

and those in Ohio on and east of U.S. Highway 25, Arthur J. Diskin, 806 Frick Building, Pittsburgh, PA 15219, attorney for applicants.

No. MC-FC-72582. By order of January 18, 1971, the Motor Carrier Board approved the transfer to Charles W. Karper, Inc., Chambersburg, Pa., of certificates Nos. MC-27903, MC-27903 (Sub-No. 9), MC-27903 (Sub-No. 12), and MC-27903 (Sub-No. 19) issued to Charles W. Karper, Chambersburg, Pa., authorizing the transportation of various commodities of a general commodity nature, between specified points and areas in Pennsylvania, Maryland, Virginia, West Virginia, New York, New Jersey, Ohio, Connecticut, Massachusetts, Rhode Island, Delaware, and Washington, D.C. Christian V. Graf, attorney, 407 North Front Street, Harrisburg, PA 17101.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-1120 Filed 1-26-71;8:49 am]

[Ex Parte Nos. 270, 271]

INVESTIGATION OF RAILROAD FREIGHT RATE STRUCTURE

Net Investment; Railroad Rate Base

JANUARY 19, 1971.

General notice of the institution of these proceedings has been given by publication in the FEDERAL REGISTER and actual notice has been given to all rail carriers subject to the Commission's jurisdiction. The Commission desires as wide a public participation as possible and in order to insure that consumer groups which may have an immediate interest in these proceedings receive personal notice, the orders instituting these proceedings are being served concurrently herewith upon the consumer interests set forth in Appendix A. The time for filing statements of positions in Ex Parte No. 271, Net Investment—Railroad Rate Base, is hereby extended from January 18, 1971, to February 8, 1971, so that these parties, as well as others, may participate. Similar service is being made in Ex Parte No. 270, Investigation of Railroad Freight Rate Structure, but since the present due date for filing of statements of interest and discussion of the matters specified in the order of December 11, 1970, issued in that proceeding is February 16, 1971, an extension of the filing date does not appear to be necessary.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-1121 Filed 1-26-71;8:49 am]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 22, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42116—*Vegetables, melons and related articles from points in Arizona, California, and New Mexico.* Filed by Trans-Continental Freight Bureau, agent (No. 464), for interested rail carriers. Rates on vegetables, fresh or green, melons, etc., in carloads, as described in the application, from points in Arizona, California, and New Mexico, to points in official territory.

Grounds for relief—Maintenance of depressed rates without use of such rates as factors in constructing combination rates.

Tariff—Supplement 163 to Trans-Continental Freight Bureau, agent, tariff ICC 1744.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.71-1122 Filed 1-26-71;8:49 am]

[Notice 5]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JANUARY 22, 1971.

The following publications are governed by the new Special Rule 247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 58902 (Sub-No. 15) (Republication), filed February 6, 1970, published in the FEDERAL REGISTER issue of May 7, 1970, and republished this issue. Applicant: MANLEY TRANSFER COMPANY, INC., 312 North Santa Fe, Chanute, KS. Applicant's representative: Tom B. Kretsinger, 450 Professional Building, Kansas City, MO 64106. The modified procedure has been followed in this proceeding, and a report and order of the Commission Review Board No. 1, decided January 7, 1971, and served January 15, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over regular routes, of, *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment); (a) between Chanute, Kans., and junction U.S. Highways 169 and 160, from Chanute over Kansas Highway 39 to junction U.S. Highway 75, thence over U.S. Highway 75 to Independence, Kans., thence over U.S. Highway 160 to junction

U.S. Highway 169, and return over the same route, serving all intermediate points and serving junction U.S. Highway 160 and U.S. Highway 169 for purposes of joinder only; (b) between junction U.S. Highway 75 and Kansas Highway 39 and Neodesha, Kans.; from junction U.S. Highway 75 and Kansas Highway 39 over Kansas Highway 39 to junction Kansas Highway 96, thence over Kansas Highway 96 to Neodesha, and return over the same route, serving all intermediate points and serving junction U.S. Highway 75 and Kansas Highway 39 for purposes of joinder only;

(c) Between Chanute, Kans., and junction U.S. Highways 160 and 69, from Chanute over Kansas Highway 39 to junction U.S. Highway 59, thence over U.S. Highway 59 to Parsons, Kans., thence east over U.S. Highway 160 to junction U.S. Highway 69 and return over the same route, serving all intermediate points and serving junction U.S. Highways 160 and 69 for purposes of joinder only; (d) between Parsons and Crestline, Kans., from Parsons over U.S. Highway 59 to Oswego, Kans., thence over Kansas Highway 96 to Crestline, and return over the same route, serving all intermediate points; (e) between Oswego and Chetopa, Kans.; over U.S. Highway 59; and (f) between Neodesha and Parsons, Kans.; from Neodesha over U.S. Highway 75 to junction Kansas Highway 37, thence over Kansas Highway 37 to junction U.S. Highway 160, thence over U.S. Highway 160 to Parsons, and return over the same route, serving all intermediate points. All of the authority in (a) through (f) above, is restricted to the transportation of traffic moving between Pittsburg, Kans., on the one hand, and, on the other, points in Kansas within 80 miles of Pittsburg; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that a certificate authorizing such operation should be issued subject (1) to the prior receipt from applicant of a written request for the insertion in its outstanding certificate No. MC-58902 (Sub-No. 16) of a restriction providing that the carrier shall not, pursuant to the irregular-route authority contained in that certificate, serve any points authorized herein to be served by it in regular-route operations, and (2) to the further condition that the authority granted herein shall not be severable by sale or otherwise from the irregular-routes embraced in certificate No. MC-58902 (Sub-No. 16); because it is possible that other persons who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order a notice of authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise

manner in which it has been so prejudiced.

No. MC 83835 (Sub-No. 63) (Republication), filed February 5, 1970, published in the FEDERAL REGISTER issue of February 27, 1970, and republished this issue. Applicant: WALES TRANSPORTATION, INC., Post Office Box 6186, Dallas, TX 75222. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. A decision and order of the Commission, Review Board No. 3, dated January 14, 1971, and served January 20, 1971; upon consideration of the record in this proceeding, finds; that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular route, of metal tubing and pipe, (1) from Tulsa, Okla., to points in Alabama (except Decatur), Arkansas, Georgia (except Atlanta), Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, New Mexico, New York, Ohio, Pennsylvania, Texas, Wisconsin, and Wyoming, and (2) from points in Indiana, Kansas, Michigan, New York, Ohio, Pennsylvania, Texas, Okla., subject to the condition that to the extent the authority granted duplicates any authority heretofore granted to applicant it shall be construed as conferring only a single operating right. Because it is possible that other persons, who relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 113459 (Sub-No. 58) (Republication), filed March 30, 1970, published in the FEDERAL REGISTER issue of April 23, 1970, and republished this issue. Applicant: H. J. JEFFRIES TRUCK LINE, INC., Post Office Box 94850, Oklahoma City, OK 73109. Applicant's representative: James W. Hightower, 136 Wynnewood Professional Building, Dallas, TX 75224. A decision and order of the Commission, Review Board No. 3, dated January 14, 1971, and served January 20, 1971; upon consideration of the record in this proceeding, finds; that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, of metal tubing and pipe, (1) from Tulsa, Okla., to points in Alabama (except Decatur), Arkansas, Georgia (except Atlanta), Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, New Mexico, Ohio, Texas, Utah, Wisconsin, and Wyoming, and (2) from East Troy, Wis., and points in Indi-

ana, Ohio, New York, and Texas to Tulsa, Okla., subject to the condition that to the extent the authority granted duplicates any authority heretofore granted to applicant it shall be construed as conferring only a single operating right. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition for leave to reopen the proceeding or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 12744 (Sub-No. 1) (Notice of Filing of Petition for Waiver of Rule 101 (e), for Reopening and Reconsideration, and for Modification of Passenger Broker's License), filed December 30, 1970. Petitioner: RIDGEWAY TOURS, INC., Lancaster, Pa. Petitioner's representatives: Robert H. Griswold and S. Berne Smith, Post Office Box 1166, Harrisburg, PA 17108. Petitioner holds a license to operate as a broker at Lancaster, Pa., in arranging for the transportation of passengers and their baggage, both as individuals and groups, between points in the United States, including Alaska and Hawaii. By the instant petition, petitioner seeks that Rule 101(e) of the General Rules of Practice be waived and the proceeding at MC 12744 (Sub-No. 1) be reopened and reconsidered; and that upon reconsideration petitioner's broker's license in "c. MC 12744 (Sub-No. 1) be modified to eliminate the phrase, "both as individuals and groups," so that it will read as follows: "Passengers and their baggage, between points in the United States, including Alaska and Hawaii." Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereof (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11060. (Correction) (PENN YAN EXPRESS, INC.—Purchase—FRANK'S-VAN NAMEE'S EXPRESS CORP.—STANLEY R. RUDIN—TRUSTEE IN BANKRUPTCY), published in the January 13, 1971 issue of the FEDERAL REGISTER on page 483. Prior notice read: No. MC-46300 (Sub-No. 2 TA) filed pur-

chase by PENN YAN EXPRESS, INC., 100 West Lake Road, Penn Yan, NY 14527, of the operating rights of FRANK'S-VAN NAMEE'S EXPRESS CORP., STANLEY R. RUDIN—TRUSTEE IN BANKRUPTCY; and should read: No. MC-F-11060. Authority sought for purchase by PENN YAN EXPRESS, INC., 100 West Lake Road, Penn Yan, NY 14527, of the operating rights of FRANK'S-VAN NAMEE'S EXPRESS CORP., STANLEY R. RUDIN, TRUSTEE IN BANKRUPTCY.

No. MC-F-11065. Authority sought for purchase by ARBET TRUCK LINES, INC., 222 East 135th Place, Chicago, IL 60627, of the operating rights of KEECH TRANSFER CO., INC., 803 West Jackson, Morris, IL (LEONARD M. SPIRA—TRUSTEE FOR BENEFIT OF CREDITORS), and for acquisition by EMIL ARBET, also of 222 East 135th Place, Chicago, IL 60627, of control of such rights through the purchase. Applicants' attorneys: Arnold L. Burke, 69 West Washington Street, Chicago, IL 60602 and Carl Steiner, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-98603 Sub-1, covering the transportation of property, as a common carrier in interstate commerce, within the State of Illinois. Vendee is authorized to operate as a common carrier in Illinois, Ohio, Indiana, Missouri, Iowa, Michigan, and Kentucky. Application has been filed for temporary authority under section 210a(b).

No. MC-F-11067. Authority sought for purchase by HAGEN, INC., 4120 Floyd Boulevard, Sioux City, IA 51108, of a portion of the operating rights of COMMERCIAL FREIGHT LINES, INC., 4200 Gardner, Kansas City, MO 64120, and for acquisition by FRED HAGEN, also of Sioux City, Iowa, of control of such rights through the purchase. Applicants' attorney: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Operating rights sought to be transferred: Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, except commodities in bulk, in tank vehicles, as a common carrier over irregular routes, from the site of the plant of Armour & Co. located at or near Emporia, Kans., to points in Illinois, Iowa, Missouri, and Nebraska. Vendee is authorized to operate as a common carrier in Kansas, Illinois, Iowa, Minnesota, Montana, Nebraska, North Dakota, Wisconsin, Wyoming, South Dakota, Oregon, Missouri, Arizona, California, Washington, Nevada, Idaho, and New Mexico. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11068. Authority sought for purchase by BILL G. CARR AND PHYLIS R. CARR, doing business as ARROWHEAD TRANSPORTATION, 103 Moore Lane, Billings, MT 59102, of a portion of the operating rights of

NORTHERN PACIFIC TRANSPORT COMPANY, 176 East Fifth Street, St. Paul, MN 55101. Applicants' attorney: Arthur F. Lamey, Jr., Post Office Box 2529, Billings, MT 59103. Operating rights sought to be transferred: *General commodities*, as a common carrier, over regular routes, between Laurel, Mont., and Red Lodge, Mont., serving to and from all intermediate points; and *general commodities*, between Red Lodge, Mont., and Bridger, Mont., serving all intermediate points. Vendee is authorized to operate as a *common carrier* in Montana. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11069. Authority sought for purchase by C. I. WHITTEN TRANSFER COMPANY, Post Office Box 1833, Huntington, WV 25719, of a portion of the operating rights of McLEAN TRUCKING COMPANY, 617 Waughton Street, Winston-Salem, NC 27102, and for acquisition by U.S. INDUSTRIES, INC., 250 Park Avenue, New York, NY 10017, of control of such rights through the purchase. Applicants' attorneys: J. G. Dail, Jr., 1111 E Street NW., Washington, DC 20004 and Francis W. McInerney, 1000 16th Street NW., Washington, DC 20036. Operating rights sought to be transferred: *General commodities*, and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, as a *common carrier*, over regular routes, between Forest Hill, La., and a point on Louisiana Highway 112, 4 miles from Forest Hill, serving all intermediate points; *general commodities*, between Alexandria, La., and Leesville, La., for operating convenience only, serving no intermediate points; *general commodities*, except currency, stamps, gold and silver bullion, loose bulk commodities, and commodities contaminating to other lading; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Shreveport, La., and Bossier City, La., serving no intermediate points; *classes A and B explosives*, *general commodities*, except household goods as defined by the Commission, and commodities in bulk; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Ville Platte, La., and Eunice, La., between Gibson, La., and Thibodaux, La., serving no intermediate points.

General commodities, except those of unusual value, household goods as defined by the Commission, and commodities in bulk; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Houston, Tex., and New Orleans, La., serving all intermediate points and certain off-route points in Louisiana, between Beaumont, Tex., and Port Arthur, Tex., between Houston, Tex., and Shreveport, La., between Tenaha, Tex., and Mansfield, La., between Toomey, La., and New Orleans, La., between Port Allen, La., and Lee-

ville, La., between Sulphur, La., and Hackberry, La., between junction U.S. Highway 190 and Louisiana Highway 97, near Basile, La., and Opelousas, La., between Eunice, La., and Kaplan, La., between Rayne, La., and Opelousas, La., between Abbeville, La., and Breaux Bridge, La., between Lafayette, La., and Opelousas, La., between Logansport, La., and Gloster, La., between Opelousas, La., and Ville Platte, La., serving all intermediate points, between Lake Charles, La., and Shreveport, La., serving all intermediate points except those between Lake Charles and Mansfield, La., between junction unnumbered highway, known as Old Port Arthur Road, and U.S. Highway 69, about 3 miles south of Beaumont, Tex., and Port Arthur, Tex., serving all intermediate points; *general commodities*, except those of unusual value, household goods as defined by the Commission, and commodities in bulk, between Sunset, La., and Scott, La., serving all intermediate points, and the off-route points within 2 miles of the specified route, between Sunset, La., and Rayne, La., serving all intermediate points, and the off-route points within 2 miles of the specified route, between Bristol, La., and Duson, La., serving all intermediate points, and the off-route points within 2 miles of the specified route, between Corsicana, Tex., and De Ridder, La., serving the intermediate points of Merryville, La., and Lufkin, Tex., with restriction; between La Place, La., and New Orleans, La., serving all intermediate points, between De Ridder, La., and junction Louisiana Highway 26 and U.S. Highway 190 near Elton, La., serving no intermediate points;

Classes A and B explosives, *general commodities*, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Boutte, La., and the Huey P. Long Bridge, new New Orleans, La., between Orleans, La., and Chalmette, La., between junction U.S. Highway 190 and west approach of the Mississippi River Bridge, La., and Baton Rouge, La., between Houma, La., and Dulac, La., between Houma, La., and Montegut, La., between Houma, La., and Chauvin, La., serving all intermediate points; *classes A and B explosives*, *general commodities*, except those of unusual value, baled cotton, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Galveston, Tex., and Fort Worth, Tex., serving the intermediate points of Dallas, Waco, and Houston, Tex.; *general commodities*, except household goods as defined by the Commission, between Alexandria, La., and Lake Charles, La., between Kinder, La., and

Eunice, La., serving all intermediate points; *general commodities*, except livestock, household goods as defined by the Commission, and commodities in bulk; and

Government-owned compressed gas trailers, empty or loaded with compressed gases other than liquefied petroleum gas, between Memphis, Tenn., and Little Rock, Ark., serving the intermediate point of Lonoke, Ark., between Little Rock, Ark., and Shreveport, La., serving all intermediate points; off-route points within 6 miles of Little Rock, Ark., and Shreveport, La., respectively, and those within 10 miles of Smackover and El Dorado, Ark., respectively, between El Dorado, Ark., and Hamburg, Ark., serving all intermediate points; off-route points within 10 miles of El Dorado, Ark., those within 10 miles of Smackover, Ark., those on Arkansas Highway 129 between Strong, Ark., and the Arkansas-Louisiana State line, and those on Arkansas Highway 81 between Hamburg, Ark., and the Arkansas-Louisiana State line, between Crossett, Ark., and Monroe, La., between Memphis, Tenn., and Monroe, La., between Monroe, La., and Hancock, La., for operating convenience only, serving no intermediate points, between Monroe, La., and Dubach, La., serving the intermediate point of West Monroe, La., between Dubach, La., and Minden, La., serving no intermediate; *general commodities*, except loose bulk commodities, livestock, currency, bullion, articles of virtu, household goods as defined by the Commission, and commodities exceeding ordinary equipment and loading facilities; and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, between Junction City, Ark., and Homer, La., serving all intermediate points;

Classes A and B explosives, and *general commodities*, except those of unusual value, baled cotton, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, and *Government-owned compressed gas trailers*, empty or loaded with compressed gases other than liquefied petroleum gas, over irregular routes, between points within 3 miles of Houston, Tex., including Houston; *general commodities*, between New Iberia, La., and points within 7 miles of New Iberia; *dangerous explosives*, between the site of the U.S. Naval Ammunition Depot near Savanna, Okla., on the one hand, and, on the other, the site of the U.S. naval loading and unloading facilities, at or near Bell Chasse, La. Vendee is authorized to operate as a *common carrier* in West Virginia, Pennsylvania, Ohio, Kentucky, Virginia, North Carolina, Illinois, New Jersey, Alabama, Connecticut, Delaware, Maryland, Massachusetts, Vermont, Maine, Tennessee, Iowa, New Hampshire, Rhode Island, Indiana, Wisconsin, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11070. Authority sought for control by WALTER ENICK, doing business as GATEWAY TRUCKING, 169 Station Street, Aliquippa, PA 15001, of J. MILLER EXPRESS, INC., 152 Pittsburgh, PA 15220. Applicants' Attorney Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Operating rights sought to be controlled: *Machinery, materials, and supplies*, used by steel mills (except materials used by steel mills from points in Jackson and Washington Counties, Ohio, and except ferro alloys, in containers, from the plantsite of the Union Carbide Corp., at or near Ashtabula, Ohio), *iron and steel and iron and steel articles*, as defined by the Commission, and *nonferrous metals*, as a common carrier over irregular routes, between points in Ohio, those in that part of New York west of a line beginning at Lake Ontario and extending along U.S. Highway 15 to Lakeville, N.Y., thence along Alternate U.S. Highway 20 to Geneseo, N.Y., thence along New York Highway 63 to junction New York Highway 408, thence along New York Highway 408 to junction New York Highway 16, thence along New York Highway 16 to Olean, N.Y., thence along New York Highway 16 (formerly New York Highway 16A), to the New York-Pennsylvania State line, including points on the indicated portions of the highways specified, those in that part of Pennsylvania on and west of U.S. Highway 219, and those in West Virginia on and north of U.S. Highway 50 from the Maryland-West Virginia State line to the West Virginia-Ohio State line, between Ashland, Ky., on the one hand, and, on the other points in Ohio, and those in the above-described New York, Pennsylvania, and West Virginia areas;

Ferro alloys, pig iron, and scrap metal, in dump vehicles, from the site of the storage facilities of S. H. Bell Co. at East Liverpool, Ohio, to points in Connecticut, Massachusetts, New Jersey, and points in that part of Pennsylvania on and east of U.S. Highway 15 (except Philadelphia, Pa., and points in the Philadelphia, Pa., commercial zone, as defined by the Commission), from Pittsburgh, Pa. (except Braddock, Pa.), to points in Connecticut and Massachusetts, between Braddock, Pa., and East Liverpool, Ohio, on the one hand, and, on the other, points in Vermont and New Hampshire, between Niagara Falls, N.Y., on the one hand, and, on the other, points in Connecticut, Massachusetts, Rhode Island, Vermont, and New Hampshire; *ferrous and nonferrous alloys, fluorspar, clay, pig iron, scrap metals, chrome ore, and manganese ore*, in dump vehicles, between the site of the storage facilities of the S. H. Bell Co. at Braddock, Pa., on the one hand, and, on the other, points in Connecticut, Kentucky (except points in Marshall County), Massachusetts, New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties), New York, North Carolina, points in that part of Ohio on and west of U.S. Highway 23, points in that part of Pennsylvania on and east

of U.S. Highway 15 (except Philadelphia, Pa., and points in its commercial zone, as defined by the Commission), Rhode Island, Tennessee, and Virginia, excluding clay from points in Graves County, Ky., and points in Henry County, Tenn., and excluding ferro chrome from Newport News, Va., between the site of the storage facilities of S. H. Bell Co. at East Liverpool, Ohio, on the one hand, and, on the other, points in Connecticut, Kentucky (except points in Marshall County), New Jersey, New York, North Carolina, Massachusetts, points in that part of Ohio on and west of U.S. Highway 23, points in that part of Pennsylvania on and east of U.S. Highway 15 (except Philadelphia, Pa., and points in its commercial zone, as defined by the Commission), Rhode Island, Tennessee, and Virginia, excluding clay from points in Graves County, Ky., and points in Henry County, Tenn., and excluding ferro chrome from Newport News, Va.;

Ferro alloys and silicon metal, in dump vehicles, from Vancoram, Ohio, to points in Connecticut, Delaware, Maryland (except points in Garrett, Allegany, Washington, and Frederick Counties), Massachusetts, New Jersey, and Virginia; *ferro alloys, fluorspar, and pig iron*, in dump vehicles, between the site of the storage facilities of S. H. Bell Co., at East Liverpool, Ohio, on the one hand, and, on the other, points in Illinois, Kentucky (except points in Marshall County), New Jersey, New York, points in that part of Ohio on and west of U.S. Highway 23, and points in that part of Pennsylvania on and east of U.S. Highway 15 (except Philadelphia, Pa., and points in its commercial zone, as defined by the Commission), between Pittsburgh, Pa. (except Braddock, Pa.), on the one hand, and, on the other, points in Illinois, Kentucky (except points in Marshall County), New York, and points in that part of Ohio on and west of U.S. Highway 23, with restriction; *pig iron*, in dump vehicles, from Buffalo, N.Y., to points in New Jersey, that part of Pennsylvania east of U.S. Highway 219, and that part of West Virginia south of U.S. Highway 50; *scrap metal*, in dump vehicles, between Niagara Falls, N.Y., on the one hand, and, on the other, points in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Michigan, New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, N.J.), Maryland, Delaware, and Virginia, with restriction;

Scrap carbon, furnace lining, and carbon butts, in bulk, in dump vehicles, from Niagara Falls, N.Y., to points in Pennsylvania, Ohio, and West Virginia; *alloys and ores*, in dump vehicles, from Philadelphia, Pa., to points in Ohio (except points in Ashtabula, Cuyahoga, Geauga, Franklin, Lake, Licking, Lorain, Muskingum, Portage, Summit, and Wayne Counties, Ohio), West Virginia, Indiana, Illinois, Michigan, and Kentucky; *metals, metal alloys, sand, ores, and limestone*, in dump vehicles, from points in Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey (except points in Gloucester and Cumberland Counties

and the city of Mount Hope, N.J., and points in its commercial zone as defined by the Commission), New York, Pennsylvania (except points in Adams County, Pa., and points in Pennsylvania west of U.S. Highway 15), Vermont, Virginia, and West Virginia (except points in Jefferson and Berkeley Counties and the cities of Martinsburg, Millville, and Bakerton, W. Va., and points in their commercial zones as defined by the Commission); *metals and scrap steel shapes*, in dump vehicles, between Braddock, Pa., East Liverpool, Ohio, and Niagara Falls, N.Y., on the one hand, and, on the other, points in Connecticut, Massachusetts, Rhode Island, Vermont, and New Hampshire;

Ferro alloys, silicon metals, and manganese metal, in dump vehicles, from Graham, W. Va., and Vancoram and Vanadis, Ohio, to points in Kentucky (except Marshall County), Illinois, Indiana, Missouri, Ohio (except Cuyahoga, Geauga, Lorain, Portage, and Washington Counties), and Iowa; *coke*, from Harriet (Tonawanda Township), Erie County, N.Y., to points in Pennsylvania; *metal pipe and tubing and fittings for metal pipe and tubing*, from the plantsites of Jones & Laughlin Steel Corp., located at New Kensington, Pa., and Niles, Ohio, and the plantsite of H. K. Porter Co., Inc., at Ambridge, Pa., to points in Delaware, Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Ohio, Pennsylvania, and West Virginia, with restriction. WALTER ENICK, doing business as GATEWAY TRUCKING, is authorized to operate as a common carrier under section 210a, general commodities, except commodities in bulk, in tank vehicles, over irregular routes, between Butler, Pa., and points in Allegheny, Beaver, Butler, and Mercer Counties, Pa. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11071. Authority sought for purchase by TRUCKWAY SERVICE, INC., 1099 Oakwood Boulevard, Detroit, MI 48217, of the operating rights of WILMER FRANK, Post Office Box 788, Toledo, OH 43601, and for acquisition by V. W. McLaughlin, also of Detroit, Mich., of control of such rights through the purchase. Applicants' attorneys: James R. Stiverson and Edwin H. van Deusen, 50 West Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: *General commodities*, except agricultural commodities, livestock, motion picture films, and household goods as defined by the Commission, as a common carrier, over irregular routes, between points within 5 miles of Toledo, Ohio, including Toledo, between Toledo, Ohio, and points within 10 miles of Toledo; *household goods*, as defined by the Commission, between Toledo, Ohio, and points in that part of Lucas County, Ohio, on and north of U.S. Highway 20, and all other points within 5 miles of Toledo, on the one hand, and, on the other, points in Michigan, between points in that part of Lucas County, Ohio, on and north of U.S. Highway 20, on the one hand, and, on the other, points in

that part of Indiana on and north of U.S. Highway 50, between Toledo, Ohio, on the one hand, and, on the other, points in Indiana, Maryland, Michigan, Pennsylvania, New York, New Jersey, Virginia, West Virginia, Illinois, and the District of Columbia;

New refrigerators, electric and gas ranges, heating appliances, and laundry equipment, in retail store deliveries, from points in that part of Lucas County, Ohio, on and north of U.S. Highway 20, to certain specified points in Michigan; and from Fort Wayne, Ind., to Toledo, Ohio; office furniture, and store fixtures, be-

tween points in that part of Lucas County, Ohio, on and north of U.S. Highway 20, on the one hand, and, on the other, points in the southern peninsula of Michigan and those in that part of Indiana on and north of U.S. Highway 50; refrigerators, between Toledo, Ohio, and points within 5 miles of Toledo, on the one hand, and, on the other, points in Michigan; materials, supplies, and equipment incidental to, or used in, the construction, operation, maintenance, and removal of telephone, telegraph, and electric powerlines, between certain specified points in Ohio; and machinery,

between certain specified points in Ohio. Vendee is authorized to operate as a contract carrier in Michigan, Indiana, Illinois, Ohio, Delaware, Kentucky, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL]

ROBERT L. OSWALD,
Secretary.

[FR Doc.71-1116 Filed 1-26-71;8:49 am]

CUMULATIVE LIST OF PARTS AFFECTED—JANUARY

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PART II

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

FEDERAL SEED ACT REGULATIONS

Rules of Practice



Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

SUBCHAPTER K—FEDERAL SEED ACT

PART 201—FEDERAL SEED ACT REGULATIONS

PART 202—FEDERAL SEED ACT RULES OF PRACTICE

Miscellaneous Amendments

Statement of considerations. The Federal Seed Act (7 U.S.C. 1551 et seq.) and the rules and regulations thereunder contain, in part, provisions for cease and desist proceedings. The rules of practice (7 CFR 201.151–201.154) for such proceedings have not been amended since 1940. As a result they have become outdated and do not conform with the rules of practice under other statutes administered by the U.S. Department of Agriculture.

On March 18, 1970, there was published in the FEDERAL REGISTER (35 F.R. 4734) a notice of rule making and hearing with respect to proposed amendments to the rules of practice (7 CFR 201.151 et seq.) under the Act. The proposals for amendments were primarily for the purpose of updating the rules of practice for cease and desist proceedings. However, proposed rules of practice for other proceedings under the Act also were included in the notice.

Approximately 500 copies of the notice of proposed rule making were sent to State seed officials and members of the seed trade. A public hearing was held on April 20, 1970, in Washington, D.C. Written comments were permitted until May 20, 1970.

No written comments were received. Only two persons submitted comments at the public hearing, one representing the seed trade and one representing the Department. The applicable comments made by the seed trade representative pertained principally to the time allowed for answers during the proceedings. The comments made by a representative of the Department were concerned principally with substitution of terminology for the use of "Secretary" in the rules.

The rules set forth below are the same as those proposed in the rule-making and hearing except for changes made pursuant to comments received and except for inclusion in § 202.42 of a reference to the policy for publication of notices concerning settlement of court cases which was proposed by the Consumer and Marketing Service at the public hearing on this matter.

It does not appear that further public participation in the rule-making procedure would make additional information available to the Department on the changes.

Therefore under the provisions of 5 U.S.C. 553 it is found that further notice and other public rule-making procedure

with respect to this document are unnecessary.

After consideration of all relevant matters, including those presented at the hearing and in writing pursuant to said notice and under authority of section 402 of the Federal Seed Act, Part 201 of Title 7, Code of Federal Regulations, is amended by deleting §§ 201.151 through 201.159 and § 201.231 and a new Part 202 is issued to read as follows:

Subpart A—General

Sec.	
202.1	Meaning of words.
202.2	Definitions.
202.3	Institution of proceedings.
202.4	Status of applicant.

Subpart B—Rules Applicable to Cease and Desist Proceedings

202.10	Institution of proceeding; docket number.
202.11	Complaint.
202.11-1	Filing and service.
202.11-2	Contents.
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202.14	Examiners.
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202.14-3	Conduct.
202.14-4	Powers.
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202.15	Prehearing conferences.
202.16	Motions and requests.
202.16-1	General.
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202.17	Procedure upon failure to request oral hearing or waiver of oral hearing.
202.17-1	General.
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202.19	Procedure upon request for an oral hearing.
202.19-1	Time and place of hearing.
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202.25	Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsiderations of order.
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202.26	Filing documents.
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202.28	Computation of time.
202.29	Extension of time.

Subpart C—Rules Applicable to Other Proceedings

202.40	Proceedings prior to reporting for criminal prosecution.
202.41	Notice and hearing prior to promulgation of rules and regulations.
202.42	Publication of judgments, settlements, and orders.
202.43	Proceedings under section 302(a) to show cause why seed or screenings should be admitted into the United States.
202.44	Proceedings under section 305(b) to determine whether foreign alfalfa or red clover seed is not adapted for general agricultural use in the United States.

AUTHORITY: The provisions of this part 202 issued under secs. 302, 305, 402, 408, 409, 413, 414, 53 Stat. 1275, as amended; 7 U.S.C. 1582, 1585, 1592, 1598, 1599, 1603, 1604.

Subpart A—General

§ 202.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 202.2 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:

(a) The term "Act" means the Federal Seed Act, approved August 9, 1939 (53 Stat. 1275, 7 U.S.C. 1551 et seq.) and any legislation amendatory thereof.

(b) "Complaint" means any formal complaint and notice of hearing or other document by virtue of which a proceeding under the Act is instituted.

(c) "Complainant" means the party upon whose complaint the proceeding is instituted.

(d) "Decision and Order" includes the Secretary's findings, conclusions, order, and rulings on motions, exceptions, statements of objections, and proposed findings, conclusions and orders submitted by the parties not theretofore ruled upon.

(e) "Director" means the Director of the Grain Division, Consumer and Marketing Service, U.S. Department of Agriculture, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(f) "Examiner" means an Examiner in the Office of Hearing Examiners, U.S. Department of Agriculture.

(g) "Examiner's Recommended Decision" means the Examiner's report to the Secretary consisting of the proposed:

(1) Findings of facts and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis for such conclusions and (2) order.

(h) The term "hearing" means that part of a proceeding which involves the submission of evidence and means either an oral or written hearing.

(i) "Hearing Clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

(j) The term "person" includes any individual, partnership, corporation, company, society, association, receiver, or trustee.

(k) The term "regulations" means the regulations promulgated pursuant to the Act (7 CFR Part 201).

(l) "Respondent" means the party proceeded against.

(m) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead, including the Judicial Officer.

§ 202.3 Institution of proceedings.

Any person having information of any violation of the Act or of any of the regulations promulgated thereunder may file with the Director an application requesting the institution of such proceedings as may be authorized under the Act. Such application shall be in writing, signed by or on behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation and the name and address of the applicant and the party complained of. If, after investigation of the matters complained of in the application or after investigation made on his own motion, the Director has reason to believe that any person has violated or is violating any of the provisions of the Act or the regulations made and promulgated thereunder, he may institute such proceedings as may be authorized by the Act.

§ 202.4 Status of applicant.

The person filing an application shall not be a party to any proceeding which may be instituted under the Act, unless he be permitted by the Secretary or by the Examiner to intervene therein. The Director shall not be required to divulge the name of the applicant and such person will have no legal status in the proceeding which may be instituted, except where allowed to intervene or as such person may be called as a witness. At any time after the institution of the proceeding, and before it has been submitted to the Secretary for final consideration, the Secretary or the Examiner may, upon petition in writing and upon good cause shown, permit any person to intervene.

Subpart B—Rules Applicable to Cease and Desist Proceedings

§ 202.10 Institution of proceedings; docket number.

(a) A cease and desist proceeding under section 409 of the Act (7 U.S.C. 1599) is instituted upon the issuance by the Director of a complaint and the filing of such document with the Hearing Clerk.

(b) Each such proceeding, immediately following its institution, shall be assigned a docket number by the Hear-

ing Clerk and thereafter the proceeding shall be referred to by such number.

§ 202.11 Complaint.

§ 202.11-1 Filing and service.

If the Director has reason to believe that any person has violated or is violating any of the provisions of the Act or the regulations issued or promulgated thereunder, a complaint may be filed with the Hearing Clerk, a copy of which shall be served upon each respondent as provided in § 202.27.

§ 202.11-2 Contents.

The complaint shall set forth briefly the nature of the violation or violations, including allegations of fact which constitute a basis for the proceeding, and designate a time and place for a hearing in the matter which shall be at least 30 days after the date of the service of the complaint upon the respondent.

§ 202.11-3 Amendments.

At any time prior to the close of the hearing, the complaint may be amended; but, in case of an amendment adding new provisions, the hearing shall, on the request of the respondent, be adjourned for a period not exceeding 15 days.

§ 202.12 Answer.

§ 202.12-1 Filing and service.

The respondent shall file, within 20 days after service of the complaint upon the respondent, an answer to the allegations of the complaint, with the Hearing Clerk, signed by the respondent or his attorney.

§ 202.12-2 Contents.

The answer shall:

(a) Contain a concise statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the allegations of the complaint, unless the respondent is without knowledge, in which case the answer shall so state;

(b) State that the respondent admits all of the facts alleged in the complaint; or

(c) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of a specified order without further procedure. The answer may, in addition, request an oral hearing or may contain an express waiver of hearing.

§ 202.12-3 Failure to file.

Failure to file an answer to, or plead specifically to, any allegation of the complaint, except as provided in § 201.12-2(c), shall constitute an admission of such allegation.

§ 202.13 Consent orders.

At any time after the institution of a proceeding, the respondent may file an answer or amended answer consenting to an order as set forth in § 202.12-2(c). Within 15 days after service of such an answer, the complainant shall file its recommendation. If the complainant recommends that the order consented to by

respondent be issued, the Secretary may, in his discretion, enter such order which shall have the same force and effect as other orders issued hereunder and shall be served upon the parties in the manner provided in § 202.27.

§ 202.14 Examiners.

§ 202.14-1 Assignment.

No examiner shall serve in any proceeding if he: (a) Has any pecuniary interest in any matter or business involved in the proceeding; (b) is related within the third degree by blood or marriage to any party to the proceeding; or (c) has participated in the investigation preceding the institution of the proceeding or in the determination that it should be instituted or in the preparation of the complaint or in the development of the evidence to be introduced therein.

§ 202.14-2 Disqualification of Examiner.

(a) Any party may, by motion made to the Examiner, request that the Examiner disqualify himself and withdraw from the proceeding. The Examiner may then either rule upon or certify the motion to the Secretary, but not both.

(b) An Examiner shall withdraw from any proceeding in which he deems himself disqualified for any reason.

§ 202.14-3 Conduct.

The Examiner shall conduct the proceeding in a fair and impartial manner, and save to the extent required for the disposition of ex parte matters as authorized by law, he shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

§ 202.14-4 Powers.

Subject to review by the Secretary as provided elsewhere in this part, the Examiner, in any proceeding assigned to him, shall have power to:

(a) Rule upon motions and requests;

(b) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

(e) Summon and examine witnesses and receive evidence;

(f) Take or order the taking of depositions;

(g) Admit or exclude evidence;

(h) Hear oral argument on facts or law; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient, fair and impartial conduct of the proceeding.

§ 202.14-5 Who may act in the absence of the Examiner.

In case of the absence of the Examiner or his inability to act: (a) the powers and duties to be performed by him under this part in connection with a proceeding

assigned to him may, without abatement of the proceeding unless otherwise directed by the Secretary, be assigned to any other Examiner; and (b) the Chief Hearing Examiner or the Acting Chief Hearing Examiner may act on ancillary matters, such as requests for extensions of time and requests for continuances without the case being assigned to another Examiner.

§ 202.15 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the Examiner may request the parties or their counsel to appear at a conference before him to consider: (a) the simplification of issues; (b) the necessity or desirability of amendments to pleadings; (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (d) the limitation of the number of experts or other witnesses; and (e) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the Examiner shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the Examiner may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The Examiner shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the Examiner shall submit a written summary for the record if any action is taken.

§ 202.16 Motions and requests.

§ 202.16-1 General.

All motions and requests shall be filed with the Hearing Clerk, unless made during the course of an oral hearing, in which case they may be stated orally and made a part of the transcript. The Examiner is authorized to rule upon all motions and requests filed or made prior to the filing of his report with the Hearing Clerk as hereinafter provided. The Secretary will rule upon all motions and requests filed after that time.

§ 202.16-2 Motions entertained.

Any motion will be entertained except a motion to dismiss a complaint on the pleadings. All motions and requests concerning the sufficiency of the complaint must be made within the time allowed for filing an answer.

§ 202.16-3 Contents.

All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

§ 202.16-4 Answers to motions and requests.

Within 15 days after service of any written motion or request, or within any

longer period fixed by the Secretary or Examiner, the opposing party shall file an answer to the motion or request or shall be deemed to have no objection to the granting of the relief asked for in the motion or request. Unless permitted by the Secretary or Examiner, the complainant shall have no right to reply to the answer.

§ 202.16-5 Certification to Secretary.

The submission or certification of any motion, request, objection or other question to the Secretary prior to the time when the Examiner's Recommended Decision is filed with the Hearing Clerk shall be in the discretion of the Examiner, except as provided in this section. The Examiner may either rule upon or certify the motion, request, objection, or other question, but not both.

§ 202.17 Procedure upon failure to request oral hearing or waiver of oral hearing.

§ 202.17-1 General.

Failure to request an oral hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing. Except as provided in § 202.18, upon such failure to request an oral hearing, or upon express waiver of such hearing, by the parties, the parties shall have a period of 20 days from the final date for filing the answer in which to file sworn statements or affidavits in support of their respective positions. Within a reasonable time thereafter, the Examiner shall issue his Recommended Decision, which shall be served upon the parties in the manner provided in § 202.27: *Provided, however*, That if such sworn statements or affidavits raise any material issue of fact, the Examiner may afford the parties an opportunity to submit sworn statements or affidavits in reply or supplemental thereto or he may set the matter down for an oral hearing with respect to such material issues of fact. In the event the matter is set down for oral hearing, the rules in § 202.19 shall be applicable.

§ 202.17-2 Exceptions to Examiner's Recommended Decision.

Within 20 days after service of the Examiner's Recommended Decision, the parties may take exception to any matter set out in such report, and in such case shall file exceptions in writing with the Hearing Clerk suggesting corrected findings of fact, conclusions, or order. A party may file a brief in support of any exceptions or objections which he may file. A party, if he files exceptions, shall state in writing whether he desires to make an oral argument thereon before the Secretary in the manner provided in § 202.23; otherwise he shall be deemed to have waived such oral argument.

§ 202.17-3 Final order.

As soon as practicable after the expiration of the period for filing exceptions and briefs, or, in case oral argument is had, as soon as practicable thereafter, the Secretary shall issue his final decision and order, including his ruling on any exceptions filed by the parties. The

order shall be served upon the parties in the manner provided in § 202.27.

§ 202.18 Procedure upon admission of facts.

§ 202.18-1 General.

Failure to file an answer shall constitute an admission of all the material allegations of fact contained in the complaint. The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint, shall constitute a waiver of oral hearing. Upon such admission of facts, the Examiner, without further procedure or hearing, shall issue his Recommended Decision, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint. The Examiner's Recommended Decision shall be served upon the parties in the manner provided in § 202.27.

§ 202.18-2 Exceptions to Examiner's report.

Within 10 days after service of the Examiner's Recommended Decision, parties may take exception to any matter set out in such Recommended Decision, and in such case shall file exceptions in writing with the Hearing Clerk suggesting corrected findings of fact, conclusions, or order. A party may file a brief in support of any exceptions or objections which he may file. A party, if he files exceptions, shall state in writing whether he desires to make an oral argument thereon before the Secretary in the manner provided in § 202.23; otherwise he shall be deemed to have waived such oral argument.

§ 202.18-3 Final order.

As soon as practicable after the expiration of the period for filing exceptions and briefs, or, in case oral argument is had, as soon as practicable thereafter, the Secretary shall issue his final decision and order, including his ruling on any exceptions filed by the parties. The decision and order shall be served upon the parties in the manner provided in § 202.27.

§ 202.19 Procedure upon request for an oral hearing.

§ 202.19-1 Time and place of hearing.

If and when the proceeding has reached the stage where an oral hearing is to be held, the Examiner, giving careful consideration to the convenience of the parties, shall set a time and place of hearing and shall file with the Hearing Clerk a notice stating the time and place of hearing. If any change in the time or place of the hearing is made, the Examiner shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

§ 202.19-2 Appearances.

(a) *Representation.* The parties may appear in person or by counsel or other representative. Parties who appear in person and persons who appear as counsel or in a representative capacity must conform to the standards of ethical

conduct required of practitioners before the courts of the United States. Whenever the Secretary finds, after notice and opportunity for hearing, that a person, who is acting or has acted as counsel or representative for another person in any proceeding before the Secretary, is unfit to act as such representative or counsel, he will order that such person be precluded from acting as counsel or representative in any proceeding under the Act. The procedure in such case will be governed by the applicable provisions of this part.

(b) *Failure to appear.* If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the party who is present shall have an election whether to present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the Examiner. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Examiner's Recommended Decision and to file exceptions and make oral argument before the Secretary with respect thereto, in the manner provided in §§ 202.19-3 and 202.23.

§ 202.19-3 Order of proceeding.

Except as may be determined otherwise by the Examiner, the complainant shall proceed first at the hearing.

§ 202.19-4 Evidence.

(a) *General.* The testimony of witnesses at the hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the Examiner, be examined separately and apart from all other witnesses except those who may be parties to the proceeding. The Examiner shall admit all relevant and material evidence, except evidence which is unduly repetitious.

(b) *Objections.* If a party objects to the admission or rejection of any evidence or the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the Examiner. Only objections made before the Examiner may be subsequently relied upon in the proceeding.

(c) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of § 202.20.

(d) *Records of the Department.* A true copy of every written entry in the records of the Department made by an officer or employee thereof in the course of his official duty and relevant and material to the issues involved in the hearing, shall be admissible as prima facie evidence of the facts stated therein, without the production of such officer or employee.

(e) *Exhibits.* Except where the Examiner finds that the furnishing of copies is impracticable, copies of each exhibit, in addition to the original, shall

be filed with the Examiner for the use of the other parties to the proceeding. A true copy of an exhibit may, in the discretion of the Examiner, be substituted for the original.

(f) *Official notice.* Official notice may be taken of the official publications of the Department and other Federal agencies, of such matters as are judicially noticed in the courts of the United States, and of any other matter of technical or scientific fact of established character: *Provided however,* That the parties shall be given adequate notice, at the hearing or by reference in the Examiner's Recommended Decision or otherwise, of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(g) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of an exhibit, it shall be inserted in the record in toto. In the event the Secretary decides that the Examiner's ruling in excluding the evidence was erroneous and prejudicial, the hearing shall be reopened to permit the taking of such evidence.

§ 202.19-5 Transcripts.

(a) *Filing and certification.* Oral hearings shall be stenographically reported and transcribed. As soon as practicable after the close of the hearing, the Examiner shall cause to be transmitted to the Hearing Clerk an original and two copies of the transcript of testimony and the original and copies of exhibits introduced or offered in evidence at the hearing. He shall attach to the original transcript of the evidence a certification stating that the transcript is a true transcript of the testimony offered or received at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits offered or introduced at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of evidence.

(b) *Ordering copies.* Parties to the proceeding or other persons who desire a copy of the transcript of the hearing may place orders at the close of the hearing with the reporter who will furnish and deliver such copies directly to the purchaser upon payment therefor at the rate per page provided by the contract between the reporter and the purchaser.

§ 202.19-6 Proposed findings of fact, conclusions, and order.

Within such time as the Examiner may prescribe, each party may file with the Hearing Clerk proposed findings of fact, conclusions, and order, based solely on the record, and a brief in support thereof. A copy of each such document filed by a party shall be served upon the

other party or parties in the manner provided in § 202.27.

§ 202.19-7 Examiner's Recommended Decision.

The Examiner, within a reasonable time after the termination of the period allowed to the parties for the filing of proposed findings of fact, conclusions, and orders, and briefs in support thereof, shall prepare on the basis of the record and shall file with the Hearing Clerk, his Recommended Decision, a copy of which shall be served upon each of the parties in the manner provided in § 202.27.

§ 202.19-8 Exceptions; objections; requests for oral argument.

(a) Within 20 days after service of the Examiner's Recommended Decision, the parties may take exception to any matter set out in such report, and in such case shall file exceptions in writing with the Hearing Clerk, referring to the relevant pages of the transcript, and suggesting corrected findings of fact, conclusions, or order. Within the same period of time, either party may file with the Hearing Clerk a brief statement in writing concerning each of the objections taken to the action of the Examiner at the hearing, as set out in § 202.19-4(b), upon which the party wishes to rely, referring where relevant, to the pages of the transcript. A party may file a brief in support of any exceptions or objections which he may file.

(b) A party, if he files exceptions or a statement of objections, shall state in writing, whether he desires to make an oral argument thereon before the Secretary; otherwise, he shall be deemed to have waived such oral argument.

§ 202.19-9 Final order.

As soon as practicable after the expiration of the period for filing exceptions, objections, and briefs, or, in case oral argument is had, as soon as practicable thereafter, the Secretary shall issue his final decision and order, including his ruling on any exceptions or objections filed by the parties. The decision and order shall be served upon the parties in the manner provided in § 202.27.

§ 202.20 Depositions.

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the Examiner may, at any time after the filing of the complaint, order the taking of testimony by deposition. The application shall be in writing and shall be filed with the Hearing Clerk and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to in this section as the "officer") qualified under the rules in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which should be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(b) *Examiner's order for taking deposition.* If the Examiner is satisfied that

good cause for taking the deposition is present, he may order its taking. The order shall be filed with the Hearing Clerk and shall be served upon the parties and shall state: (1) The time and place of examination (which shall not be less than 15 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; and (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(c) *Qualifications of officer.* The deposition shall be made before the Examiner, or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths. No deposition shall be made before an officer who is a relative (within the third degree by blood or marriage), employee, attorney, or counsel of any party or who is a relative (within the third degree by blood or marriage) or employee of any attorney or counsel for any party or who is financially interested in the result of the proceeding: *Provided, however,* That an officer who is an employee of the Department and is not a relative of any such party, attorney, or counsel may take depositions in any proceeding under the act.

(d) *Procedure on examination.* The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral cross-examination, parties may transmit written cross-interrogatories to the officer prior to the examination and the officer shall propound such cross-interrogatories to the deponent.

The applicant must arrange for the examination of the witness either by oral examination or by written interrogatories. If it is found by the Examiner, upon the protest of a party to the proceeding, that such party has his residence and his place of business more than 100 miles from the place of the examination and that it would constitute an undue hardship upon such party to be represented at the examination, the applicant will be required to conduct the examination by means of interrogatories. When the examination is conducted by means of interrogatories, copies of the interrogatories shall be served upon the other parties to the proceeding at least 5 days prior to the date set for the examination, and the other parties shall be afforded an opportunity to file with the officer cross-interrogatories at any time prior to the time of the examination.

(e) *Signature by witness.* The transcript of the deposition shall be read to or by the deponent, unless such reading is waived by the parties and the deponent. Any changes which the deponent wishes to make shall be entered upon the deposition by the officer, with a statement of the reasons given by the deponent for such changes. The deposition shall be signed by the deponent, unless the parties by stipulation waive such

signing, or unless the deponent is ill or cannot be found or refuses to sign. If the deponent does not sign, the officer shall sign and shall state on the record the reason why the deponent did not sign. In such case the deposition shall be as valid as though signed by the deponent, unless the Examiner finds that the reason given by the deponent for his refusal to sign requires rejection of the deposition in whole or in part.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the deposition, together with two copies thereof, in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(g) *Use of depositions.* A deposition ordered and taken in accord with the provisions of this section, or in accord with the provisions of the Rules of Civil Procedure of the Courts of the United States, may be used in a proceeding under the act if the Examiner finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a greater distance than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored but has been unable to procure the attendance of the witness by subpoena; or (5) in any event, upon application and notice that such exceptional circumstances exist as to make it desirable, in the interests of justice and with due regard to the importance of presenting the testimony orally before the Examiner, to allow the deposition to be used. If any part of a deposition is put in evidence by a party, any other party may require the production of the remainder, or any other portion, of the deposition.

§ 202.21 Subpenas.

(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpoena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the Examiner, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.

(b) *Application for subpoena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the Examiner upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production.

(c) *Service of subpenas.* Subpenas may be served (1) by a U.S. marshal or his deputy, (2) by any other person who is not less than 18 years of age, or (3) by registering or certifying and mailing a copy of the subpoena addressed to

the person to be served at his or its last known residence or principal place of business. Proof of service may be made by the return of service on the subpoena by the U.S. marshal or his deputy; or, if served by an individual other than a U.S. marshal or his deputy, by an affidavit of such person stating that he personally served a copy of the subpoena upon the person named therein; or if the service was by registered or certified mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post office receipt: *Provided, however,* That where the subpoena is issued on behalf of the Secretary, the return receipt without an affidavit of mailing shall be sufficient proof of service. In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed; the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same.

§ 202.22 Fees of witnesses.

Witnesses summoned before the Examiner or the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

§ 202.23 Argument before Secretary.

§ 202.23-1 Request for oral argument; waiver.

Unless a party has included in his exceptions or objections a request for oral argument or has filed a separate request for argument prior to the expiration of the last date for filing such exceptions or objections, he shall be deemed to have waived his right to such oral argument.

§ 202.23-2 Briefs.

The parties may, with the consent of the Secretary, file written briefs either in addition to oral argument or in lieu thereof.

§ 202.23-3 Scope of argument.

Except where the Secretary determines that argument on additional issues would be helpful, argument, whether oral or on brief, shall be limited to the issues raised by the exceptions and statement of objections. If the Secretary determines that additional issues should be argued, counsel for the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate argument on all the issues to be argued.

§ 202.24 Ex parte discussion.

At no stage of the proceeding between its institution and the issuance of the order shall the Secretary discuss ex parte the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: *Provided, however,* That the Secretary may discuss the

merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Secretary, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of, any party shall be regarded as argument made in the proceeding and shall be filed with the Hearing Clerk. A copy thereof shall be served upon the other party or parties in the manner provided in § 202.27, and opportunity will be given the other party or parties to file a reply thereto.

§ 202.25 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of order.

§ 202.25-1 Petition requisite.

(a) *Filing; service.* An application for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the order, must be made by petition to the Secretary filed with the Hearing Clerk. A copy thereof shall be served upon the other party or parties in the manner provided in § 202.27. Every such petition must state specifically the grounds relied upon.

(b) *Petition to reopen hearing.* A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(c) *Petition to rehear or reargue proceeding, or to reconsider order.* A petition to rehear or reargue the proceeding or to reconsider the order shall be filed within 15 days after the date of the service of the order. Every such petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

§ 202.25-2 Procedure for disposition of petitions.

Within 20 days following the service of any petition provided for in this § 202.25, the other party or parties to the proceeding shall file with the Hearing Clerk an answer thereto. As soon as practicable thereafter, the Secretary shall announce his decision whether to grant or to deny the petition. Unless the Secretary shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the petition. In the event that any such petition is granted by the Secretary, the applicable rules of practice, as set out elsewhere herein, shall be followed. A person filing a petition under this section shall be regarded as the moving party or complainant, although he shall be referred to as the complainant or respondent, depending upon his designation in the original proceeding.

§ 202.26 Filing documents.

All documents or papers required or authorized to be filed, except as provided otherwise in the rules in this Part, shall be filed with the Hearing Clerk in triplicate: *Provided, however,* That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide copies for service upon all parties to the proceeding.

§ 202.27 Service.

Copies of all documents or papers, required or authorized by the rules in this Part to be served on any party to a proceeding, shall be served by the Hearing Examiner, Hearing Clerk, or some other employee of the United States. Except as is provided otherwise by the rules in this Part, service shall be made either: (1) by delivering a copy of the document or paper to the individual to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; (2) by leaving a copy of the document or paper at the principal office or place of business of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record; or (3) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office or place of business. Proof of service hereunder shall be made by the affidavit of the person who actually made the service: *Provided, however,* That if the service is made by registered or certified mail, proof of service shall be made by the return post office receipt. The affidavit or post office receipt contemplated hereby shall be filed with the Hearing Clerk and the fact of filing thereof shall be noted in the record of the proceeding.

§ 202.28 Computation of time.

Saturdays, Sundays, and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided, however,* That when such time expires on a Saturday, Sunday, or a legal holiday (Federal or State), such period shall be extended to include the next following business day.

§ 202.29 Extension of time.

The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Examiner (before the Examiner's (Recommended Decision is filed), or by the Secretary (after the Examiner's (Recommended Decision is filed), if request for such extension of time is made prior to or on the final date allowed for such filing, and if in the judgment of the Examiner or the

Secretary, as the case may be, after notice to and consideration of the views of the other party, when practicable, there is good reason for the extension.

Subpart C—Rules Applicable to Other Proceedings

§ 202.40 Proceedings prior to reporting for criminal prosecution.

The Director shall, before any violation of this act is reported to any U.S. attorney for institution of a criminal proceeding, notify the person against whom such proceeding is contemplated that action is contemplated, inform him regarding the facts involved, and afford him an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding. Notice shall be served upon such person in the manner provided in section 202.27 of this part. If the person desires to explain the transaction or otherwise to present his views, he shall file with the Director, within 20 days after the service of the notice, an answer, in duplicate, signed by him or by his attorney, or shall request, within the 20 days, an opportunity to express his views orally. The request shall be embodied in a writing signed by the person or by his attorney or agent. Such opportunity to present his views orally shall be afforded at a time and place to be designated by the Director and it shall be given within a time not to exceed 10 days after the date of the filing of the request therefor.

§ 202.41 Notice and hearing prior to promulgation of rules and regulations.

Prior to the promulgation of any rule or regulation contemplated by section 402 of the Act (7 U.S.C. 1592), notice shall be given by publication in the FEDERAL REGISTER of intention to promulgate such rule or regulation and of the time and place of a public hearing to be held with reference thereto. Such hearings shall be conducted by the Director or by such employee or employees of the Department of Agriculture as may be designated to preside thereat, except that hearings with respect to rules or regulations contemplated by section 402(b) of the Act relating to title III of the Act (Foreign Commerce), shall be conducted by the Secretary of the Treasury and the Secretary of Agriculture, acting jointly or separately, or by such employee or employees of the Department of Agriculture or the Department of the Treasury as may be designated to preside thereat. The presiding officer shall conduct the hearing in an orderly and informal manner, according to such procedure as he may announce at the commencement of the hearing. Any rule or regulation promulgated under section 402 of the Act shall become effective on the date fixed in the promulgation, which date shall be not less than 30 days after publication in the FEDERAL REGISTER. Any rule or regulation may be amended or revoked in the same manner as is provided for its promulgation.

§ 202.42 Publication of judgments, settlements, and orders.

After judgment or settlement, or the issuance of a cease and desist order, in any case or proceeding arising under this Act, notice thereof containing any information pertinent to the judgment or settlement or the issuance of the cease and desist order, shall be given by issuing a press release or by such other media as the Administrator of the Consumer and Marketing Service may designate from time to time.

§ 202.43 Proceedings under section 302(a) to show cause why seed or screenings should be admitted into the United States.

When seed or screenings have been refused admission into the United States under the Act or the joint regulations promulgated thereunder, the owner or consignee of such seed or screenings may submit a request to the Director for a hearing in which he may show cause, if any he have, why such seed or screenings should be admitted. Request for such hearing shall be embodied in a writing signed by the owner or consignee or by

his attorney or agent. The Director shall thereupon fix, and notify the owner or consignee of, the time when and place at which the hearing will be held. The hearing shall be conducted in an orderly and informal manner by the Director or by a presiding officer duly designated by him, and it shall be governed by such rules of procedure as the presiding officer shall announce at the opening of the hearing. The determination as to whether the seed or screenings may be admitted into the United States shall be made by the Administrator of the Consumer and Marketing Service, within a reasonable time after the close of the hearing, and the owner or consignee of the seed or screenings who requested the hearing and the Secretary of the Treasury shall be duly notified as to such determination.

§ 202.44 Proceedings under section 305(b) to determine whether foreign alfalfa or red clover seed is not adapted for general agricultural use in the United States.

The public hearings which shall be held from time to time for the purpose of determining whether seed of alfalfa

or red clover from any foreign country or region is not adapted for general agricultural use in the United States shall be conducted by the Director, or by a presiding officer duly designated by him. Such hearings shall be conducted in an orderly and informal manner in accordance with such procedure as the presiding officer shall announce at the opening of each hearing. The Administrator of the Consumer and Marketing Service shall, within a reasonable time after the close of the public hearing, make and publish his determination as to whether the said seed is adapted for general agricultural use in the United States. Publication of the determination shall be made in the FEDERAL REGISTER, and through such other media as the said Administrator may deem appropriate.

Done at Washington, D.C., this 21st day of January 1971, effective 30 days after publication hereof in the FEDERAL REGISTER.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

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