OF SECURITIES OF SUBSIDIARY

JUNE 4, 1953.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia") a registered holding company, and its public utility subsidiary, United Fuel Gas Company ("United Fuel") have filed a joint application-declaration with this Commission pursuant to the provisions of sections 6 (b) 9, 10 and 12 (b) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-45 of the rules and regulations promulgated thereunder. All interested persons are referred to said application-declaration which is on file in the office of this Commission for a more detailed statement of the transaction therein proposed, which is summarized as follows:

Columbia, which owns all of the outstanding securities of United Fuel (except for two shares of common stock) proposes to make a cash capital contribution to United Fuel in the amount of $2,000,000. Columbia will increase its investment in the common stock of United Fuel by $1,999,989.51 and will charge $10.49 (the amount of the contribution which is applicable to the minority interest) to operating expense. United Fuel will credit $2,000,000 to its capital surplus.

United Fuel will issue and sell at par to Columbia $4,200,000 principal amount of installment promissory notes, which notes will be due in equal annual installments on February 15 on each of the years 1955 to 1979, inclusive. The notes are to bear interest at the rate of 4 percent per annum or such lower rate, being a multiple of ⅛ of 1 percent, as shall be not less than the "cost of money" to Columbia in respect of debentures anticipated to be issued and sold later this year. Prior thereto, the notes will bear interest at the rate of 4 percent per annum.

It is stated that the proposed transactions are to be consummated in order to provide United Fuel with the funds required to complete the financing of its 1953 construction program and purchase of "cushion" gas in connection with its gas storage program.

It is estimated that United Fuel and Columbia will incur expenses of $4,870 and $150, respectively.

United Fuel has made an application to the Public Service Commission of West Virginia for approval of the issuance of notes and receipt of the cash contribution. The order to be issued therein will be supplied by amendment.

Notice is further given that any interested person may, not later than June 18, 1953, at 5:30 p. m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of fact or law, if any, raised by the said application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transaction as provided in Rule U-20 (a) and Rule U-100 thereof.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 53-5130; Filed, June 9, 1953; 8:48 a. m.]

SMALL DEFENSE PLANTS ADMINISTRATION

[S. D. P. A. Pool Request 19]

ADDITIONAL COMPANIES ACCEPTING REQUEST TO PARTICIPATE IN OPERATIONS OF WISCONSIN MANUFACTURERS' DEFENSE POOL, INC., OF MILWAUKEE, WIS.

Pursuant to section 708 of the Defense Production Act of 1950, as amended, the names of the following companies which have accepted the request to participate in the operations of the Wisconsin Manufacturers' Defense Pool, Inc. of Milwaukee, Wisconsin are herewith published. The original list of companies accepting such requests was published on January 15, 1953, in 18 F R. 340.

Accurate Pattern Co., 712 South Twelfth Street, Milwaukee, Wis.
Badger Northland, Inc., 215 West Second Street, Kaukauna, Wis.
Electro-Coatings, Inc., 214 North Milwaukee Street, Milwaukee, Wis.
Green Bay Box Co., P O. Box 613, Green Bay, Wis.
Green Bay Foundry & Machine Works, 401 South Broadway, Green Bay, Wis.
Interior Woodwork Co., 919 West Bruce Street, Milwaukee, Wis.
Libert Machine Co., 324 North Roosevelt Street, Milwaukee, Wis.
Luitink Manufacturing Co., 3374 West Hopkins Street, Milwaukee, Wis.
Milwaukee Malleable & Grey Iron Works, 2773 South Twenty-Ninth Street, Milwaukee, Wis.
Modern Engineering Co., Inc., 215 West North Avenue, Milwaukee, Wis.
Neenah Foundry Co., Neenah, Wis.
Northern Engraving & Machine Co., 1210 Velp Avenue, Milwaukee, Wis.
Plymouth Industrial Products, Inc., Mill Street at Eastern Avenue, Plymouth, Wis.
Louis Reinke Sheet Metal Works, Inc., 526 South Fifth Street, Milwaukee, Wis.
Standard Machine Co., 6545 West State Street, Milwaukee, Wis.
M. J. Wallrich & Lumber Co., Shawano, Wis.
Weasler Engineering & Mfg. Co., P O. Box 275, West Bend, Wis.
Wells Manufacturing Corp., 2-26 South Brooks Street, Fon du Lac, Wis.

(Sec. 708, 64 Stat. 816, Pub. Law 96, as amended by Pub. Law 429, 82d Cong., 50 U. S. C. App. 2158; E. O. 10370, July 7, 1952, 17 F. R. 6141)

Dated: June 4, 1953.

Y. BRYNILDSSEN,
Acting Administrator

[F. R. Doc. 53-5136; Filed, June 9, 1953; 8:49 a. m.]

From *Farina INT, Ill.; to Vandalia, Ill., VOR; MEA 2,000. *3,100—MRA.
From Evansville, Ind., VOR via E alter.; to Vandalia, Ill., VOR via E alter.; MEA 2,000.
From Springfield, Ill., VOR; to Peoria, Ill., VOR; MEA 2,000.
From Peoria, Ill., VOR; to Bradford, Ill., VOR; MEA 2,000.
From Bradford, Ill., VOR; to Moline, Ill., VOR; MEA 2,000.

Section 610.6066 *VOR Civil Airway 66* is amended to read in part:

From *San Diego, Calif., VOR; to Jamul, Calif., LF/RBN; MEA 8,000. *4,000—MCA San Diego VOR, eastbound.
From Jamul, Calif., LF/RBN; to *Seeley INT, Calif., MEA **13,000. *10,000—MCA Seeley INT, westbound. **8,000—MOCA.
From Seeley INT, Calif.; to Yuma, Ariz., VOR; MEA *8,000. *4,000—MOCA.
From Barrett Lake, Calif., FM; to Jamul, Calif., LF/RBN, westbound only; MEA 6,000.
From Jamul, Calif., LF/RBN; to San Diego, Calif., VOR, westbound only; MEA 4,500.

Section 610.6068 *VOR Civil Airway 68* is amended to read in part:

From Corpus Christi, Tex., VOR; to Kingsville INT, Tex.; MEA 1,700.
From Kingsville INT, Tex.; to Brownsville, Tex., VOR; MEA 1,400.

Section 610.6077 *VOR Civil Airway 77* is amended to read in part:

From San Angelo, Tex., VOR; to Abilene, Tex., VOR; MEA 3,800.

Section 610.6095 *VOR Civil Airway 95* is amended to read in part:

From *Phoenix, Ariz., VOR; to Verde River INT, Ariz., northbound, MEA 11,000; southbound, MEA 7,500. *7,000—MCA Phoenix VOR, northeastbound.
From Verde River INT, Ariz.; to Winslow, Ariz., VOR; MEA 11,000.

Section 610.6097 *VOR Civil Airway 97* is amended to read in part:

From Albany, Ga., VOR; to *Junction City, INT, Ga.; MEA **3,500. *3,000—MRA. **1,600—MOCA.
From Junction City INT, Ga.; to Concord INT, Ga.; MEA *2,800. *2,200—MOCA.
From Concord INT, Ga.; to Atlanta, Ga., VOR; MEA *2,500. *2,000—MOCA.
From Norcross, Ga., VOR via E alter.; to Silver City INT, Ga., via E alter.; MEA 3,000.
From Silver City INT, Ga., via E alter.; to Harris INT, N. C., via E alter.; MEA 6,800.
From Harris INT, N. C., via E alter.; to *Rasar INT, Tenn., via E alter.; MEA 7,600. *7,000—MCA Rasar INT, southbound.
From Cross City, Fla., VOR via E alter.; to Tallahassee, Fla., VOR via E alter.; MEA 1,500.
From Lake Forest INT, Ill.; to Fox Lake INT, Ill.; MEA *3,500. *2,100—MOCA.

Section 610.6105 *VOR Civil Airway 105* is amended to delete:

From Phoenix, Ariz., VOR; to Knob INT, Ariz., northbound, MEA 8,000; southbound, MEA 6,500.
From Knob INT, Ariz.; to Ranch INT, Ariz.; MEA 8,000.
From Ranch INT, Ariz.; to Prescott, Ariz., VOR; MEA 9,000.

Section 610.6105 *VOR Civil Airway 105* is amended by adding:

From Phoenix, Ariz., VOR; to Prescott, Ariz., VOR; MEA 10,000.
From Phoenix, Ariz., VOR via E alter; to Knob INT, Ariz., via E alter., northbound, MEA 8,000; southbound, MEA 6,500.
From Knob INT, Ariz., via E alter.; to Ranch INT, Ariz., via E alter.; MEA 8,000.
From Ranch INT, Ariz., via E alter.; to Prescott, Ariz., VOR via E alter.; MEA 9,000.

Section 610.6120 *VOR Civil Airway 120* is amended by adding:

From Augusta INT, Mont.; to *Great Falls, Mont., VOR eastbound only; MEA 7,000. *6,800—MCA Great Falls VOR, eastbound.

Section 610.6134 *VOR Civil Airway 134* is amended to read in part:

From Evergreen, Ala., VOR; to *Shady Grove INT, Ala.; MEA **3,500. *3,500—MRA. **2,100—MOCA.
From Shady Grove INT, Ala.; to Columbus, Ga., VOR; MEA *3,500. *2,100—MOCA.

Section 610.6140 *VOR Civil Airway 140* is amended to read in part:

From Nashville, Tenn., VOR; to *Hartsville INT, Tenn.; MEA **5,000. *5,000—MRA. **3,400—MOCA.
From Hartsville INT, Tenn.; to Corbin, Ky., VAR; MEA *5,000. *3,400—MOCA.

Section 610.6154 *VOR Civil Airway 154* is amended to read in part:

From Columbus, Ga., VOR; to *Hamilton INT, Ga.; MEA 1,800. *2,400—MRA.
From Hamilton INT, Ga.; to *Junction City INT, Ga.; MEA **3,000. *3,000—MRA. **2,400—MOCA.
From Junction City INT, Ga.; to Macon, Ga., VOR; MEA *3,000. *2,400—MOCA.

Section 610.6174 *VOR Civil Airway 174* is amended by adding:

From Scotland, Ind., VOR; to *Mitchell INT, Ind.; MEA 2,000. *3,000—MRA.

Section 610.6185 *VOR Civil Airway 185* is amended to delete:

From Scotland, Ind., VOR; to *Mitchell INT, Ind.; MEA 2,000. Via E alter.; MEA 8,000. *3,000—MRA.

Section 610.6185 *VOR Civil Airway 185* is amended by adding:

From Asheville, N. C., VOR via E alter.; to Ottway INT, Tenn., via E alter.; MEA 8,000.

Section 610.6194 *VOR Civil Airway 194* is amended to read in part:

From Rocky Mount, N. C., VOR; to Cofield, N. C., VOR; MEA *1,400. *1,200—MOCA.
From Cofield, N. C., VOR; to Norfolk, Va., ILS Loc.; MEA 1,500.

Section 610.6208 *VOR Civil Airway 208* is amended by adding:

From *Oceanside, Calif., VOR; to Mesa Grande INT, Calif., eastbound, MEA 9,000; westbound, MEA 7,000. *5,000—MCA Oceanside VOR, eastbound.
From Mesa Grande INT, Calif.; to *Thermal, Calif.; VOR; MEA 11,000. *11,000—MCA Thermal VOR, southwestbound.

Section 610.6240 *VOR Civil Airway 240* is amended to read:

From *Dog INT, La.; to Mobile, Ala., VOR; MEA **1,500. *3,900—MRA. **1,400—MOCA.

Section 610.6241 *VOR Civil Airway 241* is added to read:

From La Grange INT, N. C.; to Cofield, N. C., VOR; MEA *3,000. *1,400—MOCA.

Section 610.6242 *VOR Civil Airway 242* is amended to read:

From Mobile, Ala., VOR; to Bon Secour INT, Ala.; MEA 1,600.

Section 610.6243 *VOR Civil Airway 243* is added to read:

From Chattanooga, Tenn., VOR; to Smithville INT, Tenn.; MEA 4,400.
From Smithville INT, Tenn.; to *Hartsville INT, Tenn.; MEA **4,000. *5,000—MRA. **3,500—MOCA.
From Hartsville INT, Tenn.; to Bowling Green, Ky., VOR; MEA *4,000. *3,500—MOCA.

Section 610.6404 *Hawaii VOR Civil Airway 4* is amended to read in part:

From Barbers Point, T. H., FM; to Honolulu, T. H., VOR; MEA 2,000.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

These rules shall become effective July 26, 1956.

[SEAL] JAMES T. PYLE,
Acting Administrator of Civil Aeronautics.

[F. R. Doc. 56-5278; Filed, July 3, 1956; 8:45 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 778—OVERTIME COMPENSATION

MISCELLANEOUS AMENDMENTS

Pursuant to authority under the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), and General Order No. 45–A (15 F. R. 3290), Part 778, Subchapter B, Title 29, Code of Federal Regulations, is amended as follows:

1. Section 778.0 (a), 20th line, delete the word "new".

2. Footnote 1 to § 778.0 (a) is amended to read:

[1] 29 U. S. C. 201–219, 251–262.

3. Footnote 2 to § 778.0 (a) is amended to read:

[2] 29 U. S. C. 201–208, 211–217.

4. Footnote 4 to § 778.0 (a) is amended to read:

[4] 29 U. S. C. 251–262.

5. Footnote 6 to § 778.0 (c) is amended to read:

[6] Section 16 (c) of the Fair Labor Standards Amendments of 1949 (set out as note under 29 U. S. C. 208) provides:

Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this act.

6. In footnote 12 to § 778.3 (a) delete the number and word "75 cents" and insert in place thereof the symbol and number "$1.00."

7. Section 778.3 (b) (1) is amended to read:

(1) *Hourly rate employee.* If the employee is employed solely on the basis of a single hourly rate, the hourly rate is his "regular rate." For his overtime work he must be paid, in addition to his straight-time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of 40 in the week. Thus, a $1.40 hourly rate will bring, for an employee who works 46 hours, a total weekly wage of $68.60 (46 hours at $1.40 plus 6 hours at 70 cents). In other words, the employee is entitled to be paid an amount equal to $1.40 an hour for 40 hours and $2.10 an hour for the 6 hours of overtime, or a total of $68.60.

If, in addition to the earnings at the hourly rate, a production bonus of $4.60 is paid, the regular hourly rate of pay is $1.50 an hour (46 hours at $1.40 yields $64.40; the addition of the $4.60 bonus makes a total of $69; this total divided by 46 hours yields a rate of $1.50). The employee is then entitled to be paid a total wage of $73.50 for 46 hours (46 hours at $1.50 plus 6 hours at 75 cents, or 40 hours at $1.50 plus 6 hours at $2.25).

8. Section 778.3(b)(2) is amended to read:

(2) *Pieceworker.* When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total weekly earnings from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For his overtime work the pieceworker is entitled to be paid, in addition to his total weekly earnings, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week.[14] Only additional half-time pay is required in such cases since the employee has already received straight-time compensation at piece rates for all hours worked. Thus, if the employee has earned $66 at piece rates for 46 hours of productive work and in addition has been compensated at $1. an hour for 4 hours of waiting time, his total compensation—$70—must be divided by his total hours of work—50—to arrive at his regular hourly rate of pay—$1.40. For the 10 hours of overtime the employee is entitled to additional compensation of $7 (10 hours at 70 cents). For the week's work he is thus entitled to a total of $77 (which is equivalent to 40 hours at $1.40 plus 10 overtime hours at $2.10).

In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the week fall short of the amount that would be earned for the total hours at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed $1.50 an hour for productive working time, he would be paid $69 (46 × $1.50) for the 46 hours of productive work (instead of the $66 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional 75 cents (half-time) for each of the 6 overtime hours worked, to bring his total compensation up to $73.50 (46 hours at $1.50 plus 6 hours at 75 cents or 40 hours at $1.50 plus 6 hours at $2.25). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the two hourly rates.[15]

9. Section 778.3 (b) (4) is amended to read:

(4) *Salaried employees—general.* If the employee is employed solely on a weekly salary basis, his regular hourly rate of pay, on which time and a half must be paid, is computed by dividing the salary by the number of hours which the salary is intended to compensate. If an employee is hired at a salary of $56 and if it is understood that this salary is compensation for a regular workweek of 35 hours, the employee's regular rate of pay is $56 divided by 35 hours, or $1.60 and hour, and when he works overtime he is entitled to receive $1.60 for each of the first 40 hours and $2.40 (one and one-half times $1.60) for each hour thereafter. If an employee is hired at a salary of $56 for a 40-hour week, his regular rate is $1.40 an hour. If his salary is $56 for a 50-hour week, his regular rate is $1.12 per hour. Where the salary covers a period longer than a workweek, such as a month, it must be reduced to its workweek equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semimonthly salary is translated into its equivalent weekly wage by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular hourly rate of pay will be calculated as indicated above.[16] Under regulations of the Administrator, pursuant to the authority given to him in section 7 (f) (3) of the act, the parties may provide that the regular rate shall be determined by dividing the monthly salary by the number of working days in the month and then by the number of hours of the normal or regular workday. Of course, the resultant rate in such a case must not be less than the statutory minimum of $1 per hour.

10. Section 778.3 (b) (5) is amended to read:

(5) *Salaried employees; irregular hours.* If an employee earns $66 per week with the understanding that the salary is to cover all hours worked and if his hours of work fluctuate from week to week, his regular rate of pay will vary from week to week and will be the average hourly rate each week. Suppose that during the course of four weeks the employee works 40, 44, 50, and 47 hours. His regular hourly rate of pay in each of these weeks is approximately $1.65, $1.50, $1.32, and $1.40, respectively. Since the employee has already received straight-time compensation on a salary basis for all hours worked, only additional half-time pay is due. For the first week the employee is entitled to be paid $66; for the second week $69 ($66 plus 4 hours at 75 cents) or (40 hours at $1.50 plus 4 hours at $2.25); for the third week $72.60 ($66 plus 10 hours at 66 cents) or (40 hours at $1.32 plus 10 hours at $1.98); for the fourth week approximately $70.90 ($66 plus 7 hours at 70 cents) or (40 hours at $1.40 plus 7 hours at $2.10).

11. In § 778.3 (c) delete the number and word "75 cents" and insert in place thereof the symbol and number "$1.00".

12. Section 778.5 (b), delete the second paragraph which begins with word "Thus", and ends with the word "act", and insert in place thereof the following:

Thus, if an employee is hired at the rate of $1.20 an hour and receives, as overtime compensation under his contract, $1.60 per hour for each hour actually worked in excess of 8 per day, his employer may credit the total of the extra 40-cent payments thus made for daily overtime hours against the overtime compensation which is due under the statute for hours in excess of 40 in that workweek. If the same contract further provided for the payment of $2 for hours in excess of 12 per day, the extra 80-cent payments could likewise be credited toward overtime compensation due under the act. Similarly, where the employee's normal or regular daily or weekly working hours are greater or less than 8 hours and 40 hours respectively and his contract provides for the payment of premium rates for work in excess of such normal or regular hours of work for the day or week (such as 7 in a day or 35 in a week) the extra compensation provided by such premium rates, paid for excessive hours, is a true overtime premium to be excluded from the regular rate and it may be credited towards overtime compensation due under the act.[20]

[14] For an alternative method of complying with the overtime requirements of the act as far as pieceworkers are concerned, see § 778.10 (b).

[15] See § 778.3 (c).

[16] The regular rate of an employee who is paid a regular monthly salary of $173.34, or a regular semimonthly salary of $86.67 for 40 hours a week, is thus found to be $1.00 per hour. The Administrator has announced that, as an enforcement policy, he will consider that payment of such regular monthly or semimonthly salary is in accordance with the minimum wage requirements of the Act.

[20] To qualify as overtime premiums under section 7 (d) (5), the daily overtime premium payments must be made for hours in excess of 8 hours per day or the employee's normal or regular working hours. If the normal workday is artificially divided into a "straight time" period to which one rate is assigned, followed by a so-called "overtime" period for which a higher "rate" is specified, the arrangement will be regarded as a device to contravene the statutory purposes and the premiums will be considered part of the regular rate. For a fuller discussion of this problem, see § 778.22.

13. Section 778.5 (e) (1) is amended to read:

(1) *Premiums for weekend and holiday work.* The application of section 7 (d) (6) may be illustrated by the following example: Suppose an agreement of employment calls for the payment of $1.65 an hour for all hours worked on a holiday or on Sunday in the operation of machines whose operators are paid a bona fide hourly rate of $1.10 for like work performed during nonovertime hours on other days. Suppose further that the workweek of such an employee begins at 12:01 a. m. Sunday, and in a particular week he works a schedule of 8 hours on Sunday and on each day from Monday through Saturday, making a total of 56 hours worked in the workweek. Tuesday is a holiday. The payment of $70.40 to which the employee is entitled under the employment agreement will satisfy the requirements of the act since the employer may properly exclude from the regular rate the extra $4.40 paid for work on Sunday and the extra $4.40 paid for holiday work and credit himself with such amount against the statutory overtime premium required to be paid for the 16 hours worked over 40.

14. Section 778.5 (e) (2) is amended to read:

(2) *Premiums for work outside basic workday or workweek.* The effect of section 7 (d) (7) where "clock pattern" premiums are paid may be illustrated by reference to provisions typical of the applicable collective-bargaining agreements traditionally in effect between employers and employees in the longshore and stevedoring industries. These agreements specify straight-time rates applicable during the hours established in good faith under the agreement as the basic, normal, or regular workday and workweek. Under one such agreement, for example, such workday and workweek are established as the first six hours of work, exclusive of mealtime, each day, Monday through Friday, between the hours of 8 a. m. and 5 p. m. Under another typical agreement, such workday and workweek are established as the hours between 8 a. m. and 12 noon and between 1 p. m. and 5 p. m., Monday through Friday. Work outside such workday and workweek is paid for at premium rates not less than one and one-half times the bona fide straight-time rates applicable to like work when performed during the basic, normal, or regular workday or workweek. The extra compensation provided by such premium rates will be excluded in computing the regular rate at which the employees so paid are employed and may be credited toward overtime compensation due under the Fair Labor Standards Act. For example, if an employee is paid $1.40 an hour under such an agreement for handling general cargo during the basic, normal, or regular workday and $2.10 per hour for like work outside of such workday, the extra 70 cents will be excluded from the regular rate and may be credited to overtime pay due under the act. Similarly, if the straight-time rate established in good faith by the contract should be higher because of handling dangerous or obnoxious cargo, recognition of skill differentials, or similar reasons, so as to be $2 an hour during the hours established as the basic or normal or regular workday or workweek, and a premium rate of $3 an hour is paid for the same work performed during other hours of the day or week, the extra $1 may be excluded from the regular rate of pay and may be credited toward overtime pay due under the act. Similar principles are applicable where agreements following this general pattern exist in other industries.

15. Section 778.7 (d) (1) is amended to read:

(1) An employee whose rate of pay is $1.30 an hour and who usually works a 6-day 48-hour week is entitled, under his employment contract, to a week's paid vacation in the amount of his usual straight-time earnings—$62.40. He foregoes his vacation and works 50 hours in the week in question. He is owed $65 as his total straight-time earnings for the week, and $62.40 in addition as his vacation pay. Under the statute he is owed an additional $6.50 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1.30 per hour has not been increased by virtue of the payment of $62.40 vacation pay, but no part of the $62.40 may be offset against the statutory overtime compensation which is due. (Nothing in this example is intended to imply that the employee has a statutory right to $62.40 or any other sum as vacation pay.[20] This is a matter of private contract between the parties who may agree that vacation pay will be measured by straight-time earnings for any agreed number of hours or days, or by total normal or expected take-home pay for the period or that no vacation pay at all will be paid. The example merely illustrates the proper method of computing overtime for an employee whose employment contract provides $62.40 vacation pay.)

16. Section 778.7 (d) (2) is amended to read:

(2) An employee, who is entitled, under his employment contract, to 8 hours' pay at his rate of $1.30 an hour for the Christmas holiday, foregoes his holiday and works 9 hours on that day. During the entire week he works a total of 50 hours. He is paid, under his contract, $65 as straight-time compensation for 50 hours plus $10.40 as idle holiday pay. He is owed, under the statute, an additional $6.50 as overtime premium (additional half-time) for the 10 hours in excess of 40. His rate of $1.30 per hour has not been increased by virtue of the holiday pay but no part of the $10.40 holiday pay may be credited toward statutory overtime compensation due.

The latter example should be distinguished from a situation in which an employee is entitled to idle holiday pay only when he is actually idle on the holiday, and who, if he foregoes his holiday also, under his contract, foregoes his idle holiday pay. The typical situation is one in which an employee is entitled by contract to 8 hours' pay at his rate of $1.30 an hour for certain named holidays when no work is performed. If, however, he is required to work on such days, he does not receive his idle holiday pay. Instead he receives a premium rate of $1.95 (time and one-half) for each hour worked on the holiday. If he worked 9 hours on the holiday and a total of 50 hours for the week, he would be owed, under his contract, $17.55 (9 × $1.95) for the holiday work and $53.30 for the other 41 hours worked in the week, a total of $70.85. Under the statute (which does not require premium pay for a holiday) he is owed $71.50 for a workweek of 50 hours at a rate of $1.30 an hour. Since the holiday premium qualifies as an overtime premium under section 7 (d) (6)[21] the employer may credit it toward statutory overtime compensation due and need pay the employee only the additional sum of 65 cents to meet the statutory requirements.

If all other conditions remained the same but the contract called for the payment of $2.60 (double time) for each hour worked on the holiday, the employee would receive, under his contract, $23.40 (9×$2.60) for the holiday work in addition to $53.30 for the other 41 hours worked, a total of $76.70. Since this holiday premium is an overtime premium under section 7 (d) (6), the employer may credit it toward statutory overtime compensation due. Since the total paid exceeds the statutory requirements, no additional compensation is due under the act. In distinguishing this situation from that in example (2) above, it should be noted that the contract provisions in the two situations are different and result in the payment of different amounts. In example (2) the employee received a total of $22.10 attributable to the holiday (8 hours' idle holiday pay at $1.30 an hour and $11.70 pay for 9 hours' work on the holiday). In the situation discussed in this paragraph the employee received $23.40 pay for the holiday—double time for 9 hours of work. Thus, clearly, all of the pay in this situation is paid for and directly related to the number of hours worked on the holiday.

17. Section 778.7 (e) is amended to read:

(e) *"Show-up" and "call-back" pay.* Under some employment agreements, an employee may be paid a minimum of a specified number of hours' pay at the applicable straight-time or overtime rate on infrequent and sporadic occasions when, after reporting to work at his scheduled starting time on a regular workday or on another day on which he has been scheduled to work, he is not provided with the expected amount of work. The amounts that may be paid under such an agreement over and above what the employee would receive if paid at his customary rate only for the number of hours worked are paid to compensate the employee for the time wasted by him in reporting for work and to prevent undue loss of pay resulting from the employer's failure to provide ex-

[20] On the requirements of the act, see Part 777 as to minimum wage; §778.2 (b) of this chapter as to overtime pay.

[21] See § 778.5 (c).

pected work during regular hours. One of the primary purposes of such an arrangement is to discourage employers from calling their men in to work for only a fraction of a day when they might get full-time work elsewhere. Pay arrangements of this kind are commonly referred to as "show-up" or "reporting" pay. Under the principles and subject to the conditions set forth in §§ 778.3 to 778.5, that portion of such payment which represents compensation at the applicable rates for the straight-time or overtime hours actually worked, if any, during such period may be credited as straight-time or overtime compensation, as the case may be, in computing overtime compensation due under the act. The amount by which the specified number of hours' pay exceeds such compensation for the hours actually worked is considered as a payment that is not made for hours worked. As such, it may be excluded from the computation of the employee's regular rate and cannot be credited toward statutory overtime compensation due him.

To illustrate, assume that an employee whose workweek begins on Monday and who is paid $1.30 an hour reports for work on Monday according to schedule and is sent home after being given only 2 hours of work. He then works 8 hours each day on Tuesday through Saturday, inclusive, making a total of 42 hours for the week. The employment agreement covering the employees in the plant, who normally work 8 hours a day, Monday through Friday, provides that an employee reporting for scheduled work on any day will receive a minimum of 4 hours' work or pay. The employee thus receives not only the $2.60 earned in the 2 hours of work on Monday but an extra 2 hours' "show-up" pay, or $2.60 by reason of this agreement. However, since this $2.60 in "show-up" pay is not regarded as compensation for hours worked, the employee's regular rate remains $1.30 and the overtime requirements of the Act are satisfied if he receives, in addition to the $54.60 straight-time pay for 42 hours and the $2.60 "show-up" payment, the sum of $1.30 as extra compensation for the 2 hours of overtime work on Saturday.

In the interest of simplicity and uniformity, these principles will be applied also with respect to typical minimum "call-back" or "call-out" payments made pursuant to employment agreements. Typically, such minimum payments consist of a specified number of hours' pay at the applicable straight-time or overtime rates which an employee receives on infrequent and sporadic occasions when, after his scheduled hours of work have ended and without prearrangement, he responds to a call from his employer to perform extra work.

The application of these principles to call-back payments may be illustrated as follows: An employment agreement provides a minimum of 3 hours' pay at time and one-half for any employee called back to work outside his scheduled hours. The employees covered by the agreement normally work 8 hours each day, Monday through Friday, inclusive, in a workweek beginning on Monday, and are paid overtime compensation at time and one-half for all hours worked in excess of 8 in any day or 40 in any workweek. Assume that an employee covered by this agreement and paid at the rate of $1.30 an hour works 1 hour overtime or a total of 9 hours on Monday, and works 8 hours each on Tuesday through Friday, inclusive. After he has gone home on Friday evening he is called back to perform an emergency job. His hours worked on the call total 2 hours and he receives 3 hours' pay at time and one-half, or $5.85, under the call-back provision, in addition to $52 for working his regular schedule and $1.95 for the overtime worked on Monday evening.

In computing overtime compensation due this employee under the act, the 43 actual hours (not 44) are counted as working time during the week. In addition to $55.90 pay at the $1.30 rate for all these hours, he has received under the agreement a premium of 65 cents for the one overtime hour on Monday and of $1.30 for the 2 hours of overtime work on the call, plus an extra sum of $1.95 paid by reason of the provision for minimum call-back pay. For purposes of the act, the extra premiums paid for actual hours of overtime work on Monday and on the Friday call (a total of $1.95) may be excluded as true overtime premiums in computing his regular rate for the week and may be credited toward compensation due under the act, but the extra $1.95 received under the call-back provision is not regarded as paid for hours worked; therefore, it may be excluded from the regular rate, but it cannot be credited toward overtime compensation due under the act. The regular rate of the employee, therefore, remains $1.30, and he has received an overtime premium of 65 cents an hour for 3 overtime hours of work. This satisfies the requirements of section 7 of the act. The same would be true, of course, if, in the foregoing example, the employee was called back outside his scheduled hours for the 2-hour emergency job on another night of the week or on Saturday or Sunday, instead of on Friday night.

18. Footnote 32 to § 778.7 (f) is amended to read:

[32] See Part 785 (Interpretative Bulletin on "hours worked"). For a discussion of travel time in particular and preliminary and postliminary activities in general as working time see Part 790 (statement on effect of Portal-to-Portal Act of 1947).

19. Section 778.9 (b) is amended to read:

(b) *Effect on salary for fixed workweek.* If an employee was hired at a salary of $56 for a fixed workweek of 40 hours, his regular rate at the time of hiring was $1.40 per hour. If his workweek is later reduced to a fixed workweek of 35 hours while his salary remains the same, it is the fact that it now takes him only 35 hours to earn $56, so that he earns his salary at the average rate of $1.60 per hour. His regular rate thus becomes $1.60 per hour; it is no longer $1.40 an hour. Overtime pay is due under the act only for hours worked in excess of 40, not 35, but if the understanding of the parties is that the salary of $56 now covers 35 hours of work and no more, the employee would be owed $1.60 per hour under his employment contract for each hour worked between 35 and 40. He would be owed time and one-half of $1.60 ($2.40) per hour, under the statute, for each hour worked in excess of 40 in the workweek. In weeks in which no overtime is worked only the provisions of section 6 of the act, requiring the payment of not less than $1.00 per hour, apply, so that the employee's right to receive $1.60 per hour is enforceable only under his contract. However, in overtime weeks the Administrator has the duty to insure the payment of time and one-half the employee's regular rate of pay for hours in excess of 40 and overtime cannot be said to have been paid until all straight-time compensation due the employee under the statute or his employment contract has been paid. Thus if the employee works 41 hours in a particular week, he is owed his salary for 35 hours—$56, 5 hours pay at $1.60 per hour for the 5 hours between 35 and 40—$8, and one hour's pay at $2.40 for the one hour in excess of 40—$2.40, or a total of $66.40 for the week.

20. Section 778.9 (c) is amended to read:

(c) *Effect if salary is for variable workweek.* The discussion in the prior paragraph sets forth one result of reducing the workweek from 40 to 35 hours. It is not either the necessary result or the only possible result. As in all cases of employees hired on a salary basis, the regular rate depends in part on the agreement of the parties as to what the salary is intended to compensate. In reducing the workweek to 35 hours the parties may agree to change the basis of the employment arrangement by providing that the salary which formerly covered a fixed workweek of 40 hours now covers a variable workweek up to 40 hours. If this is the new agreement, the employee receives $56 for workweeks of varying lengths, such as 35, 36, 38, or 40 hours. His rate thus varies from week to week, but in weeks of 40 hours or over, it is $1.40 per hour (since the agreement of the parties is that the salary covers up to 40 hours and no more) and his overtime rate, for hours in excess of 40, thus remains $2.10 per hour. Such a salary arrangement presumably contemplates that the salary will be paid in full for any workweek of 40 hours or less. The employee would thus be entitled to his full salary if he worked only 25 or 30 hours. No deductions for hours not worked in short workweeks would be made.[33]

21. Section 778.9 (e) is amended to read:

(e) *Effect on salary covering more than 40 hours' pay.* The same reasoning applies to salary covering straight-time pay for a longer workweek. If an employee was hired at a fixed salary of $77 for 55 hours of work, he was entitled to statutory overtime for the 15 hours in excess of 40 at the rate of 70 cents per hour (half-time) in addition to his sal-

[33] For a discussion of the effect of deductions on the regular rate, see § 778.12.

ary. If the workweek is later reduced to 50 hours, with the understanding between the parties that the salary covers all hours up to 55, his regular rate in any week of 55 hours or less is determined by dividing the salary by the number of hours worked to earn it in that particular week, and additional half-time, at that rate, is due for each hour in excess of 40. In weeks of 55 hours or more, his regular rate is $1.40 per hour. If the understanding of the parties is that the salary now covers a fixed workweek of 50 hours, his regular rate is $1.54 per hour in all weeks. This assumes that when an employee works less than 50 hours in a particular week, deductions are made at the rate of $1.54 per hour for the hours not worked.

The reasoning does not, of course, apply to a situation in which the former earnings at both straight-time and overtime are paid to the employee for the reduced workweek. Suppose an employee was hired at an hourly rate of $1.40 an hour and regularly worked 50 hours, earning $77 as his total straight-time and overtime compensation, and the parties now agree to reduce the workweek to 45 hours without any reduction in take-home pay. The parties in such a situation may agree to an increase in the hourly rate from $1.40 per hour to $1.62 so that for a workweek of 45 hours (the reduced schedule) the employee's straight-time and overtime earnings will be $77. The parties cannot, however, agree that the employee is to receive exactly $77 as total compensation (including overtime pay) for a workweek varying, for example, up to 50 hours, unless he does so pursuant to contracts specifically permitted in section 7 (e) of the act, as discussed in § 778.18. An employer cannot otherwise discharge his statutory obligation to pay overtime compensation to an employee who does not work the same fixed hours each week by paying a fixed amount purporting to cover both straight-time and overtime compensation for an "agreed" number of hours. To permit such a practice without proper statutory safeguards would result in sanctioning the circumvention of the provisions of the act which require that an employee who works more than 40 hours in any workweek be compensated, in accordance with express Congressional intent, at time and one-half his regular rate of pay for the burden of working long hours. In arrangements of this type, no additional financial pressure would fall upon the employer and no additional compensation would be due to the employee under such a plan until the workweek exceeded 50 hours.

22. Section 778.9 (f) is amended to read:

(f) *Temporary or sporadic reduction in schedule.* The problem of reduction in the workweek is somewhat different where a temporary reduction is involved. Reductions for the period of a dead or slow season follow the rules announced above. However, reduction on a more temporary or sporadic basis presents a different problem. It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight-time rate no matter how many hours he worked. If he set the rate at $1.40 per hour for all workweeks in which the employee worked 40 hours or less, approximately $1.38 per hour for workweeks of 41 hours, approximately $1.37 for workweeks of 42 hours, approximately $1.27 for workweeks of 50 hours, and so on, the employee would always receive (for straight time and overtime at these "rates") $1.40 an hour regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal non-overtime week—in this case, $1.40 per hour.

The situation is different in degree but not in principle where employees who have been hired at a bona fide $1.60 rate usually working 50 hours and taking home $88 as total straight-time and overtime pay for the week are, during occasional weeks, cut back to 42 hours. If the employer raises their rate to $2 for such weeks so that their total compensation is $86 for a 42-hour week the question may properly be asked, when they return to the 50-hour week, the $1.60 rate and the gross pay of $88, whether the $1.60 rate is really their regular rate. Are they putting in 8 additional hours of work for that extra $2 or is their "regular" rate really now $2 an hour since this is what they earn in the short workweek? It seems clear that where different rates are paid from week to week for the same work and where the difference is justified by no factor other than the number of hours worked by the individual employee—the longer he works the lower the rate—the device is evasive and the rate actually paid in the shorter or non-overtime week is his regular rate for overtime purposes in all weeks.

23. Section 778.10, computation number (3), is amended to read:

(3) Suppose that, in the example given, the employee worked 5 hours on Sunday, March 11, 1956. His workweek commenced at 7 a. m. on Monday, March 5th, and he worked 40 hours March 5th through 10th so that for that week he would be owed straight-time and overtime compensation for 45 hours. The proposal is to commence the workweek at 7 a. m. on March 11th. In the week from Sunday, March 11, through Saturday, March 17, the employee worked a total of 40 hours, including the 5 hours worked on Sunday. It is obvious that the allocation of the Sunday hours to the old workweek will result in higher total compensation to the employee for the 13-day period. He should, therefore, be paid (if his rate were $1.40 an hour) $66.50 for the period from March 5th through March 11th, and $49 for the period from March 12th through March 17th.

The fact that this method of compensation is permissible under the Fair Labor Standards Act will not alter any obligation the employer may have under his employment contract to pay a greater amount of overtime compensation for the period in question.

24. Section 778.12, paragraph beginning with the words "the reductions" and ending with the word "altered" is amended to read:

The reductions in pay described in category (4) are not, properly speaking, "deductions" at all. If an employee is compensated at a fixed salary for a fixed workweek and if this salary is reduced by the amount of the average hourly earnings for each hour lost by the employee in a short workweek, the employee is, for all practical purposes, employed at an hourly rate of pay. This hourly rate is the quotient of the fixed salary divided by the fixed number of hours it is intended to compensate. If an employee is hired at a fixed salary of $56 for a 40-hour week, his hourly rate is $1.40. When he works only 36 hours he is therefore entitled to $50.40. The employer makes a "deduction" of $5.60 from his salary to achieve this result. The rate is not altered.

25. Section 778.12, last paragraph beginning with the words "where deductions," 3d from last line, delete the number and symbol "75¢" and insert in place thereof the symbol and number "$1.00".

26. Footnote 39 to § 778.13 (b) is amended to read:

[39] The time spent by the employee in competing for such a prize (whether successfully or not) is working time and must be counted as such in determining overtime compensation due under the act.

27. Section 778.14 is amended to read:

§ 778.14 *Lump sum attributed to overtime.* Section 7 of the act requires the payment of overtime compensation for hours worked in excess of 40 at a rate not less than one and one-half times the regular rate. The overtime rate is a rate per hour.

Where employees are paid on some basis other than an hourly rate, the regular hourly rate is derived by dividing the total compensation (except statutory exclusions) by the total hours of work for which the payment is made. To qualify as an overtime premium under section 7 (d) (5), (6) or (7), however, the extra compensation must be paid pursuant to a premium rate which is a rate per hour.[40] To qualify under section 7 (d) (5) this rate must be greater than the regular rate, either a fixed amount per hour or a multiple of the rate, such as time and one-third. To qualify under section 7 (d) (6) or (7) the rate may not be less than time and one-half the bona fide rate established in good faith for like work performed during nonovertime hours. It may not be less than time and one-half but it may be more. It may be a standard multiple greater than one and one-half (for example, double time); or it may be a fixed sum of money per hour which is,

[40] Sections 7 (e) and 7 (f) of the act provide for special exceptions from this rule. These are discussed in §§ 778.18, 778.19, and 778.20.

as an arithmetical fact, at least time and one-half the regular rate (for example, if the regular rate is $2 per hour, the overtime rate may not be less than $3 but it may be set at a higher arbitrary figure such as $3.20 per hour).

Where an employee works a regular fixed number of hours each week, it is, of course, proper to pay him a fixed sum, for his overtime work, determined by multiplying his overtime rate by the number of overtime hours, regularly worked. However, a premium in the form of a lump sum which is paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money may be equal to or greater than the sum owed on a per-hour basis. For example, an agreement that provides for the payment of a flat sum of $20 to employees who work on Sunday does not provide a premium which will qualify as an overtime premium, even though the employee's straight-time rate is $1.30 an hour and the employee always works less than 10 hours on Sunday. Likewise, where an agreement provides for the payment for work on Sunday of either the flat sum of $20 or time and one-half the employee's regular rate for all hours worked on Sunday, whichever is greater, the $20 guaranteed payment is not an overtime premium. The reason for this is clear. If the rule were otherwise, an employer desiring to pay an employee a fixed salary regardless of the number of hours worked in excess of 40 in the workweek could merely label as overtime pay a fixed portion of such salary sufficient to take care of compensation for the maximum number of hours that would be worked. The Congressional purpose to effectuate a maximum hours standard by placing a penalty upon the performance of excessive overtime work would thus be defeated. For this reason, where extra compensation is paid in the form of a lump sum for work performed in overtime hours, it must be included in the regular rate and may not be credited against statutory overtime compensation due.

The same reasoning applies where employees are paid a flat rate for a special job performed during overtime hours, without regard to the time actually consumed in performance.[41] The total amount paid must be included in the regular rate; no part of the amount may be credited toward statutory overtime compensation due.

It may be helpful to give a specific example illustrating the results of paying an employee on the basis under discussion.

An employment agreement calls for the payment of $1.50 per hour for work during the hours established in good faith as the basic workday or workweek; it provides for the payment of $2.25 per hour for work during hours outside the basic workday or workweek. It further provides that employees doing a special task outside the basic workday or workweek shall receive 6 hours' pay at the rate of $2.25 per hour (a total payment of $13.50) regardless of the time actually consumed in performance.

Suppose an employee works the following schedule. (The hours marked by an asterisk were spent in the performance of the special work.)

	M	T	W	T	F	S	S
Hours within basic workday	8	8	7	8	8	0	0
Pay under contract	$12	$12	$10.50	$12	$12	0	0
Hours outside basic workday	2	*2	1	0	0	4	0
Pay under contract	$4.50	$13.50	$2.25	0	0	$9	0

To determine the regular rate, the total compensation (except statutory exclusions) must be divided by the total number of hours worked. The only sums to be excluded in this situation are the extra premiums provided by a premium rate (a rate per hour) for work outside the basic workday and workweek, which qualify for exclusion under section 7 (d) (7) of the act.[42] The $4.50 paid on Monday, the $2.25 paid on Wednesday and the $9 paid on Saturday are paid pursuant to rates which qualify as premium rates under section 7 (d) (7) of the act. The total extra compensation (over the straight-time pay for these hours) provided by these premium rates is $5.25. The sum of $5.25 should be subtracted from the total of $87.75 paid to the employee. No part of the $13.50 paid for the special work performed on Tuesday qualifies for exclusion. The remaining $82.50 must thus be divided by 48 hours to determine the regular rate—$1.72 per hour. The employee is owed one-half this rate for each of 8 overtime hours worked—$6.88. The extra compensation in the amount of $5.25 paid pursuant to premium rates which qualify as overtime premiums may be credited toward the $6.88 owed. No part of the $13.50 premium may be so credited. The employer must pay the employee an additional $1.63 as statutory overtime pay—a total of $89.38 for the week.

28. In § 778.15 delete from the paragraph beginning with the words "The employment agreement establishes a basic hourly rate" to the end of the section, and insert in place thereof the following:

The employment agreement establishes a basic hourly rate of $1.50 per hour, provides for the payment of $2.25 per hour for overtime work (in excess of the basic workday or workweek) and defines the basic workday as 8 hours, and the basic workweek as 40 hours, Monday through Friday. It further provides that the assembling of a machine constitutes a day's work. An employee who completes the assembling job in less than 8 hours will be paid 8 hours' pay at the established rate of $1.50 per hour and will receive pay at the "overtime" rate for hours worked after the completion of the task.

Suppose an employee works the following hours in a particular week:

	M	T	W	T	F	S	S
Hours spent on task	6	7	7	0	8½	6	0
Day's pay under contract	$12	$12	$12	$12	$12	$18	0
Additional hours	2	----	2	-------	½	----	--
Additional pay under contract	$4.50	----	$4.50	$2.25	$2.25	----	--

The employee has actually worked a total of 48 hours and has received a total of $91.50 for the week. The only sums which can be excluded from this total before the regular rate is determined are the extra 75-cent payments for the extra hour on Thursday and Friday made because of work actually in excess of 8 hours. The other premium rates were paid either without regard to whether or not the hours they compensated were in excess of a bona fide daily or weekly standard or without regard to the number of overtime hours worked. Only the sum of $1.50 is excluded from the total. The remaining $90 is divided by 48 hours to determine the regular rate—$1.875 per hour. One-half this rate is due as extra compensation for each of the 8 overtime hours—$7.50. The $1.50 paid for excessive hours may be credited and the balance—$6.00—is owed in addition to the $91.50 due under the contract.

29. In § 778.16 delete the third paragraph which begins with the words "An agreement not" and ends with the words "under the Act", and insert in place thereof the following:

An agreement not to compensate employees for certain nonovertime hours stands on no better footing since it would have the same effect of diminishing the employee's total overtime compensation. An agreement, for example, to pay an employee $1.50 an hour for the first 35 hours, nothing for the hours between 35 and 40 and $2.25 an hour for the hours in excess of 40 would not meet the overtime requirements of the act. The employee would have to be paid $7.50 for the 5 hours worked between 35 and 40 before any sums ostensibly paid for overtime could be credited toward overtime compensation due under the act.

30. Section 778.18 (d), second paragraph which begins with the words "The regular rate of pay", delete the number and word "75 cents" and insert in place thereof the symbol and number "$1.00".

31. Section 778.18 (f), delete the fourth paragraph which begins with the words "the amount of weekly pay", and insert in place thereof the following:

The amount of weekly pay guaranteed may not exceed compensation due at the specified regular rate for 40 hours and at the specified overtime rate for 20 additional hours. Thus, if the specified regular rate is $1.50 an hour the weekly guaranty cannot be greater than $105. This does not mean that an employee employed pursuant to a guaranteed pay contract under this section may not work more than 60 hours in any week; it means merely that pay in an amount

[41] This situation is to be distinguished from "show-up" and "call-back" pay situations discussed in § 778.7 (e). It is also to be distinguished from payment at time and one-half the applicable rate to pieceworkers for work performed during overtime hours, as discussed in § 778.19.

[42] As discussed in § 778.5 (d).

sufficient to compensate for a greater number of hours cannot be covered by the guaranteed pay. If he works in excess of 60 hours he must be paid, for each hour worked in excess of 60, overtime compensation as provided in the contract, in addition to the guaranteed amount.

32. Section 778.18 (f), delete the 6th paragraph which begins with the words "The guaranty of pay", and insert in place thereof the following:

The guaranty of pay must be "based on the rates so specified," in the contract. If the contract specified a regular rate of $1.50, and an overtime rate of $2.25 and guarantees pay for 50 hours, the amount of the guaranty must be $82.50, if it is to be based on the rate so specified. A guaranty of $100 in such a situation would not, obviously, be based on the rates specified in the contract.

33. Section 778.18 (f), in the 7th paragraph which begins with the words "Moreover, a contract", delete the symbol and number "$75" and insert in place thereof the symbol and number "$100".

34. Section 778.18 (g), in the 2d paragraph which begins with the words "As a guide to employers", delete the symbol, number, and words "$1.30 per hour" and insert in place thereof the symbol, number, and words $1.50 per hour.

35. Section 778.18 (g), delete the 3d paragraph which begins with the words "The X company" and insert in place thereof the following:

The X Company hereby agrees to employ John Doe as a claims adjuster at a regular hourly rate of pay of $1.50 per hour for the first 40 hours in any workweek and at the rate of $2.25 per hour for all hours in excess of 40 in any workweek, with a guarantee that John Doe will receive, in any week in which he performs any work for the company, the sum of $82.50 as total compensation, for all work performed up to and including 50 hours in such workweek.

36. Section 778.19 (b), in subparagraph (4) which begins with the words "the compensation paid" delete the symbol and number "$1.125" and insert in place thereof the symbol and number "$1.50".

37. Section 778.20, delete the last paragraph which begins with the words "Regulations issued pursuant" and insert in place thereof the following:

Regulations issued pursuant to this section are published in the Code of Federal Regulations as 29 CFR 548. Payments made in conformance with these regulations satisfy the overtime requirements of the act.

38. Section 778.22 is amended to read:

§ 778.22 *The "split-day" plan.* Another device designed to evade the overtime requirements of the act was a plan known as the "Poxon" or "split-day" plan. Under this plan the normal or regular workday is artificially divided into two portions one of which is arbitrarily labeled the "straight-time" portion of the day and the other the "overtime" portion. Under such a plan, an employee who would ordinarily command an hourly rate of pay well in excess of the minimum for his work is assigned a low hourly rate (often the minimum) for the first hour (or the first 2 or 4 hours) of each day. This rate is designated as the regular rate; time and one-half such rate is paid for each additional hour worked during the workday. Thus, for example, an employee is arbitrarily assigned an hourly rate of $1.40 per hour under a contract which provides for the payment of so-called "overtime" for all hours in excess of 4 per day. Thus, for the normal or regular 8-hour day the employee would receive $5.60 for the first 4 hours and $8.40 for the remaining 4 hours; a total of $14 for 8 hours. (This is exactly what he would receive at the straight-time rate of $1.75 per hour.) On the sixth 8-hour day the employee likewise receives $14 and the employer claims to owe no additional overtime pay under the statute since he has already compensated the employee at "overtime" rates for 20 hours of the workweek.

Such a division of the normal 8-hour workday into 4 straight-time hours and 4 overtime hours is purely fictitious. The employee is not paid at the rate of $1.40 an hour and the alleged overtime rate of $2.10 per hour is not paid for overtime work. It is not geared either to hours "in excess of the employee's normal working hours or regular working hours" (section 7 (d) (5)) or for work "outside of the hours established in good faith * * * as the basic, normal, or regular workday" (section 7 (d) (7)) and it cannot therefore qualify as an overtime rate. The regular rate of pay of the employee in this situation is $1.75 per hour and he is owed additional overtime compensation, based on this rate, for all hours in excess of 40. This rule was settled by the Supreme Court in the case of Walling v. Helmerich & Payne, 323 U. S. 37, and its validity has been reemphasized by the definition of the term "regular rate" in section 7 (d) of the act as amended.

39. Section 778.23 (a) is amended to read:

§ 778.23 (a) *Artificially labeling part of the regular wages a "bonus."* The term "bonus" is properly applied to a sum which is paid as an addition to total wages, usually because of extra effort of one kind or another, or as a reward for loyal service or as a gift. The term is improperly applied if it is used to designate a portion of regular wages which the employee is entitled to receive under his regular wage contract.

For example, if an employer has agreed to pay an employee $66.50 a week without regard to the number of hours worked, the regular rate of pay of the employee is determined each week by dividing the $66.50 salary by the number of hours worked in the week. The situation is not altered if the employer continues to pay the employee the same $66.50 each week but arbitrarily breaks the sum down into wages for the first 40 hours at an hourly rate of $1.00 an hour, overtime compensation at $1.50 per hour and labels the balance a "bonus" (which will vary from week to week, becoming smaller as the hours increase and vanishing entirely in any week in which the employee works 57⅓ hours or more). The situation is in no way bettered if the employer, standing by the logic of his labels, proceeds to compute and pay overtime compensation due on this "bonus" by prorating it back over the hours of the workweek. Overtime compensation has still not been properly computed for this employee at his regular rate.

An illustration of how the plan works over a three-week period may serve to illustrate this principle more clearly:

In the first week the employee works 40 hours and receives $66.50. The books show he has received $40 (40 hours×$1 an hour) as wages and $26.50 as bonus. No overtime has been worked so no overtime compensation is due.

In the second week he works 50 hours and receives $66.50. The books show he has received $40 for the first 40 hours and $15 (10 hours×$1.50 an hour) for the 10 hours over 40, or a total of $55 as wages, and the balance as a bonus of $11.50. Overtime compensation is then computed by the employer by dividing $11.50 by 50 hours to discover the average hourly increase resulting from the bonus—23 cents per hour—and half this rate is paid for the 10 overtime hours—$1.15. This is improper. The employee's regular rate in this week is $1.33 per hour. He is owed $73.15, not $67.65.

In the third week the employee works 55 hours and is paid $66.50. The books show that the employee received $40 for the first 40 hours and $22.50 (15 hours×$1.50 per hour) for the 15 hours over 40, or a total of $62.50, and the balance as a bonus of $4. Overtime pay due on the "bonus" is found to be 54 cents. This is improper. The employee's regular rate in this week is $1.21 and he is owed $75.58, not $67.04.

Similar schemes have been devised for piece-rate employees. The method is the same. An employee is assigned an arbitrary hourly rate (usually the minimum) and it is agreed that his straight-time and overtime earnings will be computed on this rate but that if these earnings do not amount to the sum he would have earned had his earnings been computed on a piece-rate basis of "x" cents per piece, he will be paid the difference as a "bonus". This subterfuge does not serve to conceal the fact that this employee is actually compensated on a piece-rate basis, that there is no bonus and that his regular rate is the quotient of piece-rate earnings divided by hours worked.[33]

The general rule may be stated that wherever the employee is guaranteed a fixed or determinable sum as his wages each week, no part of this sum is a true bonus and the rules for determining overtime due on bonuses do not apply.

40. Section 778.23 (b), delete all paragraphs preceding the paragraph beginning with the words "The total amount earned by each employee is" and insert in place thereof the following:

(b) *Pseudo "percentage bonuses."* The device does not improve when it becomes more complex. If no true bonus in a flat sum amount can be legitimately separated out of the employee's wages, certainly no bonus in the form of a percentage of total earnings can be so de-

[33] See Walling v. Youngerman-Reynolds Hardwood Company, 325 U. S. 419, where this scheme was struck down by the Supreme Court.

rived. Yet some employers, seeking to evade the overtime requirements of the act entirely while apparently complying with every requirement, have devised schemes of this kind. Like the employer described in the preceding paragraph, such an employer pays his employee $66.50 a week without regard to the number of hours worked. He also sets up a fictitious regular rate of $1.00 an hour. In a week in which the employee works 50 hours his records show the following:

(The material in brackets does not usually appear in the final records.)

Straight time for 40 hours at $1 an hour	$40.00	
Overtime for 10 hours at $1.50 an hour	15.00	
		$55.00
[$66.50−$55.00=$11.50, total amount to be distributed as a bonus]		
[$11.50/$55.00=20.9 percent]		
Percentage of total earnings bonus at 20.9 percent of $55		11.50
Total		66.50

Obviously, this employee can no more be said to be receiving proper overtime than the employee in the previous example. This employee's regular rate in this week is $1.33 per hour and he is owed a total of $73.15 for the week.

No better claim of compliance can be made by an employer who arbitrarily pieces out a bonus from all or part of group wages. The scheme tends to be more complex, but the principle is the same and the same results follow:

One relatively simple example of such a scheme is the following: Two employees are hired as salesmen on an hourly-rate-plus-commission basis. Each is hired at the rate of $1.40 an hour for the first 40 hours and $2.10 an hour for overtime and, in addition, is entitled to a share in commissions earned by each at the rate of one percent of sales. In a given week one employee works 40 hours and the other works 50. Together they sell $1,330 worth of merchandise and are thus entitled to $13.30 as commissions. In order to avoid payment of overtime on the commissions, the employer decides to distribute the $13.30 in the form of a percentage of total earnings. The total wages of the two employees is $133 in the particular week. The $13.30 commissions represent 10 percent of this figure. The employer therefore pays a 10 percent "bonus" to each employee on his total earnings. One receives $5.60 as bonus, the other, $7.70. The employer claims that no additional overtime is due because the "bonus" was a percentage of total earnings and the percentage was determined before the amount due any individual employee had been determined.

If the commissions were a "bonus" at all, the method of distribution might be proper. But a bonus, as has been stated, is a sum paid in addition to regular wages and not as a part of such wages. The employees have contracted to work on a wage-plus-group-commission basis. No extra pay—over and above the contract wage—is involved. As a regular part of their duties, the employees make sales and regularly receive a one-percent commission on the amount of the sale. Moreover, since the employees are owed the commissions in an amount related only to the amount of total sales and without regard to the number of hours worked, no part of such commissions is paid as overtime compensation.

In the example just given the employer sought only to relieve himself of the burden of paying proper overtime on part of the wages. The example must grow more complex but the principle does not change when the employer seeks to relieve himself of the entire burden of overtime by a fictitious division of regular group wages into hourly earnings and "bonus". This scheme is usually tried with respect to employees who work solely on a group piece rate or group commission basis. For simplicity we will assume that the two employees in the previous example receive no base hourly rate but are working solely on a commission basis—11 percent of total sales. In order for the scheme to function the employer must provide a minimum hourly guarantee. The minimum rate of $1.00 is best suited to his purpose for it provides the greatest leeway as to the number of hours that may be worked without the payment of any additional overtime compensation whatever. In a week in which the total sales amount to $950 the two employees are together entitled to $104.50 (11%). They will receive this amount regardless of the number of hours they have worked individually or collectively. If they work the same number of hours, each will get half—$52.25. This would be true whether the hours worked by each were 40, 43, 45, or 48 hours. Only the bookkeeping is altered. If each works 40 hours the record will show for each:

Wages at $1 per hour	$40.00
Bonus	12.25
Total	52.25

If each works 45 hours, the record will show:

Wages at $1 per hour for 40 hours	40.00
Overtime pay at $1.50 per hour for 5 hours	7.50
Bonus at 10 percent of total earnings (10 percent of $47.50)	4.75
Total	52.25

41. Section 778.25, delete from the paragraph beginning with the words "under this provision" to the end of the section, and insert in place thereof the following:

Under this provision, where an employee works both in excess of twelve hours in a day and in excess of fifty-six hours in the aggregate in a particular workweek, the employer must pay overtime compensation computed on either the daily or the weekly basis, whichever is greater, but not both. It may be helpful to illustrate this opinion by specific examples.

(a) Suppose an employee paid $1.20 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	14	14	14	14	10	0	0

On a daily basis the employee is entitled to 8 hours of overtime pay, or a total of $84, for the week (12 hours at $1.20 plus 2 hours at $1.80 for each of the first 4 days ($72) plus 10 hours at $1.20 for the fifth day). On a weekly basis the employee is entitled to 10 hours of overtime pay or a total of $85.20, for the week (56 hours at $1.20 plus 10 hours at $1.80). The employer must pay $85.20 to satisfy the requirements of the act.

(b) Suppose the employee paid $1.20 an hour works the following schedule:

	M	T	W	T	F	S	S
Hours	16	14	14	14	0	0	0

On a daily basis the employee is entitled to 10 hours of overtime pay, or a total of $82.80, for the week. On a weekly basis the employee is entitled to 8 hours of overtime pay, or a total of $81.60, for the week (56 hours at $1.20 plus 8 hours at $1.80). The employer must pay $82.80 to satisfy the requirements of the act.

42. Section 778.27 is amended to read:

§ 778.27 *Retroactive effect.* Section 16 (e) of the Fair Labor Standards Amendments of 1949 (29 U. S. C. 216b) provides:

No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the effective date of this act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to July 20, 1949, if the compensation paid prior to July 20, 1949, for such work was at least equal to the compensation which would have been payable for such work had section 7 (d) (6) and (7) and section 7 (g) of the Fair Labor Standards Act of 1938, as amended, been in effect at the time of such payment.

For the period between July 20, 1949, and January 25, 1950, the provisions of the former section 7 (e) of the act, as added by the act of July 20, 1949 (63 Stat. 446) provided virtually identical protection.

43. Section 778.6 (g) (4) is amended to read:

(4) *Plans under section 401 (a) of the Internal Revenue Code.* Where the benefit plan or trust has been approved by the Bureau of Internal Revenue as satisfying the requirements of section 401 (a) of the Internal Revenue Code, in the absence of evidence to the contrary, the plan or trust will be considered to meet the conditions specified in subparagraphs (3), (i), (iii), (iv), and (v) of this paragraph.

(52 Stat. 1060; 29 U. S. C. 201–219)

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

Signed at Washington, D. C., this 27th day of June 1956.

NEWELL BROWN,
Administrator.

[F. R. Doc. 56-5280; Filed, July 3, 1956; 8:46 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter G—Defense Contract Financing

PART 84—PAYMENTS ON INCENTIVE-TYPE AND PRICE REDETERMINATION-TYPE CONTRACTS

Sec.
84.1 Purpose.
84.2 Policy and action.
84.3 Refunds and adjustments.
84.4 Contract administration.

AUTHORITY: §§ 84.1 to 84.4 issued under sec. 202, 61 Stat. 500, as amended, secs. 2–12, 62 Stat. 21–26, sec. 638, 66 Stat. 537; 5 U. S. C. 171a, 41 U. S. C. 151–162.

NOTE: This part supersedes and cancels Part 84 published 20 F. R. 9170, subject: "Payments on Incentive-Type and Price Redetermination-Type Contracts."

§ 84.1 *Purpose.* It is the purpose of this part to assure payment of amounts fairly due for items delivered and accepted under incentive-type and price redetermination-type contracts, to reduce the need for refunds by contractors under such contracts, to facilitate timely adjustment of provisional billing prices and prompt completion of final pricing under these types of contracts, and to reaffirm the policy on progress payments.

§ 84.2 *Policy and action.* (a) To accomplish the purpose of this part, all new contracts of the incentive-type and price redetermination-type, all definitive contracts of the incentive- or price redetermination-type replacing or superseding letter contracts, all amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, and all amendments to contracts of the incentive- or price redetermination-type providing for new or additional procurement, entered into on or after July 1, 1956, shall contain one or the other of the provisions set out in subparagraphs 1 or 2 of this paragraph.

(1) Incentive-type contracts:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) until final price revision has been made shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of the established target profit allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established—increased or decreased in accordance with the incentive profit formula of this contract when the amount of costs stated in (2), above, differs from the applicable target costs. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954 shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof.

(2) In price revision—or redetermination-type contracts, not of the incentive type:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (for services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the Contractor of cost data and price-redetermination offer, the Contractor and the Contracting Officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the Contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices, and (c) so long as the Contractor bills at the agreed revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(b) In connection with amendments providing for new procurement, and amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, the above provisions shall be made applicable to the entire contract.

(c) Where the contracting officer has discretion to control payments through withholding provisions under an existing contract of the incentive- or price redetermination-type not containing the above provisions, the contract shall be administered hereafter, to the maximum extent permitted by such withholding provisions, so that on and after January 1, 1956, the total aggregate payments will be limited in the manner provided in paragraph (a) of this section.

(d) In the case of outstanding contracts of the incentive-type or price redetermination-type, where payments cannot be limited within a reasonable time as provided above, the contracting officer shall take prompt action to obtain by mutual agreement amendments of such contract incorporating the above provisions.

(e) Ordinarily, unless the contracting officer has good cause to doubt or question the accuracy of statements furnished in accordance with paragraph (a) of this section, such statements will be relied upon and prompt payments under the contract will continue to be made pending any post-audit or post-review that may be necessary to protect the interests of the Government.

§ 84.3 *Refunds and adjustments.* (a) (1) It is essential in all cases that the amount of any indebtedness of contractors to the Government be ascertained promptly, and that the amount of each contractor's indebtedness to the Government be collected expeditiously.

(2) Government personnel will take prompt action so that amendments and supplemental agreements, where appro-

priate, will be prepared expeditiously and executed without delay.

(b) For use in expediting and controlling adjustments and refunds, current inventory and control lists shall be established and maintained with regard to all incentive-type and price redetermination-type contracts. Aggressive and continuing efforts shall be made to eliminate any unnecessary delays.

(c) All incentive-type and price redetermination-type contracts shall be reviewed systematically and periodically to obtain voluntary interim billing price adjustments and prompt refunds as appropriate. The making of voluntary refunds in anticipation of retroactive price reductions shall be systematically encouraged. No proposed voluntary refund shall be refused or delayed, and all such refunds shall be tendered and accepted without prejudice to final pricing. In connection with voluntary refunds, minimum refunds proposed by contractors in connection with final pricing proposals, and refunds incident to quarterly statements, contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. Such adjustments as may be essential in connection with refunds will be accomplished by appropriate Government personnel, with such information as may be essential from contractors after refunds are made, and the making, acceptance and deposit of refunds will not be delayed pending the making of any necessary accounting adjustments. When reductions in billing prices are proposed by contractors, they will be made effective immediately without prejudice to further adjustment, and billings voluntarily reduced by contractors shall if otherwise proper be paid at the reduced amounts without awaiting contract amendments.

§ 84.4 *Contract administration.* (a) The contracting officer will exercise every effort to bring about prompt redetermination of prices and setting of firm target prices by vigilant and timely attention to the contract administration aspects of each contract, and nothing contained herein will dimish his responsibilities.

(b) Section 1481 of the Internal Revenue Code of 1954 and Section 3806 of the Internal Revenue Code of 1939 provide for certain tax credits in connection with contract price refunds. The contract provisions set out in this part and in superseded Part 84 (20 F. R. 9179) do not alter the effect of those statutory provisions. Contracts containing either one of the provisions set out in § 84.3 (a) of superseded Part 84 (20 F. R. 9179) shall be administered in such manner as to allow this statutory tax credit whenever applicable under the circumstances. Whenever there is a "gross excess" under those contract provisions, the amount of such tax credit shall be allowed in partial settlement of the gross excess determined without reference to such tax credit, and only the remainder of the excess after such tax credit allowance shall be subject to refund by the Contractor. Also, applicable previous tax credits shall be excluded in computing refunds previously made, and the amount of tax credits shall be deducted from the "gross excess" in computing the amount that may be added or restored to the unliquidated progress payment amount.

(c) It was intended by superseded Part 84 (20 F. R. 9179) that subject to the quarterly adjustment required by the contract provisions set out therein, payments at contract billing prices would be made before submission of the first required quarterly statement, and thereafter during the intervals between quarterly statements. Hence, contracts containing the provisions required by superseded Part 84 (20 F. R. 9179) will be administered in the same manner as if they contained the first sentence of the contract provisions set out above.

[SEAL] REUBEN B. ROBERTSON, Jr.,
Deputy Secretary of Defense.

[F. R. Doc. 56-5304; Filed, July 3, 1956; 8:51 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders

[Public Land Order 1309]

[69696]

NEW MEXICO

REVOKING DEPARTMENTAL ORDERS OF MAY 2, 1908 AND MARCH 2, 1909, WHICH RESERVED LANDS FOR USE OF THE FOREST SERVICE AS THE FRESNOL ADMINISTRATIVE SITE

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The departmental orders of May 2, 1908 and March 2, 1909, reserving the following-described public lands within the Sacramento (now Lincoln) National Forest, New Mexico, for use of the Forest Service, Department of Agriculture, as the Fresnol Administrative Site, are hereby revoked:

NEW MEXICO PRINCIPAL MERIDIAN

T. 16 S., R. 11 E.,
Sec. 6, lots 9, 10, 11, 13, 14, 15, 16, and 17.

The areas described aggregate 265.23 acres.

The released lands are within the Lincoln National Forest and have been open to applications and offers under the mineral-leasing laws. They will be open to such other applications, selections, and locations, as are permitted on national forest lands effective at 10:00 a. m., on

Inquiries concerning applications and offers under the mineral-leasing laws and locations under the mining laws shall be addressed to the Manager, Land Office, Bureau of Land Management, Santa Fe, New Mexico. Other inquiries shall be addressed to the Regional Forester, Post Office Building, Alamogordo, New Mexico.

WESLEY A. D'EWART,
Assistant Secretary of the Interior.

JUNE 28, 1956.

[F. R. Doc. 56-5279; Filed, July 3, 1956; 8:45 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 11532; FCC 56-587]

[Rules Amdt. 3-16]

PART 3—RADIO BROADCAST SERVICES

TELEVISION BROADCAST STATIONS

1. Prior to November 10, 1955, when this proceeding was initiated (Notice of Proposed Rule Making, FCC 55-1124), television broadcasters and other elements of the television industry had submitted numerous suggestions and, in some cases, formal petitions for revisions of the television allocation plan.

2. The scope of these proposals and the methods employed varied widely. They ranged from channel reassignments affecting a single city to major revisions affecting the entire country. The methods included such diverse and mutually inconsistent approaches as conversion to an all-VHF system, conversion to an all-UHF system, and continued use of both bands under a wide variety of proposals. Some of the latter envisaged the more or less extensive increase of the number of VHF channel assignments through the use of new VHF channels, the use of the present 12 VHF channels under reduced spacings, or both. Others contemplated the elimination or transfer elsewhere of VHF commercial channels and the substitution, locally, of UHF channels. Some proposals were based on the revision of the existing engineering standards and policies, notably with respect to minimum spacings, maximum antenna heights and powers, the directionalizing of antennas, and the use of cross polarization. Other proposals advocated the maintenance of present standards. In short, the Commission was called upon to consider an extensive array of widely differing remedies for the difficulties which had hindered the further expansion of the nation's television service and the fuller achievement of the objectives of the Sixth Report and Order.

3. Briefly stated, those objectives were to encourage the development of a nationwide, competitive television system in which:

(a) All areas would have at least one service;

(b) The largest possible number of communities would have at least one local television station; and

(c) Multiple services would be available in as many communities and areas as possible to provide adequate program choice to the public and encourage the development of competition—among broadcasters, networks and other elements of the industry.

4. Among these three basic objectives, the greatest progress has been made in achieving the first. It is estimated that over 90 percent of the population can receive service from at least one television station. Less progress has been realized toward achievement of the second objective. Of the 1,260 communities to which at least one television channel is assigned, fewer than 300 have 1 or

more stations on the air. As for the third objective, approximately 75 percent of the population receive service from two or more television stations. Slightly over 100 communities have two or more television stations in operation, as compared with 348 communities to which two or more television channels are assigned.

5. The foregoing reflects substantial progress during the four years which have elapsed since the present television allocation plan and engineering standards were adopted. Serious problems have arisen, however, which are impeding the continued expansion of the nation's television services. There is general agreement on the sources of these problems. In brief, they are:

(a) The limitation to 12 channels in the VHF band; and

(b) Difficulties which have been experienced in achieving fuller utilization of the 70 UHF channels. These difficulties have been ascribed chiefly to:

(1) The large numbers of VHF-only receivers in use and the high proportion of VHF-only receivers which continue to be manufactured.

(2) Performance deficiencies of UHF transmitting and receiving equipment during the initial 4-year period of the utilization of UHF for television broadcasting.

(3) The consequent preference of program and revenue sources for VHF outlets.

6. While some of the numerous suggestions, proposals and petitions before the Commission last November appeared to merit consideration, none was sufficiently free from disadvantage and difficulty to warrant adoption without extensive study and evaluation. Therefore this proceeding was initiated on November 10, 1955, to provide an orderly basis for examining and comparing the proposals and comments of all interested parties. Because the problems were nationwide in scope, and because widely divergent approaches to their solution required evaluation initially on a broad, nationwide basis, the Commission stated, in its Notice of Proposed Rule Making, that it would be premature at the outset to consider proposals whose scope was limited to action affecting only single communities or local areas.

7. Accordingly, the Commission requested the submission of proposals and comments relating to overall solutions on a broad, nationwide basis. At the same time the Commission terminated five rule making proceedings which had been initiated earlier on petitions for the deintermixture of five individual communities (Report and Order), November 10, 1955, Dockets 11238, 11333, 11334, 11335 and 11336, FCC 55–1125), and denied a number of other similar petitions on which rule making had not been initiated (Memorandum Opinion and Order, November 10, 1955, FCC 55–1126).

8. Aided by the proposals, comments and data submitted in this proceeding, the Commission has now had an opportunity to examine and compare the different basic approaches which are advocated by members of the television industry. The material filed has been painstakingly studied and evaluated in the endeavor to accomplish the object of the proceeding, which was to reach a decision as to the basic lines on which it would be in the public interest to revise the nationwide television system, and thus provide a basis for determining the specific reassignments which could usefully be made in individual communities in conformity with the nationwide policies adopted herein.

9. In evaluating the proposals before us it has been necessary to recognize that, while actions by this Commission determine the numbers of channels which are available for television broadcasting, the extent to which they are actually utilized depends upon the construction and operation of stations by qualified brodcasters who are able and willing to enter this field of private, free enterprise and to cope, as entrepreneurs, with the conditions of the marketplace. The opportunity for profit is accompanied by the risk of loss. Whether broadcast operations yield one or the other is dependent on economic and technical factors, many of which are beyond the Commission's control. One important economic factor is the high cost of the construction, operation and programming of television stations as compared with similar costs for radio stations. Because of this, under the present economics of television, fewer communities are able, at this stage, to support television stations than can support radio stations. Also, because of the dependence of television stations on network and other nationally distributed programming, the techniques, developed over the years in the aural broadcasting service, which enable numerous radio stations to operate successfully with a high proportion of local, non-network programming, have not so far been developed to as great an extent in the television field. This has meant that both VHF and UHF stations which have not been able to secure their principal programs from a major network have found survival difficult, if not impossible. But since it has also meant that the stations able to offer the largest viewing audience in any given community will normally secure the principal network affiliations, many UHF stations which normally cannot provide a viewing audience comparable to those of their VHF competitors have been forced to operate on a marginal or submarginal basis or cease operation.

10. Disparities which occur frequently between the audiences which VHF and UHF stations are able to offer advertising program sponsors and national spot advertisers have resulted from the serious problem of receiver incompatibility and from limitations which have been experienced to date in the power of UHF transmitters and in the sensitivity and selectivity of UHF receivers as well as the different propagation characteristics of the UHF band.

11. While we are cognizant of the jurisdictional and practical limitations which restrict the extent to which the Commission can ameliorate the foregoing economic and technical conditions, we have endeavored to determine the realistic possibilities for improvement through revision of existing television allocations. It has become apparent that the construction and successful operation of a larger number of stations has been impeded in numerous markets by the absence of a greater number of more nearly competitive facilities, despite the need for and the capacity of such markets to support a larger number of television outlets. Accordingly, in our evaluation of the numerous, diverse proposals before us, and in our determination of the course which in our judgment offers the best possibilities for both the immediate and long range expansion of the nation's television services, we have kept in mind the paramount need for more competitive services.

Remedial action proposed by the parties. 12. Some of the proposals submitted under this proceeding were based on the allocation of additional VHF spectrum space to television broadcasting and on the assignment of new VHF channels which this would make possible. Before this proceeding was initiated the Commission had undertaken negotiations with the Office of Defense Mobilization to ascertain whether any of the VHF frequencies allocated to governmental services might be made available for television broadcasting. The Office of Defense Mobilization made a careful study of the matter but concluded, in a report issued by that Office on April 13, 1956, that "national security requirements and the needs of air navigation and air communications preclude the release for non-Government use of any of the very high frequencies now utilized by the Federal Government." Moreover, this Commission has concluded that it would not be practicable to obtain a significant number of additional VHF channels using VHF frequencies under our control and now allocated to other services. In these circumstances, the proposals looking toward revision of the allocation plan on the basis of additional VHF channels must now be rejected. Moreover, the fact that additional VHF frequencies cannot be made available for television broadcasting precludes revision of the allocation plan looking toward an all-VHF television system. As the Commission has recognized from the outset, and has frequently reaffirmed, the 12 VHF channels alone are not adequate to make possible sufficient outlets for a fully competitive television system.

13. Other proposals before the Commission are based on the widespread use of additional VHF assignments, particularly in the larger markets, using the 12 VHF channels now available, but at spacings substantially shorter than the present minimum spacings. While this method appears to offer limited possibilities for meeting present needs for more stations in some areas, careful analysis of these proposals discloses difficulties which raise very serious doubt that this method would adequately serve our long range objectives. VHF stations at substandard spacings would reduce the service areas of existing VHF stations and create new interference areas within which satisfactory signals might not be received either from existing stations or from the new stations. Our studies disclose that, unless the existing minimum spacings were reduced very substantially, the number of additional outlets which could be provided over the country by

this method would be very limited. Thus, in order to permit the construction of a significant number of new VHF stations it would be necessary to make very substantial in-roads in the service areas of existing stations. We recognize as urged by parties to this proceeding that the interference problems might be limited to some extent by requiring the "squeezed-in" stations to employ lower heights and powers and directional antennas, and by the use of cross polarization. But we do not believe that the creation of numerous small VHF stations with very limited service areas would further the objectives of our nationwide television system. Similar proposals were submitted to the Commission when the present television allocation plan was under consideration. They were rejected, for reasons set out in the Sixth Report and Order (Paragraphs 136 et seq.). In our opinion those reasons remain essentially valid today. There is little likelihood, moreover, that even with the maximum possible utilization of VHF "squeeze-ins", assignments could be made available in sufficient numbers to accommodate the maximum number of television stations for which it may be expected there will eventually be economic support in the United States. Yet it is clear that the widespread use of new VHF assignments at sub-standard spacings would discourage the building of additional UHF stations, and in many instances would reduce the opportunities for successful operation of UHF stations now on the air. Thus in most of the larger markets the assignment of a VHF station at substandard spacings would operate to place an artificial ceiling on the number of stations which could eventually be established. For all of these reasons we have been unable to find that the addition of new VHF assignments at substandard spacings would serve the public interest. For reasons which are discussed later, we believe, however, that it may be desirable to relax the present rules concerning minimum assignment separations to the extent necessary to permit the assignment of additional channels which do not meet the separation from the new city, provided all separations will be met from the new transmitter on these channels.

14. Some of the proposals before us advocate the deintermixture of VHF and UHF channel assignments in order to more nearly equalize competitive opportunities in individual markets while at the same time utilizing both the VHF and UHF bands in the nationwide television system. Citing competitive difficulties of UHF broadcasters, particularly in markets which are served by two or more satisfactory VHF signals, the proponents of deintermixture have advocated the elimination of some or all of the VHF channel assignments in designated cities. It is contended that this would improve the opportunities of the local UHF broadcasters to obtain, or in some cases to retain sufficient network programming and national advertising revenue to support successful station operation which, it is alleged, would be impossible for a good many UHF stations obliged to compete with two or more VHF broadcasters. The deintermixture proposals also envisage, at least in some instances, the transfer of some VHF channels to other cities where they could be used to increase the number of local VHF services. Thus, deintermixture has the dual aspect of reducing or eliminating VHF assignments in some communities and of increasing the number of VHF assignments in others.

15. It does not appear, however, that deintermixture at this stage would be practicable in a sufficient number of communities representing a sufficiently large segment of the total population to provide significantly enhanced opportunities for the fuller utilization of the UHF channels on a nationwide basis. We believe that in some types of situations, which are discussed later, deintermixture merits careful consideration as a means of increasing the opportunity for effective competition among a greater number of stations in certain individual areas. Most of the deintermixture proposals[1] have been confined to communities where UHF stations commenced operating before the advent of one, and in some cases before the advent of a second VHF service, and where a high percentage of receivers in the hands of the local residents can receive UHF signals. There are serious obstacles to a more extensive nationwide program of deintermixture at this stage. Thus there is little support for the elimination of VHF assignments in areas with little UHF set saturation. In other instances the elimination of local VHF channel assignments would not accomplish effective deintermixture owning to the local reception from VHF stations located in neighboring communities. In still other cases the elimination of local VHF assignments would be impracticable at this stage owing to the fact that substantial "white areas" would be created. It seems doubtful for these reasons that the elimination of VHF channel assignments would be practicable at this stage in a sufficient number of communities to encourage significantly increased nationwide use of the UHF band. Nor would this technique alone satisfy the need for increasing the number of outlets in many markets, both large and small, which are at present inadequately served, and which accordingly offer only limited opportunities for competition among stations, among networks, and among other program and revenue sources.

16. Because deintermixture, alone, cannot solve the entire problem, we have found it necessary to consider additional means for making possible the full utilization of the UHF band for television broadcasting. As early as 1945,[2] recognizing the inadequacy of 13 VHF channels for a fully developed nationwide television system, Commission policy has looked toward the extensive use of the UHF band for television broadcasting. The expectation that ultimately the major part of television broadcasting would be carried on in the UHF band was implicit in the allocation, in the Sixth Report and Order, of 70 UHF channels to supplement 12 previously available VHF channels. But so far this expectation has not been realized owing to difficulties which none of the proposals already discussed can sufficiently overcome. One of the proposals whose consideration has been recommended in this proceeding and has been advocated in the past by industry representatives in submissions to the Commission and to Congress, should be examined. That is the proposal to shift all television broadcasting in the United States, or in a substantial portion of the country, to the ultra-high frequency band.

17. Although it would be premature at this stage for the Commission to adopt final conclusions concerning the feasibility of transferring television to the UHF band throughout the United States, or, alternatively, in a major portion of the country, we believe that our effort to find a solution to the nationwide television allocation problem should not be concluded without a careful and thorough exploration of this approach. Another major consideration is involved. As discussed later in more detail, there are growing indications that the needs of other services for additional spectrum space are increasing rapidly. The fact that the lower part of the VHF spectrum seems well suited to their needs indicates the likelihood that it will be possible to make effective use of the VHF frequencies now allocated to television, for other nonbroadcast services.

18. If suitable means could be found to overcome the difficulties inherent in so major a frequency reallocation as moving television to UHF, and if UHF could be sufficiently developed to permit the elimination of VHF channels without loss of service, a number of basic advantages would result. All stations would be able to compete on a much more nearly comparable basis technically, since there is much less disparity between the lower and upper UHF channels than between the VHF and UHF television channels. Thus the coverage of competing stations would be much more comparable than at present, and competitive opportunities among broadcasters, among networks and among other program and revenue sources would be considerably enhanced. It may be expected that this would encourage the building of numerous additional stations which would bring a first local service to some communities and much needed additional services in others. These achievements would be aided by the fact that broadcasting in a single band would, after a suitable transition period, eliminate the crucial problem of receiver incompatibility. As compared with alternative solutions which have been considered, the use of the UHF band exclusively would raise the ceiling of the maximum number of television stations which could eventually be built and successfully operated. And, as stated above, after the discontinuance of VHF television broadcasting, additional VHF fre-

[1] A petition filed on April 18, 1955, by Mr. Albert J. Balusek of San Antonio, Texas, proposed that the Commission deintermix UHF and VHF channel assignments in all communities throughout the United States. We are obliged to deny this petition for the reasons set out in paragraph 15.

[2] Report of Allocations from 25,000 Kc to 30,000,000 kc, May 25, 1945, Docket No. 6651.

quencies would be made available to meet the growing needs of other services for VHF spectrum space.

19. Before it would be possible, however, to achieve these impressive advantages it would be necessary to find solutions for numerous problems which a transition to all-UHF television would involve. These problems fall into several major groups. The first group relates to the technical transmission and reception potentialities of UHF. It will be necessary to ascertain the extent to which UHF transmission and reception can be improved, in order to make a realistic determination as to whether conversion to all-UHF television throughout the United States or in a major portion of the country would or would not result in the loss of services available now or potentially available with the use of VHF channels. In order to ascertain the capacity of UHF transmitting and receiving equipment to render satisfactory service without the concurrent use of the VHF band for television broadcasting, the Commission believes that a program of expedited research and development should be launched without delay with the object of achieving the maximum possible increase in the range of, and the reduction of the shadow areas of UHF stations. This research and development program should be concentrated on:

(a) UHF transmitters, with emphasis on increased transmitting power and the feasibility of the use of such techniques as UHF boosters and satellites.

(b) Receivers and receiving antennas, with the object of increasing the sensitivity of and reducing the noise factors of receivers; and improving their selectivity in order to permit the reassignment of UHF channels with a minimum number of restrictions on station separations.

20. The Commission will cooperate fully with all interested groups in organizing the orderly conduct of the foregoing research and development program. While it would be premature to anticipate the results of this program, the Commission believes that considerable encouragement is offered by recent notable advances in increasing the power of UHF transmitters and in tubes for improving the characteristics of UHF receivers. Notwithstanding the disadvantages frequently associated with UHF broadcasting there are some respects in which the UHF band is superior to the VHF channels allocated to television. UHF reception, for one thing, is freer than VHF from interference caused by local noise generators such as ignition systems, electrical appliances and switches, and is less susceptible to interference due to multipath reflections. Also, if future developments result in the production of single-band UHF receivers they could be simpler in design, less costly, and more efficient than present VHF-only or combination UHF-VHF receivers, owing to the fact that the ratio between the top and bottom UHF television frequencies is smaller than between the top and bottom VHF frequencies now allocated to television. The Commission believes, therefore, that despite disappointments that have been experienced during this initial four year period of development of UHF transmitting and receiving equipment, it would be erroneous to base our policies on an assumption that UHF transmission and reception is not susceptible of significant improvement. On the other hand, additional facts and data are needed in order to make a sound determination as to whether the fullest possible exploitation of UHF's technical potentialities will enable UHF to render a service which will justify elimination of VHF broadcasting in a major part or throughout the United States.

21. The answer to this question will not depend on whether all the disparities between UHF and VHF transmission and reception can be completely eliminated. We recognize that some differences inhere in the essential characteristics of the two frequency bands and that it may never be possible to eliminate them entirely. The problem is not, however, whether these disparities can be totally eliminated, but whether UHF transmission and reception can be perfected sufficiently to enable an all-UHF system to render service to the public at least as good as or better than the service that can be provided to the public under the present system. It may very well be that owing to the opportunities which a one-band system with 70 channels will open up for increased competition, and for the construction and operation of a greater number of stations and successful operation of more networks and other program sources, a one-band system would permit more communities to have local service and would provide a larger number of multiple services to a greater portion of the population than would be possible with the combined use of the UHF and VHF bands. This may be possible despite certain advantages in the use of VHF frequencies for television broadcasting. The critical factor is that there is an inadequate number of these frequencies, and the use of the 12 VHF channels has discouraged the utilization of more than a fraction of the UHF assignments which were made available for television broadcasting in 1952.

22. When we learn the results of the suggested program of UHF research and development, we will be better able to ascertain the full practical capabilities of UHF. On that basis we will then be able to evaluate UHF's capacity to supplant VHF broadcasting without loss of service. We will also be in a better position to determine whether UHF alone would render adequate service throughout the country, or whether it would be necessary to confine all-UHF television to areas, such as east of the Mississippi River, where owing to the greater population density, and the larger number of cities able to support stations, service areas need not be as large as in the less densely populated areas to the west.

23. The second major group of problems involved in an all-UHF television system concerns the need to establish methods and timing for transition from the present system which will minimize cost and dislocation to the public and to the television industry. It would appear that a transition period would have to be sufficiently long to cover the useful life of VHF-only receivers in the hands of the public, and to permit the amortization, over a reasonable period, of VHF transmitting equipment whose use would be discontinued when VHF broadcasting would be terminated in designated portions of the United States. One method which may merit consideration is to require VHF stations to broadcast simultaneously on UHF channels during all or some part of the transition period. It would seem probable that if it should be decided to go to an all-UHF system, the announcement of a decision that VHF broadcasting would be discontinued on a fixed future date, coupled with interim simultaneous UHF broadcasting by VHF stations, would lay the necessary basis for discontinuance of the manufacture of VHF-only receivers.

24. The problem of getting UHF equipped sets into the hands of the public is not, however, subject to complete control, under existing law, by either the Commission or the industry. For even if it were to be determined that on a mass production basis improved all-channel sets can be developed at only a moderate cost differential from VHF-only sets, the forces of price competition in the industry are such as to magnify the effects of such slight differentials and in the absence of some additional spur or protection, to have the cheaper, less-complete set drive out the all-channel sets. Any private agreement among manufacturers to manufacture only UHF equipped sets would run the risk of violating the anti-trust laws. And in view of this fact, and the public's reluctance to spend additional sums in anticipation of future developments in the television art, we believe it may be essential for the Congress, contemporaneously without explorations of the technical problems of UHF operation, to examine the advisability of legislation to relieve the situation. Such legislation might take the form of special tax relief, such as that already suggested, to equate all-channel receiver costs with those of VHF-only sets, or perhaps more drastic remedies such as the prohibition of the shipment in interstate commerce of other than UHF-equipped receivers might be found to be necessary. We can make no definite recommendations at this time as to specific legislation; we do believe, however, that this is an important facet of the overall problem which cannot be overlooked.

25. For all the foregoing reasons the Commission is convinced that it should now undertake a thorough, searching analysis of the possibilities for improving and expanding the nationwide television system through the exclusive use of the UHF band throughout or in a major portion of the United States. In order, however, to lay the basis for the formulation of a definite plan or proposal in a form suitable for consideration in a formal rule making proceeding, it will be necessary first to obtain facts and data relating to the basic problems, discussed in paragraphs 19 through 24 concerning UHF's capacity to provide a complete television service without the concomitant use of VHF channels, and the best means of effecting a transition to an all-

UHF system. The Commission will welcome the submission of comments and data on these problems by all interested parties. The comments should refer to "FCC Inquiry Into The Feasibility Of Transferring Television Broadcasting To The UHF Band," and should be submitted, in an original and 14 copies, by October 1, 1956. The Commission will decide what further proceedings will be appropriate after considering those comments.

26. Concerning the first group of problems relating to the technical performance of UHF transmitters and receivers we believe that it will be necessary to achieve some progress with the suggested program of research and development before it will be useful to establish an extensive record on these subjects. The Commission will, however, accept any comments which interested parties may feel it may be useful to submit on this aspect of the matter at this time. We will especially welcome comments at this time concerning the most effective methods for conducting and expediting this suggested research and development program.

27. An additional group of problems concerns the question of the most efficient utilization of the VHF frequencies now allocated to television broadcasting, taking into account both the problems of television allocations and the uses to which these frequencies might be put by other services. It would be premature to examine the latter uses in detail, at this stage, since even assuming the successful disposition of the technical problems of an all-UHF system developments in the interim may considerably alter the present circumstances of the other services. At the same time, it may be useful to note briefly several developments which indicate growing need of additional space in the VHF portion of the spectrum for other services.

28. Recently there has been considerable development of techniques employing ionospheric scatter from point-to-point or fixed communication. It is in use outside the United States and appears to offer possibilities for domestic use and for international use between the United States and other countries. The useful frequency range is between about 30 and 60 mc. As the sunspot cycle advances widespread interference is caused to the mobile services which are now using the same frequencies for domestic operation. Whether the use of ionospheric scatter circuits is limited to foreign areas or in the event that there will be domestic demands for this service, the question is raised whether frequencies in the range of 30 to 60 mc should be set aside for this service within the next 5 or 10 years.

29. The conditions of use and the characteristics of radio systems employed by the land mobile services indicate that the lower VHF spectrum may be well adapted to their needs. Many of these services are related to trading areas in much the same manner as the broadcast service. Thus they have need for substantially the same coverage areas. However, only the base transmitting and receiving antennas can be raised above rooftop and treetop levels, and in general the base station uses lower antennas and lesser powers than broadcast stations. The governing factor, however, is the severely restricted powers and antenna heights which are available to mobile units. Only in exceptional cases do they operate from clear sites, and it is imperative that for longer ranges they have frequencies suited to their needs. The lower VHF frequencies are less affected by hills, structures and vegetation. They also permit longer mobile antennas and more sensitive receivers. These factors indicate the desirability of considering the allocation of lower VHF frequencies to the land mobile services.

30. It is evident that the need and demand for more accommodation for land mobile services has been increasing substantially in the recent past and promises to increase further as the industrial uses of radio continue to develop. These factors raise basic questions concerning spectrum allocation which go further than the requirements of television broadcasting alone, and which take into account the rising needs of other services. Thus the question of the transfer of television broadcasting to UHF has the dual aspect of the possible improvement it may provide in the opportunity for achieving the goals of the nationwide television system upon the one hand and of accommodating expanding needs and requirements of industry on the other.

Interim action. 31. There remains the problem of interim action which should be taken pending resolution of the long range problems already discussed. Since some years would be required in any event for the full implementation of an all-UHF system, the Commission believes that steps should be taken in the meantime to improve the opportunities for effective competition among a greater number of stations. As already indicated, a basic choice in many markets at this time lies between the elimination of VHF channel assignments to create improved opportunities for UHF broadcasting and, alternatively, the assignment of additional local VHF channels. Because of the widely varying circumstances in individual markets and the numerous factors which bear on the choice of techniques in any individual community or area, it is not possible to formulate rigid criteria whose perfunctory application to individual cases will automatically indicate the course which would best serve the public interest in each community during the interim period. We have concluded, however, after extensive review of all the proposals which have been submitted to us for the elimination or addition of commercial VHF assignments, that the following considerations will have important bearing on decisions in specific communities or areas. In markets with one or more commercial VHF assignments, the merits of proposals to eliminate a VHF commercial assignment would depend to a large extent on such factors as:

1. Whether significant numbers of people would lack service as a result of the elimination of the VHF channel.

2. Whether one or more UHF stations are operating in the area.

3. Whether a reasonably high proportion of the sets in use can receive UHF signals.

4. Whether the terrain is reasonably favorable for UHF coverage.

5. Whether, taking into account all the local circumstances, the elimination of a VHF channel would be consistent with the objective of improving the opportunities for effective competition among a greater number of stations.

The desirability of assigning a first VHF channel or of adding an additional VHF channel would depend principally upon:

1. Whether it is possible to locate the new transmitter so as to meet minimum transmitter spacings.

2. Whether, in cases where it is necessary to move the channel from another city, there is greater need for the channel in the area to which it is proposed to be assigned.

3. Whether the addition of a new VHF assignment would be consistent with the objective of improving the opportunities for effective competition among a greater number of stations.

32. In appropriate instances it may be desirable, in order to attain the objectives stated in the preceding paragraph, to add an additional VHF assignment which meets all requirements of the present rules with the exception that the minimum spacing from the city where the new assignment is proposed would not be met. It would be feasible, however, in these instances, by appropriate location of the new transmitter, to meet all transmitter spacing requirements. Since it is the spacing from the transmitter that is critical, we believe, that it will be in the public interest to relax the present rules in order to permit new assignments that can be utilized within reasonable distance from the city in conformity with the minimum transmitter spacing requirement. In this way additional service can be provided without departing from the engineering standards.

Implementation of interim revisions of the table of assignments. 33. This proceeding has served the purpose for which it was instituted, i. e., determination of the basic lines on which revisions of the existing television allocation plan should be considered. It can therefore now be terminated. We announced in the Notice of Proposed Rule Making adopted on November 10, 1955, that after this determination had been made we would proceed to the consideration of proposals for such channel reassignments as might be made in conformity with the general policies adopted herein.

34. Accordingly, we are adopting today a number of Notices of Proposed Rule Making in which we will consider a series of proposed channel reassignments which appear to merit consideration in conformity with the objectives outlined in this Report and Order. For example, in a number of communities, including Madison [3] and Elmira,[3] we are proposing to delete a VHF channel or reserve it for educational use. It appears on the basis of the facts before us that such action offers reasonable prospect

[3] Chairman McConnaughey and Commissioners Doerfer and Mack dissented from this proposed rule making.

for improving the opportunities for effective competition among a greater number of stations in these areas. In other communities, such as Fresno [4] and Peoria,[4] we are proposing to shift VHF channels to other communities, which would have the added advantage of making additional comparable facilities available in VHF markets. In several other areas, such as New Orleans [4] and Albany,[5] it appears that similar objectives can be achieved by deleting or shifting one of the two VHF channels assigned in the area.

35. In communities such as Charleston and Duluth-Superior, which have two VHF channels assigned and no UHF stations in operation, we find that it is possible to add a third VHF channel by "drop-in" or by shifting an unused educational assignment for which there appears to be no realistic prospect of early use. In Miami,[6] which already has three commercial VHF assignments, we are proposing to add a 4th which it appears can be accomplished in accordance with minimum transmitter spacing requirements. We believe this course of action is more meritorious than deletion of two or all-VHF channels from Miami, as some petitioners and parties to this proceeding have proposed. Where a 4th VHF channel can be employed without violating our engineering standards, deletion of VHF channels would not appear to be warranted.

36. In some markets such as Toledo, where there are only two commercial VHF assignments and no UHF stations operating, we find that despite the apparent capacity of such markets to support additional stations, it is not possible to assign an additional VHF channel because there are none available which would meet minimum transmitter spacings. Nor would it be practicable to encourage the expansion of local services on locally assigned UHF channels by eliminating a local VHF assignment because, apart from the absence of significant UHF conversion in the area, the reception of signals from VHF cities located elsewhere (in this case, Detroit) would make it doubtful that effective deintermixture could be achieved.

37. Parties interested in these proceedings will have full opportunity to submit comments in support of or in opposition to these proposals, and to submit counterproposals. The proposals put out for rule making at this time do not cover all the amendments to the present Table of Assignments which have been proposed in petitions now before us. We will endeavor to act on all petitions as rapidly as possible, including those already before us which have not yet been acted on and in those on which rule making proceedings have been initiated but not yet concluded. Parties desiring to file petitions for additional or alternative amendments to the Table of Assignments may do so.

38. In order to assist the Commission in evaluating proposals for channel reassignments which involve the removal of an existing VHF assignment for which an application is on file or a construction permit has been granted, it is requested that the parties furnish data, in accordance with the procedure set out in paragraphs 39 and 40, showing the service of all stations in the area involved.

39. As the Commission pointed out in the Sixth Report and Order and other documents, there is no available means for predicting precisely the service areas of a specific television station which will take into account time variations and variations in location, with particular reference to uneven terrain. Propagation data gathered since the Sixth Report and Order are now available. These latest data, as analyzed by the Commission's staff and others, should be used, since they improve somewhat the predictions which can now be made in the average case. The new data and methods for employing them are set out below.

40. The data supplied should be based on the following assumptions:

(1) In computing coverage, stations should be assumed to be operating with maximum power at 1,000 feet above average terrain, with the transmitter located in the center of the principal community, except where the minimum transmitter separations proposed require transmitter location elsewhere.

(2) 1,000 feet antenna height above average terrain should be used for all pertinent directions.

(3) Service should be drawn for the limit of the Grade B contour as limited by noise or interference, as the case may be.

(4) The extent of Grade B service should be computed in accordance with the tables set out below.

(5) Only co-channel interference need be considered.

(6) Single station method of interference should be employed, i. e., the station causing the greatest penetration is assumed to mask the interference of other stations.

(7) In computing interference or service, all stations presently on the air or authorized, and pending applications, should be taken into account, whether UHF or VHF. However, where a station that is not yet operating is considered, this fact should be indicated.

If the parties desire, data based on other assumptions may be submitted in addition to the foregoing.

41. In a Notice of Proposed Rule Making adopted June 22, 1955 (Docket No. 11433, FCC 55–705), the Commission requested comments on a proposal to raise the maximum power of UHF television stations from 1,000 kw to 5,000 kw, and to substitute new curves in Figures 3 and 4 of § 3.699 of the rules governing reduction of power for antenna heights exceeding 2,000 feet. In a Further Report and Order adopted on December 14, 1955, the foregoing rule making proceeding was incorporated as part of the general television allocation proceeding under Docket No. 11532, and the proposal is accordingly before us for review in the instant proceeding. After careful examination of the comments which have been submitted in support of and in opposition to these proposals the Commission has concluded, in the light of the decisions reached in this proceeding, that the public interest would be served by increasing the maximum power of UHF stations to 5,000 kw. It has accordingly decided to amend the relevant rules, including the curves already mentioned, in Figures 3 and 4 of § 3.699. Equipment is now available and in use which yields effective radiated power of 1,000 kw for UHF stations. Encouraging experiments have been conducted with UHF transmissions at 4,500 kw and even higher power. The increase at this time in the maximum power authorized for UHF stations seems particularly appropriate in view of the importance which is attached to the research and development program already discussed.

42. In a Further Report and Order adopted November 30, 1955 (Docket Nos. 11181 and 11532, FCC 55–1198), the Commission brought within this general television allocation proceeding the proposal to increase the antenna height at which maximum power could be authorized for VHF television stations in Zone I. Previously, on July 20, 1955 (Report and Order, Docket No. 11181, FCC 55–802), the Commission had announced the adoption of an amendment to § 3.614 (b) of the rules which would permit VHF television stations in Zone I to use maximum power at antenna heights up to 1,250 feet, instead of up to 1,000 feet as provided in the rules. The effective date for that amendment was designated as August 31, 1955. This effective date was subsequently extended in a series of Orders issued prior to November 30, 1955, at which time the Commission vacated the Report and Order of July 20, 1955, and made the record in Docket No. 11181 part of this general television allocation proceeding. The rule making proposal under the former Docket No. 11181 is accordingly before us for decision.

43. In re-examining this proposal we have again carefully reviewed the comments, supporting and opposing the change. We have also considered a number of petitions for reconsideration or for stay of our Report and Order of July 20, 1955 (Docket No. 11181).[7] We also have considered the issues concerning maximum antenna heights and powers for VHF stations in Zone I in the light of the conclusions reached in this proceeding concerning the measures which will best facilitate the building and operation of greater numbers of television stations in both large and small markets. This objective is paramount, and furnishes the basis for our conclusion that it would be undesirable to alter the an-

[4] Commissioners Doerfer and Mack dissented from this proposed rule making.

[5] Chairman McConnaughey and Commissioners Doerfer and Mack dissented from this proposed rule making. Commissioners Webster, Bartley and Lee concurring but would propose the deletion of Channel 6 also.

[6] Commissioners Webster and Mack dissented from this proposed rule making.

[7] Filed by Elm City Broadcasting Corporation, The Air Transport Association of America, the Ultra High Frequency Coordinating Committee, Greylock Broadcasting Company (WMGT), Springfield Television Broadcasting Corporation (WWLP), Plains Television Corporation (WICS), The Helm Coal Company (WNOW–TV), Rossmoyne Corporation (WCMB–TV), Southern Connecticut and Long Island Television Company (WICC–TV).

tenna height and power maxima at this time. As we pointed out in our Report and Order of July 20, 1955, there were cogent reasons for rejecting, in the Sixth Report and Order, proposals to permit all stations to use maximum power at 2,000 feet, irrespective of location. In that document the Commission adverted to the lower separations in Zone I, the shorter distances between cities, and the need for more data on operations over 1,000 feet. The pattern of VHF stations in Zone I is now well established on the basis of the height and power rules adopted in 1952 when the Sixth Report and Order was issued.

44. The comments and data submitted in the instant proceeding also indicate that to some extent, the overlap of service areas tends to diminish the opportunities for the building and successful operation of a larger number of stations, both in the VHF and UHF bands, in smaller communities neighboring the larger metropolitan areas. The power increases sought for Zone I would tend to augment these effects of overlapping of service areas. In these circumstances, taking into account the objective of facilitating the construction and operation of a larger number of television stations, the Commission has come to the conclusion that it would be preferable not to adopt even the compromise increase contemplated in our Report and Order of July 20, 1955. In reaching this decision, the Commission has borne in mind not only the possible impact of the change on UHF stations in Zone I, but also the needless burdens which would be thrust on VHF stations, which would be faced with the alternatives of sustaining increased interference from co-channel stations taking advantage of the proposed rule change, or of increasing the heights of their own antennas in order to offset it. Owing to the added cost, local zoning restrictions and air space considerations not all VHF stations in Zone I would find it possible to increase their antenna heights. Thus this proposal would tend to unbalance the established pattern of VHF service in Zone I, a result which would not be justified by the extension of service areas which the amendment might make possible in a relatively few cases.

45. In our Memorandum Opinion and Order adopted December 14, 1955, we listed five petitions which related directly to the matters under review in the general television allocation and which we announced we would, accordingly, consider in these proceedings. It is now appropriate to consider these petitions in the light of the decisions reached herein. The petition filed April 18, 1955, by Albert J. Balusek of San Antonio, Texas, has already been disposed of. The remaining four are dealt with in the succeeding paragraphs.

46. On June 21, 1955, the UHF Industry Coordinating Committee requested that the Commission amend the rules so as to permit the authorization of VHF stations on a case-to-case basis at lower separations than are permitted at present. Whether such authorizations were processed on a case-to-case basis or on the basis of a general reduction of minimum separations, the Commission has concluded, for the reasons already given, that the authorization of additional VHF stations at sub-standard transmitter spacings would not be desirable.

47. On October 17, 1955, the Ultra High Frequency Industry Coordinating Committee filed a separate petition requesting, inter alia, that the Commission consider the television allocations problem under a broad rule making proceeding. The instant rule making proceeding corresponds with that requested by the petitioner. The Ultra High Frequency Industry Coordinating Committee also requested the deferment of authorizations or modifications of authorizations which would increase intermixture pending the conduct of the general proceeding. That portion of the petition is now moot, since we are now terminating this proceeding.

48. On October 7, 1955, the American Broadcasting Company filed a petition requesting the deintermixture of some communities, the reduction of VHF separations and other revisions to the present rules. These proposals of the American Broadcasting Company have been superseded by comments filed under the instant proceeding. It is not necessary, therefore, to give separate consideration to this petition.

49. On November 9, 1955, Scharfeld and Baron of Washington, D. C., filed a petition proposing that channel assignments be made on the basis of individual applications rather than under a fixed Table of Assignments. The Commission has given careful consideration to this proposal, but is not persuaded that it would be in the public interest to abandon the Table of Assignments at this time. Before the Sixth Report and Order was adopted the Commission considered proposals to assign television channels on the basis of individual applications. It was decided, however, for reasons set out in that document, that it would be preferable to establish a table of assignments subject to modification through rule making proceedings. Although not all the reasons given at that time are applicable now to the full extent they were in 1952, when a large backlog of applications would have rendered the application basis almost unmanageable, the Commission hesitates to discard the table and thereby incur delays which may occur in cases where applications propose conflicting assignments. Moreover, retention of the present system of fixed assignments subject to modification in rule making proceedings is desirable for implementation of the policies adopted in this Report and Order.

50. In our Further Report and Order adopted in this proceeding on November 30, 1955, the Commission gave notice that it would consider herein the petition which Northern Pacific TV Corporation of Spokane, Washington, filed on November 17, 1954, requesting the amendment of § 3.614 (b) of the rules so as to permit stations operating on Channels 2–6 in Zone II to operate with maximum power of 100 kw irrespective of antenna height. On the basis of careful consideration of this proposal the Commission has concluded that it would not serve the public interest to remove the maximum limitations set out in the present rules at the present time. The basic considerations which apply here are similar to those already discussed in paragraphs 43 and 44, above, relating to the proposal to increase the antenna height at which VHF stations in Zone I are permitted to use maximum power.

51. In accordance with the decision reached on the proposal to increase the maximum power of UHF stations to 5000 kilowatts, discussed in paragraph 41 above, *it is ordered*, That effective August 1, 1956, Part 3 of the Commission's rules is amended as follows:

A. Section 3.614 (b) is amended by deleting in the table the expression "30 dbk (1000 kw)" and substituting therefor "37 dbk (5000 kw)".

B. Section 3.699 is amended by the deletion of Figures 3 and 4 and the substitution therefor of the attached Figures 3 and 4.

52. Authority for the foregoing amendment is contained in sections 303 (a), (b), (c), (e), (f), (g), (h) and (r) and 4 (i) of the Communications Act of 1934, as amended.

53. In accordance with the conclusions reached herein: *It is ordered*, That this proceeding is terminated, including that portion of this proceeding concerning amendment of the rules governing maximum antenna heights and powers in Zone I, which was formerly considered under Docket No. 11181.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] MARY JANE MORRIS,
Secretary.

The accompanying Tables, which have been drawn up on the basis of new propagation data,[1] provide the basis for determining the Grade B service contours of television stations in the presence of noise and co-channel interference.

In order that rapid determinations may be reached, an abbreviated method is to be used in employing the Tables. In constructing the Tables it has been assumed that a contour which reflects the effect of each interfering station separately will approximate that derived from computing the simultaneous effect of several interfering signals since the interference from the nearest station will predominate.

The Tables are based on new minimum local field intensities of 35, 44, and 53 dbu in the presence of noise for low VHF, high VHF and UHF, respectively, and on a maximum receiving antenna discrimination of 6 db for VHF and 13 db for UHF. These new figures are employed

[1] See "Present Knowledge of Propagation in the VHF and UHF TV bands," W. C. Boese and H. Fine TRR 2.4.15, November 15, 1955.

[3] Concurring statements of Commissioners Hyde, Webster, Bartley and Mack and dissenting statement of Commissioner Doerfer filed as part of original document.

Figure 3

Figure 4

In light of experience and improvement in the art since the Sixth Report and Order. They represent the following changes from the values employed at the time of the Sixth Report and Order. A 6 db improvement in the receiver noise figure for low VHF, a 4 db improvement in the receiver noise figure and a 3 db improvement in the receiving antenna gain for high VHF, and a 5 db improvement in the receiver noise figure and a 2 db improvement in transmission line loss for UHF. Maximum power for VHF stations, 1,000 kw for UHF stations and 1,000 foot transmitting antenna heights have been assumed in compiling the Tables. All of the data underlying the Tables are based on the foregoing assumptions and on 90 percent service time probability.

Table I gives the distance of a television station's signal as limited by noise for 50 percent and 70 percent of the locations for the low band VHF, high band VHF and UHF in the presence of noise only.

Table II gives the minimum spacing between co-channel stations in order that their Grade B contours will be limited by noise only. When stations are spaced at distances less than those indicated, their service areas will be limited by the resulting interference.

Table III gives the point, on a direct line between stations, at which Grade B service will be limited by co-channel in-

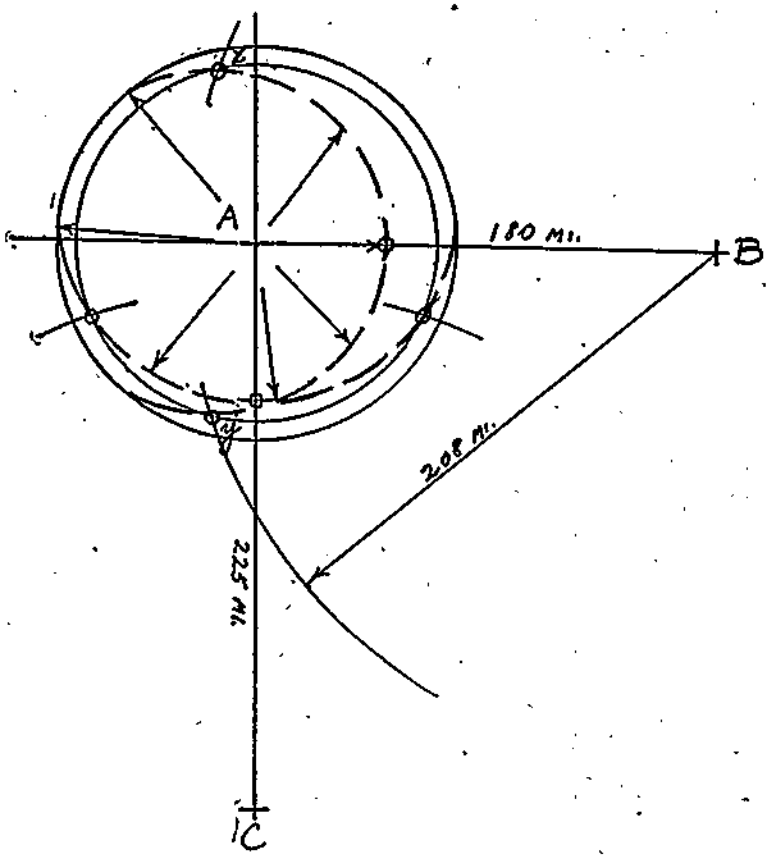
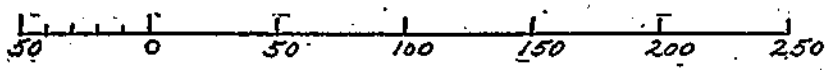


FIGURE 1.

Example of Service Computation—Low VHF.



Scale in Miles.

terference on the basis of the single station method of computation.[3] Linear interpolations may be used for distances between those listed.

Table IV gives the radii of the interfering signals which reduce the 70 percent noise limitation to an overall limitation of 50 percent.

The following example explains how the tables should be used:

Consider three co-channel TV stations in the low VHF band: Stations A, B and C (see fig. 1). The stations are offset. Station A is 180 miles from Station B and 225 miles from Station C. Station B is 290 miles from Station C. The problem is to determine the limitations of the Grade B contour of Station A in the presence of noise and the interfering signals from Stations B and C.

From Table I draw the 50 percent and 70 percent location contours as limited by noise. These are found to be circles of 78 and 71 mile radii, respectively. The contour limitation of Station A in the direction of Station B can be obtained by finding from Table III the distance to the interference-free Grade B contour d_1 for a spacing of 180 miles for low VHF stations operating on an offset basis. This contour is found to fall 50 miles from Station A, and this point should be plotted on a line between Stations A and B.

Two additional points should now be located to determine the limitation of the Grade B contour of Station A in the presence of noise and interference from Station B. These additional two points may be located from Table IV. From this Table find the pertinent distance d_2. The required points will be this distance from Station B—the undesired station—and will lie on the 70 percent location noise-limited contour of Station A, i. e., at points x and y in the diagram. In the example d_2 is 208 miles. These points will be positioned symmetrically with relation to the point already determined above and will indicate where noise will limit service to 70 percent of the locations and the interfering signal will limit service to 70 percent of the locations. The cumulative effect would thus be a limitation of service to 50 percent of the locations.

The Grade B contour of Station A as limited by noise, and interference from Station B will be determined by an arc of a circle drawn through the three points which have been located. The above procedure should be repeated for Station C.

The Grade B contour limitations for Station A are shown in the figure as indicated by the arrows.

TABLE I—DISTANCE TO NOISE LIMITED CONTOUR FOR LOCATIONS INDICATED

	Low VHF	High VHF	UHF
	Miles	*Miles*	*Miles*
At 50 percent locations	78	70	49
At 70 percent locations	71	66	45

TABLE II—MINIMUM SPACING REQUIRED SO THAT GRADE B SERVICE CONTOUR IS LIMITED BY NOISE ONLY

	Low VHF	High VHF	UHF
	Miles	*Miles*	*Miles*
Offset	271	247	155
Nonoffset	364	326	230

TABLE III—DISTANCE (d_1 IN MILES) TO GRADE B INTERFERENCE FREE SERVICE CONTOUR IN THE DIRECTION OF AN INTERFERING STATION AT SPACING INDICATED

Spacing (miles)	Low VHF		High VHF		UHF	
	Offset	Non-offset	Offset	Non-offset	Offset	Non-offset
100	26.5	-------	31.0	-------	37.0	-------
110	30.0	-------	34.0	-------	40.5	-------
120	32.5	-------	37.5	-------	43.0	-------
130	35.5	-------	40.0	-------	45.0	-------
140	38.5	-------	43.0	-------	47.0	-------
150	41.0	-------	46.0	-------	48.0	-------
155	-------	-------	-------	-------	49.0	-------
160	44.0	-------	48.5	-------	-------	-------
170	47.0	-------	51.0	-------	-------	-------
180	50.0	-------	53.5	-------	-------	-------
190	52.5	-------	56.5	-------	-------	41.5
200	55.5	37.5	58.5	42.5	-------	43.0
210	58.5	40.0	61.0	45.5	-------	44.5
220	61.5	42.5	63.5	48.0	-------	46.5
230	64.5	45.0	66.0	51.0	-------	48.0
240	67.5	48.0	68.5	53.5	-------	49.0
250	70.5	50.5	70.0	55.0	-------	-------
260	74.0	53.0	-------	57.0	-------	-------
270	77.5	55.5	-------	59.0	-------	-------
280	78.0	57.5	-------	61.0	-------	-------
290	-------	60.0	-------	63.0	-------	-------
300	-------	62.0	-------	65.0	-------	-------
310	-------	65.0	-------	67.0	-------	-------
320	-------	67.0	-------	69.0	-------	-------
330	-------	69.0	-------	70.0	-------	-------
340	-------	72.0	-------	-------	-------	-------
350	-------	74.0	-------	-------	-------	-------
360	-------	77.0	-------	-------	-------	-------
370	-------	78.0	-------	-------	-------	-------

TABLE IV—DISTANCE (d_2) FROM UNDESIRED STATION AT WHICH INTERFERING SIGNAL WILL REDUCE THE 70% LOCATION NOISE LIMITATION OF DESIRED STATION TO AN OVERALL GRADE B LIMITATION

	Low VHF	High VHF	UHF
	Miles	*Miles*	*Miles*
Offset	203	188	124
Nonoffset	307	274	210

[F. R. Doc. 56-5213; Filed, July 3, 1956; 8:45 a. m.]

[3] The figures in the Table were computed by obtaining the point on a line between stations at which the desired field exceeds the undesired by the required ratio. This does not give the precise point at which Grade B service is limited since receiver noise factor is not considered. In dealing with stations in the low VHF band, it would be necessary to consider nonoffset stations as far removed as 650 miles in order to take noise also into account. When using the simple method employed here for the spacings usually encountered the results may place the service contours from 1 to 4 miles beyond the actual figure that will be obtained if noise were also taken into account. Nevertheless, we believe the suggested method affords results of sufficient accuracy for present purposes.

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Service Order 897, Amdt. 4]

PART 97—ROUTING

CHICAGO, ST. PAUL, MINNEAPOLIS AND OMAHA RAILWAY CO.

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 28th day of June 1956.

Upon further consideration of Service Order No. 897 (19 F. R. 3762; 20 F. R. 4, 4688; 20 F. R. 9825), and good cause appearing therefor: It is ordered, that:

Section 97.897 *Service Order No. 897* be, and it is hereby amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p. m., December 31, 1956, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p. m., June 30, 1956.

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

(Sec. 12, 24 Stat. 383, as amended; 49 U. S. C. 12. Interprets or applies sec. 1, 24 Stat. 379, as amended; sec. 15, 24 Stat. 384, as amended; 49 U. S. C. 1, 15)

By the Commission, Division 3.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 56-5322; Filed, July 3, 1956; 8:54 a. m.]

TITLE 50—WILDLIFE

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

Subchapter F—Alaska Commercial Fisheries

PART 104—BRISTOL BAY AREA

PART 107—CHIGNIK AREA

WEEKLY CLOSED PERIODS

Basis and purpose. In compliance with paragraph (c) of § 104.5, announcement is made that registrations of units of gear by districts in Bristol Bay for the week ending July 7 were as follows:

1. Nushagak district, 270 units; Naknek-Kvichak district, 276 units; Egegik district, 99 units; Ugashik district, 45 units.

2. On the basis of improved runs in the Chignik area, it has been determined that additional fishing time can be permitted. Accordingly, § 107.3 is amended in paragraph (b) by deleting "Tuesday" and substituting in lieu thereof "Wednesday."

Since immediate action is necessary, notice and public procedure on these amendments are impracticable (60 Stat. 237; 5 U. S. C. 1001 et seq.) and they shall become effective immediately upon publication in the FEDERAL REGISTER.

(Sec. 1, 43 Stat. 464, as amended; 48 U. S. C. 221)

JOHN L. FARLEY, *Director.*

JULY 2, 1956.

[F. R. Doc. 56-5358; Filed, July 2, 1956; 2:46 p. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Commodity Stabilization Service

[7 CFR Part 814]

[Hearing Clerk Docket No. SH-145]

ALLOTMENT OF 1956 SUGAR QUOTA FOR DOMESTIC BEET SUGAR AREA

NOTICE OF REOPENED HEARING

Pursuant to the provisions of the Sugar Act of 1948 as amended (61 Stat. 922, as amended by 65 Stat. 318, 7 U. S. C. 1100 et seq.) hereinafter referred to as the "act", the 1956 quota for the Domestic Beet Sugar Area as established by Sugar Regulation 811 (20 F. R. 9848) amounting to 1,800,000 short tons, raw value, was allotted in Sugar Regulation 814.32, Amendment 1 (21 F. R. 2589). Thereafter, the act was amended by Public Law 545, 84th Congress, approved May 29, 1956, which provided, among other things, for increases in the quota for the Domestic Beet Sugar Area above the previously fixed level of 1,800,000 tons, when total sugar requirements exceed 8,350,000 short tons, raw value. In accordance therewith, Sugar Regulation 811, Amendment 2 (21 F. R. 4653), effective June 27, 1956 increased the 1956 quota for the area by 63,731 short tons, raw value, to total 1,863,731 short tons, raw value.

In view of such increase in the 1956 sugar quota for the Domestic Beet Sugar Area and to provide a basis for the allotment thereof and any further changes in such quota, it is necessary to reopen the record and hearing in the proceedings pertaining to the allotment of such quota identified as Hearing Clerk Docket No. SH-145, to permit evidence, limited to the subjects and issues hereinafter stated, to be introduced into such record. Accordingly, pursuant to section 205 of the act (62 Stat. 926, as amended by sec. 10, Pub. Law 545, 84th Cong.) and in accordance with the applicable rules of practice and procedure (21 F. R. 4251) notice is hereby given that a public hearing will be held in Room 2W, Administration Building, United States Department of Agriculture on July 16, 1956 beginning at 10:30 a. m., e. d. t.

The scope of such hearing will be limited to the presentation of evidence relevant and pertinent to the following subjects and issues.

1. The allotment, in accordance with section 205 of the act, of the increase of 63,731 short tons, raw value, in the 1956 sugar quota for the Domestic Beet Sugar Area and the allotment of any further increases or reductions of that part of the quota in excess of 1,800,000 short tons, raw value.

2. The limiting of marketings of each processor to permit an appropriate distribution of the 1956 sugar quota for the Domestic Beet Sugar Area in the event of any decreases in that part of the quota in excess of 1,800,000 short tons, raw value.

At the hearing, the Department of Agriculture will propose (1) that the increase of 63,731 short tons, raw value, in the 1956 sugar quota for the Domestic Beet Sugar Area, and any further increases or reductions of that part of the quota in excess of 1,800,000 short tons, raw value, be allotted in the manner proposed by the industry and set forth in Exhibit 6 of the record of the proceeding identified as Hearing Clerk Docket No. SH-145, and (2) that marketings of each allottee be limited to 98% of its allotment through November 30, 1956 and that after that date, total marketings of each allottee in the calendar year 1956 shall not exceed its allotment for such year.

Issued at Washington, D. C., this 28th day of June 1956.

[SEAL] TRUE D. MORSE, *Acting Secretary of Agriculture.*

[F. R. Doc. 56-5295; Filed, July 3, 1956; 8:49 a. m.]

[7 CFR Part 814]

[Hearing Clerk Docket No. SH-144]

ALLOTMENT OF 1956 SUGAR QUOTA FOR MAINLAND CANE SUGAR AREA

NOTICE OF REOPENED HEARING

Pursuant to the provisions of the Sugar Act of 1948 as amended (61 Stat. 318, 7 U. S. C. 1100 et seq.) hereinafter referred to as the "act" and in accordance with the applicable rules of practice and procedure (7 CFR 801.1 et seq.) a notice of hearing was issued (20 F. R. 10167) and a hearing was held to receive evidence for the allotment of the 1956 sugar quota for the Mainland Cane Sugar Area. Thereafter, the act was amended by Public Law 545, 84th Congress, approved May 29, 1956, which provided, among other things, for increases in the quota for the Mainland Cane Sugar Area above the previously fixed level of 500,000 tons, when total sugar requirements exceed 8,350,000 short tons, raw value. In accordance therewith, Sugar Regulation 811, Amendment 2, (21 F. R. 4653) effective June 27, 1956 increased the 1956 quota for the area by

60,019 short tons, raw value, to total 560,019 short tons, raw value.

In view of such increase in the 1956 sugar quota for the Mainland Cane Sugar Area and to provide a basis for the allotment thereof and any further changes in such quota, it is necessary to reopen the record and hearing in the proceedings pertaining to the allotment of such quota identified as Hearing Clerk Docket No. SH–144, to permit evidence, limited to the subjects and issues hereinafter stated, to be introduced into such record. Accordingly, pursuant to section 205 of the act (62 Stat. 926, as amended by section 10, Pub. Law 545, 84th Cong.) and in accordance with the applicable rules of practice and procedure (21 F. R. 4251) notice is hereby given that a public hearing will be held in Room 2W, Administration Building, United States Department of Agriculture on July 16, 1956 beginning at 9:30 a. m., e. d. s. t.

The scope of such hearing will be limited to the presentation of evidence relevant and pertinent to the following subjects and issue:

1. The allotment, in accordance with section 205 of the act, of the increase of 60,019 short tons, raw value, in the 1956 sugar quota for the Mainland Cane Sugar Area and the allotment of any further increases or reductions of that part of the quota in excess of 500,000 short tons, raw value.

2. The limiting of marketings of each processor to permit an appropriate distribution of the 1956 sugar quota for the Mainland Cane Sugar Area in the event of any decreases in that part of the quota in excess of 500,000 short tons, raw value.

At the hearing, the Department of Agriculture will propose (1) that the increase of 60,019 short tons, raw value, in the 1956 sugar quota for the Mainland Cane Sugar Area, and any further increases or reductions of that part of the quota in excess of 500,000 short tons, raw value, be allotted in the same manner as finally adopted for the allotment of the 500,000 tons pursuant to the record of the hearing held in this proceeding identified as Hearing Clerk docket No. 144, and (2) that marketings of each allottee be limited to 95 percent of its allotment through November 30, 1956 and that after that date, total marketings of each allottee in the calendar year 1956 shall not exceed its allotment for such year.

It also will be appropriate at the hearing to present evidence of any corporate merger or consolidation or of any transfer of sugar-processing facilities on the basis of which the Secretary may attribute the production, marketing and inventory history of one processor to another and establish allotments accordingly or may permit marketings to be made by one allottee, or other person, within the allotment of another. A Government witness will propose that a paragraph be included in the allotment order as follows:

The Director of the Sugar Division, Commodity Stabilization Service, of the Department, may, consistent with the provisions and objectives of the Sugar Act, permit marketings to be made by one allottee, or other person, within the allotment or portion thereof established for another allottee upon receipt of evidence satisfactory to him of a merger, consolidation, transfer of sugar processing facilities, or other action of similar effect upon the allottees or persons involved, and upon relinquishment by one of the allottees of all or a portion of its allotment.

Issued at Washington, D. C., this 28th day of June 1956.

[SEAL] TRUE D. MORSE,
Acting Secretary of Agriculture.

[F. R. Doc. 56–5296; Filed, July 3, 1956; 8:50 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 2]

[Docket No. 11703]

FIXED SERVICE UTILIZING TROPOSPHERIC SCATTER TECHNIQUES

EXTENSION OF TIME TO FILE COMMENTS

In the matter of amendments of Part 2 of the Commission's rules to provide specifically for the fixed service utilizing tropospheric scatter techniques.

1. The Commission having under consideration the request filed in the above entitled proceeding by the Radio-Electronics-Television Manufacturers Association (RETMA) requesting an extension of time from July 1, 1956, to January 2, 1957, in which to file comments to the Commission's Notice of Proposed Rule Making in this Docket;

2. It appearing that good and sufficient reasons have been advanced by the RETMA in its request for an extension of time in which to file comments, and that the public interest would be served by a grant of that request;

3. *It is ordered*, That the time for filing comments in the above entitled proceeding is hereby extended from July 1, 1956, to January 2, 1957.

Adopted: June 27, 1956.

Released: June 28, 1956.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56–5316; Filed, July 3, 1956; 8:53 a. m.]

[47 CFR Part 3]

[Docket No. 11747; FCC 56–588]

TELEVISION BROADCAST STATIONS; SPRINGFIELD, ILL., ST. LOUIS, MO.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Springfield, Ill.–St. Louis, Mo.).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Springfield, Ill.	2, 20, *66	20, 39, *66
St. Louis, Mo.	4, 5, *9, 11, 36, 36, 42	2, 4, 5, *9, 11, 30, 36, 42
Lincoln, Ill.	53	49

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56–5214; Filed, July 3, 1956; 8:45 a. m.]

[47 CFR Part 3]

[Docket No. 11748; FCC 56–589]

TELEVISION BROADCAST STATIONS; HARTFORD, CONN., PROVIDENCE, R. I.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of assignments*, Television Broad-

[1] Commissioners Doerfer and Mack dissenting.

cast Stations (Hartford, Connecticut–Providence, Rhode Island).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Hartford, Conn.	3, 18, *24	18, *24, 61
Meriden, Conn.	61	
Easthampton, Mass.	61	
Providence, R. I.	10, 12, 16, *36	3, 10, 12, 16, *36

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 3 is being proposed for Providence even though the minimum spacing from the city would not be met. However, as noted in the above Report and Order, in the utilization of Channel 3, the transmitter will have to be located so as to meet the minimum transmitter spacing requirement.

4. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

6. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5215; Filed, July 3, 1956; 8:45 a. m.]

[47 CFR Part 3]

[Docket No. 11749; FCC 56-590]

TELEVISION BROADCAST STATIONS; PEORIA, ILL., DAVENPORT, IOWA-ROCK ISLAND-MOLINE, ILL.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Peoria, Illinois, Davenport, Iowa-Rock Island-Moline, Illinois.

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Galesburg, Ill.	40	77
Peoria, Ill.	8, 19, *37, 43	19, 25, *37, 43
Rock Island, Ill.	(1)	8

[1] See Davenport, Iowa.

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 8 is being proposed for Rock Island even though the minimum spacing from the city would not be met. However, as noted in the above Report and Order, in the utilization of the channel the transmitter will have to be located so as to meet the minimum spacing requirements.

4. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

6. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5216; Filed, July 3, 1956; 8:46 a. m.]

[47 CFR Part 3]

[Docket No. 11750; FCC 56-591]

TELEVISION BROADCAST STATIONS; NORFOLK, PORTSMOUTH, NEWPORT NEWS, VA., AND NEW BERN, N. C.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Norfolk-Portsmouth-Newport News, Virginia and New Bern, North Carolina).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and

[1] Commissioners McConnaughey, Chairman, and Mack dissenting and Commissioner Doerfer dissenting and issuing a statement, which is filed as part of the original document.

[1] Commissioners Doerfer and Mack dissenting.

in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
New Bern, N. C.	13	12
Norfolk-Portsmouth-Newport News, Va.	3, 10, 15, *21, 33	3, 10, 13, 15, *21, 33

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 12 is being proposed for New Bern and Channel 13 for Norfolk-Portsmouth-Newport News even though the minimum spacing from the city would not be met. However, as noted in the above Report and Order, in the utilization of the channels the transmitters will have to be located so as to meet the minimum spacing requirements.

4. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38-40 of the above Report and Order.

6. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h), and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 56-5217; Filed, July 3, 1956; 8:46 a. m.]

[1] Commissioners Hyde, Webster, and Mack dissenting.

[47 CFR Part 3]

[Docket No. 11751; FCC 56-592]

TELEVISION BROADCAST STATIONS; ALBANY, SCHENECTADY, TROY, N. Y., AND VAIL MILLS, N. Y.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments,* Television Broadcast Stations (Albany-Schenectady-Troy, New York and Vail Mills, New York).

1. Notice is hereby given or rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Albany - Schenectady - Troy, N. Y.	6, *17, 23, 35, 41	6, *17, 23, 35, 41, 47
Vail Mills, N. Y.	10	

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 47 is being proposed for Albany-Schenectady-Troy even though the minimum city-to-city spacing would not be met. However, as noted in the above Report and Order, in the utilization of Channel 47 the transmitter will have to be located so as to meet the minimum spacing.

4. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38-40 of the above Report and Order.

6. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 56-5218; Filed, July 3, 1956; 8:46 a. m.]

[47 CFR Part 3]

[Docket No. 11752; FCC 56-593]

TELEVISION BROADCAST STATIONS; NEW ORLEANS, LA.-MOBILE, ALA.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of assignments,* Television Broadcast Stations (New Orleans, Louisiana-Mobile, Alabama).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Mobile, Ala.	5, 10, *42, 48	4, 5, 10, *48
New Orleans, La.	4, 6, *8, 20, 26, 32, 61	6, *8, 20, 26, 32, 42, 61

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 4 is being proposed for Mobile even though the minimum spacing from the city would not be met. However, as noted in the above Report and Order, in the utilization of Channel 4 the transmitter will have to be located so as to meet the minimum spacing requirements.

[1] Commissioners McConnaughey, Chairman; Doerfer and Mack dissenting.

4. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

6. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4, (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5219; Filed, July 3, 1956; 8:46 a. m.]

[47 CFR Part 3]

[Docket No. 11753; FCC 56-594]

TELEVISION BROADCAST STATIONS; CHARLESTON, S. C.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Charleston, South Carolina).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Charleston, S. C.	2, 5, *13, 17	2, 4, 5, *13, 17

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendment proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h), and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5220; Filed, July 3, 1956; 8:46 a. m.]

[47 CFR Part 3]

[Docket No. 11754; FCC 56-595]

TELEVISION BROADCAST STATIONS, MADISON, WIS.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Madison, Wisconsin).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Madison, Wis.	3, *21, 27, 33	*3, 21, 27, 33

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendment proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5221; Filed, July 3, 1956; 8:47 a. m.]

[47 CFR Part 3]

[Docket No. 11755; FCC 56-596]

TELEVISION BROADCAST STATIONS; DULUTH, MINN., SUPERIOR, WIS.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broad-

[1] Commissioners Doerfer and Mack dissenting.

[1] Commissioners McConnaughey, Chairman; Doerfer and Mack dissenting.

cast Stations (Duluth, Minn.-Superior, Wis.).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Duluth, Minn.-Superior, Wis.	3, 6, *8, 32, 38	3, 6, 8, *32, 38

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendment proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5222; Filed, July 3, 1956; 8:47 a. m.]

[47 CFR Part 3]

[Docket No. 11756; FCC 56-597]

TELEVISION BROADCAST STATIONS; MIAMI, FLA.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Miami, Florida).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Miami, Fla.	*2, 4, 7, 10, 23, 33	*2, 4, 6, 7, 10, 23, 33

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. In accordance with the policies adopted in the Commission's Report and Order issued today in Docket No. 11532, Channel 6 is being proposed for Miami even though the minimum spacing from the city would not be met. However, as noted in the above Report and Order, in the utilization of Channel 6, the transmitter will have to be located so as to meet the minimum spacing requirements.

4. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

5. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

6. Authority for the adoption of the amendment proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (f), (g), (h), and (r) and 307 (b) of the Communication Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

7. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5223, Filed, July 3, 1956; 8:47 a. m.]

[47 CFR Part 3]

[Docket No. 11757; FCC 56-598]

TELEVISION BROADCAST STATIONS; EVANSVILLE, IND.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Station A (Evansville, Indiana).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Evansville, Ind.	7, 50, *56, 62	*7, 50, 56, 62

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

[1] Commissioners Webster and Mack dissenting.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendment proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5224; Filed, July 3, 1956; 8:47 a. m.]

[47 CFR Part 3]

[Docket No. 11758; FCC 56-599]

TELEVISION BROADCAST STATIONS; ELMIRA, N. Y.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Elmira, New York).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Auburn, N. Y.	37	
Elmira, N. Y.	9, 18, 24	18, 21, 30

(Offset carrier designations for the various channels will be specified in the final Report and Order).

3. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5225; Filed, July 3, 1956; 8:47 a. m.]

[47 CFR Part 3]

[Docket No. 11759; FCC 56-600]

TELEVISION BROADCAST STATIONS; FRESNO-SANTA BARBARA, CALIF.

TABLE OF ASSIGNMENTS

In the matter of amendment of § 3.606 *Table of Assignments*, Television Broadcast Stations (Fresno-Santa Barbara, California).

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission today adopted a Report and Order in its general television allocation proceeding in Docket No. 11532, outlining a long-range program designed to improve the television allocation structure and at the same time specifying the bases on which it would consider channel changes in the interim with the view to improving the immediate television situation in individual communities. As a part of this interim program of channel reassignments and in accordance with the general objectives outlined in the above Report and Order, the Commission is proposing the following channel changes:

City	Channel No.	
	Present	Proposed
Fresno, Calif.	12, *18, 24, 47, 53	*18, 24, 30, 47, 53
Madera, Calif.	30	59
Santa Barbara, Calif.	3, 20, 26	3, 12, 20, 26

(Offset carrier designations for the various channels will be specified in the final Report and Order.)

3. Any interested party who is of the view that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before September 10, 1956, a written statement setting forth his comments. Comments supporting the proposed amendments may also be filed on or before the same date. Comments in reply to original comments may be filed within 15 days from the last date for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

4. Parties submitting comments in this proceeding are requested to direct their attention to the matters discussed in paragraph 31 of the Commission's Report and Order issued today in Docket No. 11532. All data indicating television coverage should be filed in accordance with the procedures specified in paragraphs 38–40 of the above Report and Order.

5. Authority for the adoption of the amendments proposed herein is contained in sections 1, 4 (i) and (j), 301, 303 (a), (b), (c), (d), (e), (f), (g), (h) and (r) and 307 (b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

6. In accordance with the provisions of § 1.764 of the rules, an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: June 25, 1956.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5226; Filed, July 3, 1956; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 10]

UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

NOTICE OF PROPOSED RULEMAKING

JUNE 6, 1956.

Having under consideration rearrangement of the form of the general balance sheet statement prescribed for railroad companies, and changes in account numbers, titles, and texts, necessary to implement the rearrangement, the Commission has approved the modifi-

[1] Commissioners Doerfer and Mack dissenting.

[2] Commissioners McConnaughey, Chairman; Doerfer and Mack dissenting.

cations which are set forth below. These changes in the form of the balance sheet will, when formally ordered, have the effect of (1) showing the current assets and the current liabilities as the first items in the list of assets and liabilities, respectively; and (2) showing the capital stock, capital surplus, and retained income, in the same group under "Shareholders Equity" at the end of the balance sheet.

Any interested person may on or before August 1, 1956, file with the Commission's Secretary written views or arguments to be considered in this connection, and may request oral argument thereon. Unless otherwise decided after consideration of representations so received, and giving effect to any changes found necessary because of them, it is contemplated that this revision of the balance sheet accounts and the form of balance sheet statement will become effective January 1, 1957.

[SEAL] HAROLD D. McCOY, *Secretary.*

MODIFICATIONS

1. In § 10.790 *Form of general balance sheet statement,* cancel the form of general balance sheet statement and substitute the following form for it:

ASSETS

CURRENT ASSETS

701. Cash.
702. Temporary cash investments.
703. Special deposits.
704. Loans and notes receivable.
705. Traffic and car-service balances—Dr.
706. Net balances receivable from agents and conductors.
707. Miscellaneous accounts receivable.
708. Interest and dividends receivable.
709. Accrued accounts receivable.
710. Working fund advances.
711. Prepayments.
712. Material and supplies.
713. Other current assets.
Total current assets.

SPECIAL FUNDS

715. Sinking funds.
716. Capital and other reserve funds.
717. Insurance and other funds.
Total special funds.

INVESTMENTS

721. Investments in affiliated companies.
722. Other investments.
723. Reserve for adjustment of investment in securities—Cr.
Total investments.

PROPERTIES

731. Road and equipment property.
732. Improvements on leased property.
733. Acquisition adjustment.
734. Donations and grants—Cr.
Total transportation property.
735. Accrued depreciation—Road and equipment.
736. Accrued amortization of defense projects—Road and equipment.
Total transportation property less recorded depreciation and amortization.
737. Miscellaneous physical property.
738. Accrued depreciation—Miscellaneous physical property.
Miscellaneous physical property less recorded depreciation.
Total properties less recorded depreciation and amortization.

OTHER ASSETS AND DEFERRED CHARGES

741. Other assets.
742. Unamortized discount on long-term debt.
743. Other deferred charges.
Total other assets and deferred charges.
Total assets.

LIABILITIES AND SHAREHOLDERS' EQUITY

CURRENT LIABILITIES

751. Loans and notes payable.
752. Traffic and car-service balances—Cr.
753. Audited accounts and wages payable.
754. Miscellaneous accounts payable.
755. Interest matured unpaid.
756. Dividends matured unpaid.
757. Unmatured interest accrued.
758. Unmatured dividends declared.
759. Accrued accounts payable.
760. Taxes accrued.
761. Other current liabilities.
Total current liabilities.

LONG-TERM DEBT

	Total issued	Held by or for Company
765. Funded debt unmatured		
766. Equipment obligations		
767. Receivers' and Trustees' securities		
768. Debt in default		
769. Amounts payable to affiliated companies		
Total long-term debt (due within 1 year $_____)		

RESERVES

771. Pension and welfare reserves.
772. Insurance reserves.
773. Equalization reserves.
774. Casualty and other reserves.
Total reserves.

OTHER LIABILITIES AND DEFERRED CREDITS

781. Interest in default.
782. Other liabilities.
783. Unamortized premium on long-term debt.
784. Other deferred credits.
785. Accrued depreciation—Leased property.
Total other liabilities and deferred credits.

SHAREHOLDERS' EQUITY

	Total issued	Held by or for Company
Capital stock (par or stated value):		
791. Capital stock issued		
792. Stock liability for conversion		
793. Discount on capital stock		
Total capital stock		
Capital surplus:		
794. Premiums and assessments on capital stock		
795. Paid-in surplus		
796. Other capital surplus		
Total capital surplus		
Retained income:		
797. Retained income—Appropriated		
798. Retained income—Unappropriated		
Total retained income		
Total shareholders' equity		
Total liabilities and shareholders' equity		

2. Cancel the numbers, titles and texts, of § 10.702½C *Accrued depreciation; road* and § 10.702½D *Accrued depreciation; equipment,* and substitute the following:

§ 10.735 *Accrued depreciation; road and equipment.* (a) This account shall be credited with amounts concurrently charged to operating expenses or other accounts to cover the loss in service value of depreciable road and equipment property. It shall also include amounts which the Commission may authorize the accounting company to credit to account 607, "Miscellaneous credits," or charge to account 621, "Miscellaneous debits," or to account 733, "Acquisition adjustment," in respect to past accruals of depreciation.

(b) At the time of the retirement of each unit of depreciable property, this account shall be charged with the entire service value of the unit retired or minor item retired and not replaced.

(c) For balance sheet purposes, this account shall be treated as a single composite reserve for property. However, for purposes of analysis, the accounting company shall maintain subsidiary records in which this reserve is broken down into components corresponding to the primary accounts for depreciable property. These subsidiary records shall show the current debits and credits to this reserve by primary accounts.

3. Cancel the numbers, titles and texts of § 10.702½E *Accrued amortization of defense projects; road* and § 10.702½F *Accrued amortization of defense projects; equipment* and substitute the following:

§ 10.736 *Accrued amortization of defense projects; road and equipment.* (a) This account shall include the amounts of accumulated past provisions for amortization of road and equipment defense projects, the cost of which is included in account 731, "Road and equipment property," or account 732, "Improvements on leased property." This account shall be charged with the credit balance herein applicable to specific property at the time the property is retired.

(b) The accounting company shall maintain subaccounts separately for accrued amortization of (1) road property and (2) equipment.

4. Change the title of § 10.712 *Loans and bills receivable,* to read: *"Loans and notes receivable."*

5. Change the account number of § 10.720 *Working fund advances,* to 710 and add the following note to the text of the account:

§ 10.710 *Working advances.* * * *

NOTE: Advances to jointly owned or used terminal companies and other companies for permanent working funds or capital purposes shall be included in accounts 721, Investments in Affiliated Companies, or 722, Other Investments, as may be appropriate.

6. Cancel the account number, title and text of § 10.722 *Other deferred assets,* and substitute the following:

§ 10.741 *Other assets.* This account shall include the estimated value of salvage recoverable from property retired when the recovery of the salvage is deferred for any reason; items of a current character but of doubtful value; other deferred assets; and assets not otherwise provided for in general balance sheet accounts. (See § 10.08–7 *Current assets.*)

7. Change the account number of § 10.723 *Prepayments,* to 711 and add the following note to the text of the account:

§ 10.711 *Prepayments.* * * *

NOTE: Expenditures, in the nature of additional rental, borne by a carrier for improvements to office buildings and other facilities rented for more than one year shall be included in account 743, Other deferred charges.

8. Cancel the account numbers, titles and texts of § 10.726 *Property retired chargeable to operating expenses,* and § 10.727 *Other unadjusted debits,* and substitute the following:

§ 10.743 *Other deferred charges.* (a) This account shall include the amount of debit balances in suspense accounts that cannot be cleared and disposed of until additional information is received, such as freight claims paid when found to be correct, but in advance of investigation with other carriers; debit balances in clearing accounts, such as "Shop expenses," "Store expenses," "Operations of gravel pits," and "Operation of quarries"; unextinguished discount on short-term notes; unadjusted debit items not otherwise provided for and similar items the proper disposition of which is uncertain.

(b) This account also is intended as a suspense account in which may be included deferred amounts for property retired chargeable to operating expenses as follows:

(1) Amounts representing the service value of nondepreciable road property retired which are relatively so large that their inclusion in the accounts for a single year would distort those accounts. (See § 10.04–6 *Distribution of charges for nondepreciable road property retired.*)

(2) Amounts representing the service value of depreciable road property retired which are relatively so large that their inclusion in the depreciation reserve would result in unduly depleting the reserve.

(3) Amounts representing the service value of equipment retired which are relatively so large that their inclusion in the depreciation reserve would result in unduly depleting the reserve.

(4) This provision covering property retired is to be used only after permission of the Commission has been asked and given. The carrier in its application to the Commission shall give full particulars concerning the property retired, the amount which it is proposed to charge to operating expenses, and the period over which, in its judgment, the amount of such charge shall be distributed.

9. Cancel the numbers, titles and texts of § 10.728 *Securities issued or assumed; unpledged,* and § 10.729 *Securities issued or assumed; pledged.*

10. Cancel the account number, title, and text of § 10.770 *Other deferred liabilities,* and substitute the following:

§ 10.782 *Other liabilities.* This account shall include assessments for public improvements payable over a period longer than one year; retained percentages due contractors to be paid upon completion of contracts; deposits for construction of side tracks to be refunded on basis of an agreed portion of the earnings from the traffic handled over the tracks; other deferred liabilities; and liabilities not otherwise provided for in general balance sheet accounts.

NOTE: The amount of assessments for public improvements, if payments are to be made within one year, shall be included in account 761, "Other current liabilities."

11. Add the following account number, title and text:

§ 10.774 *Casualty and other reserves.* This account shall include reserves created by charges to operating expenses to provide for estimated liability for injuries to persons and loss and damage claims; estimated liability for revenue overcharges, such as those covered by reparation claims; and reserves not otherwise provided for in balance sheet accounts.

NOTE: With respect to injuries to persons and loss and damage claims, if the settlements when audited are charged to this account the balances for each year shall be kept separately until all items have been adjusted and cleared, but, if the settlements when audited are charged to the appropriate expense accounts the balance in this account shall be adjusted through the appropriate expense accounts so as to reflect the probable liability at the close of each year.

12. Cancel the account number, title and text of § 10.778 *Other unadjusted credits,* and substitute the following:

§ 10.784 *Other deferred credits.* This account shall include the amount of credit balances in suspense accounts that cannot be entirely cleared and disposed of until additional information is received, such as amounts received from sale of mileage tickets, to be disposed of as mileage is honored; amounts received from sales of excess baggage script, to be disposed of as coupons are honored; interchangeable mileage credential ticket redemption funds; amounts collected from the sale of damaged, unclaimed and overfreight held pending claim; credit balances in clearing accounts, such as "Shop expenses," "Store expenses," "Operating gravel pits," and "Operating quarries"; unadjusted credit items not otherwise provided for and similar items, the proper disposition of which is uncertain.

13. Change numbers of accounts as follows:

From—	To—
701	731
702	732
702½A	733
702½B	734
702½C, D	Cancel
New account	735
702½E, F	Cancel
New account	736
703	715
704	716
705	737
705½	738
706	721
707	722
707½	723
708	701
709	702
711	703
712	704
713	705
714	706
715	707
716	712
717	708
718	709
719	713
720	710
721	717
722	Cancel
723	711
725	742
New account	741
726–727	Cancel
New account	743
728–729	Cancel
751	791
752	792
753	794
754	793
755	765
755½	768
756	767
756½	766
757	769
758	751
759	752
760	753
761	754
762	755
763	756
764	757
765	758
766	759
767	760
768	761
769	771
769½	781
770	Cancel
772	783
773	772
773½	773
New account	774
New account	782
778	Cancel
New account	784
779	785
784	Cancel
784.1	795
784.2	796
785	797
786	798

[F. R. Doc. 56–5283; Filed, July 3, 1956; 8:47 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Foreign Assets Control

DYED HOG BRISTLE OF GERMAN ORIGIN

AVAILABILITY OF LICENSES FOR IMPORTATION

Notice is hereby given that the Treasury Department is now prepared to consider applications on Form TFAC–1 for licenses under the Foreign Assets Control Regulations, 31 CFR 500.101 to 500.808, to consummate contracts for the purchase and importation from Germany, in appropriate cases, of dyed hog bristles of German origin, provided that such bristles were dyed and dressed pursuant to such contract or contracts entered into between the applicant and the German exporter prior to April 14, 1955, and in reliance upon the German certificate of origin procedure, which was announced in the FEDERAL REGISTER on September 22, 1953 (18 F. R. 5655), and which is no longer in effect. Licenses issued pursuant to such applications will authorize the importation of bristle for entry into warehouse. The release from warehouse of bristle imported pursuant to such licenses will be authorized only after the Foreign Assets Control is satisfied by physical inspection of the merchandise, and such other measures as may be appropriate, that the merchandise consists solely of dyed bristle of German origin.

Applicants are advised that the fact that a licensee has paid for bristle under a license will not be considered a factor which would warrant the release from warehouse of bristle which is not found by Foreign Assets Control to consist entirely of dyed bristle of German origin.

Additional information and license application forms may be obtained from the Foreign Assets Control, Treasury Department, Washington 25, D. C., or the Federal Reserve Bank of New York, 33 Liberty Street, New York 45, New York.

[SEAL] ELTING ARNOLD,
Acting Director,
Foreign Assets Control.

[F. R. Doc. 56-5305; Filed, July 3, 1956; 8:51 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

UTAH

SMALL TRACT CLASSIFICATION ORDER PARTIALLY REVOKED; LAND RECLASSIFIED

JUNE 26, 1956.

Pursuant to authority delegated to the State Supervisors by section 2.5 of Redelegation Order No. 541, issues April 21, 1954, by the Director, Bureau of Land Management, I hereby revoke Small Tract Classification Order No. 1, Utah, published October 12, 1954, as to that part of Sec. 21, T. 26 S., R. 22 E., Salt Lake Meridian, lying northeast of the county road. This area has been designated on the supplemental plat of survey, not yet approved, as lots 5, 6, 7, 8, 9, 10, 11, Sec. 21, T. 26 S., R. 22 E., Salt Lake Meridian, and contains approximately 23 acres.

The above described land is hereby reclassified as suitable for disposal under the act of September 30, 1890 (26 Stat. 502) to accommodate the requirements of the City of Moab, Utah. The reclassification is for a public purpose and is, therefore, not subject to the provisions contained in the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284) as amended, granting preference rights to veterans of World War II and others.

WM. N. ANDERSEN,
State Supervisor.

[F. R. Doc. 56-5303; Filed, July 3, 1956; 8:51 a. m.]

COLORADO

NOTICE OF PROPOSED WITHDRAWAL AND RESERVATION OF LANDS

JUNE 27, 1956.

The United States Forest Service of the Department of Agriculture has filed an application, Serial No. Colorado 011497, for withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, subject to existing valid claims.

The applicant desires the land for use as sites for camp and picnic grounds and recreation areas in the White River National Forest.

For a period of thirty (30) days from the date of publication of this notice, persons having cause may present their objections in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, 357 New Custom House, P. O. Box 1018, Denver 1, Colorado.

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

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

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

WHITE RIVER NATIONAL FOREST

Cliff Lake Campground:
T. 2 S., R. 90 W.,
Sec. 30: SW¼SW¼;
Sec. 31: NW¼NW¼.
South Fork Campground:
T. 2 S., R. 90 W.,
Sec. 19: SW¼NE¼, W½SE¼.
Sweetwater Campground:
T. 3 S., R. 87 W.,
Sec. 16: Lot 5 (SE¼NE¼), NE¼SE¼.
Clark Cabin Picnic Ground:
T. 3 S., R. 91 W.
Sec. 3: SE¼SE¼SW¼, SW¼SW¼SE¼;
Sec. 10: NW¼NW¼NE¼, NE¼NE¼NW¼.
East Elk Campground:
T. 4 S., R. 90 W.,
Sec. 31: E½NE¼.
Gore Campground:
T. 5 S., R. 79 W.,
Sec. 18: NW¼NE¼.
Bighorn Picnic Ground:
T. 5 S., R. 79 W.,
Sec. 18: NE¼NW¼.
Hornsilver Picnic Ground:
T. 6 S., R. 80 W.,
Sec. 29: SW¼SW¼SW¼;
Sec. 32: W½NW¼NW¼.
Camp Tigawon Recreation Area:
T. 6 S., R. 81 W.,
Sec. 14: SW¼SW¼;
Sec. 22: NE¼NE¼;
Sec. 23: NW¼NW¼.
Blodgett Campground:
T. 7 S., R. 80 W.,
Sec. 5: Lot 8 (NW¼NW¼), N½SW¼NW¼;
Sec. 6: Lot 8 (NE¼NE¼).
Rocky Fork Campground:
T. 8 S., R. 84 W.,
Sec. 18: W½NW¼NE¼, NE¼NW¼;
Sec. 7: S½SE¼SW¼.
Dinkle Lake Campground:
T. 9 S., R. 87 W.,
Sec. 4: E½ Lot 9, Lot 10 (E½SW¼NW¼, SE¼NW¼).
Janeway Picnic Ground:
T. 9 S., R. 88 W.,
Sec. 28: W½NE¼SW¼, E½NW¼SW¼.
Avalanche Creek Campground:
T. 9 S., R. 88 W.,
Sec. 34: S½SW¼NE¼, NW¼SE¼, SW¼NE¼SE¼, NE¼SW¼SE¼, NW¼SE¼SE¼.
Snowmass Creek Campground:
T. 10 S., R. 86 W.,
Sec. 4: SE¼SE¼;
Sec. 9: NE¼NE¼;
Sec. 10: NW¼NW¼.
Redstone Picnic Ground:
T. 10 S., R. 88 W.,
Sec. 9: SW¼SW¼SW¼;
Sec. 16: NW¼NW¼NW¼.
Grottos Campground:
T. 11 S., R. 83 W.,
Sec. 6: SE¼SE¼.
Bogan Flats Campground:
T. 11 S., R. 88 W.,
Sec. 18: S½S½NE¼, N½N½SE¼.
Lost Creek Campground:
T. 1 N., R. 90 W.,
Sec. 15: S½ Lot 1 (SW¼SE¼), SE¼SE¼SW¼.

Total area, 1,269.24 acres.

J. ELLIOTT HALL,
Acting State Supervisor.

[F. R. Doc. 56-5315; Filed, July 3, 1956; 8:53 a. m.]

Bureau of Mines

VARIOUS OFFICIALS OF REGION V

[Regional Administrative Order 77]

DELEGATION OF AUTHORITY TO EXECUTE CONTRACTS

1. In accordance with the provisions of paragraph 205.2.4A (4) of the Bureau of Mines Manual, the following officials of Region V, Bureau of Mines, may, subject to the limitations appearing in Bureau of Mines Manual, paragraph 205.2.4A (1) and those herein prescribed including approval by higher authority, execute contracts and purchase orders for equipment, supplies or services, including maintenance in conformity with applicable regulations and statutory re-

quirements: Assistant Regional Director, Chief, Division of Administration, Chief, Branch of Property Management, Superintendents of stations, administrative officers, administrative assistants, purchasing agents and certain other employees designated by name at College Park, Maryland; Pittsburgh, Pennsylvania; Morgantown, West Virginia; Norris, Tennessee; Tuscaloosa, Alabama; Gorgas, Alabama; and Minneapolis, Minnesota.

2. In accordance with the provisions and limitations listed in Paragraph 1, preceding, the following officials of Region V may approve contracts and purchase orders for equipment, supplies, or services, including maintenance:

(A) Purchases or services (leases excluded) not exceeding $500.00, microfilming not exceeding $100.00, alterations and repairs to buildings not exceeding $500.00, purchases from General Services Administration or its contractors not exceeding $2,000.00: All officials named in paragraph 1, above, as having authority to execute contracts and purchase orders.

(B) Acquirement by lease within the area under the administrative jurisdiction of the Office of the Regional Director, Region V, space in buildings, consistent with the provisions of Bureau of Mines Manual, Volume IV, paragraph 2.8.30: Assistant Regional Director, Chief, Division of Administration, Chief, Branch of Property Management.

(C) Purchases from General Services Administration or its contractors in the range $2,000–$10,000, and other purchases in the range $500–$1,000: Assistant Regional Director.

3. Change orders and extra work orders—With respect to any contract (including a contract approved by the Director or the Regional Director, Region V) the following officials may, up to $500.00: issue change orders and extra work orders pursuant to the contract, enter into any modifications and amendments of the contract which are legally permissible, and terminate the contract if such action is legally authorized: Assistant Regional Director, Chief, Division of Administration, Chief, Branch of Property Management, Superintendents of stations at College Park, Maryland; Pittsburgh, Pennsylvania; Morgantown, West Virginia; Norris, Tennessee; Tuscaloosa, Alabama; Gorgas, Alabama; and Minneapolis, Minnesota.

4. Authorities delegated by this order may be redelegated only with the approval of the Regional Director, Region V.

5. The delegations contained herein supersede those in Paragraph 4 of Administrative Order No. 3, Region V, pertaining to purchases and contracts and restates and redelegates the authority to execute leases delegated by the Secretary of the Interior to heads of Bureaus in section 52 of Secretary's Order 2509 (17 F. R. 6793), subdelegated to the Regional Director and Chief, Branch of Property Management by the Director of the Bureau of Mines in Bureau Administrative Order 666–B (19 F. R. 3483) and on reorganization of the Bureau transferred to the Regional Director, Region V, by Bureau of Mines Administrative Order 696, Part B, Section II, Paragraph 4 (a).

H. P. GREENWALD,
Regional Director,
Region V.

Approved: June 26, 1956.

THOS. H. MILLER,
Acting Director,
Bureau of Mines.

[F. R. Doc. 56–5299; Filed, July 3, 1956; 8:50 a. m.]

Office of the Secretary

[69322]

OREGON

EXCHANGING ADMINISTRATIVE JURISDICTION OF CERTAIN OREGON AND CALIFORNIA RAILROAD GRANT LANDS AND NATIONAL FOREST LANDS

Correction

The land descriptions in the order of the Secretaries of Agriculture and of the Interior, appearing as FEDERAL REGISTER Document 56–5018 at pages 4525–4530 of the issue for June 23, 1956, are corrected in the following particulars:

In Part I of the order:

(a) T. 33 S., R. 5 W. (Josephine County), sec. 32, change "N¼SE¼" to read "SW¼SE¼."

(b) T. 33 S., R. 10 W. (Curry County), sec. 2, change "NW¼SE¼, NE¼" by deleting the comma which appears at the end of the last line, first column, page 4526.

(c) By eliminating the third group of lands in column 2, page 4526 headed "Douglas County" which is an incorrect duplication. The correct grouping for Douglas County commences near the bottom of column 2.

(d) By eliminating the second grouping of lands in column 2, page 4526 headed "Klamath County," which is a duplication of the lands described in the fourth group of that column.

(e) T. 28 S., R. 3 W. (Douglas County), sec. 30, change "S½NW¼" to read "E½NW¼."

(f) T. 34 S., R. 2 E. (Jackson County), sec. 20, "W¼SW¼" should read "W½SW¼."

(g) T. 39 S., R. 2 W. (Jackson County), sec. 25, "SE¼NS¼" should read "SE¼NE¼."

(h) T. 40 S., R. 2 W. (Jackson County), sec. 10, change "NW¼SE¼, NW¼NW¼" and "S½SE¼, NW¼NW¼" by deleting the comma in each instance.

(i) T. 38 S., R. 3 W. (Jackson County), sec. 16, "NE¼SW½" should read "NE¼SW¼."

In Part II of the order:

(a) T. 34 S., R. 9 W. (Josephine County), sec. 21, change "W½SE¼SE¼SE¼" to read "W½SE¼, SE¼SE¼."

(b) T. 35 S., R. 9 W. (Josephine County), sec. 33, "E½, E½," delete the duplication.

(c) T. 35 S., R. 10 W. (Josephine County), sec. 13, "NE¼NW¼ NE¼NW¼," delete the duplication.

(d) T. 12 S., R. 8 W. (Lincoln County), sec. 13, change "NE¼E½SW¼" to read "NE¼, E½SW¼." In sec. 17, change "SW¼NE¼S½" to read "SW¼NE¼, S½."

(e) T. 30 S., R. 1 W. (Douglas County), sec. 33, change "N½SW¼" to read "N½, SW¼."

(f) Add "T. 73 S., R. 3 E.," just prior to the third line, from the bottom, third column, page 4529 (Jackson County) to indicate that the lands following sec. 1 and preceeding sec. 35, now listed under T. 40 S., R. 1 E., are in the former township.

(g) T. 3 S., R. 8 W. (Tillamook County), sec. 25, "N½N¼" should read "N½N½."

DEPARTMENT OF COMMERCE

Federal Maritime Board

SANTIAGO DE CUBA CONFERENCE AND BUCCANEER LINE; INC.

NOTICE OF AGREEMENT FILED WITH THE BOARD FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 7650–B, between the member lines of the Santiago de Cuba Conference and Buccaneer Line, Inc., covers the admission of Buccaneer Line to associate membership in that conference. As an associate member, Buccaneer Line will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will have no vote in conference affairs; will be permitted to participate in conference contracts with shippers; and will be exempt from posting of the usual surety bond. Agreement No. 7650 covers the trade between U. S. Atlantic and Gulf ports and Santiago de Cuba.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: June 29, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS,
Secretary.

[F. R. Doc. 56–5326; Filed, July 3, 1956; 8:55 a. m.]

JAMES LOUDON & CO., INC., AND D. C. ANDREWS & CO., INC.

NOTICE OF AGREEMENT FILED WITH THE BOARD FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

Agreement No. 8074 between James Loudon & Co., Inc. (Los Angeles) and

D. C. Andrews & Company, Inc. (New York) is a cooperative working arrangement whereby freight forwarding services are to be performed by the parties for each other.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: June 29, 1956.

By order of the Federal Maritime Board.

[SEAL] A. J. WILLIAMS, *Secretary.*

[F. R. Doc. 56-5327; Filed, July 3, 1956; 8:55 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-1142, G-2210, G-9547, and G-10592]

UNITED GAS PIPE LINE CO.

ORDER FURTHER CONSOLIDATING PROCEEDINGS FOR PURPOSE OF ORAL ARGUMENT ONLY AND SUPPLEMENTING ORDER ISSUED JUNE 22, 1956

By order issued June 22, 1956, the Commission consolidated the proceeding in Docket No. G-9547 with the proceedings in Docket Nos. G-1142 and G-2210 for purpose of oral argument upon the matters involved in and the issues presented by (1) the May 15, 1956, motion of Tyler Gas Service Company (Tyler Gas) and the answer of United Gas Pipe Line Company (United) in Docket Nos. G-1142 and G-2210; (2) the petitions to intervene of Tyler Gas and the City of Tyler, Texas, in such proceedings; and (3) the motion of Tyler Gas and the answer of United in Docket No. G-9547. We fixed July 13, 1956, as the date of oral argument thereon.

United, on May 15, 1956, filed increased rates, including increased rates and charges applicable to the sales of gas to Tyler Gas. These increased rates and charges were suspended until November 16, 1956, by order of the Commission issued June 15, 1956, in Docket No. G-10592.

Tyler Gas and the City of Tyler, Texas, on June 15, 1956, filed a joint petition in Docket No. G-10592 for an order of the Commission rejecting the May 15, 1956, filing of United insofar as it applied to sales of gas to Tyler Gas.

Petitioner state, and the petition so shows, that the joint petition in Docket No. G-10592 and the other pleadings hereinabove referred to are grounded upon the same basic facts and principles of law, namely, the rule of the United States Supreme Court in Federal Power Commission v. Mobile Gas Service Corporation, 350 U. S. 332, and Federal Power Commission v. Sierra Pacific Power Company, 350 U. S. 348. They request that these matters be consolidated and set for oral argument.

In its answer in Docket No. G-10592, United adopted its answer to the motion of Tyler Gas in Docket No. G-9547 and, in addition, denied that it had or has any contract with the City of Tyler, Texas. United again points to the decisions in its favor in Tyler Gas Service Company v. United Gas Pipe Line Company, C. A. No. 1622, United States District Court for the Eastern District of Texas, Tyler Division, decided December 29, 1953, affirmed by the United States Court of Appeals for the Fifth Circuit, 217 F. 2d 73, as being final judgments and obligatory upon Tyler Gas, City of Tyler, Texas, and United.

The joint petition and the answer of United in Docket No. G-10592 raise substantially the same question posed in the proceedings in Docket Nos. G-1142, G-2210, and G-9547, and it appears appropriate that the matters involved and the issues presented by such pleadings be resolved at the same time.

The Commission finds it is necessary and appropriate in carrying out the provisions of the Natural Gas Act and for the proper administration thereof that oral argument be had concerning the matters involved and the issues presented by the joint petition filed on June 15, 1956 by Tyler Gas and the City of Tyler, Texas, in the proceeding in Docket No. G-10592; and that the proceeding in Docket No. G-10592 be consolidated with the proceedings in Docket Nos. G-1142, G-2210, and G-9547 solely for purpose of oral argument upon the pleadings described above.

The Commission orders:

(A) The proceeding in Docket No. G-10592 be and it is hereby consolidated with the proceedings in Docket Nos. G-1142, G-2210, and G-9547, solely for the purpose of the oral argument provided in Paragraph (B) hereof.

(B) The order of the Commission issued June 22, 1956, in the proceedings in Docket Nos. G-1142, G-2210, and G-9547, be and it is hereby supplemented to provide that the oral argument fixed to be had on July 13, 1956, also shall concern the matters involved in and the issues presented by the joint petition filed June 15, 1956, in Docket No. G-10592 by Tyler Gas Service Company and the City of Tyler, Texas, and by the answer of United Gas Pipe Line Company.

Issued: June 22, 1956.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 56-5281; Filed, July 3, 1956; 8:46 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 11673, 11674; FCC 56M-640]

MISSISSIPPI BROADCASTING CO. (WCOC-TV), AND LAUREL TELEVISION CO., INC. ET AL.

STATEMENT AND ORDER AFTER PREHEARING CONFERENCES

In re applications of Mississippi Broadcasting Company (WCOC-TV), Pachuta, Mississippi, Docket No. 11673, File No. BMPCT-3213; for modification of construction permit and Laurel Television Company, Inc., Laurel, Mississippi, Docket No. 11674, File No. BPCT-2031, for television construction permit (Channel 7).

1. Prehearing conferences under Rule 1.813 and 1.841 were held on April 30, May 7, May 24, June 11 and June 27, 1956, the transcript of which is incorporated by reference. The following schedule is prescribed (Tr. 233):

a. Exchange of written direct cases under Rule 1.841, July 20, 1956, 5:00 p. m.

b. Further conference under Rule 1.841, July 30, 1956, at 10:00 a. m., in the offices of the Commission, Washington, D. C.

c. Commencement of hearing, September 17, 1956, at 10:00 a. m., in the offices of the Commission, Washington, D. C. (continued from originally scheduled date of June 25, 1956),

So ordered, This 27th day of June 1956.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 56-5317; Filed, July 3, 1956; 8:53 a. m.]

[Docket No. 11743; FCC 56M-631]

CONFEDERATE RADIO CO. (WPGA)

ORDER SCHEDULING HEARING

In re application of Confederate Radio Company (WPGA), West Point, Georgia, Docket No. 11743, File No. BMP-7066; for modification of construction permit.

It is ordered, This 21st day of June 1956, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on September 10, 1956, in Washington, D. C.

Released: June 26, 1956.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 56-5318; Filed, July 3, 1956; 8:54 a. m.]

[Docket No. 11761; FCC 56-609]

AMERICAN CABLE AND RADIO CORP.

ORDER DESIGNATING MATTER FOR HEARING ON STATED ISSUES

In the matter of American Cable and Radio Corporation, Docket No. 11761; revision of Joint Tariff F. C. C. No. 7, to provide tie-line indications without charge.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 27th day of June 1956;

The Commission, having under consideration a revised tariff schedule, filed by American Cable and Radio Corporation, to become effective July 1, 1956, designated as follows: American Cable and Radio Corporation, Joint Tariff F. C. C. No. 7, 1st Revised Page 70.

which amends Rule 31 by adding paragraph .04 reading as follows:

.04 Subject to admissibility at overseas points, telegrams addressed to customers having tie-line connections with either Company may bear a non-chargeable routing instruction consisting of the addressee's tie-line number. Overseas senders must insert such routings at the time the message is filed. Such routings will not form part of the chargeable address which must comply with Rule 11.

It appearing that the Commission is unable to determine from an examination of the aforesaid amendment whether it will be lawful under the Communications Act of 1934, as amended, insofar as the provision at issue purports to permit one class of users to insert matter without charge whereas other classes of users are required to pay for the matter of a similar nature which they insert;

It further appearing that if the aforesaid amendment is permitted to become effective on the date specified in the revised tariff schedule, the rights and interests of the public may be adversely affected thereby;

It is ordered, That pursuant to sections 201, 202, 204, 205, and 403 of the Communications Act of 1934, as amended, the Commission shall enter upon a hearing and investigation concerning the lawfulness of the classifications, regulations, and practices set forth in the aforesaid amendment;

It is further ordered, That pursuant to section 204 of the Communications Act of 1934, as amended, the operation of the aforesaid amendment is hereby suspended until the 1st day of October 1956, unless otherwise ordered by the Commission; and that during said period of suspension no changes shall be made in such suspended amendment unless authorized by special permission of the Commission;

It is further ordered, That, without in any way limiting the scope of the investigation, it shall include consideration of the following issues:

(a) Whether the classifications, practices, and regulations provided for in said tariff amendment are lawful under section 201 of the Communications Act of 1934, as amended;

(b) Whether the classifications, practices, and regulations provided for in said tariff provision are lawful under section 202 of the Communications Act of 1934, as amended;

It is further ordered, That a copy of this order be filed in the offices of the Commission with the tariff schedule containing the amendment herein suspended; that the American Cable and Radio Corporation, with its subsidiaries, Mackay Radio and Telegraph Company, Commercial Cable Company, and All America Cables and Radio, Inc., are hereby made party respondents to the proceeding, and that a copy hereof be served upon said respondents;

It is further ordered, That this matter is designated for hearing at a time and place to be specified in a subsequent order; and that the presiding officer shall certify the record to the Commission without preparing either a recommended or initial decision.

Released: June 28, 1956.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5319; Filed, July 3, 1956; 8:54 a. m.]

[Docket No. 11761; FCC 56M-643]

AMERICAN CABLE AND RADIO CORP.

ORDER SCHEDULING HEARING

In the matter of American Cable and Radio Corporation, Docket No. 11761; revision of Joint Tariff F. C. C. No. 7, to provide tie-line indications without charge.

It is ordered, This 28th day of June 1956, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on July 17, 1956, in Washington, D. C.

Released: June 28, 1956.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5320; Filed, July 3, 1956; 8:54 a. m.]

[Mexican Change List 191]

MEXICAN RADIO STATIONS

LIST OF CHANGES, PROPOSED CHANGES AND CHANGES IN ASSIGNMENTS

MAY 31, 1956.

Notification under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement.

List of Changes, Proposed Changes, and Corrections in Assignments of Mexican Broadcast Stations Modifying the Appendix Containing Assignments of Mexican Broadcast Stations (Mimeograph 47214-6) attached to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

MEXICAN BROADCAST STATIONS

Call letters	Location	Power	Antenna	Schedule	Class	Probable date of change or commencement of operation
		570 kilocycles				
XETJ	Torreon, Coahuila (assignment of call letters).	1 kw D/100 w N	ND	U	IV	Apr. 30, 1956
		600 kilocycles				
XEEH	Monterrey, Nuevo Leon (assignment of call letters).	500 w	ND	D	III	Do.
		650 kilocycles				
XEEK	Oaxaca, Oaxaca (assignment of call letters).	1 kw	ND	D	II	Do.
XEEL	Los Mochis, Sinaloa (assignment of call letters).	250 w	ND	D	II	Do.
XEEJ	Puerto Vallarta, Jalisco (assignment of call letters).	250 w	ND	D	II	Do.
		660 kilocycles				
XEEL	Fresnillo, Zacatecas (assignment of call letters).	250 w	ND	D	II	Do.
XEEM	Rio Verde, San Luis Potosi (assignment of call letters).	100 w	ND	D	II	Do.
		690 kilocycles				
XEEO	Monterrey, Nuevo Leon (assignment of call letters).	250 w D/200 w N	ND	U	II-D, IV-N	Do.
XEEN	Progreso, Yucatan (assignment of call letters).	50 kw	ND	U	II	Do.
		750 kilocycles				
XEEQ	San Luis Potosi, San Luis Potosi (assignment of call letters).	250 w	ND	D	II	Do.
		760 kilocycles				
XEEG	Torreon, Coahuila (change in call letters from XETJ).	1000 w	ND	D	II	Do.
		820 kilocycles				
XEES	Sta. Barbara, Chihuahua (assignment of call letters).	500 w	ND	D	II	Do.
XEET	Fortin de las Flores, Veracruz (assignment of call letters).	1 kw	ND	D	III	Do.
XEEU	Tepic, Nayarit (assignment of call letters).	1 kw	ND	D	II	Do.
		870 kilocycles				
XEEV	Villahermosa, Tabasco (assignment of call letters).	1 kw	ND	D	II	Do.
		920 kilocycles				
XEEX	Culiacan, Sinaloa (assignment of call letters).	5 kw	DA-N	U	III	Do.
XEEY	Ensenada, Baja California (assignment of call letters).	250 w	ND	D	IV	Do.
		970 kilocycles				
XEEZ	Caborca, Sonora (assignment of call letters).	250 w D/100 w N		U	IV	Do.
		1050 kilocycles				
XEGO	Irapuato, Guanajuato (assignment of call letters).	1 kw	ND	D	II	Do.

MEXICAN BROADCAST STATIONS—Continued

Call letters	Location	Power	Antenna	Schedule	Class	Probable date of change or commencement of operation
		1100 kilocycles				
XEQP	Cosamaloapan, Veracruz (assignment of call letters).	1 kw	DA-N	U	II	Apr. 30, 1956
		1110 kilocycles				
XEQQ	San Luis de la Paz, Guanajuato (assignment of call letters).	500 w	ND	D	II	Do.
		1160 kilocycles				
XEQR	Coatepec, Veracruz (assignment of call letters).	1 kw	DA-N	U	II	Do.
		1170 kilocycles				
XEQV	Nogales, Sonora (assignment of call letters).	250 w	ND	D	II	Do.
		1240 kilocycles				
XEHO	Ensenada, Baja California (assignment of call letters).	100 w	ND	U	IV	Do.
		1270 kilocycles				
XEHN	Nogales, Sonora (assignment of call letters).	250 w N/100 w N	ND	U	IV	Do.
		1280 kilocycles				
XEHS	Los Mochis, Sinaloa (assignment of call letters).	250 w	ND	U	IV	Do.
		1300 kilocycles				
XEHU	Martinez de la Torre, Veracruz (assignment of call letters).	250 w D/100 w N	ND	U	IV	Do.
XEYJ	Nueva Rosita, Coahuila (correction of error in nighttime power).	1000 w D/100 w N	ND	U	IV	May 30, 1956
		1320 kilocycles				
XEHW	Montemorelos, Nuevo Leon (assignment of call letters).	250 w D/100 w N		U	IV	Apr. 30, 1956
		1350 kilocycles				
XEHY	Oaxaca, Oaxaca (assignment of call letters).	1 kw	ND	D	III	Do.
XEJF	Tierra Blanca, Veracruz (assignment of call letters).	250 w D/100 w N		U	IV	Do.
XEHZ	Alvarado, Veracruz (delete assignment).	250 w D/150 w N		U	IV	Do.
		1370 kilocycles				
XEFY	Fortin de las Flores, Veracruz (assignment of call letters).	500 w D/250 w N	ND	U	IV	Do.
		1380 kilocycles				
XEJH	La Paz, Baja California (assignment of call letters).	250 w	ND	U	IV	Do.
		1390 kilocycles				
XEJI	Tehuantepec, Oaxaca (assignment of call letters).	2.5 kw D/350 w N	ND	U	III	Do.
		1400 kilocycles				
XESB	Sta. Barbara, Chihuahua (increase power).	200 w	ND	U	IV	Do.
		1440 kilocycles				
XEJL	Rosario, Sinaloa (assignment of call letters).	250 w		U	IV	Do.
XEJQ	Parras, Coahuila (assignment of call letters).	5 kw	ND	D	III	Do.
		1460 kilocycles				
XEJT	Tampico, Tamaulipas (assignment of call letters).	1 kw	ND	U	III	Do.
		1490 kilocycles				
XEJU	Culiacan, Sinaloa (assignment of call letters).	250 w	ND	U	IV	Do.
		1500 kilocycles				
XEJV	Ensenada, Baja California (assignment of call letters).	500 w	ND	D	II	Do.
		1500 kilocycles				
XEEB	Esperanza, Sonora (new)	250 w	ND	D	II	Nov. 31, 1956
		1540 kilocycles				
XEJY	El Grullo, Jalisco (assignment of call letters).	500 w	ND	D	II	Apr. 30, 1956
		1560 kilocycles				
XEKA	Tonanzintla, Puebla (assignment of call letters).	250 w D/100 w N	ND	U	II-D, IV-N	Do.
		1590 kilocycles				
XEKB	Atemajac, Jalisco (assignment of call letters).	250 w D/125 w N	ND	U	IV	Do.
XEKC	Mexicali, Baja California (assignment of call letters).	5 kw	ND	U	III	Do.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS,
Secretary.

[F. R. Doc. 56-5321; Filed, July 3, 1956; 8:54 a. m.]

SECURITIES AND EXCHANGE COMMISSION

R. W. PORTER

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Reese Wade Porter, dba R. W. Porter, 500 West Panola Street, Carthage, Tex.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 28th day of June 1956.

I. The Commission's public official files disclose that Reese Wade Porter, a sole proprietor, bda R. W. Porter, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,[1] stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1955, as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered*, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof at 10 a. m. on the 2d day of August 1956 at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. At such time the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before July 26, 1956. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended

[1] Filed as part of the original document.

decision pursuant to Rule IX of the rules of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to August 2, 1956.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5285; Filed, July 3, 1956; 8:47 a. m.]

ANDREW STEWART MESSICK & CO.

ORDER FOR PROCEEDINGS AND NOTICE OF HEARING

In the matter of Andrew Stewart Messick & Co., 308 Cotton Exchange Building, New Orleans, La.

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 28th day of June 1956.

I. The Commission's public official files disclose that Andrew Stewart Messick & Co., a partnership, hereinafter referred to as registrant, is registered as a broker-dealer pursuant to section 15 (b) of the Securities Exchange Act of 1934.

II. The Records Officer of the Commission has filed with the Commission a statement, a copy of which is attached hereto and made a part hereof,[1] stating that registrant did not file with the Commission reports of his financial condition during the calendar year 1955 as required by section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted thereunder.

III. The information reported to the Commission by its Records Officer as set forth in Paragraph II hereof tends, if true, to show that registrant violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section.

IV. The Commission, having considered the aforesaid information, deems it necessary and appropriate in the public interest and for the protection of investors that proceedings be instituted to determine:

(a) Whether the statement referred to in Paragraph II hereof is true;

(b) Whether registrant has wilfully violated section 17 (a) of the Securities Exchange Act of 1934 and Rule X-17A-5 adopted under said section;

(c) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, it is in the public interest to revoke registration of registrant; and

(d) Whether, pursuant to section 15 (b) of the Securities Exchange Act of 1934, pending final determination, it is necessary or appropriate in the public interest or for the protection of investors to suspend the registration of registrant.

V. *It is ordered*, That registrant be given an opportunity for hearing as set forth in Paragraph IV hereof at 10 a. m., on the 2d day of August 1956 at the main office of the Securities and Exchange Commission, located at 425 Second Street NW., Washington 25, D. C., before a Hearing Examiner to be designated by the Commission. At such time the Hearing Room Clerk in Room 193, North Building, will advise the parties and the Hearing Examiner as to the room in which such hearing will be held. The Commission will consider any motion with respect to a change of place of said hearing if said motion is filed with the Secretary of the Commission on or before July 26, 1956. Upon completion of any such hearing in this matter the Hearing Examiner shall prepare a recommended decision pursuant to Rule IX of the rules of practice unless such decision is waived.

It is further ordered, That in the event registrant does not appear personally or through a representative at the time and place herein set or as otherwise ordered, the Hearing Room Clerk shall file with the Records Officer of the Commission a written statement to that effect and thereupon the Commission will take the record under advisement for decision.

This order and notice shall be served on registrant personally or by registered mail forthwith, and published in the FEDERAL REGISTER not later than fifteen (15) days prior to August 2, 1956.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon the matter except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of section 4 (c) of the Administrative Procedure Act, it is not deemed to be subject to the provisions of the section delaying the effective date of any final Commission action.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5286; Filed, July 3, 1956; 8:48 a. m.]

[1] Filed as part of the original document.

[File No. 812-1013]

DREXEL & CO. ET AL.

NOTICE OF APPLICATION FOR ORDER EXEMPTING ACCEPTANCE OF FEES BY AFFILIATED PERSONS OF AN INVESTMENT COMPANY

JUNE 28, 1956.

In the matter of Drexel & Co., Phillip A. Roth, Baldwin Securities Corporation and General Industrial Enterprises, Inc., File No. 812-1013.

Notice is hereby given that Baldwin Securities Corporation ("Baldwin"), a closed-end, non-diversified investment company registered under the Investment Company Act of 1940 ("act") and General Industrial Enterprises, Inc. (formerly The Midvale Company and herein designated "General"), a company controlled by Baldwin, Phillip A. Roth, an affiliated person of Baldwin and General, and Drexel & Co. ("Drexel"), an affiliated person of an affiliated person of Baldwin and General, have filed an application pursuant to section 6 (c) of the act for an order of the Commission exempting from the provisions of section 17 (e) (1) of the act, the receipt by Roth and Drexel of a commission in connection with the sale by General of certain of its assets.

Baldwin owns 62 percent of the outstanding stock of General. General therefore is a controlled company of Baldwin.

On August 25, 1955, the Board of Directors of General adopted a resolution authorizing Roth and Drexel to conduct negotiations on behalf of General with one or more prospective purchasers looking toward a sale by General of its operating assets. The services on behalf of Drexel were to be performed by Edward Hopkinson, Jr., a partner in the Drexel firm, who also was and is a director and officer of both Baldwin and General. Since May 7, 1953, Roth has been a director of Baldwin and since March 7, 1956, an officer of Baldwin, and since June 25, 1953, a director of General and since April 3, 1956, an officer of General. Roth is therefore an affiliated person of Baldwin and General and Drexel is an affiliated person of an affiliated person of Baldwin and General within the terms of section 2 (a) (3) of the act.

Both before and subsequent to the resolution dated August 25, 1955, Roth and Hopkinson conducted negotiations with several prospective purchasers and these negotiations culminated in a sale on December 30, 1955, by General of all its operating assets to Midvale-Heppenstall Company for a base consideration of $6,100,000.

On March 7, 1956, a disinterested majority of the Board of Directors of General adopted a resolution authorizing, subject to the granting of the instant application, the payment by General to Roth and Drexel of $75,000 each for the services performed.

The receipt by an affiliated person of a registered investment company or by an affiliated person of such a person of any compensation for the sale of property for such investment company is prohibited by section 17 (e) (1) of the act unless an exemption therefrom is

granted by the Commission pursuant to section 6 (c) of the act.

All interested persons are referred to said application which is on file at the Washington, D. C., office of this Commission for a more detailed statement of the matters of fact and law therein asserted.

Notice is further given that an order granting the application may be issued by the Commission at any time after July 16, 1956, unless prior thereto a hearing on the application is ordered by the Commission as provided in Rule N-5 of the rules and regulations promulgated under the act. Any interested person may, not later than July 16, 1956, at 5:30 p. m., submit in writing to the Commission his views or any additional facts bearing upon the application or the desirability of a hearing thereon or request the Commission, in writing, that a hearing be held thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C., and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact or law raised by the application which he desires to controvert.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5287; Filed, July 3, 1956; 8:48 a. m.]

[File No. 70-3465]

UNION ELECTRIC COMPANY OF MISSOURI AND HEVI-DUTY ELECTRIC CO.

SUPPLEMENTAL ORDER RELATING TO DIRECTORS

JUNE 28, 1956.

Union Electric Company of Missouri ("Union Electric"), a registered holding company, and Hevi-Duty Electric Company ("Hevi-Duty"), a wholly owned non-utility subsidiary company of Union Electric, having filed an application and declarations with this Commission pursuant to sections 6 (a) (1), 6 (a) (2), 7, 9 (a) (1), 10, 12 (c), and 12 (f) of the Public Utility Holding Company Act of 1935 ("act") and Rules U-42, U-43, and U-46 promulgated thereunder, proposing, among other things, the distribution by Union Electric to its stockholders of the common stock of Hevi-Duty and thereby divesting itself of its interest in Hevi-Duty as heretofore directed by this Commission (Holding Company Act Release No. 11530 (October 31, 1952)); and

The Commission, in granting and permitting to become effective the aforementioned application and declarations (Holding Company Act Release No. 13170 (May 4, 1956)), having ordered that, promptly after the distribution by Union Electric of the Hevi-Duty common stock, the names of the proposed membership of the boards of directors of Hevi-Duty and of Anchor Manufacturing Company ("Anchor"), Hevi-Duty's wholly owned non-utility subsidiary, should be submitted to this Commission for its approval; and

Hevi-Duty having submitted the proposed membership of its board of directors and the board of directors of Anchor to this Commission as follows:

Directors of Hevi-Duty: H. E. Koch, L. B. Lattin, G. W. Armstrong, Carl L. A. Beckers, John N. Worcester.

Directors of Anchor: G. W. Armstrong, K. H. Foskett, H. E. Koch, Carl L. A. Beckers, John N. Worcester.

Hevi-Duty and Union Electric having also notified this Commission that they will consent to the inclusion in an order of the Commission, in connection with the approval of the proposed boards of directors of Hevi-Duty and Anchor, of a condition that (1) at the next annual meeting of the stockholders of Hevi-Duty, in the spring of 1957, Hevi-Duty shall submit to its stockholders a charter amendment to increase the number of its directors so that a majority of such directors shall be persons who shall be neither officers nor employees of either Hevi-Duty or Anchor; and (2) the names of nominees for such additional directors shall be submitted to this Commission for approval; and

The Commission having examined the proposed membership of the boards of directors of Hevi-Duty and Anchor and finding that no adverse action need be taken with respect to such boards; and it appearing to the Commission in the public interest that Hevi-Duty should increase its board of directors and submit its nominees thereto to this Commission for its approval;

It is ordered, That the proposed membership of the boards of directors of Hevi-Duty and Anchor be, and hereby is, approved.

It is ordered, That (1) at the next annual meeting of its stockholders, Hevi-Duty shall submit to its stockholders a charter amendment to increase the number of its board of directors so that a majority of such directors shall be persons who shall be neither officers nor employees of either Hevi-Duty or Anchor; and (2) the names of nominees for such additional directors shall be submitted to this Commission for approval.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5288; Filed, July 3, 1956; 8:48 a. m.]

[File No. 24NY-3357 etc.]

DEAL SHORE ESTATES ASSOCIATION, SECTION II ET AL.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

JUNE 28, 1956.

In the matter of Deal Shore Estates Association, Section II, File No. 24NY-3357; Acryvin Corporation of America, Inc., Nash S. Eldridge, File No. 24NY-3367; Segal Lock & Hardware Company, Inc., File No. 24NY-3429, File No. 24NY-3468; National Foods Corporation, Weber-Milligan Co., File No. 24NY-3440; Oil Finance Corp., Anderson Oil Company, File No. 24NY-3442; Marco Industries, Inc., File No. 24NY-3458; Charles D. Adams and Joseph H. Neebe as "The Friendly Persuasion Company," File No. 24NY-3460; Air Research and Exploration, Inc., File No. 24NY-3480; Verschoor and Davis, Inc., File No. 24NY-3489.

Deal Shore Estates Association, Section II, Charms Building, Asbury Park, New Jersey; Acryvin Corporation of America, Inc., 464-72 East 99th Street, Brooklyn 12, New York for Nash S. Eldridge as selling stockholder, 302 West 12th Street, New York City, New York; Segal Lock & Hardware Company, Inc., 395 Broadway, New York City, New York; National Foods Corporation, 131 Dahlem Street, Pittsburgh, Pennsylvania for Weber-Milligan Co. as selling stockholder, 50 Broadway, New York 4, New York; Oil Finance Corporation, 217 Hickory Street, Warren, Pennsylvania for Anderson Oil Company as selling stockholder, Warren, Pennsylvania; Marco Industries, Inc., 786 Terrace Blvd., Depew, New York; Charles D. Adams, 26 East 92d Street, New York City, New York and Joseph H. Neebe, 430 East 63d Street, New York City, New York, as "The Friendly Persuasion Company"; Air Research & Exploration, Inc., 458-57th Street, Brooklyn, New York; Verschoor and Davis, Inc., 550 Fifth Avenue, New York City, New York, having each filed with the Commission a notification on Form 1-A relating to a proposed public offering of securities for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder; and

The Commission having been advised that the terms and conditions of said Regulation A have not been complied with in that each issuer has failed to file on Form 2-A reports of sales as required by Rule 224 of Regulation A and has ignored requests by the Commission's staff for such reports.

It is ordered, Pursuant to Rule 223 (a) of the general rules and regulations under the Securities Act of 1933 that the exemption under Regulation A be, and it hereby is, temporarily suspended in each instance.

Notice is hereby given that any person having any interest in the matter with respect to any aforesaid company or companies may file with the Secretary of the Commission a written request for a hearing; that, within 20 days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent for any such company, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5289; Filed, July 3, 1956; 8:48 a. m.]

[File No. 70-3483]

MICHIGAN WISCONSIN PIPE LINE CO.

ORDER GRANTING APPLICATION REGARDING ISSUANCE OF SHORT-TERM NOTES TO BANKS

JUNE 28, 1956.

Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin"), a nonutility subsidiary of American Natural Gas Company, a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the third sentence of section 6 (b) of the Public Utility Holding Company Act of 1935 ("act") regarding certain proposed transactions which are summarized as follows:

Michigan Wisconsin proposes to enter into a Credit Agreement providing for the borrowing from banks at one or more times subsequent to June 30, 1956, of up to $25,000,000 on notes maturing January 1, 1957. The names of the banks and their respective commitments are as follows:

Name of bank	Amount of commitment
The First National City Bank of New York	$7,000,000
The Hanover Bank, New York	7,000,000
Mellon National Bank & Trust Company, Pittsburgh, Pa.	7,000,000
National Bank of Detroit	4,000,000
Total	25,000,000

The Credit Agreement will commit the banks to lend to the company from time to time, on and after July 1, 1956, sums aggregating a maximum of $25,000,000 and will provide that the company shall pay a stand-by charge calculated at the rate of one-fourth of one percent per annum on the average daily unused balance of the commitment from July 1, 1956, until the entire $25,000,000 shall have been taken down or the Agreement terminates, whichever is earlier. The company may reduce the amount of the commitment at any time without penalty.

The notes issued pursuant to the Credit Agreement will mature January 1, 1957, and will bear interest at the prime rate prevailing at the First National City Bank of New York for commercial loans on the date of each borrowing. The company will have the right to prepay at any time without penalty, in amounts of $1,000,000 or multiples thereof, notes so issued, except that a prepayment penalty of one-fourth of one per cent per annum for the unexpired terms of the notes will apply in case of prepayment from the proceeds of borrowings from banks other than those participating in the Credit Agreement.

Michigan Wisconsin will covenant in the Credit Agreement, among other things, that it will not without prior consent of the banks pay dividends on its common stock in excess of the amount permitted by the company's Mortgage and Deed of Trust; incur other borrowings unless subordinated to the notes issued under the Credit Agreement except first mortgage bonds issued under said mortgage or any mortgage indenture supplementing or replacing the same; or merge or consolidate with or into any other company.

At March 31, 1956, Michigan Wisconsin had outstanding $14,000,000 of notes to banks due July 1, 1956, issued pursuant to a Credit Agreement dated June 17, 1955. The first borrowing under the proposed Credit Agreement will be on July 1, 1956, and the company will apply the proceeds therefrom, to the extent required, to the retirement of notes issued and then outstanding under the 1955 Credit Agreement.

The proposed borrowings will provide Michigan Wisconsin with funds for the construction of additional facilities, the cost of which, together with normal construction, is estimated to be approximately $12,500,000. Thus, a total of about $26,500,000 is required to finance construction this year and retire the presently outstanding bank loans.

The notes to be issued under the proposed Credit Agreement will be retired from proceeds of the issue and sale, pursuant to the competitive bidding requirements of Rule U-50, of $25,000,000 principal amount of First Mortgage Bonds, __ Percent Series due 1976, as to which an application is now pending before this Commission (File No. 70-3488). To provide sufficient time to carry out the bond financing and obtain adequate protection against unforeseeable contingencies, the company desires, in its present application, to have authorization to execute the proposed Credit Agreement for a period of six months, with the right of the company at its option and with the approval of the Commission, to renew the notes for a period of six months beyond January 1, 1957.

The fees, commissions and other remuneration to be paid by the company in connection with the proposed transaction are estimated by Michigan Wisconsin as follows:

Sidley, Austin, Burgess & Smith, legal fees	$1,000
American Natural Gas Service Co., services at cost	500
Miscellaneous telephone, telegraph, duplicating, traveling and other expenses and contingency fund	500
Total	2,000

No State commission and no Federal commission other than this Commission has jurisdiction over the proposed transactions.

Due notice having been given of the filing of the application and a hearing not having been requested of or ordered by the Commission; and the Commission finding that the applicable provisions of the act and rules promulgated thereunder are satisfied, and it appearing to the Commission that the estimated fees and expenses are not unreasonable, provided they do not exceed the amounts estimated, and that the application should be granted:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of said act, that said application be, and the same hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DuBOIS, *Secretary.*

[F. R. Doc. 56-5290; Filed, July 3, 1956; 8:49 a. m.]

[File No. 70-3484]

SOUTHERN ELECTRIC GENERATING CO. ET AL.

ORDER GRANTING APPLICATION AND PERMITTING EFFECTIVENESS TO DECLARATION REGARDING ISSUE AND SALE OF COMMON STOCK BY SUBSIDIARIES AND ACQUISITION THEREOF BY PARENT; ISSUE AND SALE OF COMMON STOCK BY NEW GENERATING COMPANY AND ACQUISITION THEREOF BY ASSOCIATE UTILITY COMPANIES; AND PAYMENT OF DEBT OF SUBSIDIARY OWING TO PARENT

JUNE 28, 1956.

In the matter of Southern Electric Generating Company, Alabama Power Company, Georgia Power Company, Alabama Property Company, The Southern Company; File No. 70-3480.

The Southern Company ("Southern"), a registered holding company and four of its subsidiaries, Alabama Power Company ("Alabama"), Georgia Power Company ("Georgia"), Southern Electric Generating Company ("SEGCO") a newly organized company, and Alabama Property Company ("Property Company"), having filed a joint application-declaration and amendments thereto, pursuant to sections 6 (b), 9 (a), 10, and 12 (f) of the Public Utility Holding Company Act of 1935 ("act") and Rule U-43 promulgated thereunder regarding the following proposed transactions:

Alabama and Georgia will each issue and sell 10,000 shares of their common stock, without par value, and Southern will acquire such stocks at $100 per share, or an aggregate consideration of $2,000,000. SEGCO will issue and sell 20,000 shares of its capital stock $100 par value, and Alabama and Georgia will each acquire 10,000 shares of such stock at par, or an aggregate consideration of $2,000,000.

SEGCO will apply the proceeds of the sale of its shares, to the extent necessary, to purchase from Property Company, a direct subsidiary of Alabama, certain coal reserves and one or more sites for a steam electric generating plant located in the State of Alabama and reimburse Property Company for its expenses theretofore incurred in test drilling. The amount to be paid to Property Company will be limited to the costs incurred, which it is estimated will approximate $500,000. The balance of the proceeds will be used by SEGCO to complete the acquisition of coal reserves and plant sites and to pay for any necessary test drillings and other expenditures incident to commencement of construction of a steam electric generating plant.

Property Company proposes to apply the amount obtained from SEGCO in satisfaction of an open account advance previously made by Southern.

The Georgia Public Service Commission has authorized the proposed issuance and sale of common stock by Georgia and the Alabama Public Service Commission has authorized the issuance and sale of common stock by Alabama and SEGCO.

The following estimated fees, commissions and expenses are to be incurred in connection with the proposed transactions:

	Alabama	Georgia	SEGCO
Federal original issue tax	$375	$320	$2,200
State charter fees			2,000
Legal fees and expenses			10,400
Miscellaneous	500	500	2,500
Total	875	820	17,100

Notice of the filing of the application-declaration having been duly given in the manner prescribed by Rule U-23 promulgated under the act, and no hearing having been requested of or ordered by the Commission; and

It appearing that the fees and expenses to be incurred in connection with the proposed transactions are not unreasonable if they do not exceed the estimates set forth above; and the Commission observing no basis for adverse findings, or for the imposition of terms and conditions, and finding that the applicable provisions of the act and of the rules thereunder are satisfied, and deeming it appropriate in the public interest and the interest of investors and consumers that the application-declaration, as amended, should be granted and permitted to become effective forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that the application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions contained in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 56-5291; Filed, July 3, 1956; 8:49 a. m.]

INTERSTATE COMMERCE COMMISSION

[Notice No. 119]

MOTOR CARRIER APPLICATIONS

JUNE 29, 1956.

Protests consisting of an original and two copies to the granting of an application must be filed with the Commission within 30 days from the date of publication of this notice in the FEDERAL REGISTER and a copy of such protest served on the applicant. Each protest must clearly state the name and street number, city and street address of each protestant on behalf of whom the protest is filed (49 CFR 1.240 and 1.241). Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding unless an oral hearing is held. In addition to other requirements of Rule 40 of the general rules of practice of the Commission (39 CFR 1.40), protests shall include a request for a public hearing, if one is desired, and shall notify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests containing general allegations may be rejected. Requests for an oral hearing must be supported by an explanation as to why the evidence cannot be submitted in forms of affidavits. Any interested person not a protestant, desiring to receive notice of the time and place of any hearing, pre-hearing conference, taking of depositions, or other proceeding shall notify the Commission by letter or telegram within 30 days of publication of this notice in the FEDERAL REGISTER. Except when circumstances require immediate action, an application for approval, under section 210a (b) of the act, of the temporary operations of Motor Carrier properties sought to be acquired in an application under Section 5 (2) will not be disposed of sooner than 10 days from the date of publication of this notice in the FEDERAL REGISTER. If a protest is received prior to action being taken, it will be considered.

APPLICATIONS OF MOTOR CARRIERS OF PROPERTY

No. MC 263 Sub 83, filed June 4, 1956, GARRETT FREIGHTLINES, INC., 2055 Pole Line Road, Pocatello, Idaho. Applicant's attorney: Maurice H. Greene, P. O. Box 1554, Boise, Idaho. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment, (1) between junction U. S. Highway 20 and Oregon Highway 201 (near Ontario, Oreg.) and junction U. S. Highway 95 and Idaho Highway 72 (near Marsing, Idaho): from junction U. S. Highway 20 and Oregon Highway 201 (near Ontario) over U. S. Highway 20 to Parma, Idaho, thence over U. S. Highway 95 to junction U. S. Highway 95 and Idaho Highway 72 (near Marsing), and return over the same route, serving all intermediate points; (2) between Nyssa, Oreg., and Homedale, Idaho: from Nyssa over Oregon Highway 201 to the Idaho-Oregon State line, thence over Idaho Highway 19 to Homedale, and return over the same route, serving all intermediate points; (3) between Parma, Idaho, and Caldwell, Idaho: from Parma over U. S. Highway 20 to Caldwell, and return over the same route, serving all intermediate points; (4) between junction U. S. Highway 95 and Idaho Highway 19 (near Wilder, Idaho), and Caldwell, Idaho: from junction U. S. Highway 95 and Idaho Highway 19 near Wilder over Idaho Highway 19 to Caldwell, and return over the same route, serving all intermediate points; (5) between Homedale, Idaho, and Caldwell, Idaho: from Homedale over unnumbered county road to Caldwell, and return over the same route, serving all intermediate points; (6) between junction Idaho Highways 44 and 16 (near Star, Idaho) and junction Idaho Highway 52 and U. S. Highway 30 at Hamilton Corners (near New Plymouth, Idaho): from junction Idaho Highways 44 and 16 near Star over Idaho Highway 16 to junction with Idaho Highway 52, thence over Idaho Highway 52 to junction with U. S. Highway 30 at Hamilton Corners near New Plymouth, and return over the same route, serving all intermediate points; (7) between Weiser, Idaho, and Payette, Idaho: from Weiser over U. S. Highway 30N to Payette, and return over the same route, serving all intermediate points; (8) between Weiser, Idaho, and Ontario, Oregon: From Weiser over U. S. Highway 30N to junction with U. S. Highway 30, thence over U. S. Highway 30 to Ontario, and return over the same route, serving all intermediate points; (9) between Payette, Idaho, and junction Oregon Highway 90 and U. S. Highway 30 (near Payette, Idaho): from Payette over Idaho Highway 52 to the Idaho-Oregon State line near Payette, thence over Oregon Highway 90 to junction with U. S. Highway 30 near Payette, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Idaho, Montana, California, Utah, Oregon, Nevada, Colorado, and New Mexico.

No. MC 891 Sub 7, filed June 18, 1956, GERARD MOTOR EXPRESS, INC., 10 Cherry Street, Terre Haute, Ind. Applicant's attorney: Ferdinand Born, 708 Chamber of Commerce Building, Indianapolis 4, Ind. For authority to operate as a *common carrier*, transporting: *General commodities*, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the Warrick Works of the Aluminum Company of America plant, located in Warrick County, Ind., near Newburgh, Ind., approximately ten (10) miles from Evansville, Ind., as an off-route point in connection with applicant's regular route operations to and from Evansville, Ind. Applicant is authorized to conduct operations in Illinois and Indiana.

No. MC 936 Sub 25, filed June 4, 1956, VALLEY MOTOR LINES, INC., 2470 South Cherry Avenue, Fresno, Calif. For authority to operate as a *common carrier*, over regular and irregular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, (1) between Oakdale, Calif. and Donnells Dam Site, Calif., from Oakdale over California Highway 120 to Yosemite Junction, thence over California Highway 108 to its junction with unnumbered highway approximately twelve and one-half (12½) miles east of Strawberry, Calif., and thence over the unnumbered highway to Donnells Dam Site, and return over the same route, serving all intermediate points and the off-route points of Donnells Warehouse, Beardsley Dam Site, Pinecrest, Soulsbyville, Tuolumne, Standard, and Knights Ferry; (2) between intermediate and off-route points as outlined in (1) hereof; (3) between the intermediate and off-route points outlined in (1), on the one hand, and, on the other, points Valley Motor Lines, Inc. is authorized to serve. Applicant is authorized to conduct operations in California.

No. MC 8948 Sub 35 (Second Amendment), published on Page 3706, issue of May 30, 1956, filed April 16, 1956, WESTERN TRUCK LINES, LTD., 2835 Santa Fe Avenue, Los Angeles 58, Calif. Applicant's attorney: Lloyd R. Guerra, 2835

Santa Fe Avenue, Los Angeles, Calif. For authority to operate as a *common carrier*, transporting: *Class A, B, and C explosives, ammunition*, not included in Class A, B, and C explosives, and *component parts* of Class A, B, and C explosives, and of ammunition not included in Class A, B, and C explosives, between Phoenix, Ariz., on the one hand, and, on the other, points in Arizona, California and Nevada, in connection with applicant's authorized regular and irregular route operations in Certificate No. MC 8948 and sub-numbers thereunder, in the transportation of general commodities, with exceptions. Applicant is authorized to conduct operations in Texas, California, Nevada and Arizona.

No. MC 9895 Sub 85, filed June 16, 1956, R. B. "DICK" WILSON, INC., P. O. Box 838, Denver, Colo. Applicant's attorney: Marion F. Jones, Suite 526 Denham Building, Denver 2, Colo. For authority to operate as a *common carrier*, over irregular routes, transporting: *Acids* and *Chemicals*, as described by the Commission, in bulk, in tank vehicles, between points in Wyoming, Colorado, Kansas, Nebraska, Utah, and those in that part of South Dakota west of a line beginning at the North Dakota-South Dakota State line and extending along the eastern boundaries of Perkins, Meade, Pennington, Washabough, and Shannon Counties, S. Dak.

No. MC 15808 Sub 18, filed June 14, 1956, GIRTON BROS., INC., P. O. Box 341 (U. S. 40 East), Brazil, Ind. Applicant's attorney: Louis E. Smith, Suite 503, 1800 North Meridian Street, Indianapolis 2, Ind. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Petroleum* and *petroleum products*, in bulk, in tank vehicles, from the site of the Socony-Mobile Oil Company pipe line terminal near new U. S. Highway 150 north of New Goshen, Vigo County, Ind., to points in Illinois. Applicant is authorized to conduct operations in Illinois, Indiana and Missouri.

No. MC 29566 Sub 43, filed June 13, 1956, SOUTHWEST FREIGHT LINES, INC., 1415 Commerce Building, Kansas City, Mo. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, (1) between St. Louis, Mo., and Weldon Springs, Mo., over combined U. S. Highways 40 and 61; (2) between St. Charles, Mo., and Weldon Springs, Mo., over Missouri Highway 94; (3) between Wentzville, Mo., and Weldon Springs, Mo., over combined U. S. Highways 40 and 61, and return over the above specified routes, serving no intermediate points; and (4) serving points within ten miles of Weldon Springs as off-route points in connection with applicant's authorized regular route operations between East St. Louis, Ill., and Kansas City, Kans. Applicant is authorized to conduct operations in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Wyoming.

No. MC 30897 Sub 8, filed June 14, 1956, CONSOLIDATED FREIGHT COMPANY, a Corporation, 100 Carroll Street, Saginaw, Mich. Applicant's representative: Robert A. Sullivan, 2606 Guardian Building, Detroit 26, Mich. For authority to operate as a *common carrier*, over irregular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the Ford Motor Company (Sheet Metal Stamping Plant) located at the intersection of Cottage Grove and U. S. Highway 30 (Lincoln Highway) approximately two miles east of the incorporated city limits of Chicago Heights in Cook County, Ill., as an off-route point in connection with carrier's regular route operations to and from Chicago, Ill., and the Commercial Zone thereof.

No. MC 31600 Sub 409, filed June 20, 1956, P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham, Mass. For authority to operate as a *common carrier*, over irregular routes, transporting: *Aviation fuel*, in bulk, in tank vehicles, moving on Government bills-of-lading, from Melville and East Providence, R. I., to West Trenton, N. J. Applicant is authorized to conduct operations in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont.

No. MC 31600 Sub 410, filed June 20, 1956, P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham, Mass. For authority to operate as a *common carrier*, over irregular routes, transporting: *Gelva emulsion*, in bulk, in tank vehicles, from Springfield, Mass., to Branchville, Md. Applicant is authorized to conduct operations in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

No. MC 37620 Sub 9, filed June 14, 1956, FREIGHTWAY CORPORATION, 131 Matzinger Road, Toledo, Ohio. Applicant's attorney: Ralph W. Sanborn, Society for Savings Building, Cleveland 14, Ohio. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Sugar*, in containers, and in bulk, and *liquid sugar*, in tank vehicles, from Findlay, Fremont and Toledo, Ohio, to points in that part of the Southern Peninsula of Michigan on and south of a line commencing at the western terminus of Michigan Highway 46 in Muskegon, thence over Michigan Highway 46 to Michigan Highway 37, thence over Michigan Highway 37 to Michigan Highway 57 to Michigan Highway 15, thence over Michigan Highway 15, to Michigan Highway 21, thence over Michigan Highway 21 to Port Huron, Mich., and *Empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified in this application, on return. Applicant is authorized to conduct operations in Indiana, Ohio, and Michigan.

No. MC 41635 Sub 31 (Amended) published on page 4332, issue of June 20, 1956, filed June 11, 1956, DEALERS TRANSPORT COMPANY, 1368 Riverside Blvd., P. O. Box 2482, DeSoto Station, Memphis, Tenn. Applicant's attorney: Charles H. Hudson, Jr., 407 Broadway Bank Building, Nashville, Tenn. For authority to operate as a *common carrier*, over irregular routes, transporting: *Automobiles, trucks, tractors, bodies, cabs and chassis*, and *automobile show paraphernalia, equipment and supplies*, and *parts and accessories* at the same time and with the vehicle of which they are a part and on which they are to be installed, in initial movements, in truckaway and driveaway service, from points in Jefferson County, Ky., to points in Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Illinois, on and north of U. S. Highway 24, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, except Moffett, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, except Texarkana, Utah, Vermont, Washington, Wisconsin, Wyoming and Kentucky. Applicant is authorized to conduct operations in Missouri, Tennessee, Arkansas, Mississippi, Kentucky, Louisiana, Alabama, Oklahoma, Texas, Virginia, West Virginia, Ohio, Indiana, Georgia, Florida, North Carolina, South Carolina, and Illinois.

No. MC 43974 Sub. 1, filed March 16, 1956, A. L. JOHNSON, doing business as JOHNSON MOTOR FREIGHT, 589 Van Buran Avenue, Barberton, Ohio. Applicant's attorney: Herbert Baker, 50 West Broad Street, Columbus 15, Ohio. For authority to operate as a *common carrier*, over irregular routes, transporting: *Compressed gasses* (including movements in special trailers of the shipper or otherwise), from Euclid and Barberton, Ohio, to points in Allegheny, Beaver, Washington and Westmoreland Counties, Pa., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities, on return.

No. MC 50069 Sub 175, filed June 20, 1956, REFINERS TRANSPORT & TERMINAL CORPORATION, 2111 Woodward Avenue, Detroit 1, Mich. For authority to operate as a *common carrier*, over irregular routes, transporting: *Liquid chemicals and acids*, in bulk, in tank vehicles, and *dry chemicals and acids*, in bulk, from Chicago Heights, Ill., to points in Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, Ohio and Wisconsin.

No. MC 50069 Sub 176, filed June 20, 1956, REFINERS TRANSFER & TERMINAL CORPORATION, 2111 Woodward Avenue, Detroit 1, Mich. For authority to operate as a *common carrier*, over irregular routes, transporting: *Petroleum products*, from Mogadore, Ohio, to points in Jefferson County, Ohio, and Brooke County, W. Va.

NOTE: Applicant states that service is to be limited to transportation of shipments stopped in transit for partial delivery in both counties.

No. MC 52657 Sub 489, filed June 22, 1956, ARCO AUTO CARRIERS, INC., 91st Street and Perry Avenue, Chicago 20, Ill. Applicant's representative: G.

W. Stephens, 121 West Doty Street, Madison, Wis. For authority to operate as a *common carrier*, over irregular routes, transporting: *Transit or truck mixers*, and *integral component parts thereof* when moving together with the mixers, from Bryan, Ohio and points within five (5) miles of Bryan, to Los Angeles, Calif., the District of Columbia, and points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin; *truck cabs*, (1) from Chicago, Ill., to Los Angeles, Calif., and Bryan, Ohio and points within five (5) miles of Bryan, and (2) from Bryan, Ohio and points within five (5) miles of Bryan, to Los Angeles, Calif. Applicant is authorized to conduct operations throughout the United States.

No. MC 58923 Sub 24, filed March 19, 1956 (Amended), published April 4, 1956, on Page 2161, GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road SE., Atlanta 15, Ga. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between Thomaston, Ga., and Americus, Ga., over U. S. Highway 19, serving no intermediate points, as an alternate route for operating convenience only in connection with applicant's regular route operations (a) between Thomaston, Ga., via Atlanta, and Columbus, Ga., and (b) applicant's proposed regular route operations between Americus, Ga., and Columbus, Ga., described in (3) below; (2) between Albany, Ga., and Thomasville, Ga., over U. S. Highway 19, serving all intermediate points, and points within five (5) miles of Albany, Ga., as off-route points; and (3) between Americus, Ga., and Columbus, Ga., from Americus over U. S. Highway 19 to Ellaville, Ga., thence over Georgia Highway 26 to junction Georgia Highway 103, thence over Georgia Highway 103 to Columbus, and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Alabama, Georgia, and Tennessee.

NOTE: This case is directly related to MC-F 6226. Applicant states it proposes to tack the authority sought to its present authority.

No. MC 60785 Sub 5, filed June 14, 1956, RODGERS MOTOR LINES, INC., Gilligan Street and South Avenue, Scranton, Pa. Applicant's attorney: Robert H. Shertz, 811-19 Lewis Tower Building, 225 South 15th Street, Philadelphia 2, Pa. For authority to operate as a *common carrier*, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, serving Retsof, N. Y., as an off-route point in connection with applicant's regular route operations as authorized in MC 60785 Sub 4. Applicant is authorized to conduct operations in New York, Pennsylvania, New Jersey, Maryland, and Delaware.

NOTE: Applicant states that it is presently authorized to serve Retsof, N. Y., under its irregular route authority but such authority is subject to cancellation if and when Certificate in MC 60785 Sub 4 is issued.

No. MC 60863 Sub 8, filed June 22, 1956, RUFFALO'S TRUCKING SERVICE, INCORPORATED, East Union on Lyons Road, Newark, N. Y. For authority to operate as a *common carrier*, over irregular routes, transporting: *Kraut*, in containers, and *canned goods*, from Newark, N. Y., and points within 75 miles of Newark, N. Y., to Easton, Williamsport, Milton, Sunbury, Harrisburg, Lancaster, Coatesville, Philadelphia, Wilkes-Barre, Scranton, Pittston, Allentown, Reading, York, Norristown, Bridgeport and Primos, Pa. Applicant is authorized to conduct operations in New Jersey and New York and Pennsylvania.

No. MC 65451 Sub 15, filed June 18, 1956, ALABAM FREIGHT LINES, 546 West Madison Street, Phoenix, Ariz. Applicant's attorney: James F. Haythornewhite, Phoenix National Bank Building, Phoenix, Ariz. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, and except Class A and B explosives, household goods, as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Theba, Ariz., and the Painted Rock Dam Site located on the Gila River, near Theba, Ariz., from Theba approximately three miles west on U. S. Highway 80, thence in a northwesterly direction over an unnumbered county highway approximately 27 miles to the site of the Painted Rock Dam, and return over the same route, serving no intermediate points. Applicant is authorized to conduct operations in Arizona, New Mexico, and Texas.

No. MC 69236 Sub 7, filed June 15, 1956, SCHIEN TRUCK LINES, INC., 416 West Main Street, Sedalia, Mo. Applicant's attorney: B. W. La Tourette, 1230 Boatmen's Bank Building, St. Louis 2, Mo. For authority to operate as a *common carrier*, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, serving points in Hickory County, Mo., except Weaubleau, Preston, Cross Timbers, Hermitage, and Wheatland, Mo., as off-route points in connection with applicant's authorized regular route operations between Warsaw, Mo. and Springfield, Mo. over unnumbered highway and U. S. Highway 65. Applicant is authorized to conduct operations in Missouri, Kansas, and Illinois.

No. MC 76032 Sub 102, filed June 14, 1956, NAVAJO FREIGHT LINES, INC., 381 South Broadway, Denver 9, Colo. Applicant's attorney: O. Russell Jones, 54½ East San Francisco Street, Southwest Corner Plaza, Santa Fe, N. Mex. For authority to operate as a *common carrier*, transporting: *General commodities*, including *Class A and B explosives*, but excluding articles of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the Glen Canyon Dam Site, located approximately fifteen (15) miles upstream from Marble Canyon, Ariz., near the Utah-Arizona State line, and points within ten (10) miles thereof, and construction sites located at points on access roads thereto, as off-route points in connection with applicant's regular route operations between Los Angeles, Calif., and Albuquerque, N. Mex. Applicant is authorized to conduct operations in Arizona, California, Colorado, Illinois, Iowa, Missouri, Nebraska, Nevada, New Mexico, and Texas.

No. MC 76032 Sub 103, filed June 19, 1956, NAVAJO FREIGHT LINES, INC., 381 South Broadway, Denver 9, Colo. Applicant's attorney: O. Russell Jones, 54½ San Francisco Street, Southwest Corner Plaza, Santa Fe, N. Mex. For authority to operate as a *common carrier*, transporting: *General commodities*, including *Class A and B explosives*, but excluding articles of unusual value, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment (not including those requiring refrigeration), serving the site of the United States Air Force Academy, located on the west side of Combined U. S. Highways 85 and 87, near Husted, Colo., which lies about sixty (60) miles south of Denver, Colo., and ten miles north of Colorado Springs, Colo., as an off-route point in connection with applicant's regular route operations between Denver, Colo., and Albuquerque, N. Mex. Applicant is authorized to conduct operations in Arizona, California, Colorado, Illinois, Iowa, Missouri, Nebraska, Nevada, New Mexico, and Texas.

No. MC 80430 Sub 80, filed June 13, 1956, GATEWAY TRANSPORTATION CO., A Corporation, 2130-2150 South Avenue, La Crosse, Wis. Applicant's attorney: Joseph E. Ludden, P. O. Box 851, La Crosse, Wis. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the new Chrysler Corporation Stamping Plant at Twinsburg, in Summit County, Ohio, as an off-route point in connection with carrier's regular route operations between (1) Chicago, Ill., and Akron, Ohio, over Ohio Highway 8, (2) Cleveland, Ohio, and Youngstown, Ohio, over U. S. Highway 422, (3) Chicago, Ill., and Youngstown, Ohio, over U. S. Highways 30 and 62, (4) Mansfield, Ohio, and Cleveland, Ohio, over U. S. Highway 42, and (5) Bryan, Ohio and Youngstown, Ohio over U. S. Highway 224.

No. MC 83881 Sub 1, filed May 21, 1956, VIRGIL A. ANDERSON, Centerville, S. Dak. Applicant's attorney: R. G. May, Security Bank Bldg., Sioux Falls, S. Dak. For authority to operate as a *common carrier*, over irregular routes, transport-

ing: *Farm machinery, farm machinery parts* therefor and moving with and as an integral part thereof, and *feed* (animal, poultry and livestock), from Sioux City, Iowa, to Centerville, S. Dak. *Damaged shipments* of the described commodities, on return. Applicant is authorized to transport livestock, feed, grain and seeds between Sioux City, Iowa and points in South Dakota.

No. MC 86687 Sub 42, (amended June 25, 1956) filed May 29, 1956, published at page 4061 issue of June 13, 1956, SEABOARD AIR LINE RAILROAD COMPANY, a corporation, Seaboard Air Line Railroad Building, Norfolk 10, Va. Applicant's representative: James S. Cremins, Seaboard Air Line Railroad Company, Norfolk 10, Va. For authority to operate as a *common carrier*, over a regular route, transporting: *General commodities*, including *commodities of unusual value*, and *Class A and B explosives*, but excluding household goods as defined by the Commission, commodities in bulk and those requiring special equipment, (1) between Hamlet, N. C., and Andrews, S. C., from Hamlet over U. S. Highway 74 to junction North Carolina Highway 381, thence over North Carolina Highway 381 to North Carolina-South Carolina State Line, thence over South Carolina Highway 381 to Clio, thence over South Carolina Highway 9 to Dillon, thence over South Carolina Highway 57 to junction South Carolina Highway 41 and thence over South Carolina Highway 41 to Andrews, and return over the same route, serving the intermediate and off-route points of Gibson, N. C., McColl, Clio, Little Rock, Dillon, Floydale, Mullins, Johnsonville, Hemingway, Rains, Centenary, Gresham, Poston and Nesmith, S. C. and (2) between McColl, S. C., and Laurinburg, N. C., over U. S. Highway 15, serving no intermediate points, as an alternate route in connection with applicant's authorized regular route operations between Hamlet and Wilmington, N. C., and in connection with the proposed regular route outlined above. RESTRICTION: Authority applied for herein to be limited to service which is auxiliary to, or supplemental of, applicant's rail service and applicant shall not serve any point not a station on its rail line. Shipments to be transported shall be limited to those moving on a through bill of lading or Railway Express receipt. Applicant is authorized to conduct motor carrier operations in Florida, Georgia, North Carolina, South Carolina, and Virginia.

No. MC 88454 Sub 1, filed June 21, 1956, GERALD G. QUIST, 720 Sixth Avenue SW., Pipestone, Minn. For authority to operate as a *common carrier*, over irregular routes, transporting: *Feed*, from Sioux City, Iowa, to Pipestone, Minn.

No. MC 92722 Sub 10, filed June 14, 1956, ROBERT R. WALKER, INC., 1818 West Sample Street, P. O. Box 206, South Bend, Ind. Applicant's attorney: Wilmer A. Hill, Transportation Building, Washington, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Automobiles, trucks, station wagons, busses, and ambulances*, new; *new automobile, truck, station wagon, bus, and ambulance bodies, chassis, and cabs; parts and accessories of new automobiles, trucks, station wagons, busses, and ambulances, and of automobile, truck, station wagon, bus and ambulance bodies, chassis and cabs* when accompanying shipments thereof; *new automobile, truck, station wagon, bus and ambulance parts and accessories; automobile, truck, station wagon, bus, and ambulance show equipment and paraphernalia; vehicles, except trailers, designed for transportation of passengers or property, or both*, and *new bodies, chassis, cabs, parts and accessories, and show equipment and paraphernalia pertaining thereto*, in initial movement, in truckaway service, from South Bend, Ind. to points in Alabama, Georgia, New Mexico, and Tennessee, and in that part of North Carolina east of a line commencing at the Virginia-North Carolina State line and extending along U. S. Highway 21 to Statesville, N. C., thence along U. S. Highway 70 to Salisbury, N. C., and thence along U. S. Highway 52 to the North Carolina-South Carolina State line; *all the afore-mentioned commodities*, in secondary movement, in truckaway service, from South Bend, Ind., to points and places in Alabama, Georgia, New Mexico, and Tennessee, and the above-described area of North Carolina, subject to the stipulation that this secondary truckaway service is to be restricted to transportation of such traffic as has been transported by applicant or other carriers in initial movements from South Bend, Ind., and further restricted against the transportation of such traffic as has had an immediately prior movement by water. Applicant is authorized to conduct operations in Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, North Carolina, Ohio, South Carolina, Pennsylvania, Tennessee, Texas, Wisconsin, Montana, and Wyoming.

No. MC 94265 Sub 55, filed June 22, 1956, BONNEY MOTOR EXPRESS, INC., P. O. Box 4057, Broad Creek Station, Norfolk, Va. Applicant's representative: Harry C. Ames, Jr., 238 Transportation Building, Washington 6, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Meats* and *packing-house products*, as defined by the Commission, from Norfolk and Suffolk, Va., to points in Maryland, Pennsylvania, New Jersey, and New York. Applicant is authorized to conduct operations in Iowa, Minnesota, Illinois, Nebraska, Virginia, West Virginia, Ohio, Kentucky, Missouri, Indiana, Wisconsin, North Carolina, Maryland, Tennessee, and the District of Columbia.

No. MC 95211 Sub 1 (Amended), filed April 5, 1956, published page 2904, issue of May 2, 1956, JOE FORTUNER, 17 Devine Street, Carbondale, Pa. For authority to operate as a *common carrier*, over irregular routes, transporting: *Household goods*, and *office equipment*, between points in Lackawanna, Pike, Susquehanna, and Wyoming Counties, Pa., bounded by a line beginning at Olyphant, Pa., and extending in an easterly direction to Greeley, Pa., thence northwest to Hallstead, Pa., thence southwest to Tunkhannock, Pa., and thence southeast to point of beginning, and points in Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, Delaware, District of Columbia, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Ohio, Kentucky, Tennessee, Alabama, Illinois, Wisconsin, Missouri, Mississippi, Indiana, Michigan, Arkansas, and Iowa.

No. MC 107515 Sub 231, filed June 15, 1956, REFRIGERATED TRANSPORT CO., INC., 290 University Avenue SW., Atlanta, Ga. Applicant's attorney: Allan Watkins, 204 Grant Building, Atlanta 3, Ga. For authority to operate as a *common carrier*, over irregular routes, transporting: *Candies*, from Kansas City, Mo., to points in Tennessee, North Carolina, South Carolina, Alabama, and Mississippi. Applicant is authorized to conduct operations in Missouri, Georgia, and Florida.

No. MC 109640 Sub 15, filed June 18, 1956, BICE TRUCK LINES, INC., Laurel, Mont. Applicant's attorney: Jerome Anderson, Electric Building, Billings, Mont. For authority to operate as a *common carrier*, over irregular routes, transporting: *Petroleum* and *petroleum products*, in bulk, in tank vehicles, from points in Big Horn County, Mont., to points in Wyoming, and *contaminated shipments* on return. Applicant is authorized to conduct operations in Montana, Idaho, and Wyoming.

No. MC 110436 Sub 24, filed June 18, 1956, ROBERTSON TRANSPORTS, INC., 5700 Polk Avenue, P. O. Box 9218, Houston, Tex. Applicant's attorney: Charles D. Mathews, 1020 Brown Building, Austin 1, Tex. For authority to operate as a *common carrier*, over irregular routes, transporting: *Cotton seed oil, vegetable oils, animal oils, animal fats* and *fats*, in bulk, in tank vehicles, between points in Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, New Mexico, and Texas.

No. MC 110505 Sub 26, filed June 15, 1956, RINGLE TRUCK LINES, INC., 601 South Grant Avenue, Fowler, Ind. Applicant's attorney: Robert C. Smith, 512 Illinois Building, Indianapolis 4, Ind. For authority to operate as a *common carrier*, over irregular routes, transporting: *Foodstuffs*, canned, preserved or prepared (not frozen), and beverages, non-alcoholic, from Rochelle, De Kalb, Mendota, Belvidere, Lanark, and Pecatonica, Ill., and Frankfort, Ind., to points in Pennsylvania, Ohio, West Virginia, Indiana, Kentucky, Illinois, Iowa, and St. Louis County, Mo. Applicant is authorized to conduct operations in Indiana, Illinois, Ohio, Kentucky, West Virginia, Wisconsin, Iowa, Missouri, Tennessee, Nebraska, Iowa, and Alabama.

No. MC 110920 Sub 1, filed June 8, 1956, JOHN PERVIN, doing business as PERVIN GRAIN & TRANSIT CO., 1819 Third Avenue SE., Rochester, Minn. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn. For authority to operate as a *common carrier*, over irregular routes, transporting: *Horsemeat*, fresh or fro-

zen, from Duluth, Minn., to points in Massachusetts, New York, New Jersey, Ohio, and Pennsylvania.

No. MC 110920 Sub 2, filed June 18, 1956, JOHN PERVIN, doing business as PERVIN GRAIN & TRANSIT CO., 1819 Third Avenue SE., Rochester, Minn. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn. For authority to operate as a *common carrier*, over irregular routes, transporting: *Prefabricated houses*, knocked down, including *parts therefor*, as more fully described in the application, from Litchfield, Minn. to points in North Dakota, South Dakota, Missouri, Wisconsin, Illinois, Iowa, Indiana, and Montana.

No. MC 112272 Sub 3, filed June 12, 1956, REISS TRANSPORTATION, INC., 24-60 28th Street, Long Island City, N. Y. Applicant's attorney: Richard F. Brennan, Jr., 36 Waldron Avenue, Staten Island 1, N. Y. For authority to operate as a *common carrier*, over irregular routes, transporting: *Grease*, in bulk, in tank vehicles, between New York, N. Y., on the one hand, and, on the other, Newark, N. J., and Kearny, N. J. The application is accompanied by *motion to dismiss* on the grounds that applicant holds in Certificate No. MC 112272 the authority sought herein. Applicant is authorized to conduct operations in New York and New Jersey.

No. MC 113388 Sub 17 (AMENDED), filed April 9, 1956, published April 25, 1956, LESTER C. NEWTON TRUCKING CO., Bridgeville, Del. Applicant's attorney: Glenn F. Morgan, 1008 Warner Building, Washington 4, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Frozen foods*, from Houston, Del., to Dover, Del., and *empty containers or other such incidental facilities* (not specified), on return. Applicant is authorized to conduct operations in Virginia, Delaware, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, North Carolina, and the District of Columbia.

NOTE: Applicant holds a certificate authorizing transportation of frozen foods from Dover to various states. The purpose of this application is to extend authority to Houston, Del., from which point the same destinations may be served as now from Dover. It is proposed to tack the proposed authority to the present authority from Dover.

No. MC 113779 Sub 44, filed June 21, 1956, YORK INTERSTATE TRUCKING, INC., 8222 Market Street Road, Houston, Tex. For authority to operate as a *common carrier*, over irregular routes, transporting: (1) *Muriatic acid*, in bulk, in tank vehicles, from Fort Worth, Tex., to points in Arkansas, Louisiana, Mississippi, New Mexico, and Oklahoma (except Healdton, Miami, Lillard Park, Guymon, Enid, Seminole, and Pauls Valley, Okla., and Bossier City and Shreveport, La., and (2) *acids*, in bulk, in tank vehicles, from Tulsa, Okla., to points in Arkansas, Kansas, Missouri, New Mexico, and Texas. Applicant is authorized to conduct operations in Arkansas, Louisiana, Mississippi, Oklahoma, New Mexico, and Texas.

No. MC 114052 Sub 4, filed June 18, 1956, HOWARD CATENCAMP, doing business as CATENCAMP TRANSFER & STORAGE, 303 East Stephens Street, Shawano, Wis. Applicant's attorney: Claude J. Jasper, 1 West Main Street, Madison 3, Wis. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Formaldehyde*, in bulk, in tank vehicles, from Calumet City, Ill., to Shawano, Wis.

No. MC 115162 Sub 10, filed June 21, 1956, WALTER POOLE, doing business as POOLE TRUCK LINE, Evergreen, Ala. Applicant's representative: Hugh R. Williams, 2284 West Fairview, Montgomery, Ala. For authority to operate as a *common carrier*, over irregular routes, transporting: *Farm machinery* and *equipment*, and *parts for farm machinery and equipment*, from Louisville, Ky., Memphis, Tenn., Richmond, Ind., and Moline, Ill., Hooperton, East Moline, and Chicago, Ill., Waterloo, Des Moines, Dubuque, and Ottumwa, Iowa, Horicon, Wis., and Chamblee, Ga., to points in Alabama, and Pensacola, Fla.

No. MC 115408 Sub 2, filed June 19, 1956, GELAS COURCHESNE, St. Cyrille De Wendover, Drummondville, Quebec, Canada. Applicant's attorney: Andre J. Barbeau, 795 Elm Street, Manchester, N. H. For authority to operate as a *common carrier*, over irregular routes, transporting: *Hardwood dimension stock*, in bundles, from ports of entry on the International Boundary line between the United States and Canada located at or near Jackman, Maine, and Norton and Derby Line, Vt., to Auburn, Freedom, Locke Mills, Mechanic Falls, Old Town, and Orono, Maine, and Baldwinville, Gardner, Marlboro, and Templeton, Mass., and *damaged shipments* and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodity on return movements.

No. MC 115490 Sub 1, filed June 20, 1956, BERNARD KLEIN, SAMUEL KLEIN, and EMANUEL KLEIN, a partnership, doing business as BERNARD'S EXPRESS & TRUCKING, 48-20 30th Street, Long Island City, N. Y. For authority to operate as a *common carrier*, over irregular routes, transporting: *Toilet paper, facial tissue, paper towels, paper napkins, paper containers, paper plates, sanitary napkins, wrapping paper* and *paper bags*, from Long Island City, N. Y. to points in Nassau and Suffolk Counties, N. Y., transporting *returned shipments* on return, operations to be *restricted* to prior movements by rail.

No. MC 115523 Sub 8, filed June 15, 1956, CLARK TANK LINES COMPANY, (a corporation), 1450 Beck Street, P. O. Box 1895, Salt Lake City, Utah. Applicant's attorney: Harry D. Pugsley, Continental Bank Building, Salt Lake City 1, Utah. For authority to operate as a *common carrier*, over irregular routes, transporting: *Road oil, asphalt* and other *petroleum products*, in bulk, in tank vehicles, from Salt Lake City, Utah and points within fifteen miles of Salt Lake City, to points in Coconino County, Ariz. Applicant is authorized to conduct operations in Colorado and Utah.

No. MC 115825, filed February 20, 1956, GLEN O. ATWOOD, doing business as ATWOOD TRANSPORT, Box 134, Cardston, Alberta, Canada. For authority to operate as a *common carrier*, over irregular routes, transporting: *Livestock* and *lumber*, from port of entry on the international boundary between the United States and Canada at or near Sweetgrass, Mont., to Salt Lake City, Utah; *hay* (race horse), from port of entry on the international boundary between United States and Canada at or near Sweetgrass, Mont., to points in California; *stone* and *salt*, from points in Utah to port of entry on the international boundary between United States and Canada at or near Sweetgrass, Mont., *machinery*, from points in California, to port of entry on the international boundary between United States and Canada at or near Sweetgrass, Mont.

No. MC 115884 Sub 1, filed June 21, 1956, CECIL E. STIERNAGLE, doing business as MOBILE HOME TOWING SERVICE, Albers Trailer Court, P. O. Box 22, R. R. No. 2, Rantoul, Ill. Applicant's attorney: Alfred H. Reichman, 318 North Hickory Street, Champaign, Ill. For authority to operate as a *common carrier*, over irregular routes, transporting: *House trailers*, towed by motor vehicle, between Rantoul, Ill., and points in Missouri, Arkansas, Texas, Oklahoma, New Mexico, and Arizona.

No. MC 115941 (Amended), published page 2907, issue of May 2, 1956, filed April 19, 1956, WILLARD CALVERT AND OSCAR CALVERT, doing business as CALVERT BROS. TRANSFER, 102 Trumbo Avenue, Morehead, Ky. Applicant's attorney: Thomas R. Burns, Morehead, Ky. For authority to operate as a *common carrier*, over irregular routes, transporting: *Household goods*, as defined by the Commission, from points in Rowan County, Ky., to points in Ohio, West Virginia, Indiana, and Michigan, and *empty containers or other such incidental facilities* used in transporting the commodities specified on return.

No. MC 115956, filed April 26, 1956, L. A. WHITE, doing business as WHITE TRANSFER CO., 714 Reed Street, Biltmore, N. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Liquid wax*, in bulk, in specially constructed tank vehicles, between points in New Jersey, Maryland, Delaware, and Pennsylvania, on the one hand, and, on the other, points in Tennessee, North Carolina, South Carolina, Georgia, and Florida.

No. MC 115970, filed June 21, 1956, JAY LOGAN, 736 Skyline Drive, Lancaster, Pa. Applicant's attorney: Williams Livengood, Jr., 25 South Front Street, Harrisburg, Pa. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Petroleum products*, excluding products transported in bulk in tank vehicles, from Freedom, Pa., to New York, N. Y., Philadelphia, Pa., including the Philadelphia, Pa. Commercial Zone as defined by the Commission, and Baltimore, Md., for delivery to docks at said ports for shipment in foreign commerce. *Empty containers or other such incidental facilities* used in transporting the commodities specified, and *damaged shipments* of the commodities specified, on return.

No. MC 116042, filed June 7, 1956, WHOLESALE TRAILER CONVOY, INC., 6839 Southeast 82d Avenue, Portland,

Oreg. For authority to operate as a *common carrier*, over irregular routes, transporting: *Trailers* and *trailer houses*, in initial and secondary movements, between points in Oregon, Washington, and California, and *trailers* and *trailer houses*, as may be available for transportation on return.

No. MC 116050, filed June 15, 1956, ROBERT H. CARR, SR., doing business as RAMBACH DISTRIBUTING, 3-21 27th Street, Fairlawn, N. J. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N. Y. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Frozen desserts*, from the site of the plant of Rambach Farms in Hawthorne, N. J., to retail stores in New York, N. Y., and points in Nassau, Suffolk, Westchester, Rockland, and Orange Counties, N. Y., and those in Fairfield County, Conn., and *returned shipments* on return.

No. MC 116054, filed June 15, 1956, McKENZIE TRANSPORT LEASING, CO., INC., 6601 South Broadway, St. Louis, Mo. Applicant's attorney: William J. Lippman, 1413 K Street NW., Washington 5, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Class A, B, and C explosives, empty containers and other such incidental facilities* (not specified) used in transporting the commodities specified in this application, and *shell cases*, and *pallets*, between the site of Savanna Ordnance Depot, located 12 miles north of Savanna, Ill., and Camp McCoy, Wis., located 10 miles east of Sparta, Wis., on State Highway 21.

No. MC 116055, filed June 15, 1956, ORPHA M. ROBBINS and HERBERT S. ROBBINS, doing business as H. K. ROBBINS COMPANY, 508 West Third Avenue, Ellensburg, Wash. For authority to operate as a *common carrier*, over irregular routes, transporting: *Malt beverages*, from Van Nuyes, and San Francisco, Calif., to points in Washington and Oregon, and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified in this application, on return.

No. MC 116056, filed June 18, 1956, LEO CAIN and CECIL LAKE, a partnership, doing business as CAIN & LAKE, Mill City, Oreg. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Lumber*, from points in Lincoln and Tillamook Counties, Oreg., to Rail and Steamship loading docks in Lincoln, Tillamook, Yamhill, Marion, Multnomah, and Polk Counties, Oreg.

No. MC 116059, filed June 20, 1956, RAYMOND BROWN AND BERNARD FRIEDMAN, doing business as BROWN BROTHERS CARTAGE SERVICE, 2900-2908 West Taylor Street, Chicago, Ill. Applicant's attorney: Edward G. Baselon, 39 South La Salle Street, Chicago 3, Ill. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Such commodities as are dealt in by retail furniture dealers*, in delivery service, from Chicago and Waukegan, Ill., to points in Illinois, Indiana, Michigan, Wisconsin, and those in Iowa on and east of U. S. Highway 69, and *damaged, defective, returned, used, repossessed and trade-in shipments* on return.

NOTE: Applicant has common carrier authority under Certificate No. MC 96121 to transport household goods, among other authority, and section 210 may be involved.

No. MC 116065, published on Page 3711, issue of May 30, 1956 under Docket No. MC 108340 Sub 8, filed May 8, 1956 (see note), HANEY TRUCK LINE, a corporation, 2219 Cedar Street, Forest Grove, Oreg. Applicant's representative: John M. Hickson, Yeon Building, Portland, Oreg. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Lumber* and *lumber mill products*, from points in Washington, Tillamook and Yamhill Counties, Oreg., to points in California; *cottonseed meal*, between points in California, on the one hand, and, on the other, points in Washington, Tillamook, Yamhill, and Multnomah Counties, Oreg.; *glass containers*, from points in Washington, to points in Washington County, Oreg. Applicant is authorized to conduct operations in Oregon and Washington.

NOTE: Applicant seeks, by letter dated June 18, 1956, from Attorney Hickson, to amend its application filed May 8, 1956, for common carrier authority by changing such authority to contract carrier authority; therefore, Docket MC 116065 has been assigned to cover the contract carrier authority sought and Docket MC 108340 Sub 8 originally assigned to common carrier authority, is canceled.

APPLICATIONS OF MOTOR CARRIERS OF PASSENGERS

No. MC 1002 Sub 10 filed June 11, 1956, ASBURY PARK-NEW YORK TRANSIT CORPORATION, Broadway and State Highway No. 35, Keyport, N. J. Applicant's attorney: Edward W. Carrie, 123 Main Street, Matawan, N. J. For authority to operate as a *common carrier*, transporting: *Passengers and their baggage* in the same vehicle with passengers, between Newark, N. J., and Jersey City, N. J., from the junction of New Jersey Turnpike and Newark Bay-Hudson County Extension of the New Jersey Turnpike in Newark, over the Newark Bay-Hudson County Extension of the New Jersey Turnpike to its junction with U. S. Highway No. 1 in Jersey City, as an alternate route for operating convenience only, serving no intermediate points, in connection with carrier's authorized regular route operations. Applicant is authorized to conduct operations in New Jersey and New York.

No. MC 3647 Sub 201, filed June 15, 1956, PUBLIC SERVICE COORDINATED TRANSPORT, a corporation, 80 Park Place, Newark, N. J. Applicant's attorney: Frederick M. Broadfoot, Public Service Terminal, Newark 1, N. J. For authority to operate as a *common carrier*, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, from Irvington, N. J., over city streets and access roads leading to and from the Garden State Parkway, thence over the Garden State Parkway to access roads leading to and from New Jersey Highway 3, Clifton, N. J., and return over the same route, serving all intermediate points except those in East Orange, Bloomfield and Nutley, N. J. Applicant is authorized to conduct operations in New Jersey and New York.

No. MC 52476 Sub 3, filed June 18, 1956, MORRIS SAYLOR (PAUL SAYLOR, ADMINISTRATOR), AND FANNIE SAYLOR, doing business as CUMBERLAND COACH LINES, Cumberland, Ky. For authority to operate as a *common carrier*, over a regular route, transporting: *Passengers and their baggage*, and *express, mail*, and *newspapers*, in the same vehicle with passengers, between Hazard, Ky., and Jenkins, Ky., from Hazard over Kentucky Highway 15 to junction U. S. Highway 119, thence over U. S. Highway 119 to Jenkins (also from junction Kentucky Highways 7 and 15, near Lothair, Ky., over Kentucky Highway 7 to junction Kentucky Highways 7 and 15, near Isom, Ky.), and return over the same route, serving all intermediate points. Applicant is authorized to conduct operations in Kentucky and Virginia.

APPLICATIONS UNDER SECTION 5 (2) AND 210 (a) (b)

No. MC-F 6222, published in the March 21, 1956, issue of the FEDERAL REGISTER on page 1761. Supplemental application filed June 22, 1956, to show M. C. BENTON, JR., and PAUL P. DAVIS as the persons in control of vendee. Hearing assigned July 9, 1956, at Charlotte, N. C.

No. MC-F 6312. Authority sought for purchase by UTAH PARKS COMPANY, Cedar City, Utah, of a portion of the operating rights and certain property of THE GREYHOUND CORPORATION, 2600 Board of Trade Building, Chicago, Ill. UTAH PARKS COMPANY is controlled by LOS ANGELES & SALT LAKE RAILROAD COMPANY and UNION PACIFIC RAILROAD COMPANY, both of Omaha, Nebr. Applicants' attorney: W. R. Rouse, 1416 Dodge Street, Omaha, Nebr. Operating rights sought to be transferred: *Passengers and their baggage*, and *express, mail* and *newspapers* in the same vehicle with passengers, as a *common carrier* over regular routes between Cedar City, Utah, and Lund, Utah, serving all intermediate points. Vendee is authorized to operate as a *common carrier* in Colorado, New Mexico, California, Arizona, Nevada, and Utah. Application has not been filed for temporary authority under section 210a (b).

No. MC-F 6313. Authority sought for control by KENNETH HUDSON, 70 Union Street, Medford, Mass. of the operating rights and property of McINTIRE BUS LINES, INC., 450 Main Street, Stoneham, Mass. Applicant's attorney: James H. Sullivan, 52 Maple St., Danvers, Mass. Operating rights sought to be transferred: *Passengers and their baggage*, restricted to traffic originating at the points indicated, in special or charter service, as a *common carrier* over irregular routes from points in Middlesex County, Mass., to points in Maine, Massachusetts, New Hampshire and Rhode Island, and return. Applicant holds no authority from the Commission but owns controlling stock interest in Kenneth Hudson, Inc., doing business as Hudson Bus Lines, and Canton & Blue Hill Bus Line, Inc., which are authorized to oper-

ate in New Hampshire, Massachusetts, Rhode Island, Connecticut, Maine and New York. Application has been filed for temporary authority under section 210a (b).

No. MC-F 6314. Authority sought for purchase by GREAT SOUTHERN TRUCKING COMPANY, 1863 Clarkson Street, Jacksonville, Fla., of the operating rights and property of K. S. MOFFETT, doing business as MOFFETT TRANSIT LINES, 461 Oak Street, Macon, Ga.; and for acquisition by RYDER SYSTEM, INC., JAR CORPORATION, and JAR NO. 2 CORPORATION, all of Miami, Fla., J. A. RYDER, R. N. REEDY and A. E. GREENE, JR., all of Jacksonville, of control of such operating rights and property through the purchase. Applicants' attorney: Allen Post, 1220 First National Bank Building, Atlanta 3, Ga. Operating rights sought to be transferred: *General commodities*, with certain exceptions including household goods, as a *common carrier* over regular routes, between Macon, Ga., and Eastman, Ga., between Macon, Ga., and Dublin, Ga., and between Macon, Ga., and Americus, Ga., serving all intermediate points. Vendor also operates in Georgia under the Second Proviso of section 206 (a) (1). Vendee is authorized to operate as a *common carrier* in Alabama, Georgia, South Carolina, North Carolina, Tennessee, and Florida. Application has been filed for temporary authority under section 210a (b).

No. MC-F 6315, Authority sought for purchase by CENTRAL NEW YORK FREIGHTWAYS, INC., 344 Sixth North Street, Syracuse, N. Y., of the operating rights and property of MOHAWK EXPRESS, INC., Progress Street, Union, N. J., and for acquisition by W. W. PATTERSON, JR., also of Syracuse, of control of such rights and property through the purchase. Applicants' attorneys: Frank J. Foley, 80 Broad Street, New York 4, N. Y., and Norman M. Pinsky, 407 South Warren Street, Syracuse 2, N. Y. Operating rights sought to be transferred: *General commodities*, with certain exceptions including household goods, as a *common carrier* over irregular routes between points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, N. J., and points in the New York, N. Y., Commercial Zone, as defined by the Commission, on the one hand, and, on the other, certain points in New York. Vendee is authorized to operate as a *common carrier* in New York. Application has been filed for temporary authority under section 210a (b).

No. MC-F 6316. Authority sought for purchase by CENTRAL SWALLOW COACH LINES, INC., 724 North Capital Avenue, Indianapolis, Ind., of a portion of the operating rights of TRANSIT SERVICE COMPANY, INC., 724 North Capital Avenue, Indianapolis, Ind., and for acquisition by CHARLES SECONDINO, STANLEY MILLER, JOHN GIOVANNI, JR., LESSIE A. BUFFO and B. C. HALL, all of Indianapolis, of control of such rights through the purchase. Applicants' attorney: Harry J. Harman, 210 Bankers Trust Building, Indianapolis, Ind. Operating rights sought to be transferred: *Passengers and their baggage*, restricted originating in the territory indicated, in charter operations, as a *common carrier*, over irregular routes, from points in Indiana to the District of Columbia, and points in Alabama, Florida, Georgia, Illinois, Iowa, Kentucky, Maryland, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin, and return. Vendee is authorized to operate as a *common carrier*, in Indiana. Application has not been filed for temporary authority under section 210a (b).

No. MC-F 6318. Authority sought for purchase by AMERICAN RED BALL TRANSIT COMPANY, INC., 1000 Illinois Building, Indianapolis, Ind., of the operating rights of G. EVAN REELY, doing business as REELY'S STORAGE AND FREIGHT TERMINAL, 734 West Broadway, Missoula, Mont., and for acquisition by CLARENCE KISSEL, also of Indianapolis, of control of such rights through the purchase. Applicants' representatives: Rice, Carpenter and Carraway, 618 Perpetual Building, Washington 4, D. C. Operating rights sought to be transferred: *Household goods*, as defined by the Commission, as a *common carrier*, over irregular routes, between points in Montana, between points in Montana on the one hand, and, on the other, points in Idaho, Oregon, Washington, California, and Nevada, and between points in Montana on and west of U. S. Highway 89, on the one hand, and, on the other, points in Wyoming, Colorado, Utah, Arizona, and North Dakota. Vendor is retaining a broker's license. Vendee is authorized to operate as a *common carrier* in Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, West Virginia, Wyoming, and the District of Columbia. Application has been filed for temporary authority under section 210a (b).

No. MC-F 6319. Authority sought for purchase by BUCKINGHAM TRANSPORTATION, INC., Omaha and West Boulevard, Rapid City, S. Dak., of the operating rights of A. F. GERMANN, doing business as BIRNEY FREIGHT LINE, 918 Adair Street, Route No. 3, Sheridan, Wyo., and a portion of the operating rights and certain property of EDWARD J. NESTOR, doing business as POWDER RIBER BUS LINES, 1200 Ivy, Miles City, Mont., and for acquisition by EARL F. BUCKINGHAM and HAROLD D. BUCKINGHAM, both of Rapid City, of control of such rights and property through the purchase. Applicants' representative: Marion F. Jones, 526 Denham Building, Denver 2, Colo. Operating rights sought to be transferred: (Germann) *General commodities*, with certain exceptions including household goods, as a *common carrier* over regular routes between Sheridan, Wyo., and Lame Deer, Mont., between junction unnumbered Montana Highways approximately 14 miles north of Decker, Mont., and Busby, Mont., and between Busby, Mont., and Lame Deer, Mont., serving certain intermediate and off-route points; *stockfed* and *heavy machinery*, over irregular routes, between points within 40 miles of Sheridan, Wyo., including Sheridan, and between Sheridan, Wyo., and points within 40 miles of Sheridan, on the one hand, and, on the other, certain points in Montana; and *livestock*, between Sheridan, Wyo., and points in Wyoming within 100 miles of Sheridan, between Sheridan and points in Wyoming within 100 miles of Sheridan, on the one hand, and, on the other, certain points in Montana, and between points in Montana within 40 miles of Sheridan, Wyo.; (Nestor) *General commodities*, except Class A and B explosives, as a *common carrier* over irregular routes, between Miles City, Mont., on the one hand, and, on the other, points in Montana within 150 miles of Miles City; *general commodities*, in collection-and-delivery service, between points in Wibaux, Mont.; and *general commodities*, including livestock, between points in Montana and North Dakota located within 50 miles of Wibaux, Mont. Vendee is authorized to operate as a *common carrier* in Minnesota, South Dakota, Nebraska, Iowa, Wyoming, Colorado, North Dakota, Montana, Wisconsin, Illinois, Utah, Washington, California, Nevada, Arizona, Idaho, and Oregon. Application has not been filed for temporary authority under Section 210a (b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 56-5284; Filed, July 3, 1956; 8:47 a. m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 29, 1956.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 32285: *Coke and related products—Chicago district to points in Ontario.* Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on petroleum coke, coke breeze, coke screenings, and pitch coke, carloads from Chicago, Ill., Whiting, Ind., and other points in Illinois and Indiana in the Chicago district named in the application, to Chippewa, Niagara Falls, Port Colborne, Thorold, and Welland, Ont., Canada.

Grounds for relief: Water competition and circuitous routes.

Tariffs: Supplement 33 to Baltimore and Ohio Railroad Company tariff I. C. C. 24272 and other tariffs listed in appendix A of the application.

FSA No. 32286: *Petroleum products to Ladora, Derby, and Denver, Colo.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on refined petroleum products, tank-car loads from specified points in Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas to Ladora, Derby and Denver, Colo.

Grounds for relief: Circuitous routes.

Tariff: Supplement 58 to Agent Kratzmeir's I. C. C. 4193.

FSA No. 32287: *Trailer-on-flat-car service between Central and Southwestern territories.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on various commodities, moving on class and commodity rates, in highway trailers transported on railroad flat cars between specified points in Ohio, and Pennsylvania, also Louisville, Ky., on the Erie Railroad Company, on the one hand, and points in Arkansas, Louisiana, Oklahoma, and Texas, on the other.

Grounds for relief: Motor truck competition and circuity.

Tariff: Supplement 2 to Agent Kratzmeir's tariff I. C. C. 4196.

FSA No. 32288: *Barytes, etc., from New Mexico to interstate points.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on barite (barytes), celestite ore, carloads from Limitar, McNierney, San Acacia and Socorro, N. Mex., to various interstate destinations as described in the application.

Grounds for relief: Short-line distance formula and circuitous routes.

Tariff: Supplement 55 to Agent Kratzmeir's I. C. C. 4092.

FSA No. 32289: *Old bags—Official Territory to Memphis, Tenn.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on bags, old, worn out, carloads from specified points in official territory to Memphis, Tenn.

Grounds for relief: Carrier competition and circuity.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 56-5282; Filed, July 3, 1956; 8:46 a. m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 107]

PENNSYLVANIA

DECLARATION OF DISASTER AREA

Whereas it has been reported that on or about June 17, 1956, because of the disastrous effects of a flood, damage resulted to residences and business property located in certain areas in the State of Pennsylvania;

Whereas the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected; and

Whereas after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act of 1953, as amended:

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 207 (b) (1) of the Small Business Act of 1953, as amended, may be received and considered by the Offices below indicated from persons or firms whose property situated in Allegheny County (including any areas adjacent to said county) suffered damage or other destruction as a result of the catastrophe above referred to:

Small Business Administration Regional Office, Jefferson Building, Room 1118, 1015 Chestnut Street, Philadelphia 7, Pennsylvania.

Small Business Administration Branch Office, Fulton Building, Rooms 801-802, 107 Sixth Street, Pittsburgh 22, Pennsylvania.

2. No special field office will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to December 31, 1956.

Dated: June 20, 1956.

WENDELL B. BARNES, *Administrator.*

[F. R. Doc 56-5292; Filed, July 3, 1956; 8:49 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

A. A. KISSLING

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

A. A. Kissling, Bern, Switzerland, $1,147.94 in the Treasury of the United States. Claim No. 41268, Vesting Order No. 5585.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 56-5306; Filed, July 3, 1956; 8:52 a. m.]

EMILIE KRATZKE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Mrs. Emilie Kratzke, Kreis Soltau, Hannover, Germany, $2,312.11 in the Treasury of the United States. Claim No. 59294, Vesting Order No. 17156.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 56-5307; Filed, July 3, 1956; 8:52 a. m.]

NETHERLANDS FOR THE BENEFIT OF ALICE KARELINE DE JONG ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Alice Kareline de Jong, L. S. Claim No. 239, Cities Service Company 5/58 Debenture No. 12146, in the principal amount of $1,000.

Carolina Eitje, L. S. Claim No. 376, Cities Service Company 5/69 Debenture No. 10958, in the principal amount of $1,000.

Albert and Sally Elzas, Cato Sjouwerman, Cornelis, Simon, Bertha and Bernard de Vries, Lydia Kroonenberg, and Constance Muyen, L. S. Claim No. 380, Cities Service Company 5/58 Debenture No. 27522, in the principal amount of $1,000.

Herman Judell, Eduard Elias, and Joel Goudsmit, L. S. Claim No. 413, Cities Service Power and Light Company 5½/52 Debenture No. 18589, in the principal amount of $1,000.

Adriana Beversluis, Jacques and Maria Hamburger, L. S. Claim No. 462, Cities Service Company 5/58 Debenture No. 107, in the principal amount of $500.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON, *Deputy Director, Office of Alien Property.*

[F. R. Doc. 56-5308; Filed, July 3, 1956; 8:52 a. m.]

NETHERLANDS FOR THE BENEFIT OF THEA CELINE ELIAS ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended,

notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Thea Celine Elias, L. S. Claim No. 378, Union Pacific Railroad Company 4/47 Bond No. 16330, in the principal amount of $500.

Gretha Elias, L. S. Claim No. 408, Cities Service Company 5/66 Debenture No. 3006, in the principal amount of $1,000.

Erich Theodor Gelber, L. S. Claim No. 419, Cities Service Company 5/58 Debenture No. 18514, in the principal amount of $1,000.

Freddy Gompertz, L. S. Claim No. 439, Southern Pacific Company-San Francisco Terminal 4/50 Bond No. 3057, in the principal amount of $500.

Antonia Maria Wilhelmina Gosschalk-Bergen, L. S. Claim No. 442, Southern Pacific Company-San Francisco Terminal 4/50 Bond No. 3366, in the principal amount of $100.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-5309; Filed, July 3, 1956; 8:52 a. m.]

NETHERLANDS FOR THE BENEFIT OF JOHANNA VAN DE RUIT ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Johanna, Cornelia, Gerardus and Heeltje van de Ruit; Anna de Jonge; and Johanna van Tongeren, L. S. Claim No. 142, Cities Service Company 5/58 Debenture Nos. 7726 and 13776, in the principal amount of $1,000 each; and Southern Pacific Company 4½/69 Bond No. 12259, in the principal amount of $1,000.

Philip Arnold Hartog, L. S. Claim No. 469, Cities Service Company 5/69 Debenture No. 45862, in the principal amount of $1,000.

Mrs. Suze Christine Leopold, L. S. Claim No. 570, Cities Service Company 5/69 Debenture No. 1461, in the principal amount of $1,000.

Jonas, Chawa and Betty Loopuit, L. S. Claim No. 586, Southern Pacific Company 4/49 Bond No. 107, in the principal amount of $500.

Mozes Jacob Nieuwendijk, L. S. Claim No. 623, Cities Service Company 5/50 Debenture No. 89930, in the principal amount of $1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-5310; Filed, July 3, 1956; 8:52 a. m.]

NETHERLANDS FOR THE BENEFIT OF JOSEPHINE VAN ADELBERGEN ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Josephine van Adelbergen, nee Godschalk, sole heiress of Bertha Godschalk (deceased), L. S. Claim No. 431, Cities Service Company 5/69 Debenture No. 49031, in the principal amount of $1,000.

Marie Hauer-Hertz, Ellen Zollikofer-Hauer, and Lotte van den Bergh-Hauer, L. S. Claim No. 472, Cities Service Company 5/69 Debenture No. 21329, in the principal amount of $1,000.

Theodoor Heimans, L. S. Claim No. 474, Cities Service Company 5/69 Debenture No. 34932, in the principal amount of $1,000.

Dr. Jacob H. van der Hoeden, L. S. Claim No. 489, Cities Service Company 5/58 Debenture No. 19883, in the principal amount of $1,000.

Albert Jules Keizer, L. S. Claim No. 531, Atchison, Topeka and Santa Fe Railway Company, 4/95 Bond No. 96519, in the principal amount of $1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-5311; Filed, July 3, 1956; 8:52 a. m.]

NETHERLANDS FOR THE BENEFIT OF NICOLAAS DE VRIES ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Nicolaas and Hugo de Vries, L. S. Claim No. 519, Southern Pacific Railroad Company 4/55 Bond No. 30288, in the principal amount of $1,000.

Naatje and Rudolf Sanders, L. S. Claim No. 534, Southern Pacific Company 4/49 Bond Nos. 21931 and 16240, in the principal amount of $1,000 each.

M. Kleerekoper-de Jong and M. Granaada-de Jong, L. S. Claim No. 535, Southern Pacific Company-San Francisco Terminal 4/50 Bond No. 15198, in the principal amount of $1,000.

Betty Jessurun and Elvire Veenhuys, L. S. Claim No. 587, Cities Service Company 5/69 Debenture No. 41651, in the principal amount of $1,000.

Arthur Menko, L. S. Claim No. 599, Cities Service Company 5/69 Debenture No. 19886, in the principal amount of $1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-5312; Filed, July 3, 1956; 8:53 a. m.]

NETHERLANDS FOR THE BENEFIT OF JOHANNES VAN BURKEN ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

The State of the Netherlands for the benefit of (all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to):

Johannes van Burken, L. S. Claim No. 543, Cities Service Company 5/68 Debenture No. 9864, in the principal amount of $1,000.

Alice Loebel, L. S. Claim No. 545, Cities Service Company 5/69 Debenture No. 14123, in the principal amount of $1,000.

Celine Kosturkiewicz and Helena Noordenbos, L. S. Claim No. 547, Cities Service Company 5/58 Debenture No. 39179, in the principal amount of $1,000.

Leon and Karel van Leer, L. S. Claim No. 559, Cities Service Company 5/69 Debenture No. 48222, in the principal amount of $1,000.

Saar Frisco, L. S. Claim No. 569, Cities Service Company 5/69 Debenture No. 47616, in the principal amount of $1,000.

Netherlands Embassy, Office of the Financial Counselor, 25 Broadway, New York 4, New York.

Executed at Washington, D. C., on June 27, 1956.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 56-5313; Filed, July 3, 1956; 8:53 a. m.]

person who obtained the exemption has submitted to the Commissioner (in triplicate) amended information describing such proposed changes, and such amendment has been accepted by the Commissioner. When intended for the uses specified in this subparagraph, it may also contain, in the amount specified, one, but only one, of the ingredients prescribed by paragraph (a) of this section. If it contains one of the arsenic compounds prescribed in such paragraph, its labeling must bear a warning that it must be discontinued 5 days (in lieu of 48 hours as required in this subparagraph) before the treated swine are slaughtered for human consumption.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes existing requirements, and since it would be against public interest to delay providing for the amendment herein set forth.

I further find that animal feed containing antibiotic drugs and conforming with the conditions prescribed in this order need not comply with the requirements of sections 502 (l) and 507 of the Federal Food, Drug, and Cosmetic Act in order to ensure their safety and efficacy.

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

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies secs. 502, 507, 52 Stat. 1051, 59 Stat. 463 as amended; 21 U. S. C. 352, 357)

Dated: May 9, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-3657; Filed, May 14, 1958; 8:51 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

Subchapter B—Statements of General Policy or Interpretation Not Directly Related to Regulations

PART 778—OVERTIME COMPENSATION

MISCELLANEOUS AMENDMENTS

Pursuant to authority under 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, 1950 Supp., p. 165), and General Orders Nos. 45–A (15 F. R. 3290) and 35–A (22 F. R. 7614) of the Secretary of Labor and in accordance with section 3 (a) of the Administrative Procedure Act (5 U. S. C. 1002), Part 778 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. Immediately following § 778.6 (g) (3) (iii) (*c*) add the following:

(*d*) The requirements for a formula for determining the amount to be contributed by the employer in (*b*) and (*c*) of this subdivision may be met by a formula which requires a specific and substantial minimum contribution and which provides that the employer may add somewhat to that amount within specified limits; provided, however, that there is a reasonable relationship between the specified minimum and maximum contributions. Thus, formulas providing for a minimum contribution of 10 percent of profits and giving the employer discretion to add to that amount up to 20 percent of profits, or for a minimum contribution of 5 percent of compensation and discretion to increase up to a maximum of 15 percent of compensation, would meet the requirement. However, a plan which provides for insignificant minimum contributions and permits a variation so great that, for all practical purposes, the formula becomes meaningless as a measure of contributions, would not meet the requirement.

2. Delete from § 778.6 (g) (4) the reference to subdivision (iii).

3. Delete the citation appearing in footnote 49, § 778.18 (a) which reads "325 U. S. 427" and substitute the following: "331 U. S. 17".

(52 Stat. 1060, as amended; 29 U. S. C. 201–219)

Signed at Washington, D. C., this 9th day of May 1958.

CLARENCE T. LUNDQUIST,
Acting Administrator.

[F. R. Doc. 58-3667; Filed, May 14, 1958; 8:53 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Rules Amdt. 8-6; FCC 58-442]

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

EXTENSION OF EFFECTIVE DATE OF TYPE ACCEPTANCE REQUIREMENTS AND SPURIOUS EMISSION LIMITATIONS FOR CERTAIN TRANSMITTERS

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 8th day of May 1958;

It appearing that the New Jersey Maritime Electronics Association, Curtis and Union Avenues, Manasquan, New Jersey, and the E. Smola Company, Inc., 134 25th Street, Newport News, Virginia, have requested the Commission to extend the effective date of the type acceptance requirements (for transmitters operating on frequency assignments below 30 Mc) to January 1, 1959; and

It further appearing that petitioners state, in substance, that such postponement is necessary so that marine radio equipment dealers and boat owners will not be subjected to financial loss and hardship, that only a few manufacturers were fully aware of the implications of the type acceptance regulations, and that the average dealer and boat owner is not prepared for the enforcement of type acceptance regulations after June 1, 1958; and

It further appearing that despite the fact that standard rule making procedures were followed providing petitioners with adequate opportunity to apprise themselves of the rules and comment thereon, petitioners apparently were not aware of the type acceptance requirements and will suffer a financial loss on equipment which will be obsolete after June 1, 1958; and

It further appearing that granting the petitioners' requests would serve the public interest by lessening the impact of type acceptance requirements upon marine radio equipment dealers and boat owners without disturbing the consummation of the type acceptance program; and

It further appearing that the effective date for type acceptance requirements for radiotelephone transmitters and the spurious emission limitations for both radiotelephone and radiotelegraph transmitters are so related as to make a uniform date of application desirable, and, hence, the effective date of the spurious emission limitations is also amended to coincide with the effective date of the type acceptance requirements; and

It further appearing that in view of the imminence of the type acceptance requirements and spurious emission limitations (after June 1, 1958), compliance with the public notice and rule making procedure prescribed by sections 4 (a) and (b) of the Administrative Procedure Act is impracticable; and

It further appearing that since the amendments herein ordered relieve an existing restriction, compliance with the effective date provisions of section 4 (c) of the Administrative Procedure Act is not required; and

It further appearing that the public interest, convenience and necessity will be served by the amendments herein ordered, the authority for which is contained in sections 303 (e) and (r) of the Communications Act of 1934, as amended;

It is ordered, That, effective May 21, 1958, Part 8 of the Commission's rules is amended as set forth below.

Released: May 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

1. Section 8.136 (c) is amended by deleting in subparagraph 3 thereof the words "After June 1, 1958" and substituting therefor the words "Effective January 1, 1959". As amended paragraph (c) reads as follows:

(c) Except as outlined in paragraph (d) of this section, the requirements of paragraph (b) of this section shall be applicable as follows:

(1) To any radio transmitter for which type acceptance is requested.

(2) To radio transmitters when operating on any frequency assignment between 30 Mc and 500 Mc.

(3) Effective January 1, 1959, to any radio transmitter when operating on any frequency below 30 Mc.

2. Section 8.136 (d) is amended by deleting in subparagraphs (3) and (4)

thereof the words "June 1, 1958" and substituting the words "January 1, 1959". As amended, paragraph (d) reads as follows:

(d) The requirements of paragraph (b) of this section shall not apply to:

(1) Lifeboat transmitters;

(2) Transmitters authorized in developmental station licenses;

(3) Radiotelegraph transmitters licensed for operation on any frequency assignment below 30 Mc prior to January 1, 1959, which are authorized in a station license issued to the same licensee or for a station on board the same vessel;

(4) Other radio transmitters licensed for operation on any frequency assignment below 30 Mc prior to January 1, 1959, which are authorized in a station license issued to the same licensee or for a station on board the same vessel until they are authorized in a new or renewed station license issued in response to an application filed after June 1, 1963.

3. Section 8.139 (a) (2) is amended by deleting in the first sentence thereof the words "After June 1, 1958" and substituting therefor the words "Effective January 1, 1959". Section 8.139 (a) (2) is further amended by deleting in the second sentence thereof the words "June 1, 1958" and substituting therefor the words "January 1, 1959". As amended, § 8.139 (a) (2) reads as follows:

(2) Effective January 1, 1959, to transmitters when operating on any frequency assignment, including any assignment below 30 Mc. However, until requested to be authorized in a new or renewed license issued in response to an application filed after June 1, 1963, transmitters licensed under this part prior to January 1, 1959, may (insofar as this requirement is concerned) continue to be authorized for operation on any frequency assignment below 30 Mc if authorized in a station license issued to the same licensee or for a station on board the same vessel.

[F. R. Doc. 58-3662; Filed, May 14, 1958; 8:53 a. m.]

TITLE 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

[General Order 20, 2d Revision]

PART 272—POLICY AND PROCEDURE REGARDING CONDUCTING OF SUBSIDY CONDITION SURVEYS AND ACCOMPLISHMENT OF SUBSIDIZED VESSEL MAINTENANCE AND REPAIRS

Correction

In F. R. Doc. 58-3243, appearing at page 2920 of the issue for Thursday, May 1, 1958, the following changes should be made:

1. In the first sentence of § 272.3 (b) (1), the word "or" should read "of".

2. The word "Repair" should be inserted after the word "Ship" the second time it appears in § 272.6 (b).

3. The last paragraph of § 272.9 should be designated as "(i)" instead of "(1)".

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 921]

[Docket No. AO-222-A9]

HANDLING OF MILK IN OZARKS MARKETING AREA

NOTICE OF HEARING ON PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENT AND TO ORDER

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Colonial Hotel, 330 St. Louis Street, Springfield, Missouri, beginning at 10:00 a. m., local time on May 27, 1958, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Ozarks marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Proposal number 6 refers to such changes in other provisions of the order as may be required to effectuate the operation of individual-handler pools. Other sections of the order which might be involved include, but are not limited to, the following:

(1) Need for the producer-settlement fund provided in § 921.82 and for the payments to and from such fund pursuant to §§ 921.84 and 921.85;

(2) Whether all provisions of § 921.11 are appropriate;

(3) Whether § 921.61 is appropriate.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Producers Creamery Company:

1. Amend § 921.7 to read as follows:

§ 921.7 *Producer.* Producer means any person other than a producer-handler who produces milk;

(a) Under a dairy farm permit issued by a health authority duly authorized to administer regulations governing the quality of milk disposed of in the marketing area; or

(b) Acceptable to agencies of the United States Government for fluid consumption in its institutions or bases in the marketing area, which milk is:

(1) Delivered from the farm to a pool plant, or

(2) Diverted during any of the months of April through June or to the extent of not more than 10 days production during any of the months of February, March, July or August by a handler from a pool plant to a nonpool plant for the account of a handler: *Provided, however,* That if milk is diverted to a nonpool plant which is regulated under the provisions of another milk marketing order such milk will not be considered as producer milk under the provisions of this order.

2. Amend paragraph (b) of § 921.8 *Handler* to read as follows:

(b) A cooperative association with respect to the milk of its member producer which is delivered to the pool plant of another handler or a producer handler in a tank truck owned or operated by or under contract to such cooperative association (such milk shall be considered as having been received by such cooperative association at the plant to which it is delivered); or

3. Amend § 921.11 to read as follows:

§ 921.11 *Pool plant.* Pool plant means:

(a) An approved plant which processes and packages as milk, skim milk or cream not less than 50 percent of its receipts of approved milk and from which not less than 15 percent of its receipts of approved milk during the month is disposed of as Class I milk in the marketing area to wholesale or retail outlets (including sales through plant stores or vendors);

(b) A supply plant from which a quantity of milk equal to at least 40 percent of its supply of milk from producers or other pool plants is shipped to an approved plant which processes and packages as milk, skim milk or cream not less than 50 percent of its receipts of approved milk during any of the months of February, March, April, May, June or July: *Provided,* That if such plant shall ship during August 25 percent, September 35 percent, October 40 percent, November 45 percent, December 40 percent and January 35 percent, or more of such supply to an approved plant which processes and packages as milk, skim milk or cream not less than 50 percent of its receipts of approved milk, such plant shall be designated as a pool plant during each of the subsequent months through the following July unless such plant requests nonpool designation by means of a written application to the market administrator.

4. Add a definition concerning approved milk to read as follows:

§ 921.16 *Approved milk.* Approved milk means any skim milk or butterfat contained in producer milk or in milk, skim milk or cream which is received from a pool plant, except a plant of a producer-handler and which milk is ap-

Marisha Russell v. Government Employees Insurance Company, et al.
9th Circuit Case No.: 18-55682

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 31, 2018.

I certify that all participants in the case are registered CM/EFC users and that service will be accomplished by the appellate CM/EFC system.

/s/ Monica J. Walker

CASE NO. 18-55682

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARISHA RUSSELL, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiff and Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant and Appellee.

Appeal From The United States District Court,
Southern District of California, Case No. 3:17-cv-00672-JLS-WVG,
Hon. Janis L. Sammartino, Presiding

MOTION FOR JUDICIAL NOTICE IN SUPPORT OF BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE GOVERNMENT EMPLOYEES INSURANCE COMPANY

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Attorneys for *Amicus Curiae*
Chamber of Commerce of the United States of America

I. REQUEST FOR JUDICIAL NOTICE

Amicus curiae Chamber of Commerce of the United States of America respectfully requests that the Court take judicial notice of the following documents and facts:

Exhibit 1: U.S. Department of Labor, Labor Information Bulletin, vol. 14, no. 10 (Oct. 1947).

Exhibit 2: Bureau of National Affairs, The New Wage and Hour Law (1949) and appendices thereto, and particularly the following fact:

1. On October 19, 1949, Sen. Pepper (D., Fla.) submitted to the U.S. Senate a Statement of Majority of Senate Conferees, wherein the majority stated: "This exclusion recognizes that the benefits received by employees as a result of the employer's contributions under such plans are generally received at periods when no work is being performed for the employer, rather than as compensation for hours worked." (Statement of Majority of Senate Conferees, submitted to the Senate by Sen. Pepper (Oct. 19, 1949), *reprinted in The New Wage and Hour Law*, *supra*, at Appendices-93.)

Exhibit 3: Fair Labor Standards Act Amendments: Hearings on S. 49, etc., Before the Labor Subcommittee of the Committee on Labor and Public Welfare, 80th Cong. (1948) and particularly the following fact:

1. In the aforementioned hearing report, Archibald Cox, then counsel to the Senate Committee on Labor and Public Welfare, stated that: "a number of court decisions [under the 1938 FLSA] make it impracticable, if not impossible, to comply with the law and at the same time set up profit-sharing plans or certain kinds of pension trusts. [Citations omitted.] The obstacle should be removed." (Hearing report at 198.)

II. DISCUSSION

Judicial notice is proper under Rule 201 of the Federal Rules of Evidence because these documents and facts "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned" and is requested by *Amicus*, who supplies herewith the necessary information.

Additionally, the Court may take judicial notice of public records. *Rosenfeld v. JP Morgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 959 (N. D. Cal. 2010). Thus, the Court may take judicial notice of the Exhibits 1 through 3 and facts set forth above.

DATED: October 31, 2018 MUNGER, TOLLES & OLSON LLP

By: */s/ Katherine M. Forster*
KATHERINE M. FORSTER
Attorneys for *Amicus Curiae* Chamber of Commerce of the United States of America

DECLARATION

I, Katherine M. Forster, hereby declare as follows:

1. I am an attorney duly licensed to practice before the Ninth Circuit Court of Appeal. I am a partner with the law firm of Munger, Tolles & Olson LLP, attorneys of record for *Amicus Curiae* Chamber of Commerce of the United States of America. Except where otherwise stated, I have personal knowledge of the matters stated herein and if sworn as a witness could and would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of U.S. Department of Labor, Labor Information Bulletin, vol. 14, no. 10 (Oct. 1947). I caused this document to procured by staff working under my direction by searching the digital archives of the Hathi Trust.

3. Attached as Exhibit 2 is a true and correct copy of The New Wage and Hour Law, published by The Bureau of National Affairs, Inc. (1949). I caused this document to procured by staff working under my direction by searching the widely used database, HeinOnLine.

4. Attached as Exhibit 3 is a true and correct copy of Fair Labor Standards Act Amendments: Hearings on S. 49, etc., Before the Labor Subcommittee of the Committee on Labor and Public Welfare, 80th Cong. (1948).

I caused this document to procured by staff working under my direction by searching the widely used database, HeinOnLine.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 31st day of October, 2018, at Los Angeles, California.

/s/ Katherine M. Forster
Katherine M. Forster, Esq.
Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE PURSUANT TO

FED. R. APP. 32(A)(7)(C) AND CIRCUIT RULE 32-1

Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief is proportionally spaced, has a typeface of 14 points and contains 347 words.

DATED: October 31, 2018

MUNGER, TOLLES & OLSON LLP

By: */s/ Katherine*
KATHERINE M. FORSTER
Attorneys for *Amicus Curiae* Chamber of Commerce of the United States of America