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THE NATIONAL ARCHIVES OF THE UNITED STATES * 1934 *

highlights

IMPORTANT NOTICE TO FEDERAL AGENCIES

For information on new billing codes required on all documents submitted for publication in the Federal Register after October 1, 1977, see back cover of this issue.

"THE FEDERAL REGISTER—WHAT IT IS AND HOW TO USE IT"

Reservations for November are being accepted for the free Wednesday workshops on how to use the FEDERAL REGISTER. The sessions are held at 1100 L St. N.W., Washington, D.C. in Room 9409, from 9 to 11:30 a.m.

Each session includes a brief history of the FEDERAL REGISTER, the difference between legislation and regulations, the relationship of the FEDERAL REGISTER to the Code of Federal Regulations, the elements of a typical FEDERAL REGISTER document, and an introduction to the finding aids.

FOR RESERVATIONS call: Martin V. Franks, 202–523–3517.

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/ADAMHA			HEW/ADAMHA
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Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

S. 1372..... Pub. L. 95–140

To amend title 10, United States Code, to abolish one of the two positions of Deputy Secretary of Defense and establish the position of Under Secretary of Defense for Policy and to change the title of the Director of Defense Research and Engineering to the Under Secretary of Defense for Research and Engineering. (Oct. 21, 1977; 91 Stat. 1172). Price: $.50.

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[1505–01]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

PART 966—TOMATOES GROWN IN FLORIDA

Final Rulemaking

Correction

In FR Doc. 77-30243, appearing at page 55191 in the issue for Friday, October 14, 1977, the sixth line of § 966.316(f) on page 55192 should read, "U.S. No. 3 grade and at least 24/32".

[3410–02]

PART 981—ALMONDS GROWN IN CALIFORNIA

Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reduces the tolerance for inedible almonds to improve the quality of almonds entering the market. The rule also changes certain reporting requirements for handlers of California almonds by simplifying procedures and adapting reports to current needs.

EFFECTIVE DATE: December 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202–447–3545.

SUPPLEMENTARY INFORMATION: Notice was published in the September 15, 1977, FEDERAL REGISTER (42 FR 46319) to amend Subpart—Administrative Rules and Regulations (7 CFR 981.441–981.481; 42 FR 3159, 5341, 5677, 19371) by revising §§ 981.442, 981.473, and 981.474. No comments were received.

The subpart is issued under the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based on a unanimous recommendation of the Almond Board of California.

Section 981.42 provides for each handler to cause to be determined, through the inspection agency, and at the handler's expense, the percent of inedible kernels in each variety of almonds received by him, and report this determination to the Board. The quantity of inedible kernels in each variety in excess of two percent of the kernel weight received, constitutes a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. Section 981.42 also authorizes the Board, with the approval of the Secretary, to change this percentage for any crop year, and to establish rules and regulations necessary and incidental to the administration of this provision, including, among other things, that the Board for good cause may waive portions of obligations for those handlers not generating inedible material from such sources as blanching or manufacturing. Section 981.442 implements § 981.42 and specifies the manner in which the inedible kernel weight of almonds is to be determined and methods by which a handler can satisfy his inedible kernel weight obligation. It also provides procedures for waiving a portion of the disposition obligations of those handlers not blanching almonds or manufacturing almond products.

Currently, § 981.442(a)(4) requires disposition of the weight of inedible kernels in excess of two percent of the kernel weight reported to the Board. The disposition obligation does not apply to Peerless variety and other almond varieties when used as bleaching stock. As a means of further improving the quality of almonds entering trade channels, the Board recommended reduction of this percentage to one and one-half percent. Therefore, §§ 981.442(a)(4) and (a)(6) are revised by lowering the percentage prescribed in each subparagraph to one and one-half percent. Section 981.442(a)(6) deals with the partial waiver of a handler's disposition obligation. The revision applies to almonds received by handlers for their own accounts beginning with the 1977–78 crop year which began July 1, 1977.

Section 981.61 provides the basis by which volume and financial obligations of handlers are determined. This is known as the redetermination of kernel weight. This section prescribes when a handler must file redetermination reports and the method to be used in calculation of the redetermination of kernel weight.

Section 981.473, Redetermination reports, elaborates on the information required under § 981.61. Currently, § 981.473(f) requires a handler to report, as part of his redetermination report, his undelivered sales. This is a report of all almonds sold but not delivered, showing the weight of such almonds and whether they are unshelled or shelled. The Board indicated this information is unnecessary for the purposes of redetermination.

However, the Board needs information on deliveries of almonds to Board accepted crushers, feed manufacturers, or feeders for the purpose of establishing assessment obligation. Thus, paragraph (f) is revised to require a handler to report the weight of all almonds he must deliver to such outlets to meet his disposition obligation pursuant to § 981.42 (a). The revision will ease the burden on a handler in paying assessments which would subsequently be refunded. This occurs because § 981.442(a)(5) permits a handler to satisfy his disposition obligation no later than July 30 of the succeeding crop year in which the obligation has been incurred, but § 981.73 requires that handlers file redetermination reports by July 15. Thus, the revised rule removes the need for the Board to readjust a handler's assessment obligation on the basis of his subsequent deliveries of almonds to exempt outlets. It would also enable the Board to determine its financial position at an early date after the end of the crop year.

Section 981.474 prescribes other reports the handler must file. These include reports of shipments, export sales and deliveries, and diversions, and intentions to divert reserve almonds to non-competitive outlets.

Section 981.474 is revised to update these reports and make them more understandable to handlers. It also gives the Board ready access to information it needs. In order to describe the true nature of its contents, the revised rule changes the title of that section from "report of shipments" to "report of shipments and commitments". Also, § 981.474 (a) is revised to require each handler to report his commitments (almonds not shipped but sold or otherwise obligated) to the Board on ABC Form 25. These commitments will be reported as domestic contract, export contract, and non-contract, and as inshell, shelled or manufactured.

Section 981.474(b) pertains to the reporting of export sales. This information is necessary in those crop years when a handler is permitted to satisfy his reserve obligation by exporting almonds pursuant to § 981.67. Paragraph (b) is revised so that it would not apply whenever export shipments are included with domestic shipments in the estimated trade demand for a crop year. In that event, handlers would still report export shipments, by countries of destination on ABC Form 25 pursuant to paragraph (a) of § 981.474.

After consideration of all relevant matter presented, including that in the notice, the recommendation submitted by the Board, and other available information, it is found that to amend the administrative rules and regulations as herein set forth will tend to effectuate the declared policy of the act.

Accordingly, Subpart—Administrative Rules and Regulations is amended as follows:

1. Sections 981.442(a) (4) and (6) are revised to read as follows:

§ 981.442 Quality control.

* * * * *

(a) * * *

(4) *Disposition obligation.* The weight of inedible kernels in excess of one and one-half percent of the kernel weight reported to the Board of any variety received by a handler shall constitute his disposition obligation. If a variety other than Peerless is used as bleaching stock, the weight so used may be reported to the Board and the disposition obligation for that variety reduced proportionately.

* * *

(6) *Partial waiver of obligation.* Any handler generating inedible kernels only in the form of pickouts after shelling, may petition the Board for a waiver of the difference between this inedible weight and his disposition obligation. The petition will be granted only if the handler certifies to the Secretary and the Board that (i) he did not engage in any blanching, cutting, chopping, or other processing of almond kernels during the crop year, (ii) all almonds shelled by or for him were hand-picked on belts and the visibly inedible almonds removed, and (iii) that he did not place into trade channels any almonds with more than one and one-half percent inedible. However, no waiver shall be granted for more than 30 percent of the handler's inedible disposition obligation.

* * * * *

2. Section 981.473(f) is revised to read as follows:

§ 981.473 Redetermination reports.

* * * * *

(f) *Exempt outlet deliveries.* A report showing the quantity of almonds delivered by a handler to Board accepted crushers, feed manufacturers, or feeders, and—for the purpose of establishing the assessment obligation—the quantity of almonds the handler must deliver to the Board approved outlets to meet his disposition obligation pursuant to § 981.42 (a).

3. Section 981.474 is revised to read as follows:

§ 981.474 Report of shipments and commitments.

(a) Each handler shall report on ABC Form 25 the following: (1) All shipments of almonds, inshell and shelled and by classification (domestic, and export by countries of destination); and (2) all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, he shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be filed with the Board within five business days after the close of each month of the crop year.

(b) At the time of each export sale, each handler shall report it to the Board on ABC Form 18 and upon delivery into export shall report this on ABC Form 19. If any export is not made directly by the handler, he shall send the ABC Form 19 to the broker-exporter and request him to make the report to the Board. These forms shall include the number and type of container, net weight, variety and whether inshell or shelled, time of export and destination. In years of minimum export prices applicable to reserve almonds, ABC Form 19 shall include the grade and size, the inspection certificate number, the price and any terms defining the price. Whenever export shipments are included with domestic shipments in the estimated trade demand for a crop year, this paragraph shall not apply.

* * * * *

Dated: October 20, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.77-30986 Filed 10-25-77;8:45 am]

[3510-24]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 303—ECONOMIC DEVELOPMENT DISTRICTS

Extension of Time To Comply With Private Citizen Representation Requirement

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule revises the regulation which requires certain district organizations to comply with the representation of private citizens requirement by January 1, 1978. EDA is making this change because it is currently reconsidering the amount of representation that private citizens must have on district organizations. The effect of this rule is to postpone the date by which district organizations must comply with this requirement until May 1, 1978, in order to give EDA time to conclude its deliberations.

DATES: Effective date: October 26, 1977. Comments by: November 25, 1977.

ADDRESS: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Information on regulations:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230, 202-377-5441.

SUPPLEMENTARY INFORMATION: EDA is currently reconsidering the requirement of § 303.4(c)(3) that one-third of the members of the governing boards of economic development districts must be private citizens. While EDA has not decided to change the requirement at this time, it will be deliberating the change for the next few months. Section 303.4(a)(2) of 13 CFR requires compliance with the one-third private citizen provision no later than January 1, 1978. In that compliance with § 303.4(c)(3) will require districts to make changes in the composition of their governing boards over the course of the next several months, EDA believes it is unfair to require them to make these changes while it is considering modifying that requirement. In order to give EDA time to reconsider this requirement without burdening the districts with possibly needless reorganization of their boards, EDA is extending the time of compliance until May 1, 1978.

Because this rule relates to the EDA grant and loan program, it is exempted from the procedures described in section 553 of the Administrative Procedure Act (5 U.S.C. 553). However, in the spirit of the public policy set forth in that Act, interested persons may submit written suggestions regarding this amendment to the above address.

NOTE.—EDA has determined that this document does not constitute a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular No. A-107.

Accordingly, 13 CFR 303.4(a)(2) is amended to read as follows:

§ 303.4 District organization.

(a) * * *

(2) Each development organization shall comply with the representation requirement set forth in paragraph (c)(3) of this section no later than May 1, 1978.

* * * * *

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).)

Dated: October 18, 1977.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc.77-30987 Filed 10-25-77;8:45 am]

[3510-24]

PART 317—ROUND II OF THE LOCAL PUBLIC WORKS CAPITAL DEVELOPMENT AND INVESTMENT PROGRAM

Reimbursement for Architect-Engineer Fees

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule clarifies the requirement which prohibits the use of grant funds to pay for the cost of construction activities which have been performed directly by the in-house work force of grant recipients. EDA has received many inquiries concerning the definition of "construction activities" and its applicability to architectural and engineering work. This rule is intended to clarify the definition of "construction activities" by excepting certain preliminary architectural and engineering work from its scope.

DATES: Effective date: October 26, 1977. Comments by: November 25, 1977.

ADDRESS: Send comments to: Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Information on regulations:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230, 202-377-5441.

SUPPLEMENTARY INFORMATION: EDA has received many inquiries as to whether the requirements of § 317.18(e) of its regulations published in the FEDERAL REGISTER on May 27, 1977, applies to architectural and engineering (A/E) services performed directly by a recipient of a grant. Section 317.18(e) prohibits the use of grant funds for payment of "construction activities" performed directly by an agency, department or instrumentality of a State, local government or Indian tribe. This amendment clarifies the definition of "construction activities" with respect to A/E services by distinguishing between A/E services performed during or after construction and those performed before construction has started. A/E services which are performed during or after construction, as project inspection for instance, are "construction activities" fully subject to the requirement of § 317.18(e). If they are performed directly by the grantee's in-house workforce (that is by "force account"), they may not be reimbursed from grant funds. On the other hand, if the grantee must perform additional A/E work or related planning to update or complete plans and specifications in order to allow construction to begin, such A/E services are not part of "construction activities" and may be reimbursed even when performed directly by force account.

Because this rule relates to an EDA grant program, it is exempt from the procedures described in section 553 of the Administrative Procedure Act (5 U.S.C. 553). In the spirit of the public policy set forth in that Act, interested persons may submit written suggestions regarding this rule to the Assistant Secretary for Economic Development at the above address.

NOTE.—EDA has determined that this rule does not contain a major proposal requiring preparation of an Economic Impact Statement as required by the Executive Order 11821, as amended, and OMB Circular A-107.

Accordingly, 13 CFR Part 317 is amended by revising § 317.18(e)(1) to read as follows:

§ 317.18 Ineligible project costs.

* * * * *

(e) * * *

(1) "Construction activities" includes A/E services performed during and after construction of the project, such as project inspection or test borings. A/E work or related planning performed to complete or to update plans and specifications as described in paragraph (a)(4) of § 317.17 of "construction activities" and is not subject to the prohibition of paragraph (e) of this section.

* * * * *

(Pub. L. 94-369, 90 Stat. 999 (42 U.S.C. 6701); Pub. L. 95-28, 91 Stat. 116; Department of Commerce Organization Order 10-4 (September 20, 1975), as amended (40 FR 56702, as amended).)

Dated: October 18, 1977.

ROBERT T. HALL,
Assistant Secretary for Economic Development.

[FR Doc.77-30988 Filed 10-25-77;8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Adoption of Evidentiary Rule in Advertising Substantiation Cases

AGENCY: Federal Trade Commission.

ACTION: Amendment to Rules of Practice and Procedure.

SUMMARY: The Commission has adopted a procedural rule concerning the admission of evidence in certain advertising substantiation cases. The Commission decided that this measure would ensure that advertisers' responses to formal requests for substantiation are timely and complete. This new section of the Commission's rules will prevent an advertiser charged with lacking a reasonable basis for an advertising claim from using materials in its defense that were called for by a formal request but were not submitted in response. Section 3.40 was proposed on May 14, 1974. (39 FR 17238). Public comment was solicited, and the comment period expired August 14, 1974.

DATES: Section 3.40 is effective on October 26, 1977, but it will be applied only with respect to investigatory process issued after this date.

FOR FURTHER INFORMATION CONTACT:

W. Benjamin Fisherow, Attorney, Division of National Advertising, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-724-1495.

SUPPLEMENTARY INFORMATION:

SECTION 3.40—STATEMENT OF BASIS AND PURPOSE

Section 3.40 operates to bar the introduction into evidence, as substantiation for an advertising claim alleged to lack a reasonable basis, of substantiating materials which were required to be but were not timely submitted in response to Commission process under Section 6 and 9 of the Act calling for such materials. The Section will apply in any instance where an order to file a special report under Section 6 of the Act, or a subpoena under Section 9 of the Act, requires the submission of substantiation for a representation made in advertising.

I. REASONS FOR ADOPTING § 3.40

In 1971, the Commission adopted a resolution providing "that advertisers shall be required, on demand by the Commission, to submit with respect to any advertisement such tests, studies or other data (including testimonials or endorsements) as they had in their possession prior to the time claims were made and which purport to substantiate any claims, statements or representations made in the advertisement * * *." FTC, "Resolution Requiring Submission of Special Reports Relating to Advertising Claims and Disclosures Thereof by the Commission," 36 FR 12058, amended 36 FR 14680 (1971).

Pursuant to this resolution, in a program that came to be known as the Advertising Substantiation Program, the Commission has served demands for substantiation on numerous advertisers.

In 1972, in the case of "Pfizer, Inc.," 81 FTC 23 (1972), the Commission confirmed that it is a violation of Section 5 of the Trade Commission Act for an advertiser to make an affirmative product claim without having a reasonable basis for the claim at the time it is first disseminated.[1] In "Pfizer," the Commission made clear that in order to comprise a reasonable basis, the substantiating materials must not only have been in possession of the advertiser prior to dissemination of the advertising, but must have been "actually relied upon." 81 FTC at 67. Absent such contemporaneous substantiation, there is a "fundamental unfairness," the Commission said, that "results from imposing on the consumer the unavoidable economic risk that the product may not perform as advertised; that is, at the time of sale, neither the consumer nor the vendor have a reasonable basis for belief in the

[1] Circuit Courts of Appeal have reviewed and affirmed final orders of the Commission in several cases in which the Commission applied "Pfizer's" reasonable basis standards. See, e.g., "National Dynamics Corp.", et al., 82 FTC 488 (1973), *mod. on other grds.*, 492 F. 2d 1333 (2d Cir. 1974), cert. denied, 419 U.S. 933, (1974), order modified, 85 FTC 391 (1975), order further modified 85 FTC 1052 (1975), "Crown Central Petroleum Corp.", 84 FTC 1493 (1974); aff'd per curiam, Dkt. 75-1124 (D.C. Cir., Mar. 4, 1976); "In re Fedders Corp.", 85 FTC 38 (1975), aff'd, 529 F. 2d 1398 (2d Cir. 1976).

affirmative product claims." Id. "A consumer should not be compelled to enter into an economic gamble to determine whether a product will or will not perform as represented." 81 FTC at 62.[2] The "economic gamble" can be avoided, and a "reasonable basis for belief" developed, only by a process of conscious evaluation by the advertiser of the supposedly substantiating materials. Thus, complaints alleging a lack of reasonable basis charge a failure to possess and rely upon such a basis prior to the first dissemination of the claims. See, e.g., "General Electric Company," (D-9049; Final Order April 7, 1977).

Given the "Pfizer" requirement of actual reliance, an advertiser's response to a Commission demand for substantiation should involve neither a major substantive evaluation of materials nor a major search for them.[3] While an advertiser may, in responding to a Commission order of substantiation, find it necessary to organize, describe, or summarize, the materials called for by the demand remain those which were available to and relied upon by the advertiser at the time the advertisement was first disseminated.[4]

Because the "Pfizer" requirement turns on what actually was possessed and relied upon by the particular advertiser, the advertiser's response to a demand for substantiation is at the heart of a "Pfizer" investigation. Without a timely and complete response, expeditious and comprehensive investigations are impossible. To a unique degree, the advertiser in a "Pfizer" investigation, by the submission of incomplete materials, can actually control the pace of a Commission investigation into a possible violation of the law.

Incomplete responses to demands for substantiation can cause waste as well as delay. The analysis of response to these demands generally requires extensive consultation with experts both within and without the Commission in order to assess the adequacy and reasonableness of the material proffered to substantiate advertising claims. When there are partial submissions, the expert analysis either cannot go forward at all or is needlessly protracted, thereby incurring additional expense to the Commission. Where a submission is seemingly complete and is not known by the Commission's staff to be otherwise, consultations with experts, and the preparation of analyses by these experts, would be rendered incomplete by the later submission of additional substantiating materials. The costs of expert consultants and aid are thereby multiplied. Because ad substantiation matters tend to be complex ones, any staff or outside expert investigation that turns out to be unnecessary is likely to represent a considerable waste of resources.

The Commission's experience has, in fact, been that untimely or incomplete responses have been frequent. On the three occasions detailed below, respondents represented that their answers to 6(b) advertising substantiating orders were complete in all respects. In each case, after full staff evaluation of these "complete" responses, the Commission determined to issue a complaint and to commit its resources to an adjudicative proceeding. In each case, once formal proceedings had commenced, the advertiser came forward with additional materials, not previously submitted in response to the Commission's 6(b) order, which were then claimed to constitute substantiation for the challenged claims and, therefore, to comprise a defense to the allegation that the advertiser lacked a reasonable basis for those claims. Thus, in each case, the Commission's decision to proceed was based upon an assessment of less than all of the materials that the advertiser eventually proffered as substantiation; in the two most recent cases, the advertisers had initially presented sworn statements that they possessed no substantiation for the advertising claims which were set forth in the 6(b) order and later became the subject of litigation.[5]

The 6(b) order in the first proceeding, "General Motors Corporation," Docket 8907, was issued July 7, 1971. The order directed General Motors to submit "all documentation and other substantiation" for numerous advertising claims for many of its automobiles, including the express claim that the Buick Opel automobile had a chassis that never needed lubrication. The company responded on August 17, 1971, submitting a specification sheet for the Opel and a Road Test Procedure bulletin for endurance testing. However, the company submitted no raw data or other analytical information to show how the road test procedure described in its submission applied to a lifetime of actual driving. In response to staff request for additional information, General Motors made additional submissions in May and September, 1972.

Expert analyses performed on all the relevant materials submitted led staff to recommend issuance of a complaint under former Part II of the Commission's rules. That Part II complaint was issued by the Commission in October, 1972 and afforded General Motors the opportunity to enter into negotiations leading to a consent agreement. The company waived that consent order procedure and the Commission issued a formal, Part III complaint on December 11, 1972. The complaint charged violations of Section 5, inter alia, because General Motors did not possess and rely upon a reasonable basis for the Opel "lubed-for-life" advertising claim.

Extensive pretrial discovery ensued and disclosed the existence of a substantial amount of relevant data in the possession of the company's subsidiary, Adam Opel, AG, which had not been submitted in response either to the 6(b) order or to staff's subsequent investigatory request. The materials were finally provided to complaint counsel in a submission on March 14, 1974, over two and one-half years after issuance of the Commission's initial 6(b) demand and over fifteen months after the commencement of formal proceedings.

The newly proffered materials were submitted to complaint counsel's experts for analysis on March 13, 1974. Based upon that portion of the March 14 submission which General Motors had possessed prior to the dissemination of the Opel "lubed-for-life" claim, all of those experts agreed that the claim had been substantiated. On April 8, 1974, complaint counsel advised the Administrative Law Judge of their agreement to withdraw the allegations of the complaint that pertained to the Opel claims. The remainder of allegations, pertaining to other General Motors cars were thereafter disposed of by consent agreement.

The 6(b) order in the second case, "In the Matter of Ford Motor Company," Docket 9001, was issued on March 5, 1974. It directed Ford to provide all documents and other types of materials it possessed, including expert opinions which it relied upon, to substantiate certain implied fuel-economy claims in advertisements promoting the sale of its small cars. The order further required Ford to produce all of the substantiation in support of the claims set forth in the 6(b) order that it possessed at the time the ads were published whether or not it agreed that the alleged representations were conveyed by the ads. On May 8, 1974, Ford filed its reply. It denied that the ads contained the implied gas-consumption claims, and it advised the Commission that it "has not prepared nor does it have within its

[2] The Commission emphasized that "the fact that the product subsequently performed as advertised [does not] indicate * * * a lack of public interest in the matter." 81 FTC at 67. Quoting the Supreme Court in *FTC* v. *Colgate Palmolive Co.*, the Commission stated that the "concern 'is with methods designed to get a consumer to purchase a product, not with whether the product, when purchased, will perform up to expectation.'" 81 FTC at 67, n. 24.

[3] Demands for substantiation typically request that any opinions that were relied upon for substantiation be reduced to writing, giving the qualifications of the opinion-giver and the identity of the person to whom the opinion was given. See, e.g., File 752-3003, General Electric Company, Order to File Special Report, Jan. 10, 1975, at page 2.

[4] In its "Pfizer" opinion the Commission, after observing that "respondent made no written report setting forth the actions which were taken to support the existence of a reasonable basis for its advertising claims," suggested that "[s]uch report, if made in good faith prior to advertising, if reasonable in scope and approach, and if reasonably clear as to the evidentiary basis for the specific claims in question * * * would certainly have, in itself, gone a considerable distance in demonstrating the existence of a reasonable basis * * *." 81 FTC at 72-73.

[5] Since revisions of the Ad Substantiation Program in 1974, seven investigations arising out of ad substantiation rounds have resulted in the issuance of complaints. Two of these seven proceedings, "Ford Motor Company" and "Block Drug Company," discussed in the text, infra have involved the introduction, during the adjudication under Part III, of allegedly substantiating documents not submitted in response to compulsory process.

possession substantiation for the information demanded (in the 6(b) report)."

On December 10, 1974, the Commission issued its complaint in this matter. In view of the advertisements' alleged implications, which the Commission had reason to believe the ads conveyed, and Ford's negative response to the 6(b) order for production of its substantiation materials, Ford was charged with violations of Section 5 for its failure to possess and rely upon a reasonable basis for an implied fuel-consumption claim. "See Ford Motor Company," Order Remanding For Further Proceeding, Slip Op., 3 (1976) (hereinafter, "Ford Remand Order.")

In March 1975, complaint counsel filed a Motion for Summary Decision upon all issues being adjudicated in the proceeding, including the issue of whether, at the time respondent made the representation alleged in the complaint, it possessed and relied upon a reasonable basis for that representation. In May, Ford filed in opposition to complaint counsel's Motion for Summary Decision and, in addition, filed a Cross-Motion for Summary Decision. Included as an attachment to Ford's Cross-Motion was a supporting affidavit of its Chief Car Engineer during the period when the challenged advertisements were disseminated. In this affidavit the Chief Engineer stated that, based upon his prior review of relevant materials, he and his engineering group had given approval to the use of the small cars' fuel economy test results in proposed advertising. Neither the Chief Engineer nor his opinions were mentioned in Ford's 6(b) report, filed over one year earlier.[6] Yet, as the Commission later observed in ruling upon the Cross-Motion, "he emerged, for the first time, at trial as a cornerstone for Ford's defense" to the reasonable basis charge. "Ford Remand Order," 8.

Because this statement by a " 'surprise' witness at the eve of trial," id. appeared to raise genuine issues of material fact, the Commission reversed the trial judge's grant of complaint counsel's motion for a summary judgment on the question whether Ford possessed and relied upon a reasonable basis prior to dissemination of the advertising in question. The case is still in pretrial and no trial date has yet been set.[7]

The 6(b) in the third proceeding, "in the Matter of Block Drug Company," Docket 9050, was issued September 4, 1974. It directed Block to supply all substantiating materials for certain implied performance claims for its "Poli-Grip" denture adhesive. Like the 6(b) in Ford, the Order here required Block to produce, whether or not it agreed that the alleged representations were conveyed by the ads, all of the substantiation in support of them that it possessed at the time the ads were published.

In October, 1974, Block filed its report. It stated that, because the ads did not contain the implied performance claims as set forth in the 6(b), it "could not respond" to the request for materials. By letter of January 6, 1975, responding to two staff letters seeking clarification of Block's response, the company's Vice President-Corporate Counsel stated that, "[w]hile Block Drug Company, Inc., rejects the Commission's interpretation of the challenged advertisement, at the time of the initial dissemination of the challenged advertisement, Block Drug Company, Inc. did not have substantiation" for the claims set forth in the 6(b) order. A subsequent letter in February made virtually the identical assertion for another product that also had been the subject of a 6(b) order.

On July 29, 1975, the Commission issued its complaint in this matter. Block was charged, inter alia, with violations of Section 5 because it did not possess and rely upon a reasonable basis for making the implied performance representations for its denture adhesives that were set forth in the 6(b) order.

Subsequently, in response to a subpoena issued during pretrial proceedings, Block for the first time submitted materials in the form of tests and literature that deal with the efficacy of denture adhesives. Hearings in this proceeding were scheduled to commence in the Spring of 1977.

Comparable episodes have occurred where demands for substantiation have been made by way of staff letters to advertisers.[8] Although these letters are not compulsory Commission process, they do present the advertiser with an early opportunity to demonstrate conclusively that its claims are adequately substantiated and to avoid the increased time and expense of responding to subsequent compulsory process. It would appear that advertisers have a strong interest in avoiding the issuance of a complaint. These episodes illustrate, as do the cases in which complaints have issued, that that interest is not always sufficient to prevent instances where advertisers fail to provide exculpatory, as well as inculpatory, materials in response to demands for substantiation.[9]

Whatever the reasons for episodes such as these, incomplete and untimely responses have occurred with some frequency in the past and suggest that a reasonable rule of repose to reduce the waste and delay in the future is necessary. The capacity of even a few such episodes to impede the effective functioning of materials proffered as substantiation for a claim when those materials were earlier demanded by process and when the advertiser (a) does not provide a complete response, (b) does not exercise due diligence, and (c) does not utilize an administrative remedy by filing a motion to quash or limit, or does file such a motion, the Advertising Substantiation Program calls for action directed specifically at ensuring that responses to substantiation requests are

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[6] The instructions to the 6(b) order which had been served on Ford, as do all ad substantiation 6(b) orders, stated to Ford that "[s]hould a portion of your substantiation be in the form of expert opinion, these opinions should be reduced to writing which should include a statement of the conclusion or opinion relied upon along with a full description of the basis of such opinion and a statement of when such conclusion or opinion was first rendered and the name, title, and current location of the person whose opinion was directly rendered. The writing should be signed by the person whose opinion is relied upon and such person should be identified by title and current location and the quaqualification of the individual giving the opinion should be described." File 742-3174, Order to File Special Report, Mar. 7, 1974, p. 2.

[7] The Commission affirmed the trial judge's grant of complaint counsel's motion for summary judgment on the meaning of the ads. "Ford Remand Order", 8.

[8] See, e.g., Formal Investigation File 762 3128. In this matter, staff wrote two letters in December of 1975 requesting substantiation for certain claims. The company responded with an initial submission in March of 1976, and a supplemental submission in April. (In one of these submissions, the company stated that it did not have access to records that would establish the accuracy of the claim in question.) Based on the company's responses, which purported to be complete, the staff determined to recommend that a complaint issue against the company, and the company was so informed. A complaint and memorandum were forwarded to the Director of the Bureau of Consumer Protection. Thereafter, the company made another submission to the Bureau, adducing affidavits and a line of substantiation not previously presented. This submission led staff to obtain testimony of certain officials now alleged to have been in a position to substantiate the claims. As a result of this further investigation, elicited by the company's third major submission, the staff recommended that the matter be closed.

[9] The Commission has also noted recently that statements of some advertisers in responses to section 6(b) Orders indicate their intention to develop additional substantiating material if and when the Commission issues a complaint.

For example, one advertiser stated: "[The Company] specifically reserves the right, in the event a complaint is filed against it, to develop additional evidence in substantiation of its advertisement, including without limitation the testimony of present and former employees of [the company] and third parties involved in preparing the advertisements."

Unless these respondents are challenging Pfizer's requirements of contemporaneous possession and reliance on substantiation, these statements reflect either an initial failure to comply fully with a Commission investigatory request or, at least, an intention to supplement sworn responses to such requests which should be fully responsive.

timely and complete.[10] Section 3.40 will exclude at trial but fails to provide a complete response after the motion is denied and the process has been judicially enforced. Given the "Pfizer" requirement that an advertiser must have possessed and relied on substantiation prior to the dissemination of the claim, the wasted resources and delayed proceedings that have occurred in the past because of the failure to respond timely to demands for substantiation, and the need to prevent such waste and delays in the future, the Commission has determined that to require advertisers to respond to compulsory process in a timely fashion is an appropriate way for the Commission to order its proceedings in advertising substantiation matters and is in the public interest.

II. EXPLANATIONS OF MODIFICATIONS OF THE PROPOSED RULE

The Commission has determined to make various modifications in the text of § 3.40, as it was originally proposed and published on May 14, 1974, based upon its own reappraisal and in response to the public comments on the proposal.

The first sentence of Part (a) has been modified to make clear that § 3.40 will apply only to compulsory process issued after its effective date.

A significant portion of the comments opposing the adoption of § 3.40 concerned the absence of an opportunity for judicial review of a compulsory advertising substantiation order prior to the application of § 3.40 at trial. The Commission has determined to amend § 3.40 to provide explicitly for an opportunity to secure such prior judicial review of its process. Accordingly, it has added a wholly new final sentence to Part (A) of the section, which provides parties served with a compulsory advertising substantiation order under section 6 or section 9 the opportunity to secure review of that process by the Commission, and thereafter by the courts, prior to the application of § 3.40 at trial.

The word "all" has been deleted from the first sentence in Part (a) because the requirements of the particular compulsory process calling for substantiation control the scope of application of § 3.40, and because such process may call for less than "all" substantiation.

The phrase "or documentation" is considered redundant and has been deleted from the first sentence of Part (a).

The phrase "the defense of" has been added to the first sentence of Part (a) to clarify that the section is designed to prevent the use of withheld materials by a respondent in its defense of an allegation of lack of reasonable basis. If a complaint, in addition to alleging that the representation lacked a reasonable basis, also alleged that the representation was false, or was unfair for reasons other than lack of a reasonable basis, § 3.40 would not bar introduction of such evidence with respect to the allegations of falsity or unfairness.

The phrase "nor to make an offer of proof with respect to" has been deleted from the first sentence of Part (a). Reserving a respondent's right to make an offer of proof with respect to excluded materials will insure that, upon review of an initial decision, the Commission and thereafter a court of appeals will be able to determine whether § 3.40 was correctly applied.

Part (b) of § 3.40 has been modified by deleting subpart (2). That subsection set forth an exception to the exclusion of evidence which the Administrative Law Judge found "so clearly, directly and substantially support[ed] the representation at issue that there no longer appear[ed] to be genuine issue of material fact concerning the existence of a reasonable basis or other adequate substantiation of the representation." The Commission has determined that disparate—and indeed preferential—treatment under § 3.40 should not be afforded to a party who fails to submit substantiating materials of such weight that they would entitle him to a summary decision on the reasonable basis issue. An exception for the receipt of such materials would place a premium on egregious examples of the conduct § 3.40 is specifically designed to deter. The Commission also believes that the application of the exception might, in effect, swallow the rule because a hearing examining the merits of later-proffered materials might prove to be as extensive and time consuming as a trial on the reasonable basis issues itself.

The phrase "upon motion" was added to the first sentence of Part (b) to make clear that operation of the section is conditioned upon motion by the staff. The Administrative Law Judge does not have the responsibility for determining, *sua sponte*, whether material sought to be introduced by respondent was withheld from responses to compulsory process.

The phrase "all such materials, or any reference thereto * * *" in the first sentence of Part (b) has been modified to read: "all material that was required to be but was not timely submitted in response to compulsory process described in subparagraph (a), or any reference to such material * * *." The Commission believes the modification resolves any conceivable ambiguity about the material to which Part (b) applies.

Section 3.40, as so modified, will apply only with respect to evidence called for by those portions of advertising substantiation orders, or other compulsory investigatory process calling for advertising substantiation to which a party has not objected or which have been sustained by the Commission or the courts against good faith defenses originally raised by the respondent in a timely motion to limit or to quash the process pursuant to § 2.7(b) or § 2.12(d) of the Commission's Rules of Practice and Procedure. 16 CFR 2.7(b) and 2.12(d).

The section provides an explicit exception to the exclusion of evidence. A respondent may introduce materials not timely submitted in response to process if it can demonstrate that it could not have done so despite the exercise of "due diligence." In order to make out his "due diligence" exception, the advertiser must also have notified the Commission of the existence of the material immediately upon its discovery.

III. AUTHORITY TO PROMULGATE § 3.40

Should the recipient of an advertising substantiation order believe the order is unreasonable or irrelevant, the Commission's rules expressly provide an opportunity to raise appropriate objections in a motion to limit or to quash. See 16 CFR 2.7(b) and 2.12(d). New § 3.40 in no way prejudices a party who so challenges the lawfulness of an advertising substantiation order. Section 3.40 will only apply if a recipient did not object to the process; or, if an objection is timely raised, only after the Commission upholds the process by denying a motion to quash or limit it, and if the recipient thereafter continues to refuse to comply, after a final judicial determination of the legality of the process. Where no such motion is filed, however (or is filed but is denied and the order judicially enforced), the new section acts as a rule of repose, establishing a time beyond which a party will no longer be permitted to come forward with further evidence in substantiation of an advertising claim.

Section 6(g) of the Federal Trade Commission Act declares that the Commission shall have the authority "to make rules and regulations * * * for the purpose of carrying out the provisions of this Act." 15 U.S.C. 46(g).[11] It thus supplies the statutory authority to establish, by a procedural rule, a time after which a party shall no longer be permitted to adduce advertising substantiation materials. Furthermore, the Supreme Court has declared that where the Federal Trade Commission Act does not

[10] The potential waste and misdirection of resources is perhaps greatest in the instance of purportedly complete responses that are, in fact, incomplete. As a practical matter such responses effectively circumvent application of the existing statutory sanctions of §§ 9 and 10 (15 U.S.C. 49 and 50). When an advertiser represents that it has submitted all substantiation that it possessed, there is no reason apparent to institute enforcement proceedings against the advertiser in a district court under § 9 or to issue a Notice of Default pursuant to § 10 of the Act. The same problem is present when an advertiser, in an apparently complete response, represents that it possessed no substantiation and then subsequently comes forward with what are claimed to be substantiating materials.

[11] Pursuant to this section of the Act, the Commission has promulgated, and the courts have sanctioned, procedural rules which suspended the right to a hearing on evidence when that right was waived, *Hill* v. *F.T.C.*, 124 F. 2d 104 (5th Cir. 1941), and which declared that failure to controvert facts alleged in pleadings was to be deemed an admission of such facts, *Kritzik* v. *F.T.C.*, 125 F. 2d 351 (7th Cir. 1942). See *National Petroleum Refiners Assn.* v. *F.T.C.*, 482 F. 2d 672, 678 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974).

explicitly prescribe procedural avenues, the Commission has ancillary powers which are "essential to the effective discharge of [its] responsibilities." *F.T.C.* v. *Dean Foods*, 384 U.S. 597, 607 (1966). The Court indicated that the Commission has the power to take necessary and appropriate actions that facilitate the exercise of its expressly mandated powers.

Traditionally, the courts have accorded administrative agencies substantial flexibility in formulating regulatory approaches and have encouraged agencies' efforts to maximize the efficient use of resources while pursuing their various substantive missions. See, e.g., *Weinberger* v. *Hynson, Westcott & Dunning*, 412 U.S. 609 (1973); "Permian Basin Area Rate Cases," 390 U.S. 747 (1968); *F.P.C.* v. *Texaco*, 377 U.S. 33 (1963); *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956); *National Petroleum Refiners Assn.* v. *F.T.C.*, 482 F. 2d 672 (D.C. Cir. 1973). Judicial deference has been particularly evident where the administrative actions subject to review were procedural in nature, designed to order the agencies' processes for the expeditious and efficient conduct of the public business. See, e.g., *F.T.C.* v. *Dean Foods*, supra; *F.C.C.* v. *Schreiber*, 381 U.S. 279 (1965); *F.C.C.* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 142 (1940); *Nader* v. *F.C.C.*, 520 F. 2d 182, 195 (D.C. Cir. 1975); *City of San Antonio* v. *C.A.B.*, 372 F. 2d 326, 329 (D.C. Cir. 1967); *F.T.C.* v. *Weingarten*, 336 F. 2d 687, 691–92 (5th Cir. 1964); *cf. National Petroleum Refiners Assn.* v. *F.T.C.*, 482 F. 2d at 677–78; and see Jaffe, Judicial Control of Administrative Action (1965) at 567.

Of course, the manner in which an agency exercises an acknowledged procedural flexibility must be tied to the nature of its substantive mission and of the particular problems it faces. Section 3.40 addresses the obstacle to the effective functioning of the Advertising Substantiation Program posed by incomplete and dilatory responses to compulsory advertising substantiation process by establishing a rule of repose. At least one other administrative agency, the Federal Communications Commission, has addressed a class of problems it faced by promulgating a provision with analogous effect. The F.C.C.'s "cut-off" rule, 47 CFR 1.106(b), denies a hearing to a competing applicant for a broadcast license if its application is not complete and timely filed. The courts in reviewing the F.C.C.'s application of the "cut-off" rule have acknowledged the agency's authority to promulgate such a provision. See, e.g., *Committee for Open Media* v. *F.C.C.*, 543 F. 2d 861, 873 (D.C. Cir. 1976) *citing Ashbacker Radio Co.* v. *F.C.C.*, 326 U.S. 327, 333 n.9 (1945); *Radio Athens, Inc.* v. *F.C.C.*, 401 F. 2d 398, 400–01 (D.C. Cir. 1968); *Century Broadcasting Corp.* v. *F.C.C.*, 310 F. 2d 864 (D.C. Cir. 1962); *Ranger* v. *F.C.C.*, 294 F. 2d 240 (D.C. Cir. 1961). The F.C.C. determined that the "cut-off" rule was a reasonable solution to its problem; it determined that a rule which could potentially foreclose a hearing for a competitor was necessary to enable it to cope with and discourage the threat of continuing submissions that would unreasonably delay its deliberations. Similarly, for the reasons set forth in this statement, the Commisison is authorized to adopt § 3.40 as a reasonable method of coping with its particular problem. It has determined that a rule precluding the introduction of certain evidence at trial that was required to be but was not produced much earlier will avoid the significant problems, both real and potential, that threaten the effective functioning of the Advertising Substantiation Program.[13]

Other legal concepts support precluding the introduction at trial of substantiation which was not earlier produced in response to process. The Commission believes that a review of the legal and policy considerations underlying the requirement to substantiate advertising claims makes reasonable the application of what, in effect, are the concepts of waiverand estoppel; that is, the failure fully to produce substantiation in response to process, waives a known opportunity to do so.

As already discussed at length, the Pfizer doctrine establishes that advertisers, to comport with the law, must possess and rely upon substantiation at the time they first disseminate advertising claims. Thus, the receipt of formal process should not launch the advertiser's search for materials constituting potential substantiation for his claims; that effort must, by law, already be complete. Upon the receipt of process, an adveritiser is on notice that the Commission's inquiry is focused narrowly on those very materials whose suitability as substantiation he has already evaluated and established. Because notice of the terms of § 3.40 will accompany all compulsory advertising substantiation process, an advertiser will also fully understand the consequences of a less than duly diligent assemblage and submission of materials he has been relying upon. The recipient of such process is, of course, the unique party to know what the materials he possessed and relied upon were, and the only one in a position to supply them.

Given the advertiser's legal responsibility (owed to the public and to competitors alike) to have and evaluate advertising substantiation prior to receiving a formal substantiation request, the Commission deems it reasonable to regard a failure to diligently produce that substantiation, when lawfully called for, as a waiver of the opportunity to do so.

Another application of the concepts of waiverand estoppel as a basis for preclusion is the doctrne of judicial estoppel, flowing from the power of a fact finding forum to protect the integrity and orderliness of its investigative and adjudicative processes. Judicial estoppel is a "wise and salutary doctrine which binds a party to his judicial declarations, and forbids him from subsequently contradicting his statements thus made." *Sturm* v. *Boker*, 150 U.S. 214, 333–34 (1893). Application of the doctrine excludes evidence offered to sustain positions inconsistent with previous assertions made under oath, or in a formal proceeding, where to allow the subsequent inconsistent position to be asserted would allow the party to "play fast and loose with the courts," or would threaten the administration of justice. *Scarano* v. *Central Railroad Co. of New Jersey*, 203 F. 2d 510, 513 (3d Cir. 1953).

In addition to many of the powers available to the courts, Congress took care specifically to empoyer the Commission to issue compulsory process in an investigation, prior to the commencement of a formal adjudicative proceeding. Indeed, that authority to undertake formal investigations, and in so doing to utilize compulsory process, is at the very heart of the Committee's ability to discharge the mandate of Section 5. Responses to investigatory advertising substantiation orders are required to be subscribed to and sworn, and unless such orders are challenged, it is certainly reasonable for the Commission to view the certification of such responses as a solemn representation of their completeness. To permit respondents, charged with making claims lacking a reasonable basis, later to contradict such prior representations poses the same threat to the integrity of the Commission's enforcement system as such subsequent contradictions represent to the integrity of the procedures of the civil courts. Indeed, to allow respondents to delay compliance by submitting less than complete materials, and to satisfy their obligation to comply by continually supplementing those materials at their convenience, is to invite such parties to play "fast and loose" with the Commission's investigatory process.[15]

IV. COMMENTS RECEIVED ON PROPOSED § 3.40

Twenty submissions were received in response to the invitation to submit comments on the proposed rule published in the FEDERAL REGISTER (39 FR 17238, May 14, 1974). Comments concerned every aspect of the proposal and

[13] The Commission would be prepared to consider an application for the waiver of Section 3.40, or any of its other Rules of Practice and Procedure, by an affected party who asserts that in the public interest the rule should not apply in its case. See *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192, 204–05 (1956); *WAIT Radio* v. *F.C.C.*, 418 F. 2d 1153 (D.C. Cir. 1966).

[15] The Commission also calls attention to § 3.38(a) of its rules of practice and procedure which invests Administrative Law Judges with discretion to exclude evidence at trial where a party has failed to comply with an order to make discovery. Section 3.38(a) is patterned after Federal Rule of Civil Procedure 37(b)(2) which, in turn, is based upon the power of a trial forum to draw reasonable adverse presumptions from a party's failure to comply with process. Denial of a hearing on evidence based upon such a failure to comply has been sanctioned by the Supreme Court. Compare *Hammond Packing Co.* v. *Arkansas*, 212 U.S. 322 (1909) with *Hovey* v. *Elliott*, 167 U.S. 409 (1897). See *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958); 4A Moore's Federal Practice ¶ 37.03[2.1].

its accompanying preamble, and they fell into ten substantive categories.

A. *Lack of Necessity for the Rule.* 1. Most of the comments argued that ample authority to secure timely, complete responses to Commission advertising substantiation orders already exists in Sections 9 and 10 of the Federal Trade Commission Act, 15 U.S.C. 49 and 50, and in § 2.13 of the Commission's rules of practice and procedure, 16 CFR 2.13, and that these provisions have not been shown to be inadequate.

These existing procedures are not adequate for the particular requirements of the Commission's Advertising Substantiation Program. As already pointed out in Part I of this statement, the existing statutory scheme presumes that the Commission staff is aware of deficiencies in responses to compulsory process and can determine whether judicial enforcement is necessary or appropriate. When an advertiser purports to comply fully with process, the staff is in no position to know whether or not a deficiency may exist since the materials called for are available only from the party ordered to produce them.

Similarly, when a recipient raises no good faith objection to the process, but rather, without explanation, fails to make return, the Commission will interpret that nonresponse as a waiver of the opportunity to submit substantiating material. In such a case while the Commission will be aware of a deficiency in the return and can therefore seek court enforcement, a judicial enforcement proceeding may delay for months or even years the staff's investigation and the Commission's determination whether there is reason to believe that the Act has been violated. Such delays may be appropriate where they result from a recipient's good faith objections to the validity of the process, and § 3.40 will not apply during the pendency of an enforcement proceeding if the recipient has first raised its objections to the process as provided by §§ 2.7(b) and 2.12(d) of the Commission's rules. Where, however, the party fails to utilize the Commission's procedures to object to the process, no legitimate interest is served by requiring the Commission to seek judicial enforcement under Sections 9 and 10 of the Act. In such a case, Sections 9 and 10 simply are inadequate to promote the strong public interest in prompt determinations by the Commission of whether an advertising claim lacks a reasonable basis.

2. Some comments asserted the absence of instances of dilatory or incomplete responses which necessitate the adoption of a rule of procedure such as § 3.40.

The Commission has already addressed this comment in Part I of this Statement.

3. One comment asserted that § 3.40 is unnecessary because advertisers have a strong interest in furnishing all available substantiating material in order to avoid the issuance of a complaint.

While it may be assumed that advertisers have a strong interest in avoiding the issuance of a complaint, the Commission's experience has nevertheless demonstrated that this interest has not been sufficiently weighty to prevent instances where advertisers have failed to submit exculpatory, as well as inculpatory, materials in response to compulsory advertsiing substantiation orders. The advertiser simply may not believe it will be sued because it does not believe the representation (often an implied claim) set forth in the compulsory investigatory process was in fact made, or because of other, collateral grounds. Moreover, in the past, piecemeal or untimely responses to substantiation orders did not jeopardize an advertiser's interest in avoiding issuance of a complaint since the Commission's staff could be relied upon to make requests for additional materials and to hold investigations in abeyance while supplemental returns were prepared and submitted.

It may also be assumed that advertisers have a strong interest in prolonging uncertainty or ambiguity in Commission investigations in order to avoid issuance of a complaint while advertisements are still being disseminated. Incomplete or dilatory responses to advertising substantiation orders obviously serve this interest. Moreover, such responses have the net effect of delaying the placement of substantiating material on the public record for review until after the challenged advertising has ceased to run. In short, as the Supreme Court aptly observed in *U.S.* v. *Morton Salt Co.*: "[the] only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so." 338 U.S. 632, 642 (1950).

B. *Section 3.40 is inconsistent with or goes beyond the requirements imposed by the Pfizer decision.* 4. Some comments argued that there is no language in *Pfizer* that requires substantiation to be assembled prior to making a claim in advertisements.

While *Pfizer* does not require substantiation to be "assembled" prior to the making of an advertising claim, it does require that all advertising claims be supported by a reasonable basis that is possessed and relied upon prior to making the claim. *Pfizer's* requirements of possession and reliance presuppose that the substantiating material be in a form that allows the advertiser consciously or evaluate it prior to making the claim. Section 3.40 implements the *Pfizer* standards by requiring that the material already possessed and relied upon be organized and submitted within the time set for responding to an advertising substantiation order. The section does not impose any new requirement that the substantiating materials be assembled prior to making the claim.

5. There was comment that since the *Pfizer* and National Dynamics decisions permit an advertiser at trial to corroborate the reasonableness of his basis with material not in his possession which relates solely to the advertiser's good faith or reasonableness in relying upon what substantiation it had when the claim was made, this material should not be excluded.

Only those materials "called for," but not submitted, are subject to exclusion, and each advertising substantiation order must be viewed on its own to determine whether proffered materials were "called for." This determination is for the Administrative Law Judge to make only after examining both the compulsory process and the materials in question. While the substantiating materials themselves will ordinarily be called for by an order, other materials which corroborate or support the reasonableness of the reliance upon the substantiating materials may not be called for and may subsequently be introduced into evidence. For example, where substantiating materials are in the form of tests conducted by an independent laboratory, such tests will ordinarily be called for and must be submitted. Additional tests, conducted by the same laboratory on similar products might corroborate the tests called for and submitted. Such additional tests might not have been called for and would not therefore be subject to § 3.40. Similarly, while advertising substantiation orders typically require that expert opinions relied upon as substantiation be reduced to writing and submitted, the orders typically do not require that every test conducted by the expert or every scientific article that he had read, both of which may support his expertise, be submitted.

6. One comment mentioned that no court has yet sustained the *Pfizer* decision or the standards it promulgates.

The *Pfizer* decision was announced in mid-1972, and the Commission has applied the reasonable basis standards announced in *Pfizer* in numerous cases over the ensuing four years. The circuit courts of appeal have reviewed the Commission's final orders in several of these cases and have sustained them. See, e.g., National Dynamics Corp., et al., supra; Crown Central Petroleum Corp., supra; Fedders Corp., supra.

C. *Hardship and burdensome issues.* 7. All comments claimed that § 3.40 imposes a substantial hardship upon advertisers by requiring that potentially massive submissions be made prior to the time it is necessary to prove a specifically defined issue of fact set out with formality in a complaint.

The Commission points out that where negotiations with the staff over an advertising substantiation order do not result in what the recipient of such order believes to be lawful investigative demand, an advertiser may avail itself of established procedures to attempt to limit or to quash. See 16 CFR §§ 2.7(b) and 2.12(d). Recipients of lawful compulsory investigatory process (i.e., process that satisfies the requirements, inter alia, of reasonableness) are required to comply fully with such process whether or not they have been charged formally with violating the law. See *St. Regis Paper Co.* v. *U.S.*, 368 US 208 (1961); *U.S.* v. *Morton Salt Co.*, 338 U.S. 632 (1950).

8. A few coments maintained that the massive submissions dictated by the consequences of § 3.40 will burden the Commission staff excessively. Such submis-

sions, it was said, may therefore extend rather than shorten the time needed for the evaluation of substantiation.

The Commission again points out that its staff is always available for consultation regarding the scope of a request or the magnitude of a response. Should an advertiser believe that a lawfully required response would entail the submission of an excessively large amount of documentation, it should consult with the staff to determine whether in fact such documentation is required. If the staff determines that the submission of such documents in response to advertising substantiation orders will be too massive, it will take appropriate action to limit that burden.

The investigative and evaluative problems posed by delay and by incomplete responses are documented, whereas the investigative and evaluative problems posed by complete submissions which are timely submitted are only hypothetical. If the staff can be certain that all pertinent evidence has been submitted, it can proceed to commit agency resources to an evaluation of advertising claims in a conscientious manner. Expert evaluation can be scheduled and used more efficiently; part-time help, if required, can be employed; the staff can estimate the time when evaluation will be completed and the material placed on the public record for review.

9. Two comments argued that requiring the prompt assemblage of data from testing laboratories or divisions in many different parts of the world is unreasonably burdensome.

If materials relied upon in making claims are located in a foreign country or are written in a foreign language, a respondent should inform the Commission's staff of the existence of this information and the problems associated with its submission, and it should request an extension of time in which to respond to the order. It must be recalled, in this regard, that the reasonable basis must be possessed and relied upon at the time the representation is first disseminated.

D. *Due process of law.* 10. Some comments argued that § 3.40 violates a guarantee of due process of law: The right to controvert every material fact and to set up any defenses which may be available to a respondent at trial regardless of his prior conduct during an investigation.

As already discussed in Part III of this statement, the courts have recognized that, in certain circumstances, an administrative agency has the authority to promulgate a reasonable rule of repose to promote the efficient conduct of public business. And it must be remembered that § 3.40 operates in a narrow sphere. It is designed to implement "Pfizer's" possession and reliance requirements and to protect the Advertising Substantiation Program from the jeopardy posed by responses to compulsory substantiation requests which purport to be complete but which, in fact, are not.

The Supreme Court has ruled that the Commission is entitled to full compliance with its lawful investigatory requests, and the Commission believes that it is reasonable to expect advertisers to exercise due diligence in responding to its advertising substantiation orders. As a reasonable regulation, tailored to function only in a specialized area, the Commission believes § 3.40 does not deny due process.

11. Numerous comments maintained that a party served with compulsory process has a right to a judicial hearing on the lawfulness of that process prior to suffering the exclusion of evidence for noncompliance.

While the Commission does not necessarily agree that judicial review of its compulsory process is constitutionally required prior to the invocation of § 3.40 at trial, it has determined at this time to make the application of the section contingent upon such review. Accordingly, the provisions of § 3.40(a) will not apply with respect to those portions of compulsory process to which a party has raised timely and good faith legal objections unless (1) the Commission rejects those objections, or (2) if the party thereafter continues to refuse to comply, until the process has been judicially enforced.

12. Some comments argued that since only the issuance of a formal complaint affords a party both general notice that he is charged with violating the law and specific notice of what issues are to be litigated at trial, § 3.40 impermissibly prejudices a respondent for conduct prior to the time he knows a controversy exists.

The obligation to respond fully to investigatory orders of the Commission does not depend on the existence of a controversy in the form of an adjudicative complaint. See *U.S.* v. *St. Regis Paper Co.*, supra; *U.S.* v. *Morton Salt Co.*, supra. As the Supreme Court recognized in "Morton Salt":

> Because judicial power is reluctant if not unable to summon evidence until it is shown to be relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not. 338 U.S. at 642–43.

While advertising substantiation orders do not imply that the recipient is "suspected of wrongdoing," "Fedders Corp.," 85 F.T.C. 38, 72–73 (1975), the investigational resolution accompanying each order informs recipients that one of the purposes of the order is to determine whether a violation of Section 5 has occurred.

Some comments cited *Morgan* v. *U.S.*, 304 U.S. 1 (1938), and *E. B. Muller & Co.* v. *FTC*, 142 F.2d 511 (6th Cir. 1944), arguing that a party has a right to know the specific charges of the government and to meet them before he may be precluded from introducing evidence in his defense. The Commission points out that a recipient of an order to produce advertising substantiation does, in fact, have notice of the issues that would be subject to the application of § 3.40 at any later trial. Claims cited in the substantiation order are set forth with precision, and a recipient knows that § 3.40 will apply at trial only to allegations that those claims—the ones set forth in the order—lacked a reasonable basis or other adequate substantiation.

13. Many of the comments raising the due process issue argued that administrative efficiency is not adequate support for infringing on the right to due process of law.

This proposition does not invalidate § 3.40. As a regulation pertaining to the taking of evidence in an adjudication, based upon the Commission's power to promote the effective and expeditious functioning of its programs, § 3.40 is reasonable and does not deny due process. The requirements of due process properly reflect consideration of administrative efficiency. *See, e.g., Mattews* v. *Eldridge*, 96 S. Ct. 893, 903 (1976); *WAIT Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1966).

14. Some comments urged that it is fundamentally unfair to limit a respondent at trial to evidence submitted in response to investigatory subpoenas.

The comments did not articulate clearly the basis for asserting fundamental unfairness; however, the Commission believes the comments were concerned with holding a respondent at trial to responses made to an investigatory advertising substantiation order. The Commission does not believe that it is fundamentally unfair to prevent evidence lawfully called for by compulsory process, but not submitted in response, from being introduced in a trial when the advertiser deems it appropriate. This prevention, based upon the fundamental policies and legal principles already discussed in Parts I and III of this statement, only applies to evidence proffered at trial to establish the existence of a reasonable basis for a challenged advertising claim. It, therefore, only applies to evidence which, according to "Pfizer", must have been possessed and relied upon prior to making the challenged claim. A recipient of an advertising substantiation order is on notice of "Pfizer's" requirements; he knows the consequences under § 3.40 of not responding fully; he knows that § 3.40 will apply only to evidence of reasonable basis to be offered at a later trial; and he knows that the claims which must be challenged at trial in order for § 3.40 to operate are limited to the claims presented to him in the advertising substantiation order. In light of these facts, the Commission does not believe it is fundamentally unfair to expect a recipient of advertising substantiation order to exercise due diligence in responding.

E. *Administrative Procedure Act Issues.* 15. Most comments charged that § 3.40 is contrary to various sections of the Administrative Procedure Act, 5 U.S.C. 556(d) and 558(b), which state

requirements for the admission and exclusion of evidence in administrative hearings, and for the imposition of "sanctions."

Section 556(d) provides that "any documentary or oral evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence." It appears that this provision is designed to foster the admission of types of evidence before administrative tribunals, such as hearsay, which would be inadmissible in a jury trial because of the trier's inability to gauge appropriately the probity of such evidence. See generally 2 Davis, "Administrative Law Treatise," Chapter 14 (1958) and Supp. (1970). Nothing in the legislative history or subsequent judicial construction of Section 556 indicates it was intended to limit an administrative agency's capacity to establish reasonable procedures, relating to the taking of evidence at administrative trials, which may result in the exclusion of evidence. For example, § 3.38(a)(3) of the Commission Rules of Practice authorizes an administrative law judge to exclude evidence which may be relevant, material, or not repetitive because of a respondent's failure to make adjudicative discovery. Section 3.40, similarly, directs the administrative law judge to exclude evidence if respondent has failed to produce it at an earlier stage and now fails to show that through the exercise of due diligence the evidence could not have been produced.

Many comments nevertheless argued that § 3.40 is contrary to the trend in administrative adjudications toward the admission of all logically probative evidence, citing *Universal Camera* v. *NLRB*, 340 U.S. 474 (1951) and *Samuel Moss* v. *FTC*, 148 F. 2d 378 (2d Cir. 1945). The Commission believes, however, that this acknowledged trend is directed against the exclusion of evidence based upon some limiting standard of probity, or competency, such as the hearsay rule. See 2 Davis, "Administrative Law Treatise," §§ 14.03, 14.09 (1958) and Supp. (1970). The operation of § 3.40, on the other hand, does not turn on any judgment of the probative value of the material subject to exclusion. Rather, the section is a provision designed to foster the prompt and orderly functioning of the Commission's investigatory and adjudicative responsibilities. As already discussed, the courts have recognized the need for procedures to facilitate these processes and have sustained provisions which have had the effect of limiting a respondent's right to introduce evidence in adjudicative proceedings.

Section 556(d) also states that a "sanction" may not be imposed except on consideration of the "entire record." The Commission believes the meaning of the word "sanction," as used in Section 556(d), does not comprehend an evidentiary ruling during trial by an administrative law judge. It is clear that such rulings need not be based upon review at the conclusion of the trial of all the materials adduced. If all evidence adduced in the entire administrative record had to be considered by the administrative law judge before he could make rulings necessary to the conduct of ongoing administrative trials (as, for example, rulings on motions to strike testimony), such rulings obviously could not be made. The legislative history of Section 556(d) indicates that the focus of the drafters was to ensure that findings or conclusions of the agency should be based upon record evidence of the requisite materiality and competence. See H. Rep. No. 1980, 79th Cong., 2d Sess. (1946); S. Rep. No. 752, 79th Cong., 1st Sess. (1946). The only record evidence a law judge needs to consider in determining whether § 3.40 is applicable is the original advertising substantiation order that called for the previously unsubmitted evidence which is being offered.

Section 558(b) states that "[a] sanction may not be imposed * * * except within the jurisdiction delegated to the agency and as authorized by law." Again, the Commission believes the word "sanction" does not comprehend the application of § 3.40 at trial. In any event, as elsewhere discussed, the Commission believes that § 3.40 is, if applied in a matter otherwise within it's jurisdiction, within the Commission's jurisdiction and authorized by law.

F. *Federal Trade Commission Act Issues.* 16. One comment asserted that Congress had given the Internal Revenue Service the authority to impose penalties for failure to respond to its process, citing "In re Colton", 291 F. 2d 487 (2d Cir. 1961), and that, by implication, Congress gave the Federal Trade Commission no such authority.

The Commission agrees that Congress is the source of explicit and implicit administrative authority, and it believes it is authorized to promulgate § 3.40 as an exercise of the powers granted to it under Section 6(g) of the Act. The Commission also believes, as previously stated, that the application of § 3.40 is not a "penalty" or "sanction."

17. Another comment cited *U.S.* v. *Associated Merchandising*, 261 F. Supp. 553 (S.D.N.Y. 1966) and suggested that by enacting Sections 9 and 10 of the Federal Trade Commission Act, Congress intended the Commission to seek enforcement of its compulsory process exclusively in the courts.

In the "Associated Merchandising" case, the Commission sought judicial enforcement of an adjudicative subpoena, duces tecum pursuant to Section 9 of the Act. The district court considered whether "good cause" had been shown for the production of the documents called for, and it determined to grant enforcement, in part, and to deny it in part. The court did not construe the congressional intention behind Sections 9 and 10 of the Act.[16] Moreover, nothing in the legislative history of either section compels the conclusion that Congress meant to foreclose the Commission from compensating for withheld evidence by masures such as §§ 3.38(a) or 3.40.

The Commission again directs attention to Part III of this statement for a discussion of its authority to promulgate § 3.40.

18. Many comments challenged as inapposite the analogy drawn by the Commission in the FEDERAL REGISTER Notice of May 14, 1974 between the consequences of the application of § 3.40 and those resulting from the application of Federal Rule of Civil Procedure 37 and § 3.38(a) of the Commission rules of practice and procedure.

The comments attacked the analogy to Federal Rule 37 and § 3.38 on two points: First, the two established provisions are based on conduct occurring after issuance of a complaint while § 3.40 is based on conduct occurring in an investigation prior to issuance of a complaint; second, the two established provisions give a trial court discretion in determining whether to impose sanctions while § 3.40 requires the administrative law judge to exclude proffered evidence if he determines that it should have been submitted in response to compulsory investigative process.

With respect to the first point, and as already discussed, the distinction urged between pre- and post-complaint conduct is based on two grounds neither of which is sufficient:

(1) Prior to issuance of a complaint, a respondent does not have constitutionally sufficient notice that he is at risk; and (2) it is unfair to hinge adjudicative consequences on conduct during investigation. As already pointed out, a recipient of an advertising substantiation order does, in fact, have precise notice of the claims and evidence upon which § 3.40 would operate. As also pointed out, *U.S.* v. *Morton Salt*, supra, makes clear the Commission's right to expect full compliance with its compulsory investigatory process even though a complaint has not been issued. No reason is adduced, other than the notice question, why failure to fulfill this obligation cannot result in consequences in a trial growing out of the investigation.

With respect to the second point, Federal Rule 37 and § 3.38 permit a far broader range of consequences than § 3.40, and the provisions are applicable in all of the different substantive areas

[16] The case had been before the court earlier on respondent's motion to dismiss the Commission's application for enforcement on the grounds that the court lacked jurisdiction to consider a summary application. The court denied the motion to dismiss after determining that Congress had authorized the court to proceed summarily to enforce Commission orders. However, the court did not construe congressional intention further. *U.S.* v. *Associated Merchandising Corp.*, 256 F. Supp. 318 (S.D.N.Y. 1966).

that could become a subject of adjudication. Both the trial judge and the law judge need discretion to determine which action authorized under those two provisions is best suited to the conduct and the subject matter in the particular case. On the other hand, § 3.40 authorizes only the exclusion of evidence, and only that evidence called for by an advertising substantiation order but not submitted. It is tied to the particular requirements of the Advertising Substantiation Program and to the possession and reliance elements of reasonable basis established in "Pfizer". The fundamental policies served by the promulgation of § 3.40, which relate to preserving the effectiveness of the Program, and which were discussed in Parts I and III of this statement, demonstrate the propriety of codifying § 3.40 as a mandatory rule of procedure.

19. One comment argued that § 3.40 contradicts § 3.43(b) of the Commission's rules of practice and procedure which states that relevant, material, and reliable evidence shall be admitted in adjudications.

Section 3.40 is no more inconsistent with § 3.43(b) than is § 3.38. Both sections are lawfully adopted exceptions, promulgated pursuant to section 6(g) of the Act, to the general rule stated in § 3.43(b).

20. Some comments stated that a cease and desist order might result from a failure to file a timely, complete submission in response to compulsory investigative process rather than because of a violation of the Act.

The failure to comply with an advertising substantiation order is not an unfair or deceptive act or practice in violation of the FTC Act. The Commission's staff has the burden of proving, and the Commission has the responsibility of finding, (a) that a challenged representation was, in fact, conveyed and (b) that a respondent lacked a reasonable basis for that challenged advertising claim, before a cease and desist order premised on such a violation may be issued. Whatever admissible evidence a respondent has offered to substantiate a claim will be tested for reasonableness, and it is possible that even incomplete material submitted in response to an advertising substantiation order may be sufficient to constitute such a reasonable basis. No cease and desist order will issue unless the Commission determines by the weight of the evidence that the proffered substantiation was unreasonable.

21. Some comments suggested that if the Commission does not want to use the tools for judicial enforcement of its investigative process in sections 9 and 10 of the FTC Act, 15 U.S.C. 49 and 50, it can issue its complaint and compel the production of substantiation through adjudicative discovery procedures. One comment suggested, further, that the Commission's order in "Food Fair Stores, Inc.", 3 Trade Reg. Rep. 20,579, confirming complaint counsel's right to post complaint discovery, conflicts with § 3.40 apparently because the section prevents complaint counsel from obtaining documents during trial if they wish to do so.

The Commission believes such comments reflect precisely the problem § 3.40 is designed to solve. Comments which suggest that the Commission launch an adjudicative proceeding in order to obtain information from a respondent which it could not obtain in an investigation contemplate waste and misdirection of Commission resources. First, such adjudications would be commenced for investigative purposes and would not meet the requisite statutory standard for issuance of a complaint. See 15 U.S.C. 45(b). The Commission would be issuing a complaint not because it had reason to believe the law had been violated, but, rather, because it wanted to determine whether there was reason to believe such was the case. Second, due to the investigative nature of such adjudications, there is the obvious possibility that complaints would frequently be withdrawn after compulsory adjudicative process revealed adequate substantiating materials which should have been discovered during the preadjudicative phase. Third, the comments fail to recognize the substantial difference in impact upon advertisers between a confidential staff investigation of possible violations of law and the adverse publicity attending the issuance of a complaint charging that the Commission has reason to believe the advertiser has engaged in unfair and deceptive advertising.

G. *Issues involving the separation of investigation and adjudication.* 22. Some comments argued that § 3.40 enables the Commission to evade its responsibility to hold a full adjudicatory hearing by making conduct in the investigatory phase the determinant of what evidence will be heard in adjudication.

The fact that an administrative agency may limit the right to a hearing on evidence is not a novel one and has been fully discussed. Since the Commission's investigatory advertising substantiation orders are as precise and are entitled to as much weight as process issued in an adjudication, the fact that § 3.40 is triggered by a respondent's failure to make a timely, complete return on such investigative process does not undermine its basis.

23. Some comments went further and charged that the prosecutorial staff of the Commission would dictate what evidence the administrative law judge and the Commission would hear in an adjudication by failing to seek judicial enforcement of the compulsory investigatory process and thereby allowing unsubmitted evidence to be excluded.

Section 3.40 has been modified to ensure that a recipient who desires to obtain judicial review of an advertising substantiation order prior to the commencement of adjudication may do so and may avoid the consequences of § 3.40 until the order in enforced. Where an advertiser fails to avail himself of that opportunity by first filing a motion to limit or to quash, or where the advertiser represents that his response to the process is complete, it is the advertiser, by his own action or inaction, who dictates what evidence the Commission will not hear.

24. Many comments suggest that it is inconsistent with the separation of investigational and adjudicative proceedings to permit adjudicative consequences to be based on conduct during the investigational stage.

The Commission recognizes that separate rules are necessary to govern investigative and adjudicative processes. See, e.g., *Genuine Parts* v. *FTC*, 445 F. 2d 1382 (5th Cir. 1971); *U.S.* v. *Associated Merchandising Corp.*, 261 F. Supp. 553 (S.D.N.Y. 1966). The purpose of the separation of investigative and adjudicative processes is to prohibit improper ex parte communications to the decisionmaker and to otherwise foster the impartiality decisionmaking process of the agency mandated by section 5(c) of the Administrative Procedure Act. 5 U.S.C. 554(d). This separation has nothing to do with the requirement to comply fully with compulsory process. The comments implicitly and erroneously suggest that the separation of functions means that different standards of compliance should apply to process issued by the Commission in investigations and in adjudications. As the Supreme Court's opinions in the "St. Regis Paper Co., supra, and Morton Salt Co., supra," cases indicate, nothing less than full compliance is required to satisfy the obligation to produce materials called for in lawful investigatory process issued by the Commission.

Some comments suggested that the opinions in *FTC* v. *Universal Rundle*, 387 U.S. 244 (1967); *E. Griggiths Hughes* v. *FTC*, 77 F. 2d 886 (2d Cir. 1935) and *Life Music Inc.* v. *Broadcast Music, Inc.* 41 F.R.D. 16 (S.D.N.Y. 1966), distinguish between the exclusion of evidence based upon conduct in an investigation as opposed to an adjudication. These cases involved no such distinction.[17]

Many comments also argued that respondents have diminished constitutional protections in administrative investigations, and therefore that an

[17] In *Universal-Rundle*, the Court reversed an order of the court of appeals setting aside a Commission cease and desist order with instructions to the Commission to institute an industrywide investigation. The Court, relying on *Moog Industries* v. *FTC*, 355 U.S. 411 (1958), held that the Commission's denial of respondent's petition for a stay of its final order was not patently arbitrary and capricious, and that the appellate court had exceeded its reviewing authority. In *Hughes*, the Second Circuit Court of Appeals affirmed a final order to cease and desist from representing that certain products cured obesity and had therapeutic value. The court considered and sustained the hearing examiner's refusal to admit respondent's surrebutal evidence in the form of tests conducted after the close of the case in chief. In *Life Music*, the district court applied the sanctions provided in Federal Rule of Civil Procedure 37(b)(2) against the plaintiff for willful, intentional, and bad faith failure to comply with an order to answer interrogatories propounded by defendant prior to trial.

agency's imposition of adjudicative consequences for conduct of a respondent at a stage when he could not adequately protect his constitutional rights is unfair. This argument does not fit the factual circumstances that surround the operation of § 3.40. As already pointed out, orders to file advertising substantiation in fact do provide notice of the advertising representations to be controverted at a later trial in which § 3.40 would apply. Furthermore, § 3.40 allows a recipient the opportunity to raise all good faith objections to the investigatory process, and, if a recipient desires judicial review that process, § 3.40 will not apply until the validity of his objections is finally determined by a court.

H. *Confidentiality and other excuses for failure to respond to investigatory process.* BE. Many comments asserted that it may be proper for the recipient of a substantiation order to withhold relevant materials for such reasons as a lack of assurance of confidentiality or good faith differences of opinion as to the scope or meaning of the subpoena or order.

Section 3.40 expressly contemplates the raising of objections to compulsory process by a motion to quash or limit. The section also recognizes that a respondent may desire judicial review of a Commission denial of a motion to quash or to limit. Given these opportunities to raise objections, without prejudice, the Commission does not believe it proper for a respondent to withhold silently, for any reason, material called for by compulsory process.

With respect to the first specific point raised in these comments, the fact that information sought by the Commission in an investigation is confidential or constitutes a trade secret does not limit the Commission's power to obtain it. See *FTC* v. *Tuttle*, 244 F. 2d 605 (2d Cir. 1957) cert. denied, 354 U.S. 925 (1957). The proper procedure for obtaining confidential treatment of documents called for in investigative process is to submit them to the Commission and request they be treated as confidential under 16 CFR 4.10.

With respect to good faith differences of opinion relating to the meaning or scope of the compulsory process, the inability to reach a determination on such meaning or scope is a ground for filing an appropriate motion to limit or quash rather than an excuse for failing to respond. The Commission emphasizes that its staff is always available for consultation on any matter relating to investigatory orders to produce, and it reemphasizes that advertising substantiation orders are highly specific as to the claims involved and the materials required. In any event, a genuine error in interpreting a substantiation order is one factor that can be considered in an application for the due diligence exception to § 3.40.

26. Some comments maintained that if a respondent and the staff disagree about the confidentiality of a trade secret, the proper course is for the Commission to use statutory enforcement procedure to obtain the information and to let a district court determine whether the material should or should not be submitted.

As already indicated, the Commission's investigatory power to obtain information asserted to be confidential or a trade secret is established. The Commission believes, therefore, that the proper course for ensuring the confidentiality of documentary information is to submit that information accompanied by a request that it be treated in a confidential manner. Nevertheless, § 3.40 contemplates the desire of a party (first evidenced in a timely motion) to obtain judicial review by failing to comply with an investigative demand for information believed to be confidential. If such is the case, § 3.40 will not be applicable until the validity of a recipient's objections are finally determined by a court.

I. *Problems associated with the application of § 3.40.* 27. Some comments asserted that the federal district courts have excluded evidence material to a party's defense only when there was a willful refusal to comply with process in callous disregard of the rights of the opposing party.

The Commission believes the opinion of the Supreme Court in *Societe Internationale* v. *Rogers*, 357 U.S. 197, 207–8 (1958), established that such elements of intention are not prerequisites to the application of Federal Rule 37(b). See generally Rosenberg, "Sanctions to Effectuate Pretrial Discovery" 58 Colum L. Rev. 480 (1958).

28. A few comments mentioned that the staff might be more willing in the future to grant extensions of time to respond to advertising substantiation orders, since the consequences of untimeliness will be the exclusion of evidence under § 3.40.

As in the past, the staff will continue to consider the demands placed upon advertisers in responding to Commission advertising substantiation orders. However, the willingness of the staff to grant an extension of time will be controlled solely by the facts presented in each request for such extension. If there is an increased predisposition of the staff to grant short extensions of time after the promulgation of § 3.40, any resultant delays will be more than overbalanced by the increased certainty that the responses finally secured from advertisers will be complete in all respects.

29. One comment pointed out that where an advertising substantiation order is directed solely to an advertiser, but a later complaint also names the advertiser's agency, the agency will be able to offer evidence which its client cannot since the agency was not subject to the investigative process. This might lead to inconsistent adjudications against the agency and the advertiser.

While this situation may indeed occur, the Commission notes that a similar situation could also result where both the advertiser and the agency received compulsory process and only one fully complied with such process. The Commission emphasizes that the consequences of § 3.40 flow only from the conduct of a recipient of an advertising substantiation order.

Furthermore, the "Pfizer" decision contemplates results which are specific to each respondent, and the Commission must therefore gauge the reasonableness of each respondent's basis for an advertising claim. Conceivably, therefore, materials which constitute a reasonable basis for one respondent might not do so for another respondent in the same proceeding.

Finally, no matter in which way such different consequences occur, the fact is that the agency and the advertiser are not competitors and, hence, neither is placed in a competitively disadvantageous position because of an exclusion of evidence.

30. Some comments charged that the terms "immediately upon its discovery" in § 3.40(b) are not defined, so the Administrative Law Judge cannot determine whether the staff was notified immediately upon the additional evidence's discovery.

The Commission believes that the words "immediately upon its discovery" mean that the staff should be notified when responsible officers or agents of the respondent first discover such evidence.

31. Some comments were concerned that it is unclear what the Commission deems to be full compliance with its investigatory process. For example, if an advertiser disputes the staff's determination that a particular claim was made and fails to submit substantiation, has he failed to comply? Must a respondent accept the staff's determination of which claims were in fact made?

The Commission believes an advertiser is required to respond to all lawful inquiries. This obligation to respond does not depend upon whether the advertiser agrees with the framing of the request. If an advertiser believes a substantiation order is unlawful, §§ 2.7(b) and 2.12(d) of the rules provide for a motion to quash or limit. Section 3.40 in no way curtails a party's opportunity to resort to these procedures, and thereafter to the courts, to determine the propriety of a substantiation order.

Commission substantiation orders have for some time expressly stated that if an advertiser does not believe a particular claim cited in the process has been made, he should nevertheless submit substantiation to support the claim as set forth by the Commission. Substantiation orders also have provided for some time that the advertiser should also state what claims he believes are made in the advertisement, and should fully substantiate those claims.

32. Some comments expressed concern that an advertiser will not know if the staff considers his response as complying or noncomplying. Therefore, there would be no opportunity for "cure" via supplemental submissions.

Under "Pfizer", an advertiser is required to possess and to rely on substantiating materials prior to making an affirmative advertising claim. Since the advertiser is the only party who knows what materials he possessed and relied

upon, (and since the staff is therefore in no position to advise on the degree of compliance) it is thoroughly appropriate to place the burden of compliance with process calling for such materials upon the advertiser. He should submit everything in his possession that could go to the defense of an allegation that he lacked a reasonable basis if and to the extent that the compulsory process could reasonably be construed to call for it.

In the past, an advertiser could rely upon the staff's requests for clarification of a confusing or apparently incomplete response to establish the level of compliance he needed to put forth. In effect, therefore, the burden was on the staff to determine first, that original responses were in fact inadequate and, second, to ask for more information. Such time-consuming "cures" via supplemental submissions are a practice which § 3.40 seeks to eliminate.

33. Some comments argued that Proposed § 3.40 did not allow an offer of proof to be entered on the adjudicative record, and, therefore, the opportunity for judicial review of the application of the Section was severely limited.

The Commission believes that review of a cease and desist order in the court of appeals is a necessary element in the foundation for § 3.40, and the Commission agrees that exclusion of an offer of proof severely limits a respondent's opportunity to secure adequate review in that court. Accordingly, the Commission has amended the text of § 3.40 so that an offer of proof relating to what the excluded evidence would have shown will not be precluded at trial.

J. Suggested Amendments. 34. Some comments suggested that Section 3.40 be limited to evidence substantiating express claims in advertisements.

The Commission believes that the nature of the claim, either express or implied, does not and should not alter a respondent's obligation to answer fully all lawful investigative inquiries concerning that claim. Since it is well established that an advertiser is responsible for the *truth* of an affirmative claim whether that claim is express or implied, "see Rhodes Pharmacal," 308 F. 2d 382 at 387 (1st Cir. 1953), it would be illogical not to hold an advertiser responsible for determining whether such claims are substantiated. A requirement that implied claims be substantiated is thoroughly consistent with the sound policy, and stated requirements of both "Pfizer" and "National Dynamics."

Furthermore, the Commission believes that limiting § 3.40 solely to evidence substantiating express claims would severely undermine the effectiveness of the Advertising Substantiation Program. Many advertising claims are implicit, and the Commission has not hesitated to deal with issues of reasonable basis for implicit claims in the past. "See, e.g., Crown Central Corp., supra; In re Fedders, supra;" "In re Firestone Tire & Rubber", 81 FTC 398 (1972) aff'd 481 F.2d 246 (6th Cir. 1973) cert. denied, 414 U.S. 1112 (1973). It would cripple the Program if the added certainty in staff substantiation analysis which § 3.40 is designed to promote would be applicable to only a limited aspect of the advertising which the Commission has the responsibility to review.

35. One comment suggested that the language of the exception in § 3.40(b)(1) be amended. The comment asserts that the language "[b]y due diligence the material *could* not have been timely submitted * * *" (emphasis added) directs the law judge to measure a respondent's conduct against a hypothetical standard of duly diligent conduct.

The Commission will look in each case to the conduct of the respondent to determine whether that conduct, in the context of the circumstances, was duly diligent. The exception as phrased is appropriate to this purpose.

36. One comment suggested that § 3.40 should not apply unless the Commission notifies the receipient that the investigative record is closed and affords an ample opportunity to supplement that record.

The comment implies that until a respondent is notified that the record is closed, he may withhold evidence called for by compulsory process or fail to make diligent searches of his files. Compulsory investigative process is entitled to full compliance, and recipients of such process should not view their obligation to respond as being fulfilled by initially incomplete responses which contemplate continued, supplemental submissions. If a respondent, due to special circumstances, will not be able to gather completely all materials called for by that process, he should request an extension of time in which to file his response.

37. One comment recommended that §3.40 be applied "even-handedly to both industry and the Commission." The comment suggested that applying the section equally to the Commission will minimize the chance of surprise at hearing, mesh the evidence and arguments, and encourage settlement.

The Commission points out that post-complaint discovery is available to both sides in a proceeding (see §§ 3.31, 3.33, and 3.34 of the rules), and that a respondent may fully be offered against him. The Commission believes that this comment may suggest that its staff should not be permitted to develop independent evidence supporting a charge that an advertiser lacked a reasonable basis after the staff has received that advertiser's response to an advertising substantiation order. This comment fails to understand that the receipt of a response to an advertising substantiation order is the first, rather than the final, step in a staff investigation of whether a respondent's advertising claims were substantiated. Only after the staff has received the advertiser's proffered substantiation can it fully assemble evidence going to the reasonableness, or lack thereof, of that substantiation and determine whether to recommend issuance of a complaint. Since it has the burden of demonstrating the lack of reasonable basis at trial, there is simply no reason in law or policy for the Commission's staff to be prevented from introducing at trial evidence gathered in an investigation of the adequacy of an advertiser's proffered substantiation which demonstrates that such substantiation was inadequate.

38. One comment suggested that the Section should only apply after a respondent certifies that all substantiation that is available has been produced.

Section 3.40 puts advertisers on notice that their response to advertising substantiation orders will be deemed complete in all respects. The obligation to comply fully with process issued under Section 6 or 9 of the Act is applicable whether or not a separate, express certification is made.

39. One comment suggested that the investigative process should ask for the identity of additional evidence not submitted in a response.

The Commission believes that if materials called for by process are not submitted, and yet can be identified, they should have been filed. If the reason for nonsubmission is difficulty in obtaining or assembling the materials, a request for an extension of time is appropriate. If the materials were withheld because they are claimed to be trade secrets or otherwise confidential, they should have been submitted in response to the process along with a request for confidential treatment.

40. One comment argued that § 3.40 should simply provide the Administrative Law Judge with "discretion" to exclude evidence 'when in the interest of justice such evidence should not be received."

This comment, in effect, urges the adoption of the standards of F.R.C.P. 37 and § 3.38 of the Commission's rules. As already discussed, the Commission believes discretion is appropriate in these two existing provisions because they are used in a wide range of situations and because they authorize the imposition of a wide range of consequences for failing to make discovery, including the entry of a default and the striking of pleadings. The trier of fact needs discretion to determine which of these available provisions is appropriate. See *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958); 4 Moore's Federal Practice, [¶ 37.03]. Section 3.40, on the other hand, is applicable only in the context of advertising substantiation and authorizes only one course of action, the exclusion of evidence. Therefore, the need for the discretion present in the other two provisions is not present here.

41. Many comments suggested that there be inserted in the text of § 3.40a statement that the section does not apply to evidence substantiating claims alleged to be false.

The Commission believes the text of the section, as finally adopted, makes it clear that it only applies to evidence which is offered to defend an allegation of lack of reasonable basis for a challenged representation.

42. One comment stated that § 3.40 should operate prospectively only.

The Commission agrees. Section 3.40 will only be applied to materials called

for by compulsory process issued after the Section's final promulgation and publication. The first sentence of the Section makes this clear.

43. One comment suggested that the Commission amend § 2.13 of its rules to cross reference § 3.40.

The Commission agrees.

44. One comment suggested that § 3.40 be clarified so as to operate to exclude evidence substantiating the reasonable basis of a claim set forth with "specificity" in the compulsory process.

The Commission again points out that § 3.40 will operate on evidence relevant to establishing a reasonable basis only for the claims originally set forth in the compulsory process. Given that the claims in the advertising substantiation order and in the later complaint will be the same, there is no requirement for specificity in the process greater than that necessary to constitute a sufficient pleading.

45. One comment suggested that the Section be amended to allow evidence which (1) is relevant to showing that materials which were timely submitted support the existence of a reasonable basis at the time the claim was made, or which (2) rebuts evidence offered by the Commission to rebut or impeach the substantiation offered by the respondent.

The Commission believes that, with respect to both suggested provisions, the essential question remains whether the evidence offered at trial was called for by the compulsory investigative process. If such evidence was not called for, it will be admissible at trial for any purpose, including those mentioned above. If such evidence was called for but was not submitted, it will not be admitted "for any purpose" relating to the defense of an allegation that the challenged claims lacked a reasonable basis.

Title 16 of the Code of Federal Regulations, Chapter I, Part 3 is amended by adding to Subpart D a new § 3.40 to read as follows:

§ 3.40 Admissibility of Evidence in Advertising Substantiation Cases.

(a) If a person, partnership, or corporation is required through compulsory process under Section 6 or 9 of the Act issued after October 26, 1977 to submit to the Commission substantiation in support of an express or an implied representation contained in an advertisement, such person, partnership or corporation shall not thereafter be allowed, in any adjudicative proceeding in which it is alleged that the person, partnership, or corporation lacked a reasonable basis for the representation, and for any purpose relating to the defense of such allegation, to introduce into the record, whether directly or indirectly through references contained in documents or oral testimony, any material of any type whatsoever that was required to be but was not timely submitted in response to said compulsory process: *Provided, however*, That a person, partnership, or corporation is not, within the meaning of this section, required through compulsory process to submit substantiation with respect to those portions of said compulsory process to which such person, partnership, or corporation has raised good faith legal objections in a timely motion pursuant to the Commission's rules of practice and procedure, until the Commission denies such motion; or if the person, partnership, or corporation thereafter continues to refuse to comply, until such process has been judicially enforced.

(b) The Administrative Law Judge shall, upon motion, at any stage exclude all material that was required to be but was not timely submitted in response to compulsory process described in paragraph (a) of this section, or any reference to such material, unless the person, partnership, or corporation demonstrates in a hearing, and the Administrative Law Judge finds, that by the exercise of due diligence the material could not have been timely submitted in that the Commission was notified of the existence of the material immediately upon its discovery. Said findings of the Administrative Law Judge shall be in writing and shall specify with particularity the evidence relied upon. The rules normally governing the admissibility of evidence in Commission proceedings shall in any event apply to any material coming within the above exception.

By direction of the Commission.

CAROL THOMAS,
Secretary.

OCTOBER 20, 1977.

DISSENTING STATEMENT OF COMMISSIONER COLLIER WITH RESPECT TO ADOPTION OF RULE 3.40

I dissent from the Commission's decision to promulgate the so-called Exclusionary Rule in advertising substantiation cases.

If and when the rule is ever invoked, it will by its terms result in the exclusion from evidence in Commission adjudications of highly relevant—perhaps dispositive—evidence on the question of liability. Since administrative adjudications should be a search for truth, such a result should be grounded in a clear showing of need for the rule. In my view, no such showing has been made.

Understandably, the public comments on the proposed rule were universally antagonistic and one would hardly look to this source for supporting data. The Commission staff, however, has mustered for inclusion in the Commission's statement, the available information to support the rule. As I understand the evidence, we are presented with only three concrete cases in which the rule might have been applied.[18] Even as to these cases, however, it is not clear whether application of the rule would have had any effect since we cannot tell whether the "due diligence" exception or some further implicit limitation would have applied.

During consideration of the proposed rule, I requested certain factual information in the nature of detailed chronologies of the cases offered as justifications for the rule and evaluation of the impact of the delayed disclosures in those cases. No such information was ever provided. Information of this kind seems to me to be important for an assessment of the alleged benefits of the exclusionary rule. With it we might have estimated answers to such questions as: How large is the class of cases affected by the rule? How costly (in time and money) is our current procedure? In what respects are existing explicit statutory provisions inadequate to assure complete and timely compliance with compulsory process? As a bonus, we might have even discovered whether our own handling of advertising substantiation investigations is efficient or could be improved. I regret that the staff found my request too burdensome.

The Commission relies on the appealing argument that the rule will provide an added deterrent to late or incomplete compliance with compulsory process demands made during investigations. Nevertheless, I am not convinced that existing sanctions are inadequate. Indeed, they have not been earnestly invoked. In particular, no satisfactory explanation has been offered why an untruthful response to a substantiation demand is not actionable under 15 U.S.C. Section 50. It is difficult to perceive how an exclusionary rule adds measurably to the severe deterrent against untruthful submissions provided by that provision, to the extent that its invocation is perceived as a real possibility.[19]

Moreover, there is little, if any, information to explain why respondents need additional incentives to produce admittedly exculpatory information and thereby avoid prosecution. The Commission's ad substantiation rule requires that an advertiser possess and rely upon a reasonable basis for his claims at the time of publication. Asked why, in the face of this rule, an advertiser would be so misguided as to withhold relevant information to support his claim, our staff could only say, "We don't know." I can't even guess.

One possible explanation has recently been offered by staff: it is suggested that respondents might withhold exculpatory information in order to delay the issuance of a complaint during the pendency of the advertising campaign. This speculation is without any reasonable foundation for several reasons: For example, there is no showing that ad substantiation investigations (including issuance of orders to file special reports) are in fact conducted while a campaign is still in progress; there is no reason to believe that a covert failure to submit all demanded materials would delay rather than accelerate a challenge; and there

[18] Staff's discussion of failures to respond, or respond fully, to requests for substantiating material which did not invoke our compulsory process seem to me irrelevant to the issue the Rule presents.

[19] If this section of our Act provides sanctions only as against natural persons, and if it would not be feasible to make substantiation orders run against natural persons, we should seek an amendment to correct the statutory deficiency. If it exists, it is a problem of much broader scope than this rule.

is no basis for assuming that any sought-after delay would not be easily obtained by raising objections requiring judicial enforcement of the 6(b)'s. Indeed, the absence of resort to that tactic in these cases suggests that the strategy attributed to companies under investigation is imaginary.

Finally, if the drastic sanction of an exclusionary rule is in fact called for, I see no reason to confine its operation to advertising substantiation cases. If the purpose of the rule is to enhance full and timely compliance with compulsory process demands, then that purpose would be equally served in our other law enforcement efforts. Similarly, if its purposes are to avoid costly consultant fees, then its application should not be limited. Even if it were true that the advertising substantiation area is unique because the respondent's compliance with the law requires that the subpoenaed material already be in hand,[20] this argument would cut against limiting the rule. The substantive legal requirement that an advertiser possess and rely upon substantiation itself provides a clear and strong incentive for production of this exculpatory information during our investigations in order to avoid prosecution. Similar incentives for compliance are lacking in the great majority of cases where the information demanded is incriminating.

DISSENTING STATEMENT OF COMMISSIONER CLANTON ON THE EXCLUSIONARY RULE

Although I share the desire of the majority to develop more effective means for securing full compliance with the Commission's ad substantiation orders, I believe there are remedies available less drastic than adoption of a mandatory exclusionary rule.

One such alternative is to increase substantially the civil penalties under Section 10 of the FTC Act for noncompliance with 6(b) orders or other compulsory process. Pending legislation in Congress would accomplish precisely that result by upping existing penalties from $100 to $5,000 per day. The deterrent effect of these penalties obviously will depend on the Commission's willingness to seek such sanctions, even if the failure to comply with an order is successfully concealed until the case has gone to trial.

To the extent the threat of civil or criminal penalties, backed up by effective enforcement, is insufficient to induce compliance with Commission orders,[21] the preferable approach in my view is to empower the Administrative Law Judges to impose evidentiary sanctions similar to those already authorized by § 3.38 of the Commission's rules of practice for failure to comply with adjudicative orders. The critical difference between this approach and the one contained in the pending rule is that under the former the ALJs would have discretion in the first instance to determine what weight, if any, should be given to substantiating evidence offered at trial which was not supplied in response to an earlier 6(b) order.

Since the evidence sought to be introduced at trial, but excluded by this rule, is likely to go directly to the merits of the case, it seems particularly inappropriate to preclude the trier of fact from exercising discretion in deciding how to treat such evidence. The hoped-for deterrence to be achieved by the rule may very well be undermined by efforts on the part of complaint counsel and ALJs alike to avoid the harsh impact of its application. That is highly probable where the effect of invoking the rule would lead to the prohibition of otherwise truthful claims. Rather than adopting the all-or-nothing approach of this rule, the ALJs should be given broader authority to examine the justification for withholding information in response to an investigative order and to determine what sanctions, if any, are appropriate, such as resort to adverse inferences or exclusion of evidence.

For these reasons, I cannot support the rule as adopted by the Commission.

[FR Doc.77-31045 Filed 10-25-77;8:45 am]

[20] The Commission frequently demand production of information that is required by law to be kept on hand. A familiar example is federal tax returns. It is also generally the case that proof of a violation or a defense thereto must be established by evidence that was in existence and in the respondent's possession at the time the challenged conduct occurred. Nor do I perceive what difference it makes whether a respondent was required to possess and rely on the information being demanded or whether he simply did so in fact.

[21] Presumably, advertisers have a self-interest in avoiding prolonged legal proceedings by providing all substantiating evidence in their possession as promptly as possible. It is argued, however, that advertisers may have an incentive, in instances where their case is weak and the advertising campaign under scrutiny is ongoing, to prolong an investigation by disputing whether an alleged claim was made rather than supplying whatever substantiation is available for the claim. Apart from the risks incurred by advertisers who follow such a course, where deceptive advertising is continuing the Commission can help to discourage delay and minimize the waste of scarce resources by seeking preliminary injunctive relief more frequently. More commonly, though, the advertising in question has been discontinued before any action is taken by the Commission.

[6750-01]

[Docket C-2901]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

S. S. Kresge Co.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Troy, Mich. general merchandise retailer, to cease authorizing or instituting credit collection suits in counties other than where a defendant resides or signed the relevant contract. Further, where such suits have already been initiated, the firm is required to terminate them, vacate any rendered judgements, and give notice to concerned parties that such action has been taken.

DATES: Complaint and order issued September 22, 1977.[1]

FOR FURTHER INFORMATION CONTACT:

Paul R. Peterson, Director, Cleveland Regional Office, Federal Trade Commission, Suite 500, Mall Building, 118 Saint Clair Ave., Cleveland, Ohio 44114, 216-522-4207.

SUPPLEMENTARY INFORMATION: On Tuesday, July 12, 1977, there was published in the FEDERAL REGISTER (42 FR 35858) a proposed consent agreement with analysis In the Matter of S. S. Kresge Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-70 vacate court action(s). Subpart—Enforcing Dealings or Payments Wrongfully: § 13.1045 Enforcing dealings or payments wrongfully.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

CAROL M. THOMAS,
Secretary.

[FR Doc.77-31013 Filed 10-25-77;8:45 am]

[1] Copies of the Complaint and the Decision and Order filed with the original document.

[4810-22]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-257]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Sugar Content of Certain Articles From Australia

AGENCY: United States Customs Service.

ACTION: New Amounts of Countervailing Duty Determined.

SUMMARY: This notice is to inform the public that the Treasury Department has determined that there will be no countervailing duty assessed on the sugar content of certain articles exported from Australia during the period January 1977

through June 1977. This decision is based on information the Department has received for payments by the Government of Australia over that period. The Customs Regulation is being amended to reflect that decision.

EFFECTIVE DATE: October 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Stephen Nyschot, Operations Officer, Office of Operations, Duty Assessment Division, Technical Branch, United States Customs Service, 1301 Constitution Ave., NW., Washington, D.C., telephone 202-566-5492.

In the matter of net amount of bounty declared for the period January 1977 through June 1977, for products of Australia subject to the countervailing duty order published in T.D. 54582. Section 159.47(f), Customs Regulations, amended.

The Treasury Department is in receipt of official information that no bounties or grants were paid or bestowed within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), on the exportation during the period January 1977 through June 1977, of approved fruit products and other approved products containing sugar, manufactured or produced in Australia.

Accordingly, no additional duties on the above-described merchandise, imported directly or indirectly from that country shall be assessed or collected under section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)), under "Australia-Sugar content of certain articles" is amended (1) by deleting therefrom the reference to T.D. 76-167, and (2) by adding a reference to this Treasury Decision. As amended, the last four lines of the table under this commodity will read:

County	Commodity	Treasury decision	Action
		55716	Certain articles exempted as to shipments exported on or after July 19, 1962.
		76-214	New rate.
		77-127	Do.
		77-257	Do.

(R. S. 251, as amended, secs. 303, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: October 17, 1977.

ROBERT H. MUNDHEIM,
General Counsel,

[FR Doc.77-31006 Filed 10-25-77;8:45 am]

[7020-02]

CHAPTER II—UNITED STATES INTERNATIONAL TRADE COMMISSION

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE, OR FROM IMPORTS FREE OF DUTY WHICH HAVE RECEIVED, DIRECTLY OR INDIRECTLY, ANY BOUNTIES OR GRANTS, OR WHETHER SUBSTANTIALLY REDUCED SALES OF UNITED STATES PRODUCTS RESULT FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

PART 208—[RESERVED]

Investigations of Injury to Domestic Industries

AGENCY: United States International Trade Commission.

ACTION: Final rules.

SUMMARY: This document establishes precedural rules for the conduct of investigations to determine the impact of imports on domestically produced competitive articles in U.S. markets. The regulations are necessary to implement certain provisions of the Trade Act of 1974.

EFFECTIVE DATE: November 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward Easton, Esq., or Mary Martin, Esq., Office of the General Counsel, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, 202-523-0379, 202-523-0359, respectively.

SUPPLEMENTARY INFORMATION: Part 207 establishes procedural regulations for the conduct of proceedings under the Antidumping Act, 1921, the countervailing duty statute (section 303, Tariff Act of 1930, as amended), and section 301(c)(2) of the Trade Act of 1974.

Subpart A provides a procedural framework for proceedings under the Antidumping Act, viz, (1) the conduct of 30-day inquiries to determine whether official antidumping investigation by the Treasury Department ought to be terminated; (2) the conduct of an investigation to determine whether an industry in the United States is being injured or is likely to be injured, or is prevented from being established by reason of imports sold, or likely to be sold at less than fair value; and (3) the conduct of an investigation to review determinations of injury, likelihood of injury, or prevention of establishment to determine whether changed circumstances exist which justify revocation or modification of the determination.

Subpart B provides a procedural framework for proceedings under section 303(b), Tariff Act of 1930, viz, (1) the conduct of an investigation to determine whether an industry in the United States is being cr is likely to be injured, or is prevented from being established by reason of the importation of duty-free articles on which bounties or grants have been bestowed, and (2) the conduct of an investigation to review determinations of injury, likelihood of injury, or prevention of establishment to determine whether changed circumstances exist which justify revocation or modification of the determination.

Subpart C provides a procedural framework for reporting to the President under the authority of section 301(c)(2) of the Trade Act of 1974 pursuant to which the President, in deciding whether to take action under 301(a)(3), obtains a finding from the Commission as to whether exports to the United States provided with subsidies (or other incentives having the effect of subsidies) have the effect of substantially reducing sales of the competitive U.S. product or products in the United States.

On December 27, 1976, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (41 FR 56205) proposing to add a new Part 207 to Title 19, Chapter II of the Code of Federal Regulations and to delete and reserve Part 208. Notice was given that comments concerning the proposed rulemaking were to be submitted on or before January 26, 1977. Submissions from nine interested persons and organizations were received by February 28, 1977. The submissions concerned the following topics: standards; deadlines for requests for public hearings; deadlines for the submission of written statements; provision for Commission acceptance of price assurances under the Antidumping Act; and, proposed proceedings for the review, modification, clarification or revocation of injury determinations. In this last category, there were several different kinds of comments.

I. DEFINITIONS OF STATUTORY TERMINOLOGY AND INTERPRETIVE STANDARDS

Three comments suggested that the Commission promulgate definitions of statutory terms and otherwise establish interpretive standards under the Antidumping Act, 1921, the countervailing duty statute, and the export sudsidy provisions of The Trade Act of 1974. It is the position of the Commission that the adoption of substantive definitions and substantive interpretive standards in response to a notice and comment procedure concerning proposed procedural rules would be inappropriate. The suggestions that the Commission establish such definitions and interpretive standards has been taken under advisement. The Commission will provide for public notice and opportunity for public comment in the event the agency proposes the promulgation of interpretive standards and definitions.

II. DEADLINES FOR REQUESTS FOR PUBLIC HEARINGS

Several comments suggested that the agency allow at least 30 days from the date of the publication of a Notice of Investigation in the FEDERAL REGISTER for an interested person to request a public hearing under §§ 207.4(c), 207.5(d), 207.8(c), and 207.9(d). The proposed rules had provided for only 15 days in which to make the request. It is the policy of the Commission that a notice providing for a public hearing will issue with the notice of the institution of an investigation. Nevertheless, should a notice of institution of an investigation issue in which there is no provision for a public hearing, a 15-day period from the date of publication in the FEDERAL REGISTER of the notice of the institution of the investigation will continue to be provided for requesting a public hearing under the above-referenced sections. The time periods for Commission investigations under these sections do not exceed 90 days—it is therefore not practicable to allow a longer period of time for requesting such hearings.

III. DEADLINES FOR THE SUBMISSION OF WRITTEN STATEMENTS

One comment suggested that the Commission provide specific time deadlines for written submissions in proceedings conducted under Part 207. In the proposed rules, the Commission has indicated that such statements could be filed at any time after a notice of the institution of the investigation is published in the FEDERAL REGISTER. The comment expressed the concern that in the absence of an established deadline the Commission might encourage the submission of statements which it would not have time to consider in making its final deliberations.

The Commission has rejected the suggestion. It will, however issue a notice establishing a deadline for the submission of written statements during the course of each proceeding under the section.

IV. ACCEPTANCE OF PRICE ASSURANCES IN INVESTIGATIONS CONDUCTED UNDER § 207.4

One comment suggested that the Commission provide a procedure for accepting written price assurances from the foreign producer or exporter or domestic importer to the effect that no future sales of the merchandise at "less than fair value" will be made by the party providing assurances. The suggested procedure would be discretionary and limited to use in those antidumping proceedings where the information available to the Commission indicated that no present injury existed although there was a likelihood of future injury.

The Commission has considered this proposal but has decided not to implement it. Such offers of price assurances conerning sales at "less than fair value" are provided for in the regulations of the Treasury Department (19 CFR 153.38 (1977)). In those few proceedings in which the Commission has taken notice of such offers, the offer was only one of many factors taken into consideration in assessing the likelihood of injury under the statute.

V. REVIEW OF INJURY DETERMINATIONS UNDER THE ANTIDUMPING ACT, 1921, AND THE COUNTERVAILING DUTY STATUTE.

A. *Authority for review proceedings.* Comments indicated that Commission exercise of the subject review proceedings would constitute a usurpation of judicial review, unauthorized by the underlying statutes and not contemplated in legislative history. It is the position of the Commission that it has inherent authority to review and modify its determinations. Moreover, the exercise of this authority has received legislative acceptance (U.S. Cong. Senate Comm. on Finance, Trade Reform Act of 1974, Report No. 93-1298 (to accompany H.R. 10710) 93d Cong., 2d Sess., 1974, p. 181).

B. *Review proceedings as to an error in fact or law.* Several comments were received to the effect that providing a procedure for dealing with an "aberrational situation" was unnecessary (the authority has been exercised rarely—see, e.g., Clarification of Determination in Investigation of Steel Wire Rope from Japan," 38 FR 27560, October 4, 1973). The comments also indicated that providing for such a procedure would compromise the statutory requirement that the subject investigations be completed within three months and the finality of injury determinations. The Commission has adopted the suggestion that a formal procedure not be established for reviewing injury determinations for an error of fact or law. The Commission has provided instead a hortatory provision in §§ 207.5(b) and 207.9(b) to the effect that the Commission will issue any modification, clarification or correction of an injury determination, if appropriate, within a reasonable time period after issuance.

C. *Standards for review proceedings instituted on the basis of changed circumstances.* Two comments were received to the effect that the Commission ought not to promulgate regulations for investigations concerning the review of injury determinations on the basis of changed circumstances because the agency had not articulated standards for such proceedings. To date, the Commission has conducted two proceedings reviewing determinations made under the Antidumping Act, 1921. The standards applied in these proceedings—"Northern Bleached Hardwood Kraft Pulp from Canada," 39 FR 34918, September 27, 1976, and "Primary Lead Metal from Australia and Canada," 41 FR 17628, April 27, 1976—are illustrative of the standards the Commission will use in these types of proceedings.

D. *Review provisions as invitation to relitigate.* Comments suggested that the proposed provisions of §§ 207.5 and 207.9 which would permit petitions for review after only one year had expired was an invitation to relitigate without any need to show good cause. It was also pointed out that Department of Treasury regulations required the passage of at least two years before the Department would review an outstanding determination of final action. The Commission has adopted a two-year period requirement to conform the provisions of §§ 207.5(c) and 207.9(c) with the Treasury Department regulation (19 CFR 153.44).

E. *Initiation of review proceedings.* Suggestions were made that only interested persons who had participated in the proceedings leading to the subject determination before the Commission should be allowed to apply for the review of affirmative determinations. It is the position of the Commission that the public interest is better served by permitting any interested person to file an application. In this connection, the Commission agrees with the comments to the effect that restricting applications to prior participants would be inappropriate in a nonadjudicative investigation.

In consideration of the above, Part 207 of Chapter II, Title 19 of the Code of Federal Regulations is adopted as set forth below. Part 208 is deleted and reserved.

Sec.

207.1 Applicability of part.

Subpart A—Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value

207.2 Applicability of subpart.
207.3 Inquiries under section 201(c)(2) of the Antidumping Act, 1921, as amended.
207.4 Investigations under section 201(a) of the Antidumping Act, as amended.
207.5 Investigations concerning the review of determinations under the Antidumping Act 1921.
207.6 [Reserved].

Subpart B—Investigations of Whether Injury to Domestic Industries Results From Imports Free of Duty Which Have Received, Directly or Indirectly, Any Bounties or Grants

207.7 Applicability of subpart.
207.8 Investigations under section 303(b) of the Tariff Act of 1930, as amended.
207.9 Investigations concerning the review of determinations under section 303(b) of the Tariff Act of 1930.
207.10 [Reserved].

Subpart C—Investigations of Whether Substantially Reduced Sales of U.S. Products in U.S. Markets Result From Exports to the U.S. Provided With Subsidies (or Other Incentives Having the Effect of Subsidies)

207.11 Applicability of subpart.
207.12 Investigations under section 301(c)(2) of the Trade Act of 1974.

AUTHORITY: Sec. 335, Tariff Act of 1930 (72 Stat. 680 (19 U.S.C. 1335)); sec. 603, Trade Act of 1974 (88 Stat. 2073 (19 U.S.C. 2482)).

§ 207.1 Applicability of part.

This Part 207 applies to functions and duties of the Commission under sections 201(a), 201(c)(2), and 201(d) of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.), under section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), and section 301(c)(2) of the Trade Act of 1974 (19 U.S.C. 2411 (c)(2)). Subpart A of this part sets forth

rules specifically applicable to investigations under the Antidumping Act, 1921, as amended. Subparts B and C of this part set forth rules specifically applicable to investigations under section 303 of the Tariff Act of 1930, as amended, and section 301(c)(2) of the Trade Act of 1974, respectively.

Subpart A—Investigations of Injury to Domestic Industries Resulting From Imports Sold at Less Than Fair Value

§ 207.2 Applicability of subpart.

This Subpart A of this Part 207 applies to investigations and inquiries under the Antidumping Act, 1921, as amended. For other applicable rules, see Part 201 of this chapter.

§ 207.3 Inquiries under section 201(c)(2) of the Antidumping Act, 1921, as amended.

(a) *Purpose of inquiry.* The purpose of an inquiry under section 201(c)(2) by the Commission, upon the receipt of appropriate information from the Secretary of the Treasury, is to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of the class or kind of merchandise which is the subject of an investigation by the Treasury Department.

(b) *Institution of inquiry.* After the receipt of appropriate information from the Secretary of the Treasury under section 201(c)(2), the Commission shall institute an inquiry for the purpose indicated in § 207.3(a), and publish notice thereof in the FEDERAL REGISTER.

(c) *Public hearing.* If in the judgment of the Commission there is good and sufficient reason therefor, the Commission, in the course of its inquiry, will hold a public hearing and afford interested persons the opportunity to appear and be heard at such hearing.

(d) *Written statements.* At any time after a notice of inquiry under § 207.3(b) is published in the FEDERAL REGISTER, any interested person may submit to the Commission a written statement of information pertinent to the subject matter of such inquiry. If a public hearing is held in the inquiry, such statement may be received in lieu of appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Notification of Commission's determination.* Within thirty (30) days after the date of the receipt by the Commission of the appropriate information from the Secretary of the Treasury referred to in § 207.3(b), the Commission will notify the Secretary of the Treasury of its determination. The Commission's determination, together with a statement of reasons therefor, will be published in the FEDERAL REGISTER.

§ 207.4 Investigations under section 201(a) of the Antidumping Act, 1921, as amended.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission under section 201(a) of the Antidumping Act, 1921, as amended, is to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise which the Secretary of the Treasury has determined is being, or is likely to be, sold in the United States or elsewhere at less than its fair value.

(b) *Institution of investigation.* After the receipt of advice from the Secretary of the Treasury that he has determined that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, the Commission shall institute an investigation for the purposes of § 207.4(a), and publish notice thereof in the FEDERAL REGISTER.

(c) *Public hearing.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford an opportunity for interested persons to appear and be heard. If no notice of public hearing issues concurrently with the notice of institution of the investigation under § 207.4(b), the Commission will, within fifteen (15) days after the publication of the notice of investigation in the FEDERAL REGISTER, at the request of any foreign manufacturer or exporter or any domestic importer of the foreign merchandise in question, or of any domestic manufacturer, producer, or wholesaler or merchandise of the same class or kind, conduct a hearing at which:

(1) Any such person shall have the right to appear by counsel or in person; and

(2) Any other person, firm, corporation, or association may make application and, upon good cause shown, may be allowed to intervene and appear at such hearing by counsel or in person.

(3) Any hearing conducted pursuant to this section shall be exempt from sections 554, 555, 556, 557, and 702 of title 5 of the United States Code in accordance with the requirements of section 201(d)(3) of the Antidumping Act, 1921, as amended.

(d) *Written statements.* At any time after a notice of investigation under § 207.4(b) is published in the FEDERAL REGISTER, any interested person may submit to the Commission a written statement of information pertinent to the subject matter of such investigation. If a public hearing is held in the investigation, such statement may be received in lieu of appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Notification of Commission's determination.* On or before the expiration of three (3) months after the date of the receipt by the Commission of the advice from the Secretary of the Treasury referred to in § 207.4(b) the Commission will notify the Secretary of the Treasury of its determination. The determination, whether affirmative or negative, shall be published in the FEDERAL REGISTER together with a complete statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact or law presented.

§ 207.5 Investigations concerning the review of determinations under the Antidumping Act, 1921.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission to review a determination that has been made under section 201(a) of the Antidumping Act, 1921, as amended, is to determine whether changed circumstances exist which indicate that, if the finding of dumping issued by the Secretary of the Treasury were modified or revoked, an industry in the United States would likely be injured, or prevented from being established, by reason of the importation into the United States of the relevant merchandise at less than fair value within the meaning of the Antidumping Act, as amended.

(b) *Modification, clarification or correction of a determination.* Nothing in § 207.5(a) shall limit the authority of the Commission to issue an appropriate modification, clarification, or correction of a determination within a reasonable time period of its issuance.

(c) *Institution of investigation.* The Commission may institute an investigation for the purposes of § 207.5(a) upon receipt of an application from an interested person, upon its own motion, or upon receipt from the Secretary of the Treasury of appropriate advice concerning an application from an interested person specifying the changed circumstances forming the basis for review, except that, in the absence of good cause being shown, no investigation for the purpose of § 207.5(a) shall be made unless 2 years have elapsed since the publication of the finding of dumping by the Secretary of the Treasury. The Commission shall publish notice of the institution of an investigation in the FEDERAL REGISTER.

In the event that two years have elapsed since the final action of the Secretary of the Treasury, the Commission shall publish a notice of having received an application for review in the FEDERAL REGISTER, inviting public comment on the question of whether the Commission should conduct the review.

(d) *Public hearing.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission will, in the course of an investigation under § 207.5(c) hold a public hearing and afford interested persons opportunity to appear and be heard at

such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested person, within fifteen (15) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, may submit a request in writing to the Secretary of the Commission that the Commission conduct a public hearing, stating the reasons for such request.

(e) *Written statements.* At any time after a notice of investigation under § 207.5(c) is published in the FEDERAL REGISTER, any interested person may submit a written statement of information pertinent to the subject matter of such investigation to the Commission. If a public hearing is held in the investigation, such statement may be received in lieu of an appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(f) *Notification of Commission's determination.* On or before the expiration of three (3) months after the date of institution, the Commission will notify the Secretary of the Treasury of its determination. A summary of the Commission's determination, together with a statement of reasons therefor, will be published in the FEDERAL REGISTER.

§ 207.6 [Reserved]

Subpart B—Investigations of Whether Injury to Domestic Industries Results From Imports Free of Duty Which Have Received, Directly or Indirectly, Bounties or Grants

§ 207.7 Applicability of subpart.

This Subpart B applies to investigations under section 303(b) of the Tariff Act of 1930, as amended. For other applicable rules, see Part 201 of this chapter.

§ 207.8 Investigations under section 303(b) of the Tariff Act of 1930, as amended.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission under section 303(b) of the Tariff Act of 1930, as amended, is to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation free of duty into the United States of any imported article or merchandise with respect to which the Secretary of the Treasury has made a final determination that a bounty or grant is being paid or bestowed.

(b) *Institution of investigation.* After receipt of advice from the Secretary of the Treasury that a bounty or grant is being paid or bestowed with respect to any imported article or merchandise is free of duty and the determination by the Commission described in § 207.8(a) is required, the Commission shall institute an investigation for the purpose indicated in § 207.8(a) and publish notice thereof in the FEDERAL REGISTER.

(c) *Public hearing.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested persons opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested person, within fifteen (15) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, may submit a request in writing to the Secretary of the Commission that the Commission conduct a public hearing, stating the reasons for such request.

(d) *Written statements.* At any time after a notice of investigation under § 207.8(b) is published in the FEDERAL REGISTER, any interested person may submit to the Commission a written statement of information pertinent to the subject matter of such investigation. If a public hearing is held in the investigation, such statements may be received in lieu of appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Notification of Commission's determination.* On or before the expiration of three (3) months after the date of receipt by the Commission of the advice from the Secretary of the Treasury referred to in § 207.8(b), the Commission will notify the Secretary of the Treasury of its determination. A summary of the Commission's determination, together with a statement of reasons therefor, will be published in the FEDERAL REGISTER.

§ 207.9 Investigations concerning the review of determinations under section 303(b) of the Tariff Act of 1930.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission to review a determination that has been made under section 303(b) of the Tariff Act of 1930, as amended, is to determine whether changed circumstances exist which indicate that, if the finding of a bounty or grant issued by the Secretary of the Treasury were modified or revoked, an industry in the United States would likely be injured, or prevented from being established, by reason of the importation into the United States of the relevant merchandise receiving bounties or grants within the meaning of the Tariff Act of 1930, as amended.

(b) *Modification, clarification or correction of a determination.* Nothing in § 207.9(a) shall limit the authority of the Commission to issue an appropriate modification, clarification or correction of a determination within a reasonable time period of its issuance.

(c) *Institution of investigation.* The Commission may institute an investigation for the purpose of § 207.9(a) upon receipt of an application from an interested person, upon its own motion, or upon receipt from the Secretary of the Treasury of appropriate advice concerning an application from an interested person specifying the changed circumstances forming the basis for review, except that, in the absence of good cause being shown, no investigation for the purpose of § 207.9(a) shall be made unless 2 years have elapsed since the publication of the finding of a bounty or grant by the Secretary of the Treasury. The Commission shall publish notice of the institution of an investigation in the FEDERAL REGISTER.

In the event that two years have elapsed since the final action of the Secretary of the Treasury, the Commission shall publish a notice of having received an application for review in the FEDERAL REGISTER, inviting public comment on whether the Commission should conduct the review.

(d) *Public hearing.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission will, in the course of an investigation under § 207.9(c) hold a public hearing and afford interested persons opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested person, within fifteen (15) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, may submit a request in writing to the Secretary of the Commission that a public hearing should be held, stating the reasons for such request.

(e) *Written statements.* At any time after a notice of investigation under § 207.9(c) is published in the FEDERAL REGISTER, any interested person may submit to the Commission a written statement of information pertinent to the subject matter of such investigation. If a public hearing is held in the investigation, such statement may be received in lieu of appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(f) *Notification of Commission's determination.* On or before the expiration of three (3) months after the date of institution, the Commission will notify the Secretary of the Treasury of its determination. A summary of the Commission's determination, together with a statement of reasons therefor, will be published in the FEDERAL REGISTER.

§ 207.10 [Reserved]

Subpart C—Investigations of Whether Substantially Reduced Sales of U.S. Products in U.S. Markets Result From Exports to the U.S. Provided With Subsidies (or Other Incentives Having the Effect of Subsidies)

§ 207.11 Applicability of subpart.

This Subpart C of this Part 207 applies specifically to investigations under section 301(c)(2) of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

§ 207.12 Investigations under section 301(c)(2) of the Trade Act of 1974.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission under section 301(c)(2) of the Trade Act of 1974 is to determine whether exports to the United States, which the Secretary of the Treasury

has determined are subsidized (or subject to other incentives having the effect of subsidies) by the exporting country or foreign instrumentality, have the effect of substantially reducing sales of the competitive U.S. product or products in the United States.

(b) *Institution of investigation.* Upon the receipt of the determination of the Secretary of the Treasury that a foreign country or instrumentality provides subsidies (or other incentives having the effect of subsidies) on exports of a product to the United States, the Commission shall institute an investigation for the purpose indicated in § 207.12(a) and publish notice thereof in the FEDERAL REGISTER.

(c) *Public hearing.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested persons opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested person who believes that a public hearing should be held may, within fifteen (15) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing should be held, stating the reasons for such request.

(d) *Written statements.* At any time after a notice of investigation under § 207.12(b) is published in the FEDERAL REGISTER, any interested person may submit to the Commission a written statement of information pertinent to the subject matter of such investigation. If a public hearing is held in the investigation, such statement may be received in lieu of appearance at such hearing unless the Commission rules otherwise. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Notification of Commission's determination.* After the completion of its investigation, the Commission shall transmit to the President a report of the results thereof, including the findings and a transcript of the information submitted at the hearing, if any. The Commission's report will be released to the public.

By order of the Commission.

Issued: October 20, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc. 77-30989 Filed 10-25-77;8:45 am]

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

UPDATING CURRENT REGULATIONS

Miscellaneous Amendments

AGENCY: Office of Education, HEW.

ACTION: Rule.

SUMMARY: This document amends the Code of Federal Regulations by deleting certain parts. The amendments are necessary because certain provisions have been superseded and satutory authorities have been terminated. The effect of the amendments will be to update the current regulations of the Office of Education.

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Neal Shedd, Office of Education, Regulations Officer, 202-245-7091.

SUPPLEMENTARY INFORMATION:

PART 102—STATE VOCATIONAL EDUCATION PROGRAMS

PART 103—RESEARCH AND TRAINING, EXEMPLARY AND CURRICULUM DEVELOPMENT PROGRAMS IN VOCATIONAL EDUCATION

The programs operated under Part 102 (State Vocational Education Programs), and Part 103 (Research and Training, Exemplary and Curriculum Development Programs in Vocation Education) have been superseded by Parts 104 and 105. Therefore, Parts 102 and 103 are removed from Title 45 of the Code of Federal Regulations.

PART 126—SUPPLEMENTARY EDUCATIONAL CENTERS AND SERVICES; GUIDANCE, COUNSELING, AND TESTING—SPECIAL PROGRAMS AND PROJECTS

The statutory authority for issuance of the regulations in Part 126 (Section 306 of the Elementary and Secondary Education Act) heas been terminated. Therefore, Part 126 is removed from Title 45 of the Code of Federal Regulations.

PART 145—NATIONAL DEFENSE GRADUATE FELLOWSHIP PROGRAM

The statutory authority for issuance of the regulations in Part 145 (National Defense Education Act, Title IV) has been terminated. Therefore, Part 145 is removed from Title 45 of the Code of Federal Regulations.

PART 150—PRODUCTION AND DISTRIBUTION OF CAPTIONED FILMS FOR THE DEAF

The regulations in Part 150 (Production and Distribution of Captioned Films for the Deaf) have been superseded by the regulations in 45 CFR Part 121i. Therefore, Part 150 is removed from Title 45 of the Code of Federal Regulations.

PART 151—RIGHT TO READ PROGRAM

The programs operated under Part 151 have been superseded by the programs under 45 CFR Part 162 (National Reading Improvement Program). Therefore, Part 151 is removed from Title 45 of the Code of Federal Regulations.

PART 167—SPECIAL PROJECTS AND TEACHER TRAINING IN ADULT EDUCATION

The statutory authority for issuance of regulations in Part 167 (Section 309 of the Adult Education Act (1973)) has been terminated. Therefore, Part 167 is removed from Title 45 of the Code of Federal Regulations.

PART 174—EDUCATION PROFESSIONS DEVELOPMENT

The statutory authority for issuance of the regulations in Part 174 (certain portions of the Education Professions Development Act—Section 504 and Parts B through F) has been terminated. Therefore, Part 174 is removed from Title 45 of the Code of Federal Regulations.

PART 178—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS AND DIRECT FEDERAL LOANS TO VOCATIONAL STUDENTS

The statutory authority for the regulations in Part 178, published at 31 FR 14942 (Nov. 26, 1966) and amended at 33 FR 374 (Jan. 10, 1968), 33 FR 11540 (Aug. 14, 1968), and 38 FR 30661 (Nov. 6, 1973) (Pub. L. 89-287), has been terminated. Therefore that Part 178 is removed from Title 45 of the Code of Federal Regulations.

PART 181—EMERGENCY SCHOOL ASSISTANCE

The program operated under the regulations in Part 181 has been superseded by the programs under 45 CFR Part 185 (Emergency School Assistance). Therefore, Part 181 is removed from Title 45 of the Code of Federal Regulations.

Correction in table of contents only—Part 101—"Administrative procedure" is corrected to read: "Grants To Land Grant Colleges and Universities".

NOTE.—The U.S. Office of Education has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: October 7, 1977.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: October 17, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

[FR Doc.77-31129 Filed 10-25-77;8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 77-695]

PART 0—COMMISSION ORGANIZATION
PART 76—CABLE TELEVISION SERVICE

Procedures Relating to Proceedings Requesting Orders to Show Cause Against Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rules adopted.

SUMMARY: In order to clarify existing procedures and to promote uniformity, the Federal Communications Commission has adopted rules of procedure in cable television show cause proceedings. The rules establish filing deadlines for opposition and reply comments in such proceedings, specify the number of copies of each pleading which must be filed, require factual statements within each pleading to be verified, etc. (A show cause proceeding is the phase of FCC investigation of alleged violation of cable television rules where Commission decides whether there is sufficient evidence of violation to require the party to appear at a hearing.

EFFECTIVE DATE: October 31, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Rodney Joyce, Cable Television Bureau, 202-632-9703.

Adopted: October 13, 1977.

Released: October 21, 1977.

Order. In the matter of amendment of Part 76, Subpart A of the Commission's rules and regulations concerning procedures relating to proceedings requesting order to show cause against Cable Television Systems.

1. Our primary enforcement mechanism against cable television systems violating our rules in cease and desist proceedings which are initiated by issuance of an order to show cause. Since 1972, 179 petitions for orders to show cause have been filed. Forty show cause orders have been issued, and about 15 of these have ended in cease and desist orders against the cable system. In these proceedings requesting issuance of orders to show cause, we have followed closely our rules of procedure adopted for special relief proceedings found in § 76.7. But because these procedural rules do not say on their face that they will apply to show cause proceedings, participants have frequently expressed confusion about the appropriate procedures. We have decided, therefore, to adopt a new section in the rules patterned closely after § 76.7 but applying specifically to proceedings requesting issuance of an order to show cause. The rules will allow petitions for orders to show cause to be submitted informally by letter, will require service on all interested parties, will require factual contentions to be supported by affidavits and exhibits to be verified, and will ask that parties submit an original and two copies of each pleading. These rules will merely codify the present procedural structure and will help minimize confusion.

2. We are, however, making one change from present practice which merits separate consideration. Sections 76.7 (d) and (e) of our rules require that oppositions or comments to petitions for special relief be filed within 30 days after the petition has been filed and that replies to the oppositions or comments be made within 20 days thereafter. Section 76.27 allows parties wishing to object to applications for certificates of compliance to do so within 30 days after public notice has been issued announcing the application. A reply may be filed within 20 days after an objection. There is no rule announcing times for filing oppositions and replies to petitions for issuance of an order to show cause against a cable operator. This has caused particular confusion among parties participating or desiring to participate in such proceedings. Though we have previously explained [1] that the filing deadlines in such proceedings are to be governed by the general rule for Commission filings in § 1.45,[2] participants have not always abided by the time frame established there and we are often confronted with requests to extend the filing period. Section 1.45 requires oppositions to be filed within ten days after the petition is filed, and replies are due five days after each objection. Since many petitions requesting issuance of a show cause order raise issues which are just as complex as those raised by petitions for special relief or applications for certificates of compliance, we have routinely granted extensions.

3. We believe that we should amend our rules to allow 30 days for filing oppositions and 20 days for the reply. This will confirm the rule to what has often become the practice and will end confusion. Consistent with our procedures for special relief petitions, the Commission may in the appropriate circumstances specify a shorter time for such submissions. We will accomplish this change and the others mentioned above by adopting a new § 76.9 in the rules.

4. Additionally, to conform our treatment of orders to show cause to petitions for special relief and applications for certificates of compliance, we are delegating to the Cable Television Bureau authority to act on petitions for orders to show cause whose disposition is governed by established Commission policy. Section 0.288(v) will be amended accordingly.

5. Since the rules we are adopting today relate to Commission procedure, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, do not apply. See *Ranger* v. *F.C.C.*, 294 F. 2d 240 (D.C. Cir., 1961); *Kessler* v. *F.C.C.*, 326 F 2d 673 (D.C. Cir., 1963); and *Meredith Broadcasting Company* v. *F.C.C.*, 365 F. 2d 912 (D.C. Cir., 1966).

Authority for the rules adopted herein is contained in sections 2, 3, 4 (i), and (j), 301, 303, 307, 308, and 309 of the Communications Act of 1934, as amended.

Accordingly, it is ordered, That effective October 31, 1977, Part 0 and Part 76 of the Commission's rules and regulations are amended as set forth below.

(Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; (47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309).)

FEDERAL COMMUNICATIONS COMMISSION,[1]

WILLIAM J. TRICARICO,
Acting Secretary.

1. Section 0.288(v) is amended as follows:

§ 0.288 Authority delegated.

* * * * *

(v) To act on petitions for orders to show cause, or to issue orders to show cause on his own motion, unless novel questions of fact, law, or policy which cannot be resolved under outstanding precedents and guidelines are involved.

* * * * *

2. A new § 76.9 is added reading as follows:

§ 76.9 Order to show cause.

(a) Upon petition by any interested person, the Commission may issue an order requiring the cable television operator to show cause why it should not cease and desist from violating the Commission's Rules.

(b) The petition may be submitted informally, by letter, but shall be accompanied by a certificate of service on any interested person who may be directly affected if such order to show cause and a cease and desist order are issued. An original and two copies of the petition and all subsequent pleadings should be filed.

(c) The petition shall state fully and precisely all pertinent facts and considerations relied on to support a determination that issuance of an order to show cause would be in the public interest. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(d) Interested persons may submit comments or oppositions to the petition within thirty (30) days after it has been filed. For good cause shown in the petition, the Commission may, by letter or telegram to known interested persons, specify a shorter time for such submis-

[1] In the "First Report and Order in Docket 19995", FCC 75-413, 52 FCC 2d 519 (1975), at note 26, we stated, in part: * * * we note that there exists some confusion regarding the appropriate time periods for filing responsive pleadings to petitions for orders to show cause involving cable television systems. These time periods are specified in § 1.45 of the Commission's rules and the Chief, Cable Television Bureau, has delegated authority under § 0.288(a) to act on requests for extensions of time.

[2] That section reads as follows: Except as otherwise provided * * *, pleadings in Commission proceedings shall be filed in accordance with the provisions of this section.

(a) *Oppositions.* Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed.

(b) *Replies.* The person who filed the original pleading may reply to oppositions within 5 days after the time for filing oppositions has expired * * *.

[1] Chairman Wiley not participating.

sions. Comments or oppositions shall be served on petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or circumstances relied on.

(e) The petitioner may file a reply to the comments or oppositions within twenty (20) days after the time for filing such comments or oppositions has ended. A reply shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. For good cause shown, the Commission may specify a shorter time for the filing of reply comments.

(f) The Commission, after consideration of the pleadings shall determine whether the public interest requires issuance of an order to show cause.

NOTE 1.—After issuance of an order to show cause, the rules of procedure in Title 47, Part 1, Subpart A, §§ 1.91–1.95 shall apply.

NOTE 2.—Nothing in this section is intended to prevent the Commission from issuing orders to show cause on its own motion. Such orders will not be issued, however, until the affected parties are given an opportunity to respond to the Commission's charges.

[FR Doc.77-31049 Filed 10-25-77;8:45 am]

[6712-01]

[FCC 77-687]

PART 1—PRACTICE AND PROCEDURE

Provision for Filing Motion for Summary Decision After Hearing Has Begun

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: FCC permits the filing of motions for summary decision after commencement of a hearing, with the permission or upon the invitation of the presiding officer. Experience with the summary decision procedure indicates that this change will enable the presiding officer to curtail hearings on some or all of the issues, when the disposition of such issue(s) is clear and further proceedings thereon would be unnecessary and wasteful; and that vesting full control over such motions with the presiding officer provides an adequate safeguard against repeated motions for summary decision as the hearing progresses.

EFFECTIVE DATE: October 31, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Upton K. Guthery, Office of General Counsel, 202–632–6444.

Adopted: October 13, 1977.

Released: October 19, 1977.

Order. In the matter of amendment of § 1.251, Summary decision procedure.

1. After over 5 years experience with the summary decision procedure, we have concluded that provision should be made for filing a motion for summary decision after the hearing has begun. (Section 1.251 of the rules currently requires that such a motion be filed not later than 20 days prior to the commencement of the hearing.) This change is consistent with the recommendation of the Federal Communications Bar Association's Committee for Review of Commission Procedures made when summary decision procedures were first considered and with a concurring statement issued at that time by then Chairman Burch and then Commissioner Wiley. As a safeguard against repeated motions for summary decision as the hearing progresses, such motions may be filed only with the permission or upon the invitation of the presiding officer, and no appeal from an order granting or denying permission to file such a motion will be allowed. If testimony has been received, the parties will, of course, be afforded an opportunity to file proposed findings of fact and conclusions of law.

2. Authority for adoption of the amendment set out below is contained in sections (4)(i) and 303(f) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendment is procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable.

3. *Accordingly, it is ordered,* Effective October 31, 1977, That § 1.251 of the rules is amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,[1]
WILLIAM J. TRICARICO,
Acting Secretary.

In § 1.251 of Part 1 of Chapter I of Title 47 of the Code of Federal Regulations, paragraph (a) is redesignated paragraph (a)(1), paragraph (a)(2) is added, and the first sentence of paragraph (e) is revised, to read as follows:

§ 1.251 Summary decision.

(a)(1) * * *

(2) With the permission of the presiding officer, or upon his invitation, a motion for summary decision may be filed at any time before or after the commencement of the hearing. No appeal from an order granting or denying a request for permission to file a motion for summary decision shall be allowed. If the presiding officer authorizes a motion for summary decision after the commencement of the hearing, proposed findings of fact and conclusions of law on those issues which the moving party believes can be resolved shall be attached to the motion, and any other party may file findings of fact and conclusions of law as an attachment to pleadings filed by him pursuant to paragraph (b) of this section.

* * * * *

(e) If all of the issues (or a dispositive issue) are determined on a motion for summary decision no hearing (or further hearing) will be held. * * *

* * * * *

[FR Doc.77-31050 Filed 10-25-77;8:45 am]

[4310-09]

Title 43—Public Lands: Interior

CHAPTER I—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

PART 423—1976–77 DROUGHT LOANS, GRANTS, AND DEFERMENTS

Rules for Emergency Loans, Grants, and Deferments Under the Emergency Drought Act of 1977

AGENCY: Bureau of Reclamation, Interior.

ACTION: Clarification of Termination Date.

SUMMARY: This document clarifies the extension of the expiration date of these rules from September 30, 1977, to November 30, 1977. The regulations were originally published in the FEDERAL REGISTER on April 14, 1977, (42 FR 19610), as amended by 42 FR 41122, August 15, 1977, and by 42 FR 45927, September 13, 1977, to provide guidelines on the implementation of the Bureau of Reclamation Emergency Drought Act of 1977, (Pub. L. 95–18, April 7, 1977), as amended by Pub. L. 95–107, August 17, 1977.

DATES: The regulations will expire on November 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Eugene Hinds, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, 202–343–5104.

Dated: October 19, 1977.

DANIEL P. BEARD,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-31191 Filed 10-25-77;11:15 am]

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[1] Chairman Wiley not participating.

proposed rules

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

[6320–01]

CIVIL AERONAUTICS BOARD

[14 CFR Part 296]

[EDR–333A; Docket No. 30783; Dated: October 20, 1977]

USE OF AIR FREIGHT FORWARDERS BY COOPERATIVE SHIPPERS ASSOCIATIONS AND BY OTHER AIR FREIGHT FORWARDERS

Supplemental Notice of Proposed Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice extends the filing dates for initial comments and reply comments in this rulemaking to, respectively, November 7, 1977, and November 28, 1977. The extension of the due dates was requested by the Air Freight Forwards Association.

DATES: Comments: November 7, 1977. Reply comments: November 28, 1977.

ADDRESSES: Comments should be sent to: Docket 30783, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Comments may be examined at the Docket Section, Civil Aeronautics Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Stephen Babcock, Office of the General Counsel, Civil Aeronautics Board, 202–673–5442.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR–333, 42 FR 45691, September 12, 1977, the Board solicited comments on proposed amendments to Part 296 of the Board's regulations (14 CFR Part 296) which would permit cooperative shippers associations and air freight forwarders to use the services of air freight forwarders. By letter dated October 17, 1977, the Air Freight Forwarders Association (AFFA) has requested an extension in the dates for the filing of comments and reply comments. In support, AFFA states that its fall meeting is scheduled to be held on October 25, 1977, and that its members wish to discuss EDR–333 at that meeting to determine what their position in this proceeding should be.

Upon consideration of the foregoing, I find that good cause has been shown for granting the request. Moreover, it does not appear that this extension will prejudice any party to the proceeding.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)), the time for filing comments is extended to November 7, 1977, and the time for filing reply comments to November 28, 1977.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743 (49 U.S.C. 1324))

SIMON J. EILENBERG,
Associate General Counsel, Rules Division.

[FR Doc.77–31037 Filed 10–25–77;8:45 am]

[7710–12]

POSTAL SERVICE

[39 CFR Part 111]

ADDRESSES, FORWARDING MAIL, LOCKBOX SERVICE

Change of Address Orders, Dual Addresses, Zip Code

AGENCY: U.S. Postal Service.

ACTION: Proposed rule.

SUMMARY: The purposes of the proposed rule are (1) to provide a uniform time limit of one year for the honoring of permanent change of address orders, (2) to establish a consistent procedure for delivery of mail showing two addresses (such as a street address and a post office box) and (3) to encourage the usage of correct ZIP Codes. These proposed rule changes are intended to reduce mail processing expenses.

DATE: Comments must be received on or before November 25, 1977.

ADDRESS: Written comments should be directed to the Acting Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Eugene R. McGill, 202–245–4749.

SUPPLEMENTARY INFORMATION: At the present time all permanent change of address orders are honored for one year except change of address orders to a post office box at the same post office, which are honored indefinitely. This exception has resulted in increased processing expense and has caused a substantial amount of mail to be missent. Accordingly, the exception would be removed.

As to mail with two addresses, currently an addressee has the option of issuing instructions contrary to the usual rule for delivery of mail addressed to a street address as well as a post office box. Implementing these contrary instructions requires manual processing. With the increased usage of mechanized systems to distribute mail to post office boxes it has become necessary to eliminate this option.

The proposed regulations also add a warning that lack of a Zip Code or incorrect Zip Coding may result in delayed or incorrect delivery.

In order to provide ample time for mailers to make adjustments the proposed regulations are intended to become effective on December 31, 1978.

Under the provisions of 39 CFR 111.3 the Postal Service proposes to amend, to carry out the purposes described above, sections 122.16, 122.62, 158.221, 158.31, 169.121b and 169.122e of the Postal Service Manual, Chapter I of which has been incorporated by reference in the FEDERAL REGISTER, see 39 CFR 111.1.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions of the Postal Service Manual:

PART 122—ADDRESSES

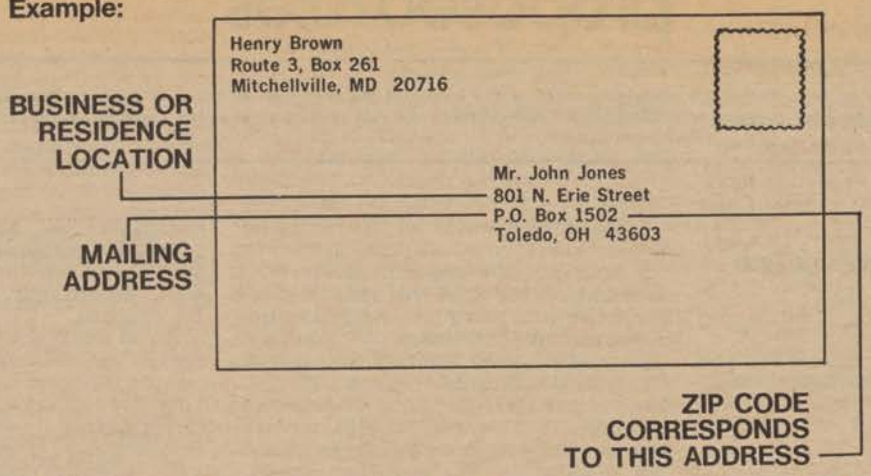
1. In 122.1 revise .16 to read as follows:

122.1 *General Information.*

* * * * *

.16 Mail should be specifically addressed to the place where the post office is to deliver it. Mail bearing both a street address and a post office box number will be distributed for delivery in accordance with the address shown on the line immediately preceding the city, State, and Zip Code. To avoid delayed or incorrect delivery, the Zip Code on the mail must be that of the box section or delivery unit through which delivery is to be effected. These provisions also apply to return addresses on mail matter.

Example:



Mail bearing the names of more than one post office in either the return address or recipient's address is not acceptable for mailing.

2. In 122.6 revise .62 to read as follows:

122.6 *Zip Code System.*

* * * * *

.62 *Purpose.* The purpose of the ZIP Code is to achieve greater accuracy and speed in the dispatch and delivery of mail. Lack of a ZIP Code on mail, or a ZIP Code which does not correspond with the delivery address, could result in delayed or incorrect delivery.

PART 158—COLLECTION AND DELIVERY: FORWARDING MAIL

3. In 158.22 revise .221 to read as follows:

158.22 *Time Limit Not Specified by Addressee.*

.221 Records of permanent change of address orders, other than those subject to 158.23, are held one year for forwarding purposes from the end of the month in which the change becomes effective. The order is not renewable.

4. In 158.3 revise .31 to read as follows:

158.3 *Postage for Forwarding.*

.31 *Change in Local Address.* If the address where the mail is forwarded is served by the same post office where the change of address order is filed, all first-, second-, and fourth-class mail, and third-class mail of obvious value, will be delivered as directed while the order is in effect. Additional postage is no required.

PART 169—POST OFFICE LOCKBOXES AND CALLER SERVICES

5. In 169.12 revise .121b and .122e to read as follows:

169.12 *Description of Service*

.121 *Lockbox Service.*

* * * * *

b. Lockboxes are located only in postal facilities. Customers receive their mail in these boxes and may open the boxes by means of a key or combination. A number is assigned to each box. Mail intended for delivery through a box must show the assigned post office box number in the address immediately above the city, State, and ZIP Code. Lack of a ZIP Code on mail, or a ZIP Code which does not correspond with the ZIP Code assigned to the box section could result in delayed or incorrect delivery. Mail without a box number will be delivered to the street address if shown in the address. If no street address is shown, the mail may be treated as undeliverable as addressed. Mail bearing both a street address and box number will be delivered in accordance with 122.16.

* * * * *

.122 *Caller Service.*

* * * * *

e. A post office box number is assigned to the caller for each separation utilized. Mail intended for delivery through caller service must show the assigned post office box number in the address immediately above the city, State, and ZIP Code, Lack of a ZIP Code on mail, or a ZIP Code which does not correspond with the ZIP Code assigned to the box section which provides the caller service, could result in delayed or incorrect delivery. Mail without a box number will be delivered to the street address, if shown in the address. If no street address is shown, the mail may be treated as undeliverable as addressed Mail bearing both a street address and box number will be delivered in accordance with 122.16.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(e).)

ROGER P. CRAIG,

[FR Doc.77-30980 Filed 10-25-77;8:45 am]

[3410–05]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 728]

1978 FEED GRAIN PROGRAM

Proposed Determinations Regarding Inclusion of Barley and Oats in Feed Grain Program, National Program Acreages, Program Allocation Factors, Set-Aside, Diversion Payments, and Limitation on Planted Acreage

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1978 crops of corn, sorghum, barley and oats:

(a) *Whether barley and oats should be included in feed grain program:* Corn and grain sorghum are required to be in the feed grain program; however, the Secretary has discretionary authority concerning the inclusion of barley and oats.

b. *National Program Acreage:* Current estimates of utilization, imports, and national weighted average farm program payment yield are:

Commodity	Million bushels			Payment yield
	Domestic use	Exports	Imports	
Corn	4,500	1,575	1	86.7
Grain sorghum	490	240	0	52.4
Barley	355	45	10	42.7
Oats	660	10	0	50.1

National program acreages shall be the estimated domestic and export demand less imports, divided by payment yield.

The Secretary may adjust the national program acreages by an amount he determines is needed to accomplish a desired level of carryover stocks. The above estimates are subject to revision as more information becomes available on expected utilization, and establishment of farm program payment yields.

c. *Program Allocation Factor:* This decision cannot be made until after the 1978-crop plantings have been determined.

d. *Whether there should be a set-aside requirement and if so, the extent of such requirement:* The Departmnet is considering several options ranging from no set-aside to various levels of set-aside. USDA press release 2444–77 issued August 29, discussed estimated program results under a 10 percent set-aside for feed grains. Terms and conditions affecting set-aside acreage are contained in a proposed rulemaking published in the FEDERAL REGISTER dated October 14 (42 FR 55243).

e. *Whether there should be provisions for land diversion payments and if so, the extent of such diversion and payment therefor:* The Secretary may make land diversion payments, whether or not a set-aside is in effect, if he determines they are needed to assist in adjusting the total national acreage of feed grains to desirable goals.

f. *Whether there should be a limitation on planted acreage and if so, the extent of such limitation:* The Secretary may limit the acreage planted to feed grains.

The above determinations are required to be made by the Secretary in accordance with provisions of the Agricultural Act of 1949, as amended.

DATES: This notice invites written comments on the proposed determinations. Comments must be received on or before November 10, 1977.

ADDRESSES: Acting Director, Production Adjustment Division, ASCS, USDA, Room 3630 South Building, P.O. Box 2415, Washington, D.C., 20013. Comments will be made available for public inspection at the Office of the Acting Director during regular business hours (8:15 a.m. to 4:45 p.m.).

FOR FURTHER INFORMATION CONTACT:

Bruce R. Webber, (ASCS) 202–447–4351.

DESCRIPTION OF SUBJECTS AND ISSUES INVOLVED: The following determinations with respect to the 1978 crops of corn, sorghum, barley and oats are to be made pursuant to the Agricultural Act of 1949, as amended by the Food and Agricultural Act of 1977 (Pub. L. 95–113).

a. *Whether barley and oats should be included in the feed grain program.* Section 105A (b) (1) (A) provides in addition, the Secretary shall make available to producers payments for each of the 1977 through 1981 crops of corn, grain sorghums and if designated by the Secretary, oats and barley.

b. *National Program Acreage.* Section 105A (d) (1) requires the Secretary to proclaim a national program acreage for each of the 1978 through 1981 crops of feed grains. The proclamation shall be made not later than November 15 of each calendar year. The Secretary may revise the national program acreage if he determines it necessary based on the latest information. Such revision shall be proclaimed as soon as it is made. The national program acreage for feed grains shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop. If the Secretary determines that carryover stocks of feed grains are excessive, or an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the national program acreage by the amount he determines will accomplish the desired increase or decrease in carryover stocks.

c. *Program Allocation Factor.* Section 105A(d) (2) requires the Secretary to determine a program allocation factor for each crop of feed grains. The allocation factor shall be determined by dividing the national program acreage for the crop by the number of acres which the Secretary estimates will be harvested for such crop. In no event shall the allocation for any crop of feed grains be more than 100 percentum nor less than 80 percentum.

d. *Whether there should be a set-aside requirement and if so, the extent of such requirement.* Section 105A(f) (1) provides the Secretary shall provide for a set-aside of cropland if he determines that the total supply of feed grains will, in the absence of such a set-aside, likely be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. Any such set-aside shall be announced by the Secretary not later than November 15 of each calendar year for the crop harvested in the next calendar year. If a set-aside of cropland is in effect, than as a condition of eligibility for loans, purchases and payments on corn, sorghum, and, if designated by the Secretary, barley and oats, respectively, the producers on a farm must set aside and devote to conservation uses an acreage of cropland equal to a specified percentage, as determined by the Secretary, of the feed grain acreage planted for harvest for the crop year for which the set-aside is in effect.

e. *Whether there should be provisions for land diversion payments and if so, the extent of such diversion for payment and the payment therefor.* Section 105A (f) (2) provides that the Secretary may make land diversion payments to producers of feed grains, whether or not a set-aside for feed grains is in effect, if he determines that such land diversion payments are necessary to assist in adjusting the total national acreage of feed grains to desirable goals. Such land diversion payments shall be made to producers on a farm who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contract entered into by the Secretary with such producers. The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in

any county or local community so as not to affect adversely the economy of the county or local community.

f. *Whether there should be a limitation on planted acreage and if so, the extent of such limitation.* Section 105A(f)(1) also provides that the Secretary may limit the acreage planted to feed grains. Such limitation shall be applied on a uniform basis to all feed grain producing farms.

Prior to determining the 1978 feed grain program provisions, consideration will be given to any data, views, and recommendations relative to the national average farm program payment yield, estimated domestic utilization of feed grains, estimated exports, estimated carryover, estimated harvested acreage, and other data pertinent to the above determinations. The Environmental Impact Statement has been filed and is available for public review and comment. The Economic Impact Statement is being prepared and will be available for public review and comment shortly.

Signed at Washington, D.C. on October 21, 1977.

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.77-31175 Filed 10-25-77;9:55 am]

[3410-02]

Agricultural Marketing Service

[7 CFR Part 927]

HANDLING OF BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

Proposed Expenses, Rate of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on proposed expenses and a rate of assessment for the 1977-78 fiscal period, to be collected from handlers to support activities of the Control Committee which locally administers the Federal marketing order covering Oregon, Washington, and California Winter Pears.

DATES: Comments must be received on or before November 7, 1977. Proposed effective dates: July 1, 1977, through June 30, 1978.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-3545.

SUPPLEMENTARY INFORMATION: The proposals under consideration were submitted by the committee, established under Marketing Order No. 927, as amended (7 CFR Part 927), regulating the handling of Winter Pears grown in Oregon, Washington, and California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer its terms and provisions. The proposals are:

(a) Expenses that are reasonable and likely to be incurred by the Control Committee during the period July 1, 1977, through June 30, 1978, will amount to $106,810.

(b) The rate of assessment for said period payable by each handler in accordance with § 927.41 is fixed at $0.005 per standard pear box of winter pears.

Dated: October 19, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.77-30985 Filed 10-25-77;8:45 am]

[3410-02]

[7 CFR Part 989]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Proposed Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on proposed expenses and a rate of assessment for the 1977-78 crop year, to be collected from handlers to support activities of the Raisin Administrative Committee which locally administers the Federal marketing order covering California raisins.

DATES: Comments must be received on or before November 18, 1977.

Proposed effective dates: August 1, 1977, through July 31, 1978.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-3545.

SUPPLEMENTARY INFORMATION: The proposals under consideration were submitted by the Committee, established under the marketing agreement, and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer this program's terms and provisions.

The proposals are:

989.328 Expenses of the Raisin Administrative Committee and rate of assessment for the 1977-78 crop year.

(a) Expenses (other than those specified in § 989.82) that are reasonable and likely to be incurred by the Raisin Administrative Committee during the period beginning August 1, 1977, through July 31, 1978, will amount to $192,739.

(b) The rate of assessment for said period payable by each handler in accordance with § 989.80 is fixed at $1.10 per ton for: (1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins under paragraph (b)(3) of this section; (2) reserve tonnage raisins released or sold to the handler for use as free tonnage, during that crop year; and (3) standard raisins (which he does not acquire) recovered by the handler by the reconditioning of offgrade raisins but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

Dated: October 20, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.77-30984 Filed 10-25-77;8:45 am]

notices

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

[3410–07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation No. A507]

WYOMING

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Wyoming Counties as a result of a severe hailstorm on August 5, 1977, in Lincoln County; a severe hail, rain, and windstorm on August 8, 1977, in Niobrara County; hailstorms on July 5, 11, and 26, 1977, in Park County; and a hailstorm and high winds on August 6, 1977, in Sheridan County.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR Part 1904, Subupart C, Exhibit D, Paragraph VB, including the recommendation of Governor Ed Herschler that such designation be made.

Applications for emergency loans must be received by this Department no later than March 31, 1978, for physical losses and Octber 3, 1978, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 14th day of October 1977.

GORDON CAVANAUGH,
Administrator, Farmers Home Administration.

[FR Doc.77–30990 Filed 10–25–77;8:45 am]

[3410–16]

Soil Conservation Service

ISAAC HALE BEACH PARK PUBLIC WATER-BASED RECREATION RC&D MEASURE, HAWAII

Notice of Intent To Not Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650, revised); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Isaac Hale Beach Park Measure, Hawaii County, Hawaii.

The environmental assessment of this Federal action indicates that the measure will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the measure. As a result of these findings, Mr. Jack P. Kanalz, State Conservationist, Soil Conservation Service, has determined that the preparation and review of an environmental impact statement is not needed for this measure.

The measure concerns a plan for public water-based recreation. The planned works of improvement include replacing and upgrading a group shelter, potable water supply system, and comfort station; construction 10 picnic sites; grading the parking area; and landscaping the park.

The notice of intent to not prepare an environmental impact statement has been forwarded to the Council on Environmental Quality. The basic data developed during the environmental assessment and the environmental impact appraisal are on file and may be reviewed by interested parties at the Soil Conservation Service, Room 4316, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, P.O. Box 50004, Honolulu, Hawaii 96850. A limited number of copies of the environmental impact appraisal are available from the same address to fill single copy requests.

No administrative action on implementation of the proposal will be taken before November 25, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87–703, 16 U.S.C. 590a-f, g.)

Dated: October 17, 1977.

DAVID P. OVERHOLT,
Director, Conservation Operations Division

[FR Doc.77–31000 Filed 10–25–77;8:45 am]

[1505–01]

DEPARTMENT OF COMMERCE

Office of the Secretary

NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

Final Finding of Need to Accredit Testing Laboratories That Test Thermal Insulation Materials

Correction

In FR Doc. 77–29776 appearing at page 55020 in the issue for Wednesday, October 12, 1977:

1. In the last line of the third paragraph, first column, page 55021, "is issue" should read "in issue."

2. In the thirteenth line of the fourth paragraph, first column, page 55021, "five properties" should read "fire properties.:

[3510–13]

Office of the Secretary

THE METRIC SYSTEM OF MEASUREMENT

Interpretation and Modification of the International System of Units for the United States

Section 3 of Pub. L. 94–168, the Metric Conversion Act of 1975, declares that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States. Section 403 of Pub. L. 93–380, the Education Amendments of 1974, states the policy of the United States to encourage educational agencies and institutions to prepare students to use the metric system of measurement as part of the regular education program. Under both these acts, the "metric system of measurement" is defined as the International System of Units as established by the General Conference on Weights and Measures in 1960 and interpreted or modified for the United States by the Secretary of Commerce (subsec. 4(4), Pub. L. 94–168; subsec. 403(a)(3), Pub. L. 93–380). The Secretary has delegated her authority under these subsections to the Assistant Secretary for Science and Technology. In implementation of this authority, tables and associated materials were published in the FEDERAL REGISTER of December 10, 1976 (41 FR 54018), setting forth the interpretation and modification of the International System of Units (hereinafter "SI") for the United States.

In accordance with recent decisions of the International Committee for Weights and Measures of the General Conference on Weights and Measures, and to refine the earlier interpretation and modification, it is deemed appropriate to amend that interpretation and modification, as published in the above-cited FEDERAL REGISTER notice of December 10, 1976. To assist interested parties and encourage the proper use of SI, the entire interpretation and modification, as hereby amended, is republished. Accordingly, this notice supersedes the notice of December 10, 1976.

The amendments include the addition in Table 2 of the degree Celsius as an SI derived unit with a special name, and, also in Table 2, more precise descriptions of the quantities for the becquerel and

the gray. There are two additions to Table 4 of SI derived units expressed by means of special names. The amendments are indicated by a dagger symbol (†).

The SI is constructed from seven base units for independent quantities plus two supplementary units for plane angle and solid angle, listed in Table 1.

TABLE 1.—*SI base and supplementary units*

Quantity	Name	Symbol
SI base units:		
length	meter	m
mass [1]	kilogram	kg
time	second	s
electric current	ampere	A
thermodynamic temperature	kelvin	K
amount of substance	mole	mol
luminous intensity	candela	cd
SI supplementary units:		
plane angle	radian	rad
solid angle	steradian	sr

[1] "Weight" is the commonly used term for "mass."

Units for all other quantities are derived from these nine units. In Table 2 are listed 18 SI derived units with special names which were derived from the base and supplementary units in a coherent manner, which means, in brief, that they are expressed as products and ratios of the nine base and supplementary units without numerical factors.

TABLE 2.—*SI derived units with special names*

Quantity	SI unit		
	Name	Symbol	Expression in terms of other units
frequency	hertz	Hz	s^{-1}
force	newton	N	$kg \cdot m/s^2$
pressure, stress	pascal	Pa	N/m^2
energy, work, quantity of heat	joule	J	$N \cdot m$
power, radiant flux	watt	W	J/s
quantity of electricity, electric charge	coulomb	C	$A \cdot s$
electric potential, potential difference, electromotive force	volt	V	W/A
capacitance	farad	F	C/V
electric resistance	ohm	Ω	V/A
conductance	siemens	S	A/V
magnetic flux	weber	Wb	$V \cdot s$
magnetic flux density	tesla	T	Wb/m^2
inductance	henry	H	Wb/A
luminous flux	lumen	lm	$cd \cdot sr$
illuminance	lux	lx	lm/m^2
†Celsius temperature [1]	degree Celsius	°C	K
†activity (of a radionuclide)	becquerel	Bq	s^{-1}
†absorbed dose, specific energy imparted, kerma, absorbed dose index	gray	Gy	J/kg

[1] In addition to the thermodynamic temperature (symbol T), expressed in kelvins (see table 1), use is also made of Celsius temperature (symbol t) defined by the equation

$$t = T - T_0$$

where $T_0 = 273.15$ K by definition. The unit "degree Celsius" is equal to the unit "kelvin," but "degree Celsius" is a special name in place of "kelvin" for expressing Celsius temperature. A temperature interval or a Celsius temperature difference can be expressed in degrees Celsius as well as in kelvins.

All other SI derived units, such as those in tables 3 and 4, are similarly derived in a coherent manner from the 27 base, supplementary, and special-name SI units.

TABLE 3.—*Examples of SI derived units expressed in terms of base units*

Quantity	SI unit	Unit symbol
area	square meter	m^2
volume	cubic meter	m^3
speed, velocity	meter per second	m/s
acceleration	meter per second squared	m/s^2
wave number	1 per meter	m^{-1}
density, mass density	kilogram per cubic meter	kg/m^3
current density	ampere per square meter	A/m^2
magnetic field strength	ampere per meter	A/m
concentration (of amount of substance)	mole per cubic meter	mol/m^3
specific volume	cubic meter per kilogram	m^3/kg
luminance	candela per square meter	cd/m^2

TABLE 4.—*Examples of SI derived units expressed by means of special names*

Quantity	Name	Unit symbol
dynamic viscosity	pascal second	$Pa \cdot s$
moment of force	newton meter	$N \cdot m$
surface tension	newton per meter	N/m
power density, heat flux density, irradiance	watt per square meter	W/m^2
heat capacity, entropy	joule per kelvin	J/K
specific heat capacity, specific entropy	joule per kilogram kelvin	$J/(kg \cdot K)$
specific energy	joule per kilogram	J/kg
thermal conductivity	watt per meter kelvin	$W/(m \cdot K)$
energy density	joule per cubic meter	J/m^3
electric field strength	volt per meter	V/m
electric charge density	coulomb per cubic meter	C/m^3
electric flux density	coulomb per square meter	C/m^2
permittivity	farad per meter	F/m
permeability	henry per meter	H/m
molar energy	joule per mole	J/mol
molar entropy, molar heat capacity	joule per mole kelvin	$J/(mol \cdot K)$
†exposure (x and γ rays)	coulomb per kilogram	C/kg
†absorbed dose rate	gray per second	Gy/s

For use with the SI units there is a set of 16 prefixes (see table 5) to form multiples and submultiples of these units. It is important to note that the kilogram is the only SI unit with a prefix. Because double prefixes are not to be used, the prefixes of table 5, in the case of mass, are to be used with gram (symbol g) and not with kilogram (symbol kg).

TABLE 5.—*SI prefixes*

Factor	Prefix	Symbol
10^{18}	exa	E
10^{15}	peta	P
10^{12}	tera	T
10^{9}	giga	G
10^{6}	mega	M
10^{3}	kilo	k
10^{2}	hecto	h
10^{1}	deka	da
10^{-1}	deci	d
10^{-2}	centi	c
10^{-3}	milli	m
10^{-6}	micro	μ
10^{-9}	nano	n
10^{-12}	pico	p
10^{-15}	femto	f
10^{-18}	atto	a

Certain units which are not part of the SI are used so widely that it is impractical to abandon them. The units that are accepted for continued use in the United States with the International System are listed in table 6.

TABLE 6.—*Units in use with the international system*

Name	Symbol	Value in SI unit
minute (time)	min	1 min = 60 s
hour	h	1 h = 60 min = 3 600 s
day	d	1 d = 24 h = 86 400 s
degree (angle)	°	$1° = (\pi/180)$ rad
minute (angle)	′	$1′ = (1/60)° = (\pi/10\,800)$ rad
second (angle)	″	$1″ = (1/60)′ = (\pi/648\,000)$ rad
liter	L*	1 L = 1 $dm^3 = 10^{-3}$ m^3
metric ton	t	1 t = 10^3 kg
hectare (land area)	ha	1 ha = 10^4 m^2

*The international symbol for liter is the lowercase "l", which can easily be confused with the numeral "1". Accordingly, the symbol "L" is recommended for United States use.

In those cases where their usage is already well established, the use, for a limited time, of the units in table 7 is accepted, subject to future review.

TABLE 7.—*Units to be used for a limited time*

nautical mile	angstrom	gal [1]
knot	barn	curie
standard atmosphere	bar	roentgen
		rad [2]

[1] Unit of acceleration.
[2] Unit of absorbed dose.

Metric units, symbols, and terms that are not in accordance with the foregoing Interpretation and Modification are no longer accepted for continued use in the United States with the International System of Units. Accordingly, the following units and terms listed in the table of metric units in section 2 of the act of July 28, 1866, that legalized the metric system of weights and measures in the United States, are no longer accepted for use in the United States:

myriameter
stere
millier or tonneau
quintal
myriagram
kilo (for kilogram)

For more information regarding the International System of Units, contact the Office of Technical Publications, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C. 20234.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 77-31094 Filed 10-25-77;8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

TECHNICAL ADVISORY COMMITTEE ON POISON PREVENTION PACKAGING

Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting: Technical Advisory Committee on Poison Prevention Packaging.

SUMMARY: This notice announces a meeting of the Technical Advisory Committee on Monday, November 14, and Tuesday, November 15, 1977, beginning at 9 a.m. on both days and adjourning at 4 p.m. on Tuesday, November 15. The meeting will be held in the third floor conference room, 1111 18th St. NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Dee Wilson, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th St. NW., Washington, D.C. 20207, 202–634–7700.

SUPPLEMENTARY INFORMATION: The Technical Advisory Committee provides advice and recommendations on the types and kinds of products which require special packaging that will protect children from injury or illness resulting from handling or ingestion of household substances. Monday morning's session will be devoted to an orientation for new committee members. The afternoon session, for the full committee, will cover a review of the PPPA; its implementation and effectiveness; and a discussion of EPA plans for the child resistant packaging of pesticides. On Tuesday, there will be a discussion of antihistamines for future regulatory action, a report of protocol testing using contrasting colors, a discussion of proposed changes to the protocol test, and a review of the CPSC policy on exemption criteria.

The meeting is open to the public; however, space is limited. Persons who wish to make oral or written presentations to the Technical Advisory Committee should notify the Office of the Secretary (see address above) by November 9, 1977. The notification should list the name of the individual, who will make the presentation, the person, company, group, or industry on whose behalf the presentation will be made, the subject matter, and the approximate time requested. Time permitting, these presentations and other statements from the audience to the Committee may be allowed by the presiding officer.

Dated: October 19, 1977.

RICHARD E. RAPPS,
Secretary.

[FR Doc.77–30992 Filed 10–25–77;8:45 am]

[3810–71]

DEPARTMENT OF DEFENSE

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on November 16–17, 1977, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 9:00 a.m. and terminate at 5:00 p.m. on both days. All sessions will be closed to the public.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order, including discussions of naval command, control and communications; the Navy's force structure; advanced naval technology and selected items of intelligence including recent Soviet naval operations. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Commander William A. Armbruster, USN, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, Va. 22209. Phone OX 4–3191.

Dated: October 18, 1977.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc.77–31001 Filed 10–25–77;8:45 am]

[3810–70]

Office of the Secretary

DDR&E HIGH ENERGY LASER REVIEW GROUP (HELRG)

Closed Meeting

Pursuant to the provisions of Section 10 of Appendix I, Title 5, United States Code, notice is hereby given that a closed meeting of the DDR&E High Energy Laser Review Group will beheld at 0830 on Thursday and Friday, 10 and 11 November 1977, in Los Angeles, Calif. The purpose is to review matters pertaining to the Department of Defense high energy laser program.

The entire meeting will be devoted to a discussion of classified information as defined in subparagraph (1) of Section 552b(c) of Title 5 of the United States Code, and therefore will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence & Directives, Washington Headquarters Services.

OCTOBER 19, 1977.

[FR Doc.77–30991 Filed 10–25–77;8:45 am]

[3128–01]

DEPARTMENT OF ENERGY

NOTICE OF ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS OF THE FEDERAL ENERGY ADMINISTRATION

Week of August 15 Through August 19, 1977

Notice is hereby given that during the week of August 15 through August 19, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal. On October 1, 1977, the Office of Administrative Review of the Department of Energy's Economic Regulatory Administration assumed the responsibilities which had previously been exercised by the FEA Office of Exceptions and Appeals.

APPEAL

Dixie Gas, Inc.; Marks, Miss.; FXA–1347; Propane

Dixie Gas, Inc. (Dixie) filed an Appeal from a Decision and Order which the FEA issued to it on March 30, 1977. *Dixie Gas, Inc.*, 5 FEA Par. 83,115 (March 30, 1977). The March 30 determination denied a request for exception which would have permitted Dixie to retain revenues which it might have realized as a result of selling propane at unlawful price levels during the period September 1973 through March 1974. In considering the Dixie Appeal, the FEA affirmed the conclusion of the March 30 Order that retroactive exception relief was not warranted. The FEA also determined that it was proper to consider Dixie's substantial non-operating income in determining whether the firm would experience an irreparable injury in the absence of retroactive exception relief. The FEA concluded that Dixie failed to demonstrate that it would experience an irreparable injury in the absence of retroactive exception relief. The FEA also held that the approval of retroactive exception relief was not warranted solely on the basis that Dixie is a small and independent marketer of propane. On the basis of these considerations, the Dixie Appeal was denied.

REQUESTS FOR EXCEPTION

Hagee-Lewis Petroleum Corp., Long Beach, Calif.; FEE–4024; Crude Oil

The Hagee-Lewis Petroleum Corp., (Hagee) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted Hagee to sell the crude oil produced from the El Segundo No. 2 Well in Los Angeles County, Calif., at upper tier ceiling prices. In considering the Hagee request, the FEA determined that the El Segundo No. 2 Well had operated at a profit for the past four fiscal years and had continued to do so for the first five months of calendar year 1977. In addition, the FEA noted that Hagee's own projections indicated that the Well would operate on a profitable basis for the remainder of the current calendar year. Since Hagee did not demonstrate that it lacks an economic incentive to continue crude oil production from the El Segundo No. 2 Well, the FEA concluded that the firm had failed to establish that the application of the lower tier ceiling price rule adversely affected it in any significant manner or caused it to experience a gross inequity. Accordingly, Hagee's exception request was denied.

Union Oil Co. of California; Los Angeles, Calif.; FEE–4107; Crude Oil

Union Oil Co. of California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the point Conception Field (the Field) at upper tier ceiling prices. In considering the exception application, the FEA determined that the

costs of producing crude oil from the Field have increased significantly since May 1973 and as a result, Union's production costs now exceed the price which the firm is permitted to charge for the crude oil from the Field. Consequently, the FEA concluded that Union does not have an economic incentive to continue to operate the Field. The FEA also found that if Union were to abandon the operation at the Point Conception Field, a substantial quantity of crude oil would not be recovered. On the basis of previous precedents involving similar factual situations, the FEA concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to Union. Accordingly, Union was granted exception relief which permits it to sell at upper tier ceiling prices 67.84 percent of the crude oil produced and sold for the benefit of the working interest owner from the Point Conception Field.

REQUESTS FOR STAY

Leonard E. Belcher, Inc.; Springfield, Mass.; FRS–1414; No. 2 Fuel Oil

Leonard E. Belcher, Inc. (Belcher) filed an Application for Stay of a Remedial Order which FEA Region I issued to the firm on July 18, 1977. In the Remedial Order the FEA found that Belcher had sold No. 2 fuel oil at prices in excess of those permitted under FEA Regulations. The request for stay, if granted, would relieve Belcher of its obligation to comply with the refund provisions of the Remedial Order pending a final determination on an administrative Appeal and on a petition for judicial review of that Order which the firm intends to file. The FEA found that Belcher had raised substantial issues concerning the propriety of the July 18 Remedial Order. The FEA also found that if the firm were required to make refunds prior to a determination on its Appeal, it could experience great difficulty in recovering those funds from its customers should the firm ultimately succeed on the merits of its Appeal. Therefore, the FEA concluded that a stay was warranted on the basis of the precedent established in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976). In previous decisions in which the refund provisions of a Remedial Order have been stayed, the FEA has made the stay contingent upon the establishment of an escrow account for the disputed funds. However, the FEA concluded that Belcher met the criteria discussed in *Tenneco Oil Co.*, 5 FEA Par. 87,028 (March 23, 1977), and should be permitted to acquire a letter of credit in the amount of the required refunds in lieu of establishing an escrow account.

Little America Refining Co.; Washington, D.C.; FES–1411; Crude Oil

Little America Refining Co. (LARCO) requested a stay of a Decision and Order issued to the firm on June 28, 1977. In the June 28 Order, the FEA directed the firm to purchase additional entitlements with a total value of $879,584 during the period July 1977 through June 1978 in order to offset the excessive benefits which the FEA found the firm had obtained from exception relief provided to it during the period April through June 1976. In its Application for Stay, LARCO asserted that unless it was relieved of its obligation to purchase entitlements as required by the June 28 Order, it would incur a serious financial hardship. LARCO further contended that there was a substantial likelihood of success on the merits of its Appeal and that stay relief was therefore warranted. The FEA found, however, that the firm had failed to demonstrate that the expense of purchasing the entitlements required by the June 28 Order, pending a determination on its Appeal, would significantly affect its overall financial posture or seriously impair any aspect of the firm's operations. The FEA also noted that if the firm prevails of its Appeal, the agency could order that an adjustment be made in LARCO's entitlement obligations at a future date to compensate the firm for the entitlements which it is currently required to purchase. Finally, the FEA found that the record in the proceeding did not make such a substantial prima facie showing of probable success on the merits as to justify the approval of a stay. The Application for Stay was accordingly denied.

Prater Co.; Farmington, N. Mex.; FRS–1413; Refined Petroleum Products

The Prater Co. filed an Application for Stay of a Remedial Order which FEA Region VI issued to it on July 25, 1977. The Remedial Order determined that during the period November 1, 1973, through August 31, 1975, Prater sold motor gasoline and diesel fuel to its customers at unlawful price levels. On the basis of this determination, the Remedial Order directed Prater to make refunds of the past overcharges plus interest to its customers. Prater's stay request, if approved, would relieve the firm of the obligation to make those refunds pending a final determination on its Appeal from the Remedial Order. In considering the request for stay, the FEA determined that Prater had made a strong showing that it could incur an irreparable injury if it were required to implement immediately the refund requirements of the July 25 Remedial Order since Prater could experience substantial difficulty in recovering any refunds made in the event that it ultimately prevailed on its Appeal. The FEA also found that the firm's continuing business operations could be seriously jeopardized if it were required to immediately implement the refunds specified in the Remedial Order. The Application for Stay was therefore approved.

SUMMARY DECISION

The FEA Office of Exceptions and Appeals has issued a Supplemental Order modifying the effective date of the exception relief which had been granted to the following firm after a finding had been made that the effective date had been stated incorrectly in the original Decision and Order.

Great Southern Oil & Gas Co., Inc.; Lafayette, La.; FEX–0182

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

National Oil Recovery Corp.; Caldwell, N.J.; FSG–0050

New York Petroleum Corp.; Washington, D.C.; FRS–1431

The following submission was dismissed following a determination made by the FEA that the relief requested was no longer necessary:

Eagle Gas Co., Inc.; Coushatta, La.; FRS–1310

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B–120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays. They are also available in "Energy Management: Federal Energy Guidelines," a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Acting Director, Office of Administrative Review.

OCTOBER 19, 1977.

[FR Doc.77–31007 Filed 10–25–77;8:45 am]

[3128–01]

NOTICE OF ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS OF THE FEDERAL ENERGY ADMINISTRATION

Week of August 22 Through August 26, 1977

Notice is hereby given that during the week of August 22 through August 26, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal. On October 1, 1977, the Office of Administrative Review of the Department of Energy's Economic Regulatory Administration assumed the responsibilities which had previously been exercised by the FEA Office of Exceptions and Appeals.

APPEALS

Richard Levy; Alexandria, Va.; FFA–1408; Freedom of information

Richard Levy appealed from a determination issued by the FEA Information Access Officer which denied in part a Request for Information which he had filed under the Freedom of Information Act, 5 U.S.C. 552 (the Act). In that determination the Information Access Officer withheld from disclosure 13 documents or categories of documents. In his Appeal, Levy sought only one of the documents which was withheld by the Information Access Officer. That document is a one-page memorandum which expresses the author's legal opinion regarding the retroactivity of an amendment to section 212.93(b)(1)(i) of the FEA Price Regulations which the FEA promulgated on February 28, 1974 and includes a one-page appendix. In his determination, the Information Access Officer withheld that document on the grounds that it was exempt from mandatory public disclosure pursuant to section 552(b)(5) of the Act. In considering Levy's Appeal, the FEA determined that release of the requested document would not be contrary to the public interest. Accordingly, pursuant to the provisions of 10 CFR 202.1 of the FEA Regulations, the FEA concluded that the document should be released to Levy.

Earl W. Sauder; Emporia, Kans.; FXA–1175; Crude oil

Earl W. Sauder filed an Appeal from a Decision and Order which the FEA issued to him on December 16, 1976. *Earl W. Sauder*, 4 FEA Par. 83,257 (December 16, 1976). The Appeal, if granted, would have resulted in the approval of retroactive exception relief permitting Sauder to classify certain crude oil producing properties which he operated from November 1973 through December 1975 as stripper well properties under the FEA Price Regulations. In addition, Sauder would have been relieved of the requirement that he refund previous overcharges made in sales of crude oil from those properties, as specified in an amended Remedial Order which the FEA issued to him on April 22, 1977. In considering the Appeal, the FEA found that Sauder had not demonstrated that the application of FEA regulations to the three properties involved resulted in a gross inequity. The FEA also found that the application of FEA regulations during the period when the overcharges occurred would not cause Sauder to experience a serious hardship. Consequently, the FEA concluded that Sauder had not made the threshold showing necessary to establish a basis upon which retroactive exception relief may be granted, and the portion of his Appeal which related to the previous denial of retroactive exception relief was denied. However, the FEA determined that if Sauder is immediately required to refund the full amount of the overcharges specified in the April 22, 1977, Remedial Order, it is likely that he will be required to sell his other crude oil interests and abandon his crude oil production activities. Under these circumstances, the FEA granted Sauder an additional 24-month period in which to complete the refunds.

Union Oil Company of California; Los Angeles, Calif.; FXA–1102; Crude oil

Union Oil Co. of California (Union), appealed from a Decision and Order which was issued to it by the FEA on December 7, 1976. *Union Oil Co. of California*, 4 FEA Par. 83,230 (December 7, 1976). In the prior proceeding, Union requested an exception from the provisions of 10 CFR 211.67(d)(2) to permit the firm to earn entitlements benefits on its total volume of crude oil runs to stills without making an adjustment for the high sulfur residual fuel oil which Union exported to Petroleos Mexicanos (PEMEX) in Baja California, Mexico. In the December 7, 1976 Decision, the FEA granted exception relief which permitted Union to earn entitlements for 52 percent of the heavy, high sulfur crude oil which Union purchased at maximum lower tier prices from independent producers of crude oil located in Santa Maria Valley, Calif., notwithstanding its export of high sulfur residual fuel oil to PEMEX. In its Appeal, Union requested that the scope of the exception relief previously granted be expanded to include all heavy, high sulfur crude oil which the firm purchases at lower tier prices from California producers. Union also requested that the FEA eliminate the requirement of the December 7 Order that Union pay maximum lower tier ceiling prices for all crude oils included in the calculation of the exception relief. In considering the Union Appeal, the FEA determined that the type of relief which Union requested in its Appeal would be impossible to administer since Union had conceded in its submission that it would be unable to identify the incremental volumes of California crude oil which it would purchase at lower tier prices from independent producers in order to produce fuel oil for sale to PEMEX. Furthermore, the data which Union submitted in its Appeal indicated that even if the full measure of the exception relief which Union sought were granted, the firm would still have no economic incentive to reduce or eliminate its imports of light, low sulfur crude oil in favor of additional purchases of heavy, high sulfur crude oil from independent California producers. While the relief approved in the December 7 Decision was intended to remove the economic disincentive for Union to continue purchasing Santa Maria Valley crude oil from independents, the FEA found that Union declined to avail itself of the relief granted, and instead reduced its purchase of heavy California crude oil from major oil companies. As a result the approval of exception relief had failed to have any apparent effect on the independent producers for whom it was specifically granted. Finally, the FEA found that the problem which Union originally identified with respect to its purchases of Santa Maria Valley crude oil, *viz.*, the lesser inherent value of heavy, high sulfur California crude oil as compared to the light, sweet crude oil which Union imports, is a generic problem attributable to the physical properties and chemical composition of the different types of crude oil rather than the operation of the provisions of 10 CFR 211.67(d)(2). The FEA therefore concluded that this problem could be best addressed through a rulemaking proceeding which has already been initiated by the agency. *See* 42 Fed. Reg. 15419 (March 22, 1977). Based on these considerations the FEA concluded that no showing had been made that the December 7, 1976 Decision was erroneous or arbitrary and capricious. Union's Appeal was therefore denied.

REQUESTS FOR EXCEPTION

Commonwealth Oil Refining Co., Inc.; Penuelas, P.R.; FPI–0122; Crude oil; naphtha

The Commonwealth Oil Refining Co., Inc. (Corco), filed an Application for Exception from the provisions of 10 CFR, Part 213, which, if granted, would relieve the firm of the requirement that it pay license fees during the current allocation period on the quantities of crude oil and naphtha which it will import in excess of its fee-free allocation. In considering the Corco application, the FEA observed that a firm is permitted to offset tariff duties paid to the United States Customs Service on imports of petroleum products against any license fees owed on those imports. The FEA also noted that license fees may be further reduced by the amount of duties which an importer of petroleum products has paid during the previous six months which have not been offset against earlier license fees. In the present case the FEA found that after this "six month duty bank" was taken into consideration, Corco would not be required to pay any license fees on imports of crude oil during the current allocation period. The Corco exception request with respect to license fees on imports of crude oil was therefore denied. The FEA concluded, however, that Corco would not accumulate a sufficiently large duty bank to offset the license fees on imports of naphtha which it would be required to pay during the current period. In addition, the FEA found that Corco had convincingly demonstrated that payment of license fees on the naphtha which it imports would cause the firm to suffer a severe financial hardship because Corco is unable at the present time as a result of competitive conditions to increase its prices to reflect import license fees. The FEA also found that as a result of the provisions of the Jones Act, Corco is unable to obtain adequate domestic supplies of naphtha at competitive prices. Consequently, the FEA concluded that exception relief should be approved to permit Corco to import 3,483,202 barrels of naphtha during the current allocation period on a fee-free basis.

Mar-Low Corp.; Lafayette, La.; FXE–4410; Crude Oil

Mar-Low Corp. (Mar-Low) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would have resulted in the extension of the exception relief previously granted to Mar-Low and would have permitted the firm to continue to sell a portion of the crude oil produced from the Maxie Broussard No. 1–D well (the Broussard well) at upper tier ceiling prices. In considering the exception application, the FEA determined that the Broussard well was continuing to incur high operating costs which currently exceeded the lower tier ceiling price. Consequently, the FEA found that the working interest owners lacked an economic incentive to maintain crude oil production from the well at the lower tier ceiling price. In view of this determination and on the basis of the operating data which Mar-Low had submitted for the most recently completed fiscal period, the FEA concluded that exception relief should be again extended to Mar-Low which would permit the firm to sell 73.54 percent of the crude oil produced from the Broussard well for the benefit of the working interest owners at upper tier ceiling prices.

Mid-Penn Refining Co.; Harmony, Pa.; FEE–4088; Motor gasoline

Mid-Penn Refining Co. (Mid-Penn), filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would result in the assignment to the firm of a new base period supplier of motor gasoline to replace the Petroleum Marketing Corp. (PMC). In considering Mid-Penn's Application for Exception, the FEA found that PMC's prices are highly competitive at the present time and that as a result, Mid-Penn is currently purchasing significant quantities of motor gasoline from PMC. The FEA further determined that even though Mid-Penn requested that its Application for Exception be evaluated on the basis of PMC's past pricing record, the file in this matter indicates that the availability of competitively priced gasoline on the spot market had permitted Mid-Penn to operate successfully without incurring any financial difficulties as a result of its base period supplier/purchaser relationship with PMC. The FEA therefore determined that since the firm's entire exception request rested on speculation as to future supply and pricing difficulties, the firm's Application for Exception should be denied in accordance with the precedent established in previous cases.

Monsanto Co.; St. Louis, Mo.; FEE–4338 through FEE–4340; Crude oil

The Monsanto Co. (Monsanto), filed three Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Bagaason No. 1 well (the Bagaason well), the Milo No. 1 well (the Milo well), and the State 16 well (the State well) at upper tier ceiling prices. In considering the Monsanto exception requests, the FEA determined that as a result of the ceiling price regulations and a significant increase in operating costs since 1973 the firm is presently incurring an op-

erating loss on each barrel of crude oil which it produces from the Milo well and the State well. The FEA found that there was little possibility that the recoverable crude oil underlying the Milo and State wells would be produced by Monsanto or any other firm in the absence of exception relief. However, with respect to the Monsanto Bagaason well, the FEA determined that the firm is still realizing a profit on each barrel of crude oil which it produces. On the basis of precedents involving similar factual matters, the FEA concluded that the application of the lower tier ceiling price rule with respect to the Milo and State wells resulted in a gross inequity to Monsanto. Accordingly, on the basis of the operating data which the firm submitted for its most recently completed six month period, Monsanto was granted exception relief which permits the firm to sell at upper tier ceiling prices 100 percent of the crude oil produced and sold for the benefit of the working interest owners from the Milo and State wells during the next six months. However, since Monsanto is currently realizing a profit on its operations at the Bagaason well, the FEA concluded that Monsanto has a sufficient economic incentive to continue operation at that well. Accordingly, the Monsanto exception request with respect to the Bagaason well was denied.

REQUEST FOR MODIFICATION OF RESCISSION

Kalama Chemical, Inc.; Kalama, Wash.; FPI–0113; unfinished Toluene

Kalama Chemical, Inc., filed an Application for Modification of a Decision and Order previously issued to the firm by the FEA. See *Kalama Chemical, Inc.*, 3 FEA Par. 83,267 (July 8, 1976). In the previous Decision, the FEA granted Kalama exception relief to permit the firm to import its projected requirements of unfinished toluene which it uses to manufacture phenol on a license fee-exempt basis during the 1976–77 allocation period. In its modification request, Kalama stated that its actual imports of toluene during the 1976–77 period had exceeded by 25,361 barrels the projected level of imports for which fee-exempt authority was previously granted, and that it has or will be assessed license fees on these imports. In considering Kalama's request, the FEA noted that the intent of the July 8, 1976 Decision was to alleviate entirely the adverse impact of the license fee provisions on the firm's operations and to enable Kalama to compete equitably with other manufacturers of phenol which are not subject to license fees on their feedstocks. Since Kalama had actually used the additional toluene which it imported to manufacture phenol, the FEA determined that the firm's request should be granted and the previous level of relief was increased accordingly.

REQUEST FOR STAY

Capitol Oil Co., Baltimore, Md.; FRS–0100; No. 2 Fuel oil

Capitol Oil Company requested that a Decision and Order which the FEA issued to the firm on March 22, 1977 be stayed pending a final determination on an Application for Modification or Rescission which the firm had filed. In that Decision the FEA denied Capitol's Appeal from an August 3, 1976 Remedial Order in which it was found that Capitol had been charging prices for No. 2 fuel oil that exceeded the maximum allowable price levels. *Capitol Oil Co.*, 5 FEA Par. 80,580 (March 22, 1977). However, the refund provisions of the Remedial Order were modified so that Capitol would not be required to repay more than one-third of the overcharges in any fiscal year. In addition it was contemplated in the March 22 determination that the first payment of refund would be satisfied by the disbursement of funds from an escrow account which Capitol had been previously directed to establish. In its Application for Stay, Capitol contended that it would experience an irreparable injury if it were required to make the specified refunds to its principal customer, the U.S. Coast Guard. In considering the Capitol stay request, the FEA noted that Capitol had not presented any material which indicated that it would have difficulty in recovering the refunds made to the Coast Guard should it ultimately prevail on the merits of its Application for Modification or Rescission. The FEA further found that the financial data submitted by Capitol had failed to demonstrate that the economic viability of the firm would be threatened in the absence of a stay. Finally the FEA noted that although Capitol had stated otherwise, the firm had failed to establish an escrow account as required by the provisions of a previous Decision and Order. Under these circumstances and in view of this apparent impropriety, the FEA concluded that a stay of Capitol's current refund obligations was not warranted.

Cities Service Oil Co.; Boston, Mass.; FRS–1404; Motor gasoline

Cities Service Oil Company (Cities) requested that a Remedial Order for Immediate Compliance issued to the firm by the Director of Regulatory Programs of FEA Region I on July 11, 1977 be stayed pending a determination on a firm's Appeal. In the Remedial Order, the Regional Office determined that subsequent to June 30, 1977 Cities had refused to supply motor gasoline to 23 dealers who were all base period customers of Cities. The FEA further found that the 23 dealers operated retail outlets which were owned by Cities and that Cities had ceased supplying them as a result of its decision not to renew the 23 leases and to sell the 23 outlets. The Remedial Order for Immediate Compliance required Cities to continue its supplier/purchaser relationship with the 23 dealers. In denying the stay request, the FEA noted that even though Cities had presented evidence of its sale of the 23 stations to Cumberland Farms pursuant to a divestiture agreement approved by the U.S. District Court for the District of Massachusetts, it had provided no evidence which would justify the termination of the supplier/purchaser relationship during the pendency of Cities' Appeal. Moreover, the FEA determined that although Cities alleged that Cumberland Farms had threatened to bring a trespass suit against Cities if it supplied the 23 dealers at the 23 disputed locations, any damages incurred in such a suit would not outweigh the immediate and irreparable injury to the dealers if such a stay request were approved. The Cities stay request was therefore denied.

Charles E. Gould; Wichita, Kans.; FRS–1437; FRT–0049; Crude oil

Charles E. Gould (Gould) filed an application for Temporary Stay and an Application for Stay of a Remedial Order which the Administrator of FEA Region VII issued to Gould on August 8, 1977. In the Remedial Order the FEA determined that during the months of November and December 1973 Gould improperly sold certain crude oil from the Lowe Jones Lease at prices which were in excess of the maximum allowable price levels computed pursuant to 6 CFR 150.354. On the basis of this finding, the Remedial Order directs Gould to immediately make refunds to the Mobil Oil Corporation, the purchaser of the crude oil involved. Gould's stay request, if granted, would relieve the firm of its obligation to make a portion of the specified refunds pending a final determination on its own Appeal of the Remedial Order. In considering the Gould request, the FEA observed that in *Rickelson Oil and Gas Company*, 6 FEA Par. ____ (August 24, 1977), new procedures were established with respect to the consideration of Applications for Stay of Remedial Orders. Under those procedures, if an Appeal from a Remedial Order is filed in a timely manner, the Order will be stayed as a matter of course during the Appeal proceeding unless it appears from the record in the case that immediate compliance is necessary to protect the public interest. In the present case, the FEA found that immediate compliance with the Remedial Order is not necessary to protect the public interest, and therefore the Gould stay request was granted. In view of this determination, the Application for Temporary Stay filed by Gould was dismissed.

Quincy Oil, Inc.; Boston, Mass.; FRS–1428; Residual Fuel oil

Quincy Oil, Inc. (Quincy) requested that a Remedial Order which the FEA had issued to the firm on July 26, 1977 be stayed pending a final Appeal from that Order. In the Remedial Order, the FEA found that during the period November 1, 1973 through September 30, 1975 Quincy sold No. 6 fuel oil to various customers at unlawful price levels. On the basis of these findings, Quincy was ordered to refund $459,422 in overcharges plus interest to the customers which were overcharged. In considering the request for stay, the FEA concluded that the record does not indicate that unusual factors are present which would reasonably lead to the conclusion that immediate compliance with the Remedial Order is necessary to protect the public interest. Therefore, in accordance with the precedent established in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977), the FEA stayed the Remedial Order pending the FEA's consideration of Quincy's Appeal.

Rickelson Oil and Gas Co.; Tulsa Okla.; FRS–1399; Crude Oil

The Rickelson Oil and Gas Company (Rickelson) requested a stay of the refund provisions of a Remedial Order which FEA Region VI issued to the firm on July 5, 1977. In considering Rickelson's request, the FEA noted that it had in the past applied the criteria set forth in *General Crude Oil Co.*, 3 FEA Par. 85,040 (June 25, 1976), modified, 3 FEA Par. 85,040 (July 8, 1976), to requests for stays of the refund provisions of Remedial Orders. The FEA further noted however that the Department of Energy Organization Act, Pub. L. No. 95–91, which was adopted on August 4, 1977, provides that if a person to whom the Department issues a Remedial Order indicates that he intends to contest the Order, the Order shall be stayed unless immediate compliance is found to be necessary to protect the public interest. In view of these provisions, the FEA indicated that where an Appeal from a Remedial Order is filed in a timely manner, the FEA will stay the Order as a matter of course during the Appeal proceeding unless it appears from the record that the public interest requires immediate compliance. The FEA further determined that any Remedial Order issued by the FEA should contain a specific determination as to whether the record contains such unusual factors as to lead to the conclusion that immediate compliance is necessary to protect the public interest. If those factors are not found to exist, the Remedial Order itself should provide by its terms for a stay pending consideration of any Appeal which the firm may file. The FEA concluded that the record in the Rickelson case does

not indicate that immediate compliance is necessary and accordingly entered a Stay of the Remedial Order pending a determination on the Appeal of the Order which Rickelson filed on July 19, 1977.

DISMISSALS

The following submission was dismissed following a determination made by the FEA that the relief requested was no longer necessary:

Capitol Oil Co.; Baltimore, Md.; FRT–0048

The following submission was dismissed following a determination made by the FEA that the relief requested was premature:

Kennecott Copper Corp., Salt Lake City, Utah; FMR–0120

The following Request for Stay was dismissed on the grounds that the submission was not filed incident to an Appeal or an Application for Exception:

First Chemical Corp.; Washington, D.C.; FES–0099

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B–120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Acting Director, Office of Administrative Review.

OCTOBER 19, 1977.

[FR Doc.77–31008 Filed 10–25–77;8:45 am]

[3128–01]

NOTICE OF ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS OF THE FEDERAL ENERGY ADMINISTRATION

Week of August 29 Through September 2, 1977

Notice is hereby given that during the week of August 29 through September 2, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal. On October 1, 1977 the Office of Administrative Review of the Department of Energy's Economic Regulatory Administration assumed the responsibilities which had previously been exercised by the FEA Office of Exceptions and Appeals.

APPEALS

Mason & Hanger-Silas Mason Co., Inc.; Middleton, Iowa; FEA–1255; Reporting requirements

Mason & Hanger-Silas Mason Company, Inc. (MHSM) filed an Appeal from an FEA Notice published in the Federal Register on December 16, 1976 (FR 54977) which identified MHSM as one of the 50 most energy-consumptive firms in the fabricated metals industry (SIC Code 34). As a result of its inclusion on that list, MHSM is required to participate in a reporting program under the provisions of Section 375 of the Energy Policy and Conservation Act (EPCA). MHSM contended for the first time in its Appeal that it should not be required to participate in the Industrial Conservation Program under the EPCA since it manufactures fabricated metals under an operating agreement with the United States Government at two plants which are owned by federal government agencies. According to MHSM, the United States Government rather than the firm is responsible for establishing all production policies at the two plants. In considering the Appeal, the FEA found that the Office of Conservation did not have an opportunity to weigh this factor in its determination as to whether MHSM should be included on the list of the 50 most energy-consumptive corporations in SIC Code 34. Consequently, the FEA remanded the matter to the Office of Conservation for reconsideration.

Johnny Seward, d.b.a. Johnny's Super Shell; Chicago, Ill.; FRA–1356; Motor gasoline

Johnny Seward d.b.a. Johnny's Super Shell (Johnny's) submitted an Appeal from a Remedial Order which had been issued to the firm by FEA Region V on June 1, 1977. In the Remedial Order, Region V found that Johnny's had sold motor gasoline at prices which exceeded the maximum permissible levels specified in Section 212.93. In considering the Appeal, the FEA found that the firm's original and amended submissions failed to satisfy the FEA Procedural Regulations. As a result of those deficiencies, the FEA concluded that it was unable to consider Johnny's Appeal. The Appeal was therefore dismissed and Johnny's was given leave to file an amended Appeal within ten days.

Stovall Oil Co.; Casper, Wyo.; FXA–1172; Crude oil

Stovall Oil Company filed an Appeal from a Decision and Order which the FEA issued to the firm on December 10, 1976. *Stovall Oil Co.*, 4 FEA Par. 83,228 (December 10, 1976). In the previous determination, the FEA granted Stovall an exception which permitted the firm to charge upper tier ceiling prices for the crude oil which it produced from the Olsen No. 1 lease in Campbell County, Wyoming for the benefit of the working interest owners. However, the FEA denied Stovall's request for exception relief for its NPRR 3–3 lease (the NPRR lease) which is located in Musselshell County, Wyoming. The Stovall Appeal, if granted, would permit the firm to sell the crude oil which it produces from the NPRR lease at upper tier ceiling prices. In considering the Appeal, the FEA found that Stovall did not challenge the factual or legal basis of the prior determination, nor did the firm contend that the December 10 Decision is in any way arbitrary or capricious. Therefore, the FEA concluded that Stovall had failed to present any basis upon which the Appeal could be granted, and the firm's Appeal was accordingly denied.

However, in its submission Stovall contended for the first time that even though the NPRR lease is profitable under the lower tier ceiling price rule, the application of Section 212.73 to the NPRR lease constitutes a serious financial hardship to the firm. Stovall stated that unless it is permitted to sell the crude oil produced from the NPRR lease at upper tier ceiling prices, it will incur substantial losses in its overall operations and will be unable to meet its current financial obligations. In considering this contention, the FEA found that Stovall's present financial difficulties were not the result of the FEA Price Regulations, but are instead attributable to business decisions made by the firm. Nevertheless, the FEA observed that the present record in this matter was incomplete and that Stovall might be able to demonstrate through the submission of new evidence that it satisfies the standard for exception relief on serious hardship grounds. Therefore, Stovall's request for exception relief was dismissed without prejudice.

REQUESTS FOR EXCEPTION

County of Hawaii, State of Hawaii; Hilo, Hawaii; FEE–4437; Motor Gasoline

The County of Hawaii of the State of Hawaii, led an Application for Exception from the provisions of Section 212.93 which, if granted, would permit resellers and retailers of motor gasoline to increase their selling prices to reflect an increase in the license tax imposed by the County. In considering the exception request, the FEA found that the tax was a non-product cost under FEA Regulations which resellers and retailers cannot automatically pass through to their customers. In previous Decisions involving the States of Hawaii and Oregon, the FEA granted exception relief which permitted distributors of covered petroleum products to increase their selling prices in order to recoup license tax increases. Those determinations were based on a finding that the burden upon the states of foregoing the tax increases or revamping their tax structures so outweighed any benefits to be derived from the continued application of the FEA Regulations as to result in a gross inequity. Since the circumstances presented in the County of Hawaii's request for exception were similiar to those previously presented, the FEA granted exception relief on the basis of its established precedents.

Hamilton Bros. Oil Co.; Tesoro Petroleum Corp.; Washington, D.C.; FEE–4349; Crude oil; Refined products

The Hamilton Bros. Oil Co. and the Tesoro Petroleum Corp. jointly filed an Application for Exception in which they requested various types of administrative relief in order to facilitate the proposed acquistion by Hamilton Bros. of Tesoro's crude oil refinery located in Newcastle, Wyo. (the Newcastle refinery). The FEA noted that the Mandatory Petroleum Allocation and Price Regulations were not specifically designed to apply to the unusual conditions which arise from the purchase and sale of a refinery. Consequently, the FEA consolidated the issues involved in the proposal acquisition for evaluation through the exceptions process.

In considering the Application, the FEA initially determined that the proposed acquisition of the Newcastle refinery was not designed to take undue advantage of various FEA regulatory programs. With respect to the firm's request that Hamilton Bros. be permitted to utilize the provisions of Section 212.111(b)(1)(ii) in determining its maximum lawful selling prices, the FEA found that the proposed acquisition of the Newcastle refinery by Hamilton Bros. was instead governed by Section 212.11(c)(1) and that Hamilton Bros. had failed to demonstrate that the application of that regulation would significantly impede the transfer of the Newcastle refinery. The FEA further determined that exception relief from Section 212.111(c)(1) was not essential in order to prevent serious market distortions in the Newcastle area. The FEA also determined that a portion of the unrecouped increased product and non-product costs which Tesoro had previously "banked" under Section 212.-83 should be allocated to Hamilton Bros.

based on the ratio of the sales volumes of motor gasoline and liquid petroleum gas during the 12-month period immediately preceding the acquisition to Tesoro's total sales volumes of motor gasoline and liquid petroleum gas during that period.

The FEA found that the prices at which the firms had agreed to transfer the covered product inventories for the Newcastle refinery included a margin in excess of the actual cost of the inventories to Tesoro. Under these circumstances, the FEA found that it would be inappropriate to affirm the legality of the prices at which the firms proposed to transfer the inventories since that determination could result in a double recovery of costs which could be reflected in increased prices to the customers of Hamilton Bros. However, since a failure to approve some form of exception relief would result in a high degree of uncertainty with respect to possible violations of FEA Regulations, the FEA approved exception relief which permitted the transfer of the covered product inventories and blendstock inventories at the prices which had been negotiated by the petitioners, provided that Hamilton Bros. and Tesoro properly apportion the costs attributable to those products. The FEA also granted Tesoro an exception from Section 212.83(h) with respect to the revenues it receives from the sale of the inventories to Hamilton Bros.

As to the issues involving the allocation of refined products, the FEA found that in order to avoid disruptions in the Newcastle refinery operations and supply dislocations to purchasers of allocated refined products: (i) Tesoro should be permitted to sell the product inventories to Hamilton Bros. without including them in its allocable supply of products; and (ii) Tesoro's base period relationships with purchasers of products refined at the Newcastle facility should be terminated and Hamilton Bros. should be assigned to supply those purchasers.

In addition, the FEA determined that Hamilton Bros. should be permitted to participate in the Old Oil Entitlements Program commencing with crude oil runs to stills for its own account on the date of acquisition. However, in order to avoid conferring windfall benefits to Tesoro or price distortions in the selling prices charged to the customers of the Newcastle refinery, Tesoro was required to remit to Hamilton Bros. the revenues which it receives from the sale of entitlements with respect to the Newcastle facility during the two months prior to the time that Hamilton Bros. first earns entitlements. The FEA further determines that Hamilton Bros will be eligible to receive a fee-exempt import allocation for the allocation period beginning on May 1, 1978.

Ingram Corp.; A. Johnson & Co., Inc.; Washington, D.C.; FEE–4449; Crude oil

Ingram Corp. and A. Johnson & Co., Inc. jointly filed an Application for Exception in which they requested various types of administrative relief relating to Johnson's proposed acquisition of Ingram's interest in a refinery located in Wilmington, N.C. (the Wilmington refinery). The FEA noted that the Mandatory Petroleum Allocation and Price Regulations were not specifically designed to apply to the unusual conditions which arise from the purchase and sale of a refinery. Therefore, the FEA consolidated the issues involved in the proposed acquisition for evaluation through the exceptions process.

Since the Wilmington refinery currently does not produce any refined products which are subject to the FEA Allocation and Price Regulations, the firms did not request exception relief with respect to the pricing and allocation of products produced at the Wilmington refinery. With respect to the sale of crude oil inventories at the refinery, the FEA determined that Ingram and Johnson should be permitted to transfer the inventories at the prices established in their Sales Agreement.

With respect to the firms' request that the FEA continue to treat Johnson as a "small refiner," the FEA found that exception relief was unnecessary since the firm will continue to qualify under the regulatory definition as a small refiner. The FEA also noted that no action was necessary to permit Johnson to earn entitlements for its crude oil runs to stills at the Wilmington refinery subsequent to its acquisition of that facility. With respect to the firm's request that Johnson be granted an allocation of crude oil pursuant to the provisions of Section 211.65 (the Crude Oil Buy/Sell Program), the FEA observed that under recent regulatory amendments Johnson is already permitted to participate in the Buy/Sell Program.

The firms also requested that Ingram be granted a refund equivalent to 75 percent of the import license fees which it paid for the crude oil run at the Wilmington refinery since October 15, 1976. The petitioners also requested that Johnson receive a fee-exempt allocation from the date of its acquisition of the refinery through October 14, 1981, thereby granting the firm a fee-exempt allocaton for a five-year period of operations as permitted by the provisions of Section 213.29. In this regard, the FEA found that undue administrative delay had occurred in processing Ingram's application for a fee-exempt import license. Accordingly, the FEA held that Ingram should be granted a partial refund of the import license fees which it had paid. In addition, the Director of the FEA Office of Oil Imports was directed to take all steps necessary to permit Ingram to sell its fee-exempt import license for the Wilmington refinery to Johnson.

Eldon Walker; Fortuna, Calif.; FEE–4261; Crude Oil

Eldon Walker filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit Walker to sell the crude oil produced from the Hutson 1–A well (the Hutson well) at upper tier ceiling prices. In considering the exception application, the FEA found that Walker had realized profits from his acquisition of the Hutson well. The FEA also found that according to the data submitted by Walker, the Hutson well would continue to generate significant operating profits during the next three fiscal years even if the firm were to undertake certain capital improvements at the lease. Therefore, the FEA concluded that Walker had failed to establish that the application of the lower tier ceiling price rule adversely affected the economic incentive of the working interest owners to produce domestic crude oil from the Hutson well. Accordingly, the exception application was denied.

REQUESTS FOR STAY

E. B. Brooks, Jr.; Dallas, Tex.; FRS–0102; Crude oil

E. B. Brooks, Jr. filed an Application for Stay of a Remedial Order which FEA Region VI issued to him on July 25, 1977. In the Remedial Order, Region VI found that Brooks had sold crude oil at prices which exceeded the maximum permissible levels specified in the FEA Regulations and directed the firm to refund the amount of overcharges plus interest. In considering the stay request, the FEA referred to a recent decision in *Rickelson Oil and Gas Co., Inc.*, 6 FEA Par. ____ (August 24, 1977) in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appears that the public interest required immediate compliance with the Remedial Order. Since the record in this case did not indicate that the public interest required immediate compliance with the July 25 Order, the FEA granted Brooks' request for stay pending consideration of his Appeal.

Robert E. Davis; Great Bend, Kans.; FRS–1440; Crude oil

Robert E. Davis filed an Application for Stay of a Remedial Order which FEA Region VII issued to him on July 14, 1977. In the Remedial Order, Region VI found that Davis had sold crude oil at prices which exceeded the maximum permissible levels specified in the FEA Regulations and directed him to refund the overcharges plus interest. In considering the stay request, the FEA referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977) which held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appears that the public interest required immediate compliance with the Remedial Order. Since the record in the present case did not indicate that the public interest required immediate compliance with the July 14 Order, the FEA granted Davis' request for stay pending consideration of his Appeal.

Lyon County Co-operative Oil Co.; St. Paul, Minn.; FRS–1426; Petroleum products

Lyon County Co-operative Oil Company filed an Application for Stay of a Remedial Order which FEA Region V issued to the firm on July 25, 1977. In the Remedial Order, Region V determined that Lyon had sold No. 1 and No. 2 heating oil, motor gasoline and diesel fuel at prices which exceeded the maximum permissible price levels specified in the FEA Regulations and directed the firm to refund the overcharges. In considering the stay request, the FEA referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977) in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in the present case did not indicate that the public interest required immediate compliance with the July 25 Order, the FEA granted Lyon's request for stay pending consideration of its Appeal.

Rancho Refining Co. of Texas; Houston, Tex.; FES–0104; Crude Oil

Rancho Refining Co. of Texas requested that the FEA stay the requirement of the June 1977 Entitlement Notice that the firm purchase 19,399 entitlements. In considering the Application for Stay, the FEA found that the Office of Regulatory Programs had incorrectly calculated Rancho's June 1977 entitlement obligation. Since the FEA found that Rancho had made a substantial prima facie showing that it would succeed on the merits of an appeal which it intended to file from the June 1977 Entitlement Notice, the firm's Application for Stay was granted.

Leo G. Wetherill, Jr.; Kansas City, Mo.; FRS–1433; Crude oil

Leo G. Wetherill, Jr. filed an Application for Stay of a Remedial Order which FEA Region VII issued to him on August 5, 1977. In the Remedial Order, Region VII found that Wetherill had sold crude oil at prices which exceeded the maximum permissible levels permitted under the FEA Regulations and

directed him to refund the amount of the overcharges plus interest. In his Application Wetherill stated that he had already complied with the requirement that he refund overcharges but contended that he should not be required to make interest payments. Wetherill also stated that in an appeal which he intended to file he would challenge the FEA's decision to require interest payments. In considering the stay request, the FEA referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977) in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in the present case did not indicate that immediate compliance with the August 5 Order was necessary to protect the public interest, the FEA granted the request for stay pending consideration of the Appeal which Wetherill stated that he intended to file.

SUPPLEMENTAL ORDER

Warrior Asphalt Co. of Alabama, Inc.; Tuscaloosa, Ala.; FEX–0170; Crude oil

On June 17, 1976, and December 23, 1976, the FEA issued Decisions and Orders to the Warrior Asphalt Co. of Alabama, Inc. which granted exceptions from the obligation to purchase entitlements under Section 211.67 (the Entitlements Program). The June 17 and December 23 Orders stated that a review of Warrior's actual financial operating results would be conducted at the end of the firm's 1977 fiscal year in order to determine whether Warrior had received a proper level of exception relief during 1977. In reviewing the entitlements exception relief previously granted to Warrior, the FEA determined that the firm's profits for its 1977 fiscal year had exceeded its historical profit margin. Accordingly, the firm was required to purchase entitlements equivalent in value to $212,026 during the period September 1977 through February 1978.

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Dyco Petroleum Corp.; Tulsa, Okla.; FEE–4471
Monsanto Co.; St. Louis, Mo.; FEE–4327
Taylor Gas, Inc.; Washington, D.C.; FRA–1355

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B–120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays. They are also available in "Energy Management: Federal Energy Guidelines," a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Acting Director, Office of Administrative Review.

OCTOBER 19, 1977.

[FR Doc.77–31009 Filed 10–25–77;8:45 am]

[3128–01]

NOTICE OF ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS OF THE FEDERAL ENERGY ADMINISTRATION

Week of September 6 Through September 9, 1977

Notice is hereby given that during the week of September 6 through September 9, 1977, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Exceptions and Appeals of the Federal Energy Administration. The following summary also contains a list of submissions which were dismissed by the Office of Exceptions and Appeals and the basis for the dismissal. On October 1, 1977 the Office of Administrative Review of the Department of Energy's Economic Regulatory Administration assumed the responsibilities which had previously been exercised by the FEA Office of Exceptions and Appeals.

APPEALS

Byron Elevator, Inc.; Owosso, Mich.; FRA–1249; No. 1 and No. 2 Heating Oil

Byron Elevator, Inc. appealed from a Remedial Order which was issued to the firm by FEA Region V on March 16, 1977. In the Remedial Order, Region V found that the firm had sold No. 1 and No. 2 heating oil at prices in excess of the maximum permissible levels specified in FEA Regulations. In considering the Appeal, the FEA found that Byron qualified as a retailer and was therefore subject to the price rules of Section 212.93 since it had title to the product in inventory, bore the risk of loss and was responsible for establishing its selling prices. In addition, the FEA found that Byron's Appeal of a Remedial Order was not the appropriate method for raising contentions regarding the inequitable impact of FEA Regulations. The FEA also rejected Byron's contentions that the regulations were unclear as a matter of law and that the firm should be excused for its improper pricing practices since it had made a good faith effort to comply with the price rules. Accordingly, the Byron Appeal was denied.

Garrett Production Co.; Longview, Tex.; FRA–1253; Crude Oil

Garrett Production Company appealed from a Remedial Order which was issued to the firm by FEA Region VI on February 8, 1977. In the Remedial Order, Region VI found that Garrett had improperly classified its Woodlawn (Hill) Unit as a stripper well lease and sold the crude oil produced from that property at prices in excess of the maximum permissible levels specified in FEA Regulations. In considering the Appeal, the FEA affirmed the Remedial Order's finding that Garrett should have excluded injection wells from the calculation of its average daily production for purposes of the stripper well lease exemption. However, the FEA also determined that the Regional Office had incorrectly calculated the average daily production of the property by considering the number of producing wells on the porperty during the period of the alleged violations rather than during the relevant qualifying periods as required by 6 CFR 150.54(s) and 10 CFR 212.32(b). Since there was an insufficient basis in the record for the finding that Garrett had violated FEA Regulations, the firm's Appeal was granted.

Sundance Production Co.; Denver, Colo.; FIA–1238; Crude oil

Sundance Oil Company appealed from an Interpretation issued by the General Counsel of the FEA on February 11, 1977. Interpretation 1977–1, 42 Fed. Reg. 10964 (February 25, 1977). In the Interpretation, the General Counsel found no basis to support Sundance's treatment of two crude oil producing wells in which the firm owned an interest as separate properties for purposes of Part 212, Subpart D of the FEA Mandatory Petroleum Price Regulations. In considering the Appeal, the FEA found that the two wells were subject to the same oil and gas lease and that the differences in the operating rights which existed for each well did not arise out of the lease instrument. The FEA also found that the two wells were subject to the same "right to produce" crude oil as that term is used in Section 212.31 and FEA Ruling 1977–1 and therefore constituted a single property. Furthermore, the FEA concluded that Garrett's request that the FEA expand the scope of Ruling 1977–1 was not appropriate in a Request for Interpretation but instead should have been presented in a Petition for Rulemaking pursuant to Subpart L of Part 205 of the FEA Procedural Regulations. Accordingly, the Sundance Appeal was denied.

Texaco, Inc.; New York, N.Y.; FEA–1369; Aviation fuel

Texaco, Inc. appealed from an Assignment Order which the FEA Office of Product Allocations issued to the firm on May 17, 1977. In that Order, the FEA assigned Texaco as a new base period supplier for Southwest Airlines and ordered it to supply that firm with 1,677,000 gallons per year of kerosene-base jet fuel. In its Appeal, Texaco contended that in establishing the appropriate base period use and in designating Texaco as a new base period supplier of Southwest Airlines, the FEA violated the applicable regulations and denied Texaco's right to procedural due process. In considering the Appeal, the FEA determined that the mere statement of conclusions contained in the Assignment Order did not satisfy the requirement that an order include a statement of the factual and legal basis upon which it was issued. Therefore, the FEA concluded that the Order should be vacated and the matter remanded to the FEA Office of Product Allocations for further proceedings.

Wardair Canada (1975) Ltd.; Edmonton, Alberta, Canada; FEA–1402; Aviation fuel

Wardair Canada (1975) Limited appealed from two Adjustment Orders which the FEA Office of Product Allocations issued to Texaco, Inc. and Exxon Company, U.S.A. on June 22, 1977. The Adjustment Orders had increased Wardair's base period use of aviation turbine fuel from Texaco by 0.19 percent to 4,275,00 gallons per year and its base period use from Exxon by 28.36 percent to 348,500 gallons per year. In its Appeal, Wardair requested additional increases in its base period use from these two suppliers. In considering the Appeal, the FEA determined that the recitation

of the legal and factual basis for the June 22 Orders was so clearly insufficient as to constitute a denial of due process to Wardair. The Orders were therefore remanded to the FEA Office of Product Allocations for issuance of revised Adjustment Orders by October 30, 1977.

REQUESTS FOR STAY

Geronimo Oil Co.; Corpus Christi, Tex.; FRS–0106; Crude oil

Geronimo Oil Company filed an Application for Stay of a Remedial Order which FEA Region VI issued to the firm on August 15, 1977. In the Remedial Order, Region VI determined that Geronimo had sold crude oil from its Lillian Morris and Ora Smith properties at prices which exceeded the maximum permissible levels specified in the FEA Regulations and directed the firm to refund the overcharges. In considering the stay request, the FEA referred to a recent decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977) in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in the present case did not indicate that the public interest required immediate compliance with the August 15 Order, the FEA granted Geronimo's request for stay pending consideration of its Appeal.

New York Petroleum Corp.; New Orleans, La.; FRS–1455; Crude oil

New York Petroleum Corporation filed an Application for Stay of a Remedial Order which FEA Region VI issued to the firm on July 29, 1977. In the Remedial Order, Region VI determined that New York had sold crude oil at prices which exceeded the maximum permissible levels specified in the FEA Regulations and directed the firm to make restitution for the overcharges. In considering the request for stay, the FEA referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. ____ (August 24, 1977) in which it held that a Remedial Order will generally be stayed pending the determination of an appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in the present case did not indicate that the public interest required immediate compliance with the July 29 Order, the FEA granted New York's request for a stay pending consideration of its Appeal.

SUMMARY DECISION

The following submission was dismissed in a Summary Decision for failure to correct deficiencies in the applicant's filing as required by the FEA Procedural Regulations:

Continental Oil Co.; Houston, Tex.; FEA–1396

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m., and 5:00 p.m., e.d.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Acting Director, Office of Administrative Review.

OCTOBER 19, 1977.

[FR Doc.77-31010 Filed 10-25-77;8:45 am]

[3128–01]

NOTICES OF CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS OF THE FEDERAL ENERGY ADMINISTRATION

Week of September 23 Through September 30, 1977

Notice is hereby given that during the week of September 23 through September 30, 1977, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Exceptions and Appeals of the Federal Energy Administration. On October 1, 1977 the Office of Administrative Review of the Department of Energy's Economic Regulatory Administration assumed the responsibilities which had previously been exercised by the FEA Office of Exceptions and Appeals.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in the cases listed in the Appendix to this Notice may filed written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Administrative Review, Economic Regulatory Administration, Department of Energy, Washington, D.C. 20461.

MELVIN GOLDSTEIN,
Acting Director, Office of Administrative Review.

OCTOBER 19, 1977.

APPENDIX.—*List of cases received by the Office of Administrative Review, week of Sept. 23 through Sept. 30, 1977*

Date	Name and location of applicant	Case No.	Type of submission
Sept. 23, 1977	IU International Oil & Gas, Inc. Plymouth Meeting, Pa. (If granted: The remedial order issued by FEA Region III on Aug. 31, 1977 would be rescinded and IU International Oil & Gas, Inc. would not be required to refund overcharges made in its sales of crude oil to Sun Oil Co.)	FRA–1468	Appeal of the remedial order issued by FEA region III on Aug. 31, 1977.
Do	L. A. Olson Co., Madison, Wis. (If granted: L. A. Olson Co. would be assigned a new, lower-priced supplier of propane to replace its base period supplier, Amtane, Inc.	FEE–4840	Exception to change suppliers.
Do	Texaco, Inc., Atlanta, Ga. (If granted: Texaco, Inc. would not be required to supply James Yarn with motor gasoline.)	FEE–4842	Allocation exception (211.9 (a)).
Do	TOSCO Corp., Washington, D.C. (If granted: TOSCO Corp. would receive an extension of the relief granted in the FEA's Apr. 29, 1977 decision and order and would be relieved of a portion of its entitlement purchase obligations.)	FXE–4841	Extension of the relief granted in *TOSCO Corp.*, 5 FEA par. 83,146 (Apr. 29, 1977).
Do	Union Oil Co. of California Los Angeles, Calif. (If granted: Union Oil Co. of California would be permitted to sell crude oil produced from the Moulton Unit located in Toole County, Mont., at upper tier ceiling prices.)	FEE–4839	Price exception (sec. 212.73).
Sept. 26, 1977	Arizona Fuels Corp., Salt Lake City, Utah. (If granted: The FEA's July 12, 1977 decision and order would be rescinded and Arizona Fuels Corp. would be relieved of its entitlement purchase obligations during the period May 1977 through Oct. 1977.)	FXA–1474	Appeal of the FEA's decision and order in *Arizona Fuels Corp.*, 6 FEA par. 83,033 (July 12, 1977).
Do	Bonacci Flying Service, Inc. Omaha, Nebr. (If granted: The FEA Region VII's Aug. 9, 1977 decision and order issued to Bonacci Flying Service would be rescinded and Bonacci Flying Service would be assigned a new supplier of aviation fuel to replace its base period supplier, Texaco, Inc.)	FEA–1481	Appeal of FEA Region VII's Aug. 9, 1977 decision and order.
Do	Cities Service Oil Co., Braintree, Mass. (If granted: The remedial order issued by FEA Region I on Sept. 12, 1977 would be rescinded and Cities Service Oil Co. would continue its supplier/wholesale purchaser reseller relationships with dealers in Massachusetts and New Hampshire.)	FRA–1482	Appeal of the remedial order issued by FEA Region I on Sept. 12, 1977.
Do	Maynard Oil Co. Dallas, Tex. (If granted: Maynard Oil Co. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced from its Jupiter plant.)	FEE–4813	Price exception (sec. 212.-165).
Do	C. E. Sharber, Seminole, Okla. (If granted: The remedial order issued by FEA Region VI on Sept. 3, 1977 would be rescinded and Sharber would not be required to refund overcharges made in sales of crude oil produced from the Rodden property.)	FRA–1480	Appeal of the remedial order issued by FEA Region VI on Sept. 3, 1977.
Do	C. R. England Oil & Gas Properties Brenham, Tex. (If granted: The FEA's Interpretation 1977–33 issued Aug. 31, 1977 would be rescinded and C. R. England Oil & Gas Properties would be permitted to sell crude oil produced from lots 20, 21, and 22 as "new crude oil.")	FIA–1485	Appeal of FEA's interpretation 1977–33 issued Aug. 31, 1977.
Do	Graves, Dougherty, Hearon, Moody & Garwood, Austin, Tex. (If granted: The FEA's Aug. 26, 1977 information request denial would be rescinded and Graves, Dougherty, Hearon, Moody, & Garwood would receive information regarding 10 CFR 211.1(b)(1).)	FFA–1484	Appeal of FEA's information request denial.
Do	Jack Halpert, Tyler, Tex. (If granted: Jack Halpert would be permitted to classify the R. H. Moore and W. T. Ware Leases as stripper well properties.)	FEE–4844 FEE–4845	Price exception (sec. 212.73).
Do	Smith's Bottled Gas, Bruceton Mills, W. Va. (If granted: Smith's Bottled Gas would be supplied propane by Consolidated Gas Corp. rather than its base period supplier, Pargas.)	FEE–4846	Exception to change suppliers.
Do	Sun Co., Inc., Dallas, Tex. (If granted: Sun Co., Inc. would receive an extension of the exception relief granted in the FEA's Apr. 4, 1977 decision and order and would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at its Peoria plant.)	FEE–4847	Extension of the relief granted in *Sun Co., Inc.*, case No. FXE–3905 (decided Apr. 4, 1977) (unreported decision).

Date	Name and location of applicant	Case No.	Type of submission
Do.	Valley Gas, Inc., Yates, N. Dak. (If granted: The remedial order issued by FEA Region VIII on Sept. 9, 1977, would be rescinded and Valley Gas, Inc. would not be required to refund overcharges made in its sales of propane.)	FRA-1483 FRS-1483	Appeal of the remedial order issued by FEA Region VIII on Sept. 9, 1977. Stay request.
Do.	Whitco, Inc., Dallas, Tex. (If granted: The provisions of 10 CFR 211.25 (the supplier substitution rule) would be stayed with respect to Sun Co., Inc. base period supply obligations to Whitco, Inc. pending a final determination on Whitco's exception application.)	FEX-0195	Supplemental order.
Sept. 28, 1977	Bock and Bacon, Houston, Tex. (If granted: Bock and Bacon would be permitted to sell the crude oil produced from Champion Paper Co. Lease at prices in excess of the lower tier ceiling prices.)	FEE-4850	Price exception (sec. 212.73).
Do.	Equipment, Inc., Lafayette, La. (If granted: Equipment, Inc. would be permitted to sell crude oil produced from the Hayes No. 1 and A-1 wells located in Acadia Parish, La., at prices in excess of the lower tier ceiling prices.)	FEE-4849	Price exception (212.73).
Do.	Mountain Fuel Supply Co., Salt Lake City, Utah. (If granted: Mountain Fuel Supply Co. would receive a stay of the requirement that it make refunds in connection with its sales of crude oil pursuant to the remedial order issued by FEA Region VIII on Sept. 16, 1977 pending a determination on the Appeal which it intends to file.)	FRS-1486	Stay of the remedial order issued by FEA Region VIII on Sept. 16, 1977.
Do.	Thunderbird Resources, Inc., Minot, N. Dak. (If granted: Thunderbird Resources, Inc. would receive an exception which would permit the firm to calculate the passthrough of increased nonproduct costs during the period Jan. 1, 1975 through Jan. 31, 1976 in a manner other than that required under FEA regulations.)	FEE-4851	Price exception (sec. 212.83).
Do.	Allen K. Trobaugh, Midland, Tex. (If granted: Allen Trobaugh would receive an extension of the relief granted in the FEA's May 6, 1977 decision and order and would continue to be permitted to sell crude oil produced from the Bailey No. 1 well at upper tier ceiling prices for the benefit of the working interest owners.)	FXE-4848	Extension of the relief granted in *Allen K. Trobaugh*, 5 FEA par. 83,146 (May 6, 1977).
Sept. 29, 1977	Asamera Oil (U.S.), Inc., Denver, Colo. (If granted: Asamera Oil (U.S.), Inc. would not be required to supply Husky Oil Co. of Delaware with crude oil pursuant to 10 CFR 211.63.)	FEE-4854	Allocation exception (211.63).
Do.	Glenrock Refinery, Inc., Glenrock, Wyo. (If granted: Glenrock Refinery, Inc. would receive an exception to the entitlements program to permit it to receive additional small refiner bias entitlements for crude oil processed for its account by other refiners during the expansion of its refinery.)	FEE-4853	Allocation exception (211.67).
Do.	Kennecott Copper Corp., Salt Lake City, Utah. (If granted: The FEA's June 30, 1977 prohibition order would be modified and the Kennecott Copper Corp. would be permitted to burn natural gas at its Utah power plant for start-up, testing and emergencies in the power plant's handling system.)	FMR-0127 FES-0127	Modification of the June 30, 1977 prohibition order. Stay request.
Sept. 2, 1977	Tristate Oil & Asphalt Sales, Inc., Spokane, Wash. (If granted: Tristate Oil & Asphalt Sales, Inc. would receive an exception which would permit the firm to calculate the passthrough of increased nonproduct costs during the period Jan. 1, 1975 through Jan. 31, 1976 in a manner other than that required under FEA regulations.)	FEE-4852	Price exception (sec. 212.83).

Notice of objections received, week of Sept. 23 through Sept. 30, 1977

Date	Name of applicant	Case No.
Sept. 26, 1977	Special jet services	FEE-2022

[FR Doc.77-31001 Filed 10-25-77;8:45 am]

[3128-01]

NOTICE OF ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

October 14 Through October 17, 1977

Notice is hereby given that during the period October 14 through October 17, 1977, the Proposed Decisions and Orders which are summarized below were issued by the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the finalization of a Proposed Decision and Order may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrevied person of actual notice, whichever occurs first.

The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Administrative Review, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays.

MELVIN GOLDSTEIN,
Acting Director,
Office of Administrative Review.

OCTOBER 19, 1977.

PROPOSED DECISIONS AND ORDERS

William Plack Carr; Dallas, Tex.; FEE-4384; Crude oil

William Plack Carr (Carr) filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Carr to sell the crude oil which it produces from the Stratmann Lease, located in Ellsworth County, Kans., at upper tier ceiling prices. On October 17, 1977, the Department of Energy issued a Proposed Decision and Order which would permit Carr to sell 48.38 percent of the crude oil produced from the Stratmann Lease and sold for the benefit of the working interest owners at upper tier ceiling prices.

Damson Oil Corp.; Houston, Tex.; FXE-4461; Crude oil

Damson Oil Corp., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Damson to sell the crude oil produced from the Venice Beach Lease located in Los Angeles, Calif. at upper tier ceiling prices. On October 17, 1977, the Department of Energy issued a Proposed Decision and Order which would permit Damson to sell 62.94 percent of the crude oil produced and sold from the Venice Beach Lease for the benefit of the working interest owners at upper tier ceiling prices.

Dorchester Gas Corp.; American Petrofina, Inc.; Washington, D.C.; FEE-4369; crude oil; Petroleum products

Dorchester Gas Corporation and American Petrofina, Inc. (Fina) filed a joint Application for Exception from the provisions of 10 CFR, Parts 211, 212, and 213 of the Mandatory Petroleum Allocation and Price Regulations. In that Application, Dorchester and Fina requested various types of administrative relief to facilitate Dorchester's purchase of a refinery which is owned and operated by Fina in Mount Pleasant, Texas. On October 17, 1977, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part. However, the DOE further determined that as a condition of any exception relief granted to the firms, Dorchester should be precluded from earning any small refiner bias entitlements for crude oil runs to stills at the Mount Pleasant refinery in excess of the small relief bias entitlement which Fina earned at that facility.

Great Southern Oil & Gas Co., Inc.; Lafayette, La.; FEE-4417; crude oil

Great Southern Oil & Gas Co., Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Great Southern to sell the crude oil produced from the Castille RA SUA Breaux No. 1 Well in St. Martin Parrish, La., at upper tier ceil-

ing price levels. On October 14, 1977, the Department of Energy issued a Proposed Decision and Order which determined that the Great Southern exception request be approved and that the firm be permitted to sell at upper tier ceiling prices 100 percent of the crude oil produced from the Castille well during the period from October 1, 1977, through March 31, 1978.

Lampton-Love, Inc.; Washington, D.C.; FEE–4099; FEE–4351; Propane

Lampton-Love, Inc., filed two Applications for Exception from the provisions of 10 CFR 212.93. The exception requests, if granted, would permit Lampton-Love to increase its selling prices for propane to three classes of purchaser in its southern Louisiana market area above the maximum permissible price levels specified in 10 CFR 212.93. On October 14, 1977, the Department of Energy issued a Proposed Decision and Order in which it determined that prospective relief should be granted and that the request for retroactive relief should be dismissed without prejudice to a refiling at a later date.

Tenneco Oil Co.; Houston, Tex.; FEE–4788; Crude oil

Tenneco Oil Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Tenneco to sell the crude oil produced from the South Coast Unit located in St. Mary Parrish, La., at upper tier ceiling price levels. On October 14, 1977, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted and that Tenneco be permitted to sell 47.62 percent of the crude oil produced from the South Coast Unit at upper tier ceiling price levels from the date of issuance of the Order through April 30, 1978.

Texaco, Inc.; Los Angeles, Calif.; FEE–4457; Crude Oil

Texaco, Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Texaco to sell the crude oil produced from an offshore drilling platform ("Platform A") located in Cook Inlet, Alaska, at exempt price levels. On October 14, 1977, the Department of Energy issued a Proposed Decision and Order which determined that Texaco should be permitted to sell 100 percent of the crude oil produced from "Platform A" during the period from October 1, 1977 through March 31, 1978 at upper tier ceiling price levels.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy has issued Proposed Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The proposed exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases.

Company	Case No.	Plant	Location	Amount of price increase (dollars per gallon)
El Paso Natural Gas Co.	FEE–4466	Jal	Lea County, N. Mex.	$0.0102
	FEE–4468	San Juan	San Juan County, N. Mex.	.0089
Shell Oil Co.	FEE–4682	Enville	Love County, Okla.	.0120
	FEE–4683	Fashing	Atascosa County, Tex.	.0324
	FEE–4684	Iowa Tet	Calcasieu Parish, La.	.0200
	FEE–4685	Laverne	Harper County, Okla.	.0184
Sun Co. Inc.	DXE–0041	Spivey	Harper County, Kans.	.0117
Union Oil Co., of California	FEE–4481	Coalinga	Fresno County, Calif.	.0065
	FEE–4482	Timbalier Bay	Terrebonne, La.	.0077

[FR Doc.77–31012 Filed 10–25–77;8:45 am]

[6740–02]

Federal Energy Regulatory Commission

[Docket Nos. CS77–752, etc.]

BRANCH T. ARCHER, ET AL.

Applications for "Small Producer" Certificates [1]

OCTOBER 14, 1977.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 11, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of Practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77–752	Aug. 17, 1977	Branch T. Archer, P.O. Box 2085, Amarillo, Tex. 79105.
CS77–753	do	Davis C. West, P.O. Box 119, Canyon, Tex. 79105.
CS77–754	do	Edward Keith, 4772 North Via Entrada, Tucson, Ariz. 85718.
CS77–755	Aug. 19, 1977	Energy Operating Corp., 12700 Park Central Pl., suite 1204, Dallas, Tex. 75251.
CS77–756	do	Jewell Moore Hankins, 1824 Dogwood Lane, Pampa, Tex. 79065.
CS77–757	do	Interex, Inc., P.O. Box 7608, Boise, Idaho 83707.
CS77–758	Aug. 22, 1977	Brown, Pethtel Oil & Gas Co., 4120 11th St. Pl., Des Moines, Iowa 50313.
CS77–759	do	Warren D. Barton, Post Office Box 1964, Midland, Tex 79702.
CS77–760	do	Wilda Wolfe, 700 Farm Credit Banks Bldg., Wichita, Kans. 67202.
CS77–761	do	Leland Petroleum Productions, Inc., 2506 McKinney, suite A, Dallas, Tex. 75201.
CS77–762	do	R. J. Fuller, 7202 Eccles Dr., Dallas, Tex. 75227.
CS77–763	do	Trahan Petroleum, Inc., P.O. Box 4382, Shreveport, La. 71104.
CS77–764	do	Virginia Blakemore Estate Trust, 620 Commercial Bank Tower, Midland, Tex. 79701.
CS77–765	do	Edwin J. White, Jr., 620 Commercial Bank Tower, Midland, Tex. 79701.
CS77–766	do	Betsy Anne Dwyer, 620 Commercial Bank Tower, Midland, Tex. 79701.
CS77–767	do	Emon A. Mahony, 406 Armstrong Bldg., El Dorado, Ark. 71730.
CS77–768	do	Joe Gieb, Jr. & O. R. Whiteside, Box 861, Midland, Tex. 79702.
CS77–769	do	Tommy Phipps, 620 Commercial Bank Tower, Midland, Tex. 79701.
CS77–770	do	William B. Blakemore, II, 620 Commercial Bank Tower, Midland, Tex. 79701.
CS77–771	Aug. 23, 1977	PPG Industries, Inc., 1 Gateway Center, Pittsburgh, Pa. 15222.
CS77–845	Sept. 21, 1977	Geological Enterprises—1972, 253 Court St., Plymouth, Mass.
CS77–846	do	The Tassinari Trust 253 Court St. Plymouth, Mass.
CS77–847	Sept. 22, 1977	Eagle Production & Investments Corp., 6800 NW. Grand Blvd., Oklahoma City, Okla. 73116.
CS77–848	Sept. 23, 1977	Tyler Investment Co., P.O. Box 6566, Tyler, Tex. 75711.
CS77–849	do	Lewis R. Pomeroy, III, suite 1715, 1100 Milam Bldg., Houston, Tex. 77002.
CS77–850	do	Arnold and Woolf, P.O. Box 6566, Tyler, Tex. 75711.
CS77–851	do	Norman A. Bock and Douglas E. Bacon, d.b.a. Bock & Bacon, P.O. Box 66909, Houston, Tex. 77006.
CS77–852	do	Hurst, Milgram and Associates, P.O. Box 5394, Beaumont, Tex. 77702.
CS77–853	Sept. 28, 1977	Louis Arrington, 5258 Ariel, Houston, Tex. 77096.

Docket No.	Date filed	Applicant
CS77-854	Sept. 26, 1977	Leon V. Manry, Jr., Trustee, 5709 Glenmont, Houston, Tex. 77081.
CS77-855	Sept. 27, 1977	Mercer Corp., Vinson & Elkins, 2500 1st City National Bank Bldg., Houston, Tex. 77002.
CS77-856	Sept. 29, 1977	Jerry Ryan & Co., 1509 Denver Club Bldg., Denver, Colo. 80202.
CS77-857	do	Alfred Gross, Trustee, Suite 3050, 540 Madison Ave., New York, N.Y. 10022.
CS77-858	do	J. B. Coe Lumber Co., P.O. Box 1866, Amarillo, Tex. 79105.
CS77-859	do	Florence Gross, Suite 3050, 540 Madison Ave., New York, N.Y. 10022.
CS77-860	Sept. 30, 1977	T. W. Cooper, 2170 Troon Rd., Houston, Tex. 77019.
CS77-861	do	Richard O. Brennan, c/o Bryant L. Manning, 900 Lovett, No. 205, Houston, Tex. 77006.
CS77-862	do	The 1st National Bank of Fort Worth, Trustee U/A with Carl M. Smith, P.O. Box 2546, Fort Worth, Tex. 76101.
CS77-863	do	Weeks Petroleum Corp., 287 Riverside Ave., Westport, Conn.

[FR Doc.77-30814 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP77-656]

COLUMBIA GULF TRANSMISSION CO.

Application

OCTOBER 17, 1977.

Take notice that on September 30, 1977, Columbia Gulf Transmission Co. (Applicant), 3805 West Alabama Avenue, Houston, Tex. 77037, filed with the Federal Power Commission in Docket No. CP77-656 an application pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, for 2 years, of up to 2,000 Mcf of natural gas per day for Stauffer Chemical Co. (Stauffer), a direct industrial customer of Eastern Shore Natural Gas Co. (Eastern Shore), a direct customer of Transcontinental Gas Pipeline Corp. (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Stauffer pursuant to a transportation agreement dated September 1977, between Applicant and Stauffer, which agreement provides for the delivery of the proposed volumes of gas to Applicant at an existing point of delivery at the outlet side of existing metering facilities at the Amoco Production Co.'s South Thornwell Plant, Jefferson Davis Parish, La. (Applicant's receipt point) for the account of Stauffer and Applicant would deliver or cause the delivery of an equivalent volume of gas to Transco for the account of Stauffer at Conoco's Acadia Plant in Acadia Parish, La. No new facilities are necessary to effectuate the proposed transportation service, it is indicated.

Applicant states that Stauffer has entered into a contract with the Anschutz Corp. (Anschutz) for the purchase of volumes of natural gas to be produced from certain leasehold interests presently owned or controlled by Anschutz in the J.M. Petitjean Well No. 1, Jefferson Davis Parish, La. It is indicated that Stauffer would pay Anschutz for the subject gas a price as follows:

(a) Commencing on the date of initial delivery hereunder and continuing for an initial term of 12 months, $1.97 per Mcf.

(b) On the first day of the month following the end of the 12 month term provided for in paragraph a above, the price would be increased $.10 per Mcf.

It is indicated that Stauffer would use the subject gas in its Delaware carbon disulfide plant for Priority 2 process and feedstock requirements in the manufacture of carbon disulfide. It is further indicated that Anschutz is unwilling to sell the subject gas in the interstate market.

Applicant states that it would retain, as company use and unaccounted for gas, 2.5 percent of the volumes received for transportation for the account of Stauffer, and that it would collect for all gas transported under the subject agreement, a transportation charge of 0.92 cent per Mcf, which charge was computed on an incremental cost of service basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 31, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30937 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No.ER77-264]

DETROIT EDISON CO.

Certification

OCTOBER 18, 1977.

Take notice that Presiding Administrative Law Judge Thomas L. Howe on October 5, 1977, certified to the Commission for consideration a proposed settlement agreement as to rates and related matters in the proceedings in the above-noted docket.

Any person desiring to be heard or to protest said certification should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before October 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this certification are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30938 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RP77-113]

EL PASO NATURAL GAS CO.

First Supplement to Petition

OCTOBER 17, 1977.

Take notice that on September 28, 1977, El Paso Natural Gas Co. (El Paso), P.O. Box 1492, El Paso, Tex. 79978, filed at Docket No. RP77-113, pursuant to § 1.11(a) of the Commission's rules of practice and procedure, a first supplement to its petition for emergency relief pending disposition in said docket,[1] so as to include as a part thereof certain additional information, all as more fully set forth in said first supplement on file with the Commission and open to public inspection.

The supplement to petition states that on July 21, 1977, El Paso filed with the Commission, on behalf of sixteen customers served by the El Paso interstate pipeline system, a petition for emergency relief from the operation of certain provisions of El Paso's currently effective tariff for the period beginning November 1, 1977, and ending April 30, 1978.

[1] Notice of the petition in Docket No. RP77-113 was issued on August 3, 1977.

The supplement further states that subsequent to the filing by El Paso of said petition for emergency relief, Tri-County Gas Co., Inc., and the city of Rankin, Tex., have advised El Paso that further review of their forecasted requirements indicates that the volumes of gas which each is entitled to receive as its Winter Season Base Volume will be sufficient to meet its needs for the forthcoming 1977–78 winter season. Further, the town of Mountainair, N. Mex., and the city of Spur, Tex., have each advised El Paso that its revised Winter Season Base Volume will be sufficient to meet its needs during the 1977–78 winter season. Therefore, emergency relief is not necessary for said parties and El Paso herein amends said petition to delete Tri-County Gas Co., Inc., the city of Rankin, Tex., the town of Mountainair, N. Mex., and the city of Spur, Tex., from the list of customers requiring emergency relief.

El Paso states that it has also been advised by Citizens Utilities Co. ("Citizens") that waiver of its Winter Season Base Volume limitation may be necessary to permit Citizens to fully serve its Priority 1 requirements without incurring overrun penalties during the forthcoming 1977–78 winter season. El Paso proposes that Citizens be included in the proceedings at Docket No. RP77–113 as a party requiring emergency relief.

In addition, Community Public Service Co., a party included in El Paso's said petition, has furnished to El Paso a revised forecast of Priority 1 requirements which changes such requirements from 251,438 Mcf as previously reported by El Paso to 284,005 Mcf.[2] Further, El Paso has included in said supplement certain additional data requested by the Commission's Staff reflecting deliveries to and customers served by the parties that are the subject of this proceeding as well as the general weather conditions existent over the last two heating seasons.

Any person desiring to be heard or to make any protest with reference to said supplement should, on or before November 2, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30939 Filed 10-25-77;8:45 am]

[2] CPSC has filed a separate petition for relief in Docket No. RP77–135–2 which was noticed and consolidated with the instant proceeding on September 30, 1977.

[6740–02]

[Docket No. RP72–6]

EL PASO NATURAL GAS CO.

Certification to Commission of Proposed Tariff Sheets

OCTOBER 17, 1977.

Take notice that on October 5, 1977, Presiding Administrative Law Judge William Jensen certified to the Commission certain proposed tariff sheets (enumerated in the Appendix hereto) reflecting various perfecting amendments to the curtailment provisions of the FPC Gas Tariff of El Paso Natural Gas Co. (El Paso). A statement of the purpose, substance, and procedural background of these proposed tariff sheets is set forth in El Paso's motion for certification which was addressed and submitted to the Presiding Judge at the hearing in these proceedings held on September 28, 1977.[1] In addition, the Presiding Judge has certified to the Commission, by reference to the Commission's record in this proceeding, the two exhibits submitted with El Paso's motion, which were marked for identification during the hearing of September 28, 1977, as Exhibit Nos. 394 and 395.

Exhibit 394 cosnsits of a letter dated August 26, 1977 from El Paso to its customers requesting customer forecasts of natural gas requirements by priority. Exhibit 395 consists of compilations of the customer responses to Exhibit 394 styled Index of Base Volumes and Index of Base Volumes by Priority.[2] It is stated that the Index of Base Volumes sets forth the daily and seasonal limitations on the amount of gas El Paso's customers are entitled to receive; while the Index of Base Volumes by Priority sets forth for planning purposes each customer's forecast of its own requirements by priority during the 1977–78 winter season up to an aggregate amount equivalent to its winter season base volumes.

El Paso has stated that the proposed tariff sheets herein certified are intended to be responsive in part to the Commission's "Order Denying Motion for Stay, Granting Rehearing, Modifying Curtailment Plan, Establishing Further Hearings, Consolidating Hearings, and Requiring Action to Obtain Remand of Record," issued July 29, 1977, in this docket. Upon approval by the Commission, the proposed tariff sheets would modify El Paso's currently effective FPC Gas Tariff in conformity with that order.

El Paso has stated that the proposed tariff sheets are further intended to resolve certain ambiguities contained in El Paso's currently effective FPC Gas Tariff, and to facilitate operations and forecasting by El Paso and its customers in a manner that is consistent with the revised interim curtailment plan prescribed for El Paso by the Commission in Opinion Nos. 697 and 697–A, as clarified. For purposes of consideration and approval by the Commission, the proposed tariff revisions are said to be intended to be severable.

It is stated that these proposed tariff sheets are being certified at El Paso's request in order to facilitate consideration and approval of them by the Commission. El Paso requests authorization to place the proposed tariff sheets into effect by November 1, 1977.

Any person desiring to comment on the matters that are the subject of the instant certification should file such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before October 31, 1977. Copies of the certified proposed tariff sheets are on file with the Commission and open to public inspection.

KENNETH F. PLUMB,
Secretary.

APPENDIX

The following sheets are included in the instant certification and, where noted by an asterisk, are identical to their respective currently effective counterpart sheets and require no modification. Those tariff sheets containing modified provisions replace the currently effective counterpart sheets.

TARIFF VOLUME AND SHEET NO.

Original Volume No. 1

*Sixth Revised Sheet No. 39
*Third Revised Sheet No. 61
Fifth Revised Sheet No. 62
Seventh Revised Sheet No. 63
Third Revised Sheet No. 63–A
Second Revised Sheet No. 63–B
Third Revised Sheet No. 63–C
Second Revised Sheet No. 63–D
Third Revised Sheet No. 63–E
First Revised Sheet No. 63–F
First Revised Sheet No. 63–G
First Revised Sheet No. 63–H
First Revised Sheet No. 63–I
First Revised Sheet No. 63–J
Original Sheet No. 63–K
Fourth Revised Sheet No. 67–D
Third Revised Sheet No. 67–E
First Revised Sheet No. 67–F
Original Sheet No. 67–G
Third Revised Sheet No. 100
First Revised Sheet Nos. 101 through 107
Original Sheet No. 128
*Original Sheet No. 129
First Revised Sheet Nos. 130 through 154

Third Revised Volume No. 2

*First Revised Sheet No. 1–G
Second Revised Sheet No. 1–H
Third Revised Sheet No. 1–I
Third Revised Sheet No. 1–J
Third Revised Sheet No. 1–K
Second Revised Sheet No. 1–L
Third Revised Sheet No. 1–M
Second Revised Sheet No. 1–N
Third Revised Sheet No. 1–O
Second Revised Sheet No. 1–P
First Revised Sheet No. 1–Q
First Revised Sheet No. 1–R
First Revised Sheet No. 1–S
First Revised Sheet No. 1–T
First Revised Sheet No. 1–U
First Revised Sheet No. 1–V
Original Sheet No. 1–W
Original Sheet No. 1–X

[1] In order to facilitate the Commission's consideration of the certified proposed tariff sheets, the Presiding Judge has certified Volume No. 12, pages 1512–1536, of the Official Stenographer's report of the September 28, 1977, hearing.

[2] The Index of Base Volumes appears in the proposed tariff sheets commencing at proposed Third Revised Sheet No. 100, and the Index of Base Volumes by Priority appears in the proposed tariff sheets commencing at proposed First Revised Sheet No. 130.

Original Volume No. 2A

*First Revised Sheet No. 1–MM
Second Revised Sheet No. 2–MM
Third Revised Sheet No. 3–MM
Third Revised Sheet No. 4–MM
Third Revised Sheet No. 5–MM
Second Revised Sheet No. 6–MM
Third Revised Sheet No. 7–MM
Second Revised Sheet No. 8–MM
Third Revised Sheet No. 9–MM
Second Revised Sheet No. 10–MM
First Revised Sheet No. 11–MM
First Revised Sheet No. 12–MM
First Revised Sheet No. 13–MM
First Revised Sheet No. 14–MM
First Revised Sheet No. 15–MM
First Revised Sheet No. 16–MM
Original Sheet No. 17–MM
Original Sheet No. 18–MM

[FR Doc.77–30940 Filed 10–25–77;8:45 am]

[6740–02]

[Docket No. RP73–14 (PGA77–3) (DCA77–2)]

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Changes in Gas Tariff

OCTOBER 17, 1977.

Take notice that on September 15, 1977, Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) tendered for filing Substitute Seventeenth Revised Sheet No. 27F to its Gas Tariff, Second Revised Volume No. 1. Michigan Wisconsin proposes an effective date of November 1, 1977, for said revised sheet.

The foregoing tariff sheet reflects (1) a commodity increase of 3.32 cents, and a demand charge increase of 1 cent in the Purchase Gas Adjustment to reflect increased rates charged by pipeline suppliers: principally the impact of the increase in Canadian export rate to $2.16 (U.S.) per MMBtu which will become effective September 21, 1977, (2) a reduction in the regular surcharge of 3.71 cents to 7.28 cents per Mcf; such reduced rate will recover increases in the cost of gas, including ENGA purchases (0.53 cents), during the deferral period February 1, 1977, through July 31, 1977, and (3) an increase of 0.72 cent to 2.13 cents per Mcf in the Demand Charge Adjustment; such increased rate will recover actual and estimated credits for the period February 1977 through April 1978.

Michigan Wisconsin further states that it requests a waiver of the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act to the extent that such waiver may be necessary to permit this filing of Substitute Seventeenth Revised Sheet No. 27F to be made and to become effective November 1, 1977. However, in the event the Commission does not accept Substitute Seventeenth Revised Sheet No. 27F to become effective November 1, 1977, Michigan Wisconsin requests that Alternate Substitute Seventeenth Revised Sheet No. 27F be accepted November 1, 1977, and that Substitute Seventeenth Revised Sheet No. 27F be suspended for (1) day to become effective November 2, 1977.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–30941 Filed 10–25–77; 8:45 am]

[6740–02]

[Docket No. E–9606]

NORTH CAROLINA ELECTRIC MEMBERSHIP CORP., ET AL.

Complaint

OCTOBER 17, 1977.

Take notice that on September 28, 1977, North Carolina Electric Membership Corp., Four County Electric Membership Corp., ElectriCities of North Carolina, and Cities of Bennettsville and Camden, S.C. (Complainants) filed a Complaint, Petition for Declaratory Order, and for Order Directing Refund of Illegal Overcharges Under Fuel Adjustment Clause.

In the Complaint, the Complainants state that Carolina Power & Light (C.P. & L.) has been improperly applying its fuel adjustment clause by including a cost for nuclear fuel storage and disposal. Complainants state that C.P. & L.'s present wholesale fuel adjustment clause became effective on January 2, 1976, pursuant to C.P. & L.'s filing in Docket No. ER76–338 and was modified on May 1, 1976, pursuant to C.P. & L.'s rate increase filing in Docket No. ER76–495. Complainants state that this Complaint is independent of the proceedings in C.P. & L.'s June 1977 rate increase filing, Docket No. ER77–485, which has been suspended until December 29, 1977.

Complainants request the Commission, pursuant to section 306 of the Federal Power Act (16 U.S.C. 825e) and § 1.6 of the Commission's rules of practice and procedure (18 CFR 1.6), to: (1) Order C.P. & L. to immediately refund to wholesale customers, with interest, the amount by which C.P. & L. has illegally overcharged such customers under its presently effective wholesale fuel adjustment clause; (2) order C.P. & L. to immediately cease billing its wholesale customers on the basis of a fuel adjustment factor other than that currently in effect until December 29, 1977, when its superseding rate increase (Docket No. ER77–485) is permitted to become effective subject to refund; and (3) take such other action and order such other relief as may be appropriate in the circumstances.

Any person desiring to be heard or to protest said complaint should file a petition to intervene or protest wth the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure filed on or before November 16, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this complaint are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–30945 Filed 10–25–77;8:45 am]

[6740–02]

[Docket No. RP77–56]

NORTHERN NATURAL GAS CO.

Petition for Emergency Relief

OCTOBER 18, 1977.

Take notice that on September 30, 1977, Northern Natural Gas Co. (Northern), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. RP77–56 a Petition pursuant to § 1.7 of the Commission's rules of practice and procedure, requesting that the Commission grant such orders and waivers of its rules and regulations as are necessary to enable Northern to recoup $16,680,000, associated with an emergency storage service agreement with Northern Illinois Gas Co. (NI-Gas) and related transportation costs.

The petition states that Northern and NI-Gas entered into a storage service agreement reduced to writing in June of 1977, whereby NI-Gas and Northern have agreed to reschedule deliveries of gas so as to make available to Northern pursuant to § 2.68 of the Energy Commission's general policy and interpretations, on a best efforts basis, a daily volume of gas up to 200,000 Mcf or such higher volumes as may be agreed to, commencing January 1, 1978, and continuing for a period not to exceed 60 consecutive days. The emergency storage service agreement with NI-Gas covers an aggregate storage withdrawal volume of 12 Bcf. The sum payable to NI-Gas for the emergency storage service is $15,600,000 or $1.30 per Mcf. In addition, Northern will replace the gas commencing on April 15, 1978. In addition, Northern will pay Natural Gas Pipeline Co. of America (Natural) a transportation charge estimated to be some 12 cents per Mcf resulting in an average cost to Northern of $1.39 per Mcf.

The petition recites that as the depletion of Northern's reserves continues, the peak day average production capacity of existing supply sources decreases and, further, because of this experience Northern knew it had to obtain emergency deliveries of gas for the 1977–78 heating season just to meet high priority

requirements under normal weather conditions. The petition also recites that during the months of November, December, and January of the 1976–77 winter heating season, virtually 100 percent of all commercial and industrial uses above 200 Mcf per day, except firm feedstock, process and plant production, were curtailed and only the purchase of some 1.6 Bcf of emergency gas and increased deliveries from storage prevented the curtailment of Priority 1 and 2 consumers.

The petition recites that if the 12 Bcf is not available from NI-Gas, Northern's other available storage must be pulled harder during the early months of the coming 1977–78 heating season and it would be a certainty that curtailment of Priority 1 and 2 would occur under normal weather conditions. The petition also states that if the weather is colder than normal, the consequences would be devastating.

Northern requests that the Energy Commission issue such orders and grant such waivers of its rules and regulations as would determine that Northern, in arranging for the temporary emergency storage service described above, was acting as a reasonable and prudent pipeline and that the Energy Commission issue promptly its order holding and providing that Northern's cost of service as determined in this proceeding will include the $16,680,000 of storage service and related transportation costs associated with its agreement with NI-Gas dated June 1, 1977. If for any reason the Energy Commission declines to grant this request, Northern's alternative request is that the Energy Commission order that Northern be permitted unconditionally to recover such costs through its annual PGA filing which will become effective December 27, 1977.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 28, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30942 Filed 10-25-77;8:45 am]

[6740-02]

[Docket Nos. RP76-115, RP73-109 and RP74-95]

NORTHWEST PIPELINE CORP.

Compliance Filing

OCTOBER 17, 1977.

Take notice that on September 19, 1977, Northwest Pipeline Corporation (Northwest) submitted for filing, certain revised tariff sheets to its Gas Tariff, Original Volume No. 1, as follows:

First Substitute Fourteenth Revised Sheet No. 10
Third Revised Sheet No. 52
Third Revised Sheet No. 56
Second Revised Sheet No. 58
First Revised Sheet No. 60

The above-identified tariff sheets were filed in compliance with Ordering Paragraph D of the Commission's Order dated July 5, 1977 approving, with modification, Northwest's rate settlement in the above-captioned proceeding. The effective dates for the tariff sheets submitted for filing are in accordance with the terms of the settlement agreement as approved by the Commission.

Copies of the filing were served upon Northwest's jurisdictional customers and affected State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 28, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Persons that have previously filed a notice or petition for intervention in this proceeding need not file additional notices or petitions to become parties with respect to the instant filing. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30943 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CI76-806, etc.]

PENNZOIL OFFSHORE GAS OPERATORS, INC.

Further Amendment to Application for Certificate of Public Convenience and Necessity and Petition for Special Relief

OCTOBER 18, 1977.

Take notice that on October 5, 1977, Pennzoil Offshore Gas Operators, Inc. (POGO), P.O. Box 2967, Houston, Texas, filed in the above docket, a second amendment to its application for a certificate of public convenience and necessity and petition for special relief. POGO, in its original application and petition, filed September 29, 1976, noticed October 27, 1976, requested a special relief rate of $2.05/Mcf for gas sales to Southern Natural Gas Pipeline Co. (Southern) and $2.37/Mcf for gas sales to United Gas Pipeline Co. (United) for sales from its interest in W. Cameron 586 and 572; Vermilion 228; and Eugene Is. 256. POGO requested the special relief rate pursuant to 18 CFR 2.56a(g), and its requested waiver of 19 CFR 154.93 so that contract prices could be recalculated upward yearly according to a formula set forth in its application.

On June 3, 1977, POGO filed its first amendment to its application and it was noticed June 28, 1977. POGO requested a new initial rate of $2.45/Mcf for its sales to Southern and $2.71/Mcf for sales to United. POGO also requested that its application and petition be granted under "whatever provisions of the Commission's regulations governing sales of gas not previously dedicated to interstate commerce at * * * rates in excess of the applicable national rate" which are found appropriate, including 18 CFR 2.75.

In its present amended application and petition, POGO now requests an initial rate of $3.1737/Mcf for sales to United, from the subject blocks. Also, the new amendment notes that in place of the original applicant—POGO—there are now two applicants—namely, POGO Producing Co. and Pennzoil Oil and Gas, Inc. These two new applicants stand in the shoes of the original POGO applicant as a result of a corporate spinoff voted by the POGO shareholders effective August 2, 1977.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 4, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30944 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RP73-3 (PGA77-3a)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Compliance Filing

OCTOBER 13, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on September 30, 1977, tendered for filing certain revised tariff sheets to its Gas Tariff, Second Revised Volume No. 1 to become effective September 1, 1977, without suspension, and September 2, 1977, subject to refund. Transco states that the purpose of this filing is to reflect the provisions of Ordering Paragraphs (A) and (B) of the Commission's Order issued August 31, 1977 in the instant docket.

Transco states that copies of the instant filing have been mailed to each of

its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30946 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP77-658]

TRANSWESTERN PIPELINE CO.

Application

OCTOBER 18, 1977.

Take notice that on September 30, 1977, Transwestern Pipeline Company (Applicant), P.O. Box 2521, Houston, Texas 77001, filed with the Federal Power Commission in Docket No. CP77-658 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of certain quantities of natural gas with El Paso Natural Gas Company (El Paso), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the order issued at Docket No. CP61-299 and pursuant to the terms and provision in an exchange agreement (1961 agreement) dated February 1, 1961, and filed as Applicant's Rate Schedule X-1, Original Volume No. 2, Applicant and El Paso have exchanged natural gas at numerous points in the Panhandle area of Texas and Oklahoma, it is indicated. It is stated that during the course of the last 16 years one additional balancing exchange point has been added and a number of wells have been added and deleted from the original 1961 agreement.

Applicant states that due to current operating conditions it and El Paso find it necessary to modify and update the mutual exchange arrangement. Consequently, they have replaced the 1961 agreement with a new exchange agreement dated February 8, 1977. A total of 13 new wells and 3 new balencing exchange points were added to the exchange arrangement, it is said.

Applicant states that the overall effect of the modification of the 1961 exchange arrangement, is to allow for the continued level of flexible operations through exchanges of natural gas between Applicant and El Paso. Applicant indicates that it would file the 1977 agreement as part of its FPC gas tariff, Original Volume No. 2. Applicant also requests authorization to attach as it becomes necessary, additional wells to the 1977 agreement by the filing of tariff revisions.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1977, file with the Federal Energy Regulatory Commission, Washington D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30947 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RP74-52]

TRANSWESTERN PIPELINE CO.

Proposed Changes in Gas Tariff

OCTOBER 18, 1977.

Take notice that Transwestern Pipeline Company (Transwestern) on September 23, 1977 tendered for filing with the Federal Power Commission as a part of its Gas Tariff, First Revised Volume No. 1 tariff sheets which incorporate the settlement rates in Docket No. RP74-52, effective throughout the period, July 11, 1974, September 30, 1975, pursuant to Ordering Paragraph (B) of the Commission's Order Affirming Initial Decision on Allocation of East-of-Roswell Transmission Costs, issued July 25, 1977 in Docket No. RP74-52.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 4, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30948 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RP74-89, etc.]

TRUNKLINE GAS CO., ET AL.

Filing of Pipeline Refund Reports and Refund Plans

OCTOBER 18, 1977.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix below.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before November 14, 1977. Copies of the respective filings are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

Date Filed	Docket No.	Company	Type of filing
May 9, 1977	G-2017, et al.	Texas Gas Transmission Corp.	Plan.
May 31, 1977	G-12193, et al.	United Gas Pipe Line Co.	Do.
June 2, 1977	AR61-2, et al. and AR69-1, et al.	do	Report.
Do.	AR64-2 and AR67-1, et al.	do	Do.
June 27, 1977	RP71-18, et al.	Columbia Gas Transmission Corp.	Plan.
June 29, 1977	CP63-12, et al. and RP70-1.	Mississippi River Transmission Corp.	Report.
July 14, 1977	R-478	El Paso Natural Gas Co.	Do.
July 25, 1977	RP76-59	do	Do.
July 28, 1977	G-1964, G-12706, G-18841, RP65-59, RP69-13 and RP70-29.	Texas Eastern Transmission Corp.	Plan.
Aug. 1, 1977	RP67-9	El Paso Natural Gas Co.	Report.
Do.	RP72-99	Transcontinental Gas Pipe Line Corp.	Do.
Do.	RP74-82	Columbia Gas Transmission Corp.	Do.
Aug. 2, 1977	CP71-50	Natural Gas Pipeline Co. of America	Do.
Do.	RP74-96	do	Do.
Do.	RI75-129	Southern Union Gathering Co.	Plan.
Aug. 12, 1977	R-478	West Texas Gathering Co.	Do.
Aug. 15, 1977	G-9547, et al.	United Gas Pipe Line Co.	Do.
Do.	AR64-2, et al.	South Texas Natural Gas Gathering Co.	Do.
Aug. 16, 1977	RP73-94	Valley Gas Transmission, Inc.	Report.
Aug. 18, 1977	RP76-10	Arkansas Louisiana Gas Co.	Do.
Aug. 26, 1977	G-12706 and G-18841	Texas Eastern Transmission Corp.	Do.
Do.	RP75-73	do	Do.
Do.	RP71-125 and RP72-132	Natural Gas Pipeline Co. of America	Do.
Do.	RP76-93	Kentucky West Virginia Gas Co.	Do.

[FR Doc. 77-30936 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. ES78-2]

IOWA ELECTRIC LIGHT AND POWER CO.

Notice of Application

OCTOBER 18, 1977.

Take notice that on October 11, 1977, the Iowa Electic Light and Power Co. (Applicant), filed an application with the Federal Energy Regulatory Commission seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance of short-term notes in the aggregate principal amount of $60,000,000.

Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado, and Nebraska with its principal business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission and sale at retail of electric energy in 55 counties in the State of Iowa.

The notes to be issued to commercial banks and/or commercial paper dealers will have a term not in execss of one year with a final maturity date of not later than December 31, 1979. The notes issued as commercial paper will bear the rate of interest then in effect for such commercial paper of like term and quality and the notes issued to banks will bear interest based on the prime rate.

According to the Applicant, the purpose for which the said notes are to be issued is for the Company's continuing construction program and for other corporate purposes.

Any person desiring to be heard or to make protest with reference to this Application should on or before November 4, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30949 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. E-9259]

LONG ISLAND LIGHTING CO.

Notice of Application

OCTOBER 18, 1977.

Take notice that on October 6, 1977, Long Island Lighting Co. (Applicant), filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue through and including December 31, 1979, its unsecured promissory notes in a principal amount not to exceed $200,000,000 and its commercial paper in a principal amount not to exceed $200,000,000, together aggregating more than 5 percent of the sum of the par value of the outstanding securities of the applicant having a par value but in no event to aggregate at any one time outstanding more than $200,000,000, both promissory notes and commercial paper to have maturity dates not later than September 30, 1980, and for a further order, continuing the exemption of the proposed issuance of short-term securities from the competitive bidding requirements of section 34.1a (b) and (c) of the Regulations under the Federal Power Act, if deemed applicable.

Applicant, incorporated under the laws of the State of New York, with its principal business office at 250 Old Country Road, Mineola, N.Y. 11501, is authorized to do business in the State of New York.

The interest rate applicable to the promissory notes will generally be at an annual rate equal to 108 percent of the prime rate of each lending bank to substantial and responsible commercial borrowers. The interest rate applicable to the commercial paper will be the rate in effect at the time of issuance, to be determined in the manner customary for commercial paper. The promissory notes will each mature not more than nine months from the date of issuance. The maturity of the commercial paper will vary but in no event will any of the commercial paper mature more than nine months after issuance.

The proceeds will be used to reimburse the treasury of the applicant to finance expenditures against which other securities have not yet been issued and, pending the issuance of new debt obligations maturing more than one year from the date of issuance and new equity issues, for construction of its electric, gas and common properties and to repay any long-term debt becoming due or to redeem Preferred Stock or long-term debt in accordance with optional or mandatory redemption provisions contained in the instruments creating such Preferred Stock or long-term debt.

The applicant is presently authorized to issue, through and including December 31, 1977, the same amounts of short-term promissory notes and commercial paper, i.e., $200,000,000 principal amount of unsecured promissory notes to commercial banks and $200,000,000 principal amount of commercial paper to commercial paper dealers, together, however, aggregating at any one time outstanding not more than $200,000,000, with final maturity dates of all notes being not later than September 30, 1978, and with the total aggregate amount of all notes issued in the form of commercial paper outstanding at any one time limited to not more than 25 percent of applicant's gross operating revenues during the preceding twelve month period. The Commission has heretofore provided the applicant with an exemption from the competitive bidding requirements of Section 34.1a of the Federal Power Commission's Regulations under the Federal Power Act.

Any person desiring to be heard or to make any protest with reference to the application should, on or before November 1, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30950 Filed 10-25-77;8:45 am]

[6740-02]

[Docket Nos. R-380 and RP77-112]

NATURAL GAS PIPELINE CO. OF AMERICA

Notice of Petition

OCTOBER 18, 1977.

Take notice that on July 20, 1977, Natural Gas Pipeline Co. of America, 122 South Michigan Avenue, Chicago, Ill.

60603 (Petitoner), filed in Docket Nos. R-380 and RP77-112, a Petition pursuant to Order Nos. 410 and 410-A seeking authorization to retain in rate base for more than five (5) years from the date delivery of gas attributable thereto commenced, the unrecouped portion of advances made to Shell Oil Co. under an advance payment agreement dated April 19, 1971, as more fully set forth in the Petition, which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with respect to said Petition should on or before October 28, 1977, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30951 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-2]

ARKANSAS OKLAHOMA GAS CORP.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 3, 1977, Arkansas Oklahoma Gas Corp. (Applicant), 115 North 12th Street, Fort Smith, Ark. 72901, filed in Docket No. CP78-2 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to connect one gas well to its pipeline system, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to connect the gathering line for the Kay Rodgers No. 1 well to Applicant's Line F at a point in Sequiyah County, Okla. Applicant states that the estimated cost of making the proposed connection is $1,680, which cost would be financed out of funds on hand.

Applicant asserts that the additional gas supply to be obtained through the proposed facilities would be used to maintain service to its existing customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intetrvene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30952 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-10]

LONE STAR GATHERING CO.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 11, 1977, Lone Star Gathering Co. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP78-10 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(c) of the regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1978, an operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $100,000, which cost would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 11, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30953 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-13]

LONE STAR GAS CO., A DIVISION OF ENSERCH CORP.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 11, 1977, Lone Star Gas Co., a Division of Enserch Corp. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP78-13 an application pursuant to section 7(b) of the Natural Gas Act and section 157.7(e) of the regulations thereunder (18 CFR 157.7(e)) for permission and approval to abandon during the calendar year 1978, direct sale service and facilities no longer required for deliveries of natural gas to Applicant's customers, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sale measuring, regulating, and related facilities. Applicant states that it would abandon service and facilities only when

deliveries to any one direct sale customer would not exceed 100,000 Mcf of natural gas during the last year of service.

The application states that Applicant would not abandon any service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has not further need for service would be filed with the Commission, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 14, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30954 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-12]

LONE STAR GAS CO., A DIVISION OF ENSERCH CORP.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 11, 1977, Lone Star Gas Co., a Division of Enserch Corp. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP78-12 an application pursuant to section 7 of the Natural Gas Act and section 157.7(g) of the regulations thereunder (18 CFR 157.7(g) for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the calendar year 1978, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment would not exceed $1,000,000 with no single project to exceed $250,000. Applicant further states the cost would be financed from working capital.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules or practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30955 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-11]

LONE STAR GAS CO., A DIVISION OF ENSERCH CORP.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 11, 1977, Lone Star Gas Co., a Division of Enserch Corp. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP78-11 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction during the calendar year 1978, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers of other similar sellers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally co-extensive with its pipeline system or the system of other pipeline companies which may be authorized to transport gas for the account of or exchange with Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $6,500,000 with no single project to exceed a cost of $1,500,000. These costs would be financed from working capital, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 11, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on

its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30956 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP78-14]

LONE STAR GAS CO.

Notice of Application

OCTOBER 19, 1977.

Take notice that on October 11, 1977, Lone Star Gas Co., a Division of Enserch Corp. (Applicant), 301 South Harwood Street, Dallas, Tex. 75201, filed in Docket No. CP78-14 an application pursuant to section 7(c) of the Natural Gas Act and section 157.7(c) of the regulations thereunder (18 CFR 157.7(c)) for a certificate of public convenience and necessity authorizing the constructing, during the calendar year 1978, and operation of facilities to make miscellaneous rearrangements on its system, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the service presently rendered by Applicant.

Applicant states that the total cost of the proposed facilities would not exceed $300,000, which cost would be financed from cash on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 11, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiciton conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the cerificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30957 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RI77-135]

THE MAURICE L. BROWN CO.

Notice of Petition for Special Relief

OCTOBER 19, 1977.

Take notice that on September 19, 1977, The Maurice L. Brown Co. (Petitioner), P.O. Box 11320, Kansas City, Mo. 64112, filed in Docket No. RI77-135 a petition for special relief pursuant to section 2.76 of the Commission's general policy and interpretations (18 C.F.R. § 2.76). Petitioner seeks to collect a rate of $1.3394 per Mcf for the sale of natural gas to United Gas Pipe Line Co. from the Furrh-Cooper Gas Unit No. 1 Well located in Panola County, Tex. Petitioner indicates that the proposed rate increase is necessary in order for Petitioner to continue economic operations so that it may maintain its oil and gas leases pending future development.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 7, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30958 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. CP77-659]

SOUTHERN NATURAL GAS CO.

Notice of Application

OCTOBER 19, 1977.

Take notice that on September 30, 1977, Southern Natural Gas Co. (Applicant), P.O. Box 2563, Birmingham, Ala. 35202, filed with the Federal Power Commission in Docket No. CP77-659 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transfer of its production properties to SONAT Exploration Co. (SONAT), an affiliate company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization: (1) to transfer to SONAT all of its interest in and to the production properties, wells and appurtenant facilities (the Properties); (2) to transfer Applicant's system-connected fields (3) to transfer Applicant's off-system sales which constitute Applicant's currently effective Rate Schedules F-4, F-5, F-6, F-9, F-10, F-12, F-13, F-14, F-15, F-16 of its FPC Gas Tariff, Original Volume No. 3, which SONAT by contemporaneous filing is seeking authority to continue as successor-in-interest; and (4) to transfer Applicant's rights and obligations set forth in the order of October 29, 1974 in Kerr-McGee Corp., et al. (52 FPC 1077). Applicant indicates that SONAT would continue, as successor-in-interest, off-system sales currently made by Applicant and would initiate sale to Applicant from present on-system properties.

The properties would be transferred to SONAT on the basis of the net book value of the Properties, which value is $11,709,086, it is indicated. Applicant estimates that its share of reserves underlying these on-system Properties totaled approximately 190,000,000 Mcf as of January 1, 1977, and that gas sales and purchase contracts have been entered into between Applicant and SONAT for all of the on-system Properties.

Applicant states that it is making ten off-system sales in Louisiana, Texas, Mississippi, and offshore Louisiana under currently effective Rate Schedules of its FPC Gas Tariff, Original Volume No. 3 which would be succeeded to by SONAT, and that it had proven reserves of approximately 80,000,000 Mcf dedicated, as of January 1, 1977 under its Volume No. 3-F Rate Schedule and the Southern Natural Gas/Philips Petroleum Co. Joint Venture. Applicant's interest in the two rate schedules of the Southern Natural Gas/Phillips Petroleum Co. Joint Venture would be transferred to SONAT which would continue these sales, it is said. Additionally, Applicant states that it currently has interest in eight fields where it is not the operator and is selling gas from those fields under certificates issued to the operator, and that after issuance of the authorizations requested herein, the operator would make the filings to reflect SONAT's acquisition of the related producing properties and the continuation of service by SONAT.

Applicant asserts that the proposed transfer of the Properties would consolidate the exploration and production activities which are carried out in an effort to benefit Applicant's gas supply, and that it would also serve to establish rate stability and simplification.

Applicant and SONAT propose that SONAT receive for sales of gas to Applicant from pre-October 8, 1969 leases the rates which an independent producer would be eligible to receive under current or any future regulation of independent producer sales or such other prices authorized by specific order of the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30959 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RP78-3]

SOUTHERN NATURAL GAS CO.

Notice of Petition for Emergency Relief

OCTOBER 19, 1977.

Take notice that on October 14, 1977, Southern Natural Gas Co. (Petitioner), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. RP78-3 a petition pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.7) requesting that the Commission grant such order and waivers of its rules and regulations as are necessary to enable Petitioner to recoup gas purchase costs in its purchased gas adjustment clause, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Petitioner indicates that due to unprecedented cold weather in its service area last winter, it encountered a severe emergency on its system which required curtailments into priority 1 service category. At this critical juncture, Petitioner was able to effect various emergency storage and purchase transactions. Emergency gas available from such transactions literally prevented a major disaster from occurring on Petitioner's system throughout the remainder of the winter.

Petitioner states that in the Commission's recent investigation into curtailments on Petitioner's system during the upcoming winter, the Commission was advised that a repeat of last winter's weather would result in similar curtailments, including a repeat of last winter's curtailment into priority-of-service category 1 if emergency purchases are not available.

Petitioner indicated in Docket No. RP77-85 that it informed the Commission that it had been unable to arrange for a temporary storage or written commitments for emergency purchases of natural gas on reasonable terms but that it had verbal commitments for about 3 Bcf of emegency gas in November and December and 6 Bcf in January and February. Petitioner has now been able to arrange for temporary emergency storage (see Docket No. RP77-136-1) and has contracted with Oklahoma Natural Gas Co. (ONG) for approximately 3 Bcf of emergency gas purchases during November and December.

Pursuant to the terms and conditions of Petitioner's agreement with ONG, Southern may purchase emergency gas during the 60-day period from November 1 through December 31, 1977, at a price of $1.90 per MMBtu. Southern and ONG anticipate that Southern will purchase approximately 50,000 Mcf per day during this period. However, if additional gas is available from ONG and if it can be transported into Petitioner's system, Petitioner may purchase additional volumes of emegency gas if severely cold weather is experienced during this time period. Petitioner will also incur transportation costs in getting the gas into its system and in this regard Petitioner has arranged transportation through the systems of Panhandle Eastern Pipe Line Co. (Panhandle), Trunkline Gas Co. (Trunkline), and Tennessee Gas Pipeline Co. (Tennessee). Petitioner states that the approximate cost of the transportation for the subject emergency gas purchase will be approximately 21 cents to 41 cents depending on the point of redelivery to Petitioner by Tennessee.

In an effort to insure that the gas purchased is used only for high priority uses, Petitioner has also entered into agreements with Tennessee and East Tennessee Natural Gas Co. (East Tennessee), under which Petitioner will offer the gas for sale to those pipelines whenever Southern does not need the same to serve priorities 1, 2, and 3 pursuant to its FPC gas curtailment plan or to replenish storage. Any gas sold to Tennessee or East Tennessee shall be sold at Petitioner's cost, plus the approximate transportation charges described in more detail in the petition on file with the Commission. Tennessee and East Tennessee have agreed to purchase the emergency gas when needed on their respective systems to meet high priority requirements. Petitioner, therefore, asserts that it has taken every step possible to insure that this emergency gas will be used for high priority requirements either on its own system or on the systems of Tennessee and East Tennessee.

Petitioner asserts that the charges associated with the emergency purchase fully comply with the Commission's "prudent pipeline" test and further asserts that in light of last winter's experience, that Petitioner's actions in arranging the emergency transactions described herein prior to next winter are reasonably prudent.

Accordingly, Petitioner requests that the Commission issue such orders and grant such waivers of its rules and regulations as would determine that Petitioner, in arranging for the temporary emergency storage service described herein, is acting as a reasonable and prudent pipeline and authorize Petitioner to track the costs of the above-described emergency purchase transaction and attendant transportation charges in its purchased gas adjustment clause.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 28, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30960 Filed 10-25-77;8:45 am]

[6740-02]

[Docket Nos. CP75-23 and CP75-120]

TENNESSEE GAS PIPELINE CO.

Notice of Petition To Amend

OCTOBER 19, 1977.

Take notice that on September 30, 1977, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Tex. 77001, filed with the Federal Power Commission in Docket Nos. CP75-23 and CP75-120 a petition to amend the Opinion and Order No. 789 (order) of March 7, 1977 (57 FPC),

in Tenneco Oil Co., *et al.* Tenneco Oil), Docket Nos. CI75–45, et al., so as to reflect provisions of amendments executed by Petitioner and Tenneco Oil to two agreements entered into in 1964 and 1974, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of March 7, 1977, issued in the instant dockets Petitioner was authorized, among other things, to transport certain volumes of gas to Yscloskey, La., for delivery to Creole Gas Pipeline Corp. (Creole) for the account of Tenneco Oil, and such service was to be rendered pursuant to a transportation agreement between Petitioner and Tenneco Oil dated September 14, 1964, as amended, and an exchange and transportation agreement between Petitioner and Tenneco Oil dated September 27, 1974. Additionally said order designated the specific sources of supply from which deliveries were to be made to Petitioner for transportation under said certificates, which sources are also reflected in the 1964 agreement and incorporated by reference into the 1974 agreement, it is indicated.

Petitioner states that it and Tenneco Oil have entered into amendments to said 1964 and 1974 agreements, both of such amendments dated September 29, 1977, which amendment modifies the 1964 and 1975 agreements. With respect to the 1964 agreement it is stated that the amendment modifies the same (1) to include as additional sources of supply for transportation thereunder gas produced from and delivered to Petitioner at Eugene Island Blocks 342 and 343 and Eugene Island Block 367, the Dog Lake Field and Tenneco Oil's Terrebonne Land Development, et al., Well No. 2, Terrebonne Parish, La.; (2) to reflect a revision to the rate provision; and (3) to reflect certain other minor revisions.

Petitioner indicates that it is receiving deliveries from Tenneco Oil of gas produced from Blocks 342 and 343, whereby Tenneco Oil, inter alia, dedicated 75 percent of its interest in said Blocks for sale to Petitioner, retaining the remaining portion thereof from dedication to Petitioner. Petitioner further indicates that pursuant to the Opinion No. 755 issued March 1, 1976, in Docket No. CI75–466, and authorized by order of October 14, in Docket No. CI75–466, Tenneco Oil also delivered to Petitioner volumes produced from its retained interest in Blocks 342 and 343 among other sources, in repayment of an imbalance recognized in said Opinion No. 755, which imbalance was eliminated in September 1977. By letter agreement dated May 26, 1977, which was filed with the Federal Power Commission on May 27, 1977, executed by counsel for Tenneco Oil and Counsel for the Public Service Commission for the State of New York, Tenneco Oil has conditionally agreed that it would dedicate to Petitioner the first 4,000,000 Mcf of gas from its remaining retained interest in Blocks 342 and 343 commencing on the date said imbalance becomes zero.

Petitioner proposes, upon the completion of repayment to Petitioner of said imbalance and subject to the delivery and sale to Petitioner of said 4,000,000 Mcf, when approved by the Commission, to transport for Tenneco Oil pursuant to the aforementioned agreements, in addition to gas delivered from the other sources of supply specified in the aforementioned agreements, such volumes as are delivered to Petitioner from Tenneco Oil's remaining retained interest in Blocks 342 and 343.

Petitioner and Tenneco Oil have entered into two separate gas purchase and sales agreements, both dated August 6, 1976, whereby Tenneco Oil has committed for sale to Petitioner 75 percent of its interest in Block 367 retaining from such dedication 25 percent of its interest in Block 367, it is indicated. Petitioner states that Tenneco Oil also owns an interest in reserves in the Dog Lake Field and in the Terrebonne Land Development, et al. Well No. 2, both sources located in Terrebonne Parish, La. Petitioner proposes to transport for Tenneco Oil, pursuant to the aforementioned agreements, volumes available from said interests.

It is indicated that with respect to the 1974 agreement, Petitioner and Tenneco Oil have included in the amendment, in addition to a revision to the rate provision, a clause limiting the volumes to be transported by Petitioner under the 1974 agreement to a quantity of up to 24,000 Mcf per day in accordance with the certificate.

Pursuant to order of September 15, 1976, in Docket No. CP76–317 Petitioner has acquired an undivided one-half interest in compression facilities related to the supply sources at Blocks 342, and 343, and Petitioner bears only such costs as were related to the compression of gas which was dedicated for sale to Petitioner. It is indicated that such order also provides that authorization is required for the utilization of said compression facilities as such utilization relates to transportation volumes. Petitioner and Natural Gas Pipeline Co. of America are installing compression facilities related to the supply source at Block 367 pursuant to certificate authorization issued on August 1, 1977, in Docket No. CP77–360, which certificate requires Applicant to assess Tenneco Oil an appropriate charge for compression of the gas transported by Petitioner for Tenneco Oil from such Block, it is said. Petitioner also proposes to utilize said compression facilities for the transportation volumes and to assess Tenneco Oil a monthly compression charge equal to the monthly costs, including fuel, associated with the compression of the gas received by Petitioner from Blocks 342, 343, and 367 for transportation as proposed herein.

It is further stated that the volumes to be transported by Petitioner from Blocks 342 and 343, Block 367, Dog Lake Field and the Terrebonne Land Development, et al., Well No. 2 would be delivered to Creole for Tenneco Oil's account at Ysckoskey, La. Petitioner indicated that Creole would further transport said gas for Tenneco Oil's account for delivery to the New Orleans complex of Air Products & Chemicals, Inc. (Air Products) and to Tenneco Oil's Chalmette Refinery, for use by Air Products and Tenneco Oil in accordance with the use prescribed in Opinion No. 789.

It is indicated that Tenneco Oil has advised Petitioner that inasmuch as certain of the original sources of supply included under the 1964 and 1974 agreements are either no longer available or are being depleted, it is presently in need of additional supply sources in order to fulfill the previously approved requirements of Air Products and for the previously approved use in Chalmette Refinery.

Any person desiring to be heard or to make any protest with reference to said petition to amend should or on before November 4, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77 30961 Filed 10–25–77;8:45 am]

[6740–02]

[Docket No. CP77–403]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Amendment to Application

OCTOBER 19, 1977.

Take notice that on October 12, 1977, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP77–403 an amendment to its application filed with the Federal Power Commission on May 20, 1977, in the instant docket so as to reflect a revision of temporary storage quantities which Applicant proposes to render for six of its customers, during the 1977–78 winter season, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant indicates that on May 20, 1977 it filed with the Federal Power Commission an application in the instant docket requesting authorizaiton to render approximately 12,700,000 dekatherms (dts) equivalent of temporary storage service from the Washington Storage Field (denominated as TSS–1) for its customers for the 1977–78 winter season. It is indicated that Applicant

was granted temporary authorization to commence the subject storage service pursuant to a letter order issued by the Federal Power Commission on July 15, 1977.

Applicant states that one of the participating customers, South Jersey Gas Company (South Jersey), has requested a reduction of its temporary storage quantity. Accordingly, Applicant has requested its other customers to indicate their desires for the temporary storage capacity which South Jersey wishes to relinquish, it is indicated. Applicant indicates that as a result, five customers have requested temporary storage quantities as follows:

Customer:	Storage quantity (dt)
Alexander City, Ala.	20,000
Lawrenceville, Ga.	8,000
Lexington, N.C.	10,000
Monroe, Ga.	30,000
Pennsylvania Gas and Water Co.	250,000
Total	318,000

South Jersey's TSS–1 quantity has been reduced by 318,000 dts (from 2,000,000 dts to 1,682,000 dts), and the total quantity of TSS–1 service is unchanged, it is said.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 1, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–30962 Filed 10–25–77;8:45 am]

[6740–02]

[Docket No. ER78–17]

TUCSON GAS & ELECTRIC CO.

Notice of Filing

OCTOBER 19, 1977.

Take notice that Tucson Gas & Electric Company (Tucson) on October 11, 1977, tendered for filing Amedment No. 2 to the Tucson-Edison 1976–1978 Energy Sale Agreement dated March 30, 1976, between Tucson and Southern California Edison Company.

Tucson indicates that the primary purpose of Amendment No. 2 is to provide an additional point of delivery at the Mean Substation to facilitate the delivery of contract-stated guaranteed amount of energy.

Tucson requests that the Commission accept this Amendment No. 2 so that service thereunder may commence effective immediately.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests shall be filed on or before October 31, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–30963 Filed 10–25–77;8:45 am]

[6740–02]

[Docket No. CP77–660]

UNITED GAS PIPE LINE CO.

Notice of Application

OCTOBER 19, 1977.

Take notice that on September 30, 1977, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Tex. 77001, filed with the Federal Power Commission in Docket No. CP77–660 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)) for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the twelve-month period commencing upon the issuance of the requested authorization herein, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in the construction and abandonment of facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment would not exceed $3,000,000, and that the cost of any single project would not exceed $500,000. The cost would be financed from funds on hand, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1977, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–30964 Filed 10–25–77;8:45 a.m.]

[6740–02]

[Docket No. CP77–489]

UNITED GAS PIPE LINE CO.

Notice of Filing of Original Tariff Sheets

OCTOBER 19, 1977.

Take notice that on October 12, 1977, United Gas Pipe Line Company tendered for filing Original Sheet Nos. 893 through 904 to its FERC Gas Tariff, Original Volume No. 2, being an exchange agreement between United Gas Pipe Line Company, Natural Gas Pipeline Company of America, Southern Natural Gas Company and Columbia Gulf Transmission Company dated June 14, 1977. It is proposed that these tariff sheets become effective on September 5, 1977.

United States that copies of these tariff sheets have been mailed to Natural Gas Pipeline Company of America, Southern Natural Company and Columbia Gulf Transmission Company.

Any person desiring to be heard or to make any protest with reference to said application, on or before November 11, 1977, should file with the Federal Energy

Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30965 Filed 10-25-77;8:45 am]

[6740-02]

[Docket No. RM78-2 (Formerly Ex Parte No. 308]

COMMON CARRIER PIPELINES

Rescheduled Hearing

AGENCY: Federal Energy Regulatory Commission.

ACTION: Rescheduling hearing.

SUMMARY: This order reschedules the hearing previously set in this proceeding for October 18, 1977 (42 FR 48429, September 23, 1977) to November 1, 1977. This rescheduling is necessitated for administrative reasons resulting from the transferral of this proceeding from the ICC pursuant to the Department of Energy Organization Act. On November 1, 1977, the hearings will commence to permit cross-examination of comments previously submitted in this proceeding.

EFFECTIVE DATE: October 12, 1977.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 202-275-4166.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities and, inter alia, certain functions and responsibilities of the Interstate Commerce Commission were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705 (b) of the DOE Act provide that proceedings pending on the date the DOE Act takes effect before any department, agency, commission, or component thereof, the functions of which are transferred by the DOE Act, shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402 of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR Part 1000 (42 FR 55534, October 17, 1977), provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On October 3, 1977, the Association of Oil Pipe Lines (AOPL) filed a motion with this Commission requesting that hearings scheduled in this proceeding by order of the Interstate Commerce Commission dated September 6, 1977, go forward as scheduled without further delay. Hearings are scheduled for the purpose of cross-examination of witnesses who have submitted statements in the proceeding.

The issues in this proceeding generally include the methodology of valuation applicable to oil pipelines and guidelines for fair rates of return on the valuation of oil pipelines. AOPL notes the great importance of this proceeding to the public and the oil pipeline industry. AOPL further states prompt resolution of the issues in this proceeding is desirable for use in major controversies over rates of particular pipelines, for the planning of additional oil pipelines, and to mitigate the logistical difficulties of rescheduling about twenty witnesses.

On October 6, 1977, the Department of Justice moved for the convening of a prehearing conference, for a postponement of the hearing scheduled for October 18, 1977, and that the parties be accorded the opportunity to submit in writing their views on procedural issues and a proposed timetable for these proceedings. The Department of Justice contends the issues in this proceeding have never been properly focused; that the statements submitted by the ICC's Bureau of Investigations and Enforcement describe the ICC's valuation procedures without any specific proposals for reform, even though the Department of Justice and other parties have argued for reformation of that methodology, and that the AOPL has primarily addressed the issue of the proper rate of return suggesting only minor methodology modifications. Consequently, the Department of Justice says the parties do not know which issues are to be addressed and that therefore going forward would result in a significant waste of time.

The Department of Justice also states it has some procedural questions relating to the transfer of jurisdiction from the ICC to the FERC concerning, for example, the procedural rules to be utilized, whether the Secretary of the Department of Energy or the FERC will have primary jurisdiction over the rulemaking proceeding, the legal capacity of the three Bureau witnesses to describe and defend the method of rate regulation in light of the transfer; the issue of availability of information in the hands of the carriers, and whether this is an appropriate proceeding for the FERC to exercise its subpoena power.

Upon consideration, the Commission will postpone the hearing now scheduled for October 18, 1977, until November 1, 1977.

The Commission notes with concern the comments of the Department of Justice. Nevertheless, the parties have been on notice since at least January 9, 1976, of the intended scope of this rulemaking. All parties have had the opportunity to comment upon the issues set forth by the ICC in its Notices of proposed Rulemaking. The burden has been on the participants to comment or to join issue with others on those matters subject to consideration in this rulemaking. The Commission also recognizes the significance of this proceeding and deems it desirable to complete now the cross-examination on the comments already submitted in order to better determine whether further information must be gathered by the Commission or if additional issues need to be explored in this rulemaking proceeding. We shall therefore order cross-examination of the witnesses who have submitted statements in this proceeding to go forward. However, for administrative reasons resulting from the transferral of this proceeding from the ICC pursuant to the DOE Act, it is necessary to reschedule the hearing to November 1, 1977.

We further direct that at the conclusion of the cross-examination of the witnesses who have submitted statements in this proceeding, the presiding Administrative Law Judge shall conduct a conference with the parties to determine whether in their view additional information, not a part of the record, or other issues need to be considered by the Commission, and to take such further action as he deems appropriate consistent with the notices of rulemaking and other orders of the ICC issued in this proceeding and to thereafter certify the record to the Commission for the consideration of further procedures.

In response to the comments of the Department of Justice, we note this proceeding has been transferred to the jurisdiction of the FERC by the "Transfer of Proceedings to the Secretary of Energy and the FERC" adopted on October 1, 1977. Further, as provided by this Commission's Order No. 1[1], the rules and regulations in Chapter I, Title 18 of the Code of Federal Regulations, apply to

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[1] Interim Regulations for the Operation of the Federal Energy Regulatory Commission, Docket No. RM78-1, Order Providing for the Continuation of Functions Vested in, or Delegated to, the Federal Energy Regulatory Commission, issued October 6, 1977.

functions vested in, or delegated to, the Commission, and shall continue to apply to the functions of this Commission except, *inter alia*, that the rules and regulations in Title 49, CFR §§ 1241.61 and 1241.62, and Parts 1002, 1100, 1108, 1204, 1220, 1224, 1260–1262, 1300, 1330, and 1331, relating to functions under the Interstate Commerce Act which are vested in, or delegated to, the Commission, shall continue in effect until modified by the Commission.

The Commission finds: (1) The hearing scheduled in this proceeding to commerce October 18, 1977, should be postponed and rescheduled for November 1, 1977.

(2) The motions of AOPL and the Department of Justice should, to the extent not granted herein, be denied.

The Commission orders: (A) The hearing scheduled in this proceeding for October 18, 1977, is postponed and rescheduled for November 1, 1977.

(B) The hearing heretofore ordered in this proceeding shall be commenced at 10 a.m. in a hearing room of the Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR § 3.5(d)) shall preside at the hearing in this proceeding.

(D) The motions of AOPL and the Department of Justice, to the extent not granted herein, are denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-31026 Filed 10-25-77;8:45 am]

[3128-01]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

LONG-TERM MANAGEMENT OF DEFENSE HIGH-LEVEL RADIOACTIVE WASTES (HANFORD RESERVATION, RICHLAND, WASHINGTON)

Preparation of Environmental Impact Statement and Availability of Technical Alternatives Defense Waste Document

Notice is hereby given that in accordance with the National Environmental Policy Act, the Energy Research and Development Administration (ERDA) intends to prepare a programmatic environmental impact statement (EIS) concerning the long-term management of the high-level radioactive wastes that are generated as part of the national defense effort at the Hanford Reservation located at Richland, Wash. Currently, large quantities of these radioactive wastes in liquid and solid forms are stored at the Hanford site.

The environmental impacts of the continuing waste management operations at the plant were assessed in ERDA–1538, a final environmental impact statement issued in December 1975 (40 FR 60110, December 31, 1975). This new programmatic statement will assess the environmental impacts associated with the reasonably available alternatives for ultimate disposition of the wastes in an environmentally acceptable manner for periods of time required for the radioactivity to decay to safe levels, i.e., hundreds to thousands of years. Research and development programs are being performed at the Hanford Reservation on alternative waste forms and storage modes for the long-term management of these defense wastes.

The purpose of this Notice is to present pertinent background information regarding the proposed scope and content of the statement and to solicit comments and suggestions for consideration in its preparation. In order to provide background regarding the state-of-the-art of various technologies to be considered for use in disposal of the wastes, ERDA has prepared a Defense Waste Document (DWD), "Alternatives for Long-Term Management of Defense High-Level Waste," Hanford Reservation (ERDA 77–44). The preparation of this DWD was announced October 18, 1976 (41 FR 45901). This DWD describes the alternative technologies with respect to their probable relative costs, risks, and uncertainties. Four basic alternatives and several variations are included in the DWD. These alternatives range from continuing the storage as salt cake and sludge in tanks on the Hanford Reservation (which is the "no action" alternative) to conversion of the waste to a glass form and shipping it to a Federal repository.

The EIS will assess the environmental impact of the main candidate plans using the DWD as a reference source of input. The EIS will provide the environmental input into decisions related to the programmatic undertakings required to establish an environmentally acceptable mode of disposal for these high-level radioactive wastes.

Interested agencies, organizations or persons desiring to submit comments or suggestions should submit them to W. H. Pennington, Director, Office of NEPA Coordination, Mail Station E–201, U.S. Energy Research and Development Administration, Washington, D.C. 20545, telephone (301) 353–4241, on or before January 1, 1978. Those desiring a copy of the DWD for use in preparing comments or suggestions, or a copy of the draft EIS when it is issued, should notify Mr. Pennington.

Copies of the DWD, the existing Hanford final EIS (ERDA–1538), and other documentation to be used in the preparation of the new EIS are available for public inspection at the public document room located at ERDA Richland Operations Office. Copies of the Hanford DWD, ERDA 77–44; ERDA–1538; the Savannah River DWD, ERDA 77–42; and the Idaho DWD, ERDA 77–43 are available for public inspection at ERDA's public document rooms located at:

ERDA Headquarters, 20 Massachusetts Ave., NW., Washington, D.C. 20545.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, N. Mex. 87115.
Chicago Operations Office, 9800 South Cass Ave., Argonne, Ill. 60439.
Idaho Operations Office, 550 Second St., Idaho Falls, Idaho 83401.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn. 37830.
Nevada Operations Office, 2753 South Highland Dr., Las Vegas, Nev. 89114.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif. 94612.
Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29801.

Dated at Germantown, Maryland, this 30th day of Sept. 1977, for the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-31025 Filed 10-25-77;8:45 am]

[3128-01]

[ERDA–1553]

MANAGEMENT OF INTERMEDIATE LEVEL RADIOACTIVE WASTE, OAK RIDGE NATIONAL LABORATORY, OAK RIDGE, TENNESSEE

Availability of Final Environmental Impact Statement

Notice is hereby given that a Final Environmental Impact Statement, ERDA–1553, Management of Intermediate Level Radioactive Waste, Oak Ridge National Laboratory, Oak Ridge, Tennessee (September 1977), was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to support an administrative action to select a preferred technique for the management of intermediate level radioactive waste (ILW) and the construction and operation of a facility to implement the technique at the Oak Ridge National Laboratory in Roane County, Tennessee.

The environmental impacts of managing the ILW at ORNL by three alternative techniques, hydrofracture, shalecement fixation, and glass fixation, are assessed. The overall environmental impact of any of these three management techniques would be expected to be beneficial, since they would remove large volumes of radioactive waste from the existing storage facilities and fix them in a form that would pose little risk of environmental contamination. Radiation exposure from potential accident situations is evaluated in the statement.

Copies of the final enviromental impact statement are available for public inspection at the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Ave., NW., Washington, D.C.
Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, N. Mex.

Chicago Operations Office, 9800 South Cass Ave., Argonne, Ill.
Chicago Operations Office, 175 West Jackson Blvd., Chicago, Ill.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Dr., Las Vegas, Nev.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn.
Richland Operations Office, Federal Building, Richland, Wash.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif.
Savannah River Operations Office, Savannah River Plant, Aiken, S.C.

Copies of the final statement have been furnished to those who commented on the draft statement that was issued by the Energy Research and Development Administration on January 18, 1977. Copies are also available for public inspection at designated Federal Depository Libraries.

A limited number of single copies of the final statement are available for distribution by the Technical Information Center, P.O. Box 62, Oak Ridge, Tennessee 37830, 615-483-8611, Extension 34672. The statement is also available from the National Technical Information Service, Springfield, Va. 22161.

Dated at Germantown, Maryland, this 30th day of September 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-31024 Filed 10-25-77;8:45 am]

[3128-01]

[ERDA-1536]

WASTE MANAGEMENT OPERATIONS, IDAHO NATIONAL ENGINEERING LABORATORY, IDAHO

Availability of Final Environmental Impact Statement

Notice is hereby given that a Final Environmental Impact Statement, ERDA-1536, Waste Management Operations, Idaho National Engineering Laboratory, Idaho, was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to assess the environmental impact of continuing the waste management operations at the Idaho site in southeastern Idaho.

The current program for management of high-level radioactive waste consists of converting liquid waste to a calcined solid. These solid high-level wastes are in interim storage in steel bins within underground concrete vaults pending development of a terminal storage method.

The environmental effects of the current waste management operations at INEL are assessed in the statement. The radiation total-body dose to man from these operations is small. Only minor effects to terrestrial or aquatic life have been observed in the 28 years that the laboratory has been in operation. Approximately 210 acres of desert land (about 0.04 percent of the total ERDA Idaho Reservation area) are committed to waste storage activities.

Alternatives to current waste management operations for radioactive and non-radioactive liquid, solid, and gaseous waste are assessed.

Copies of the final enviromental impact statement and the record of hearings held on the draft statement are available for public inspection at the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Avenue NW., Washington, D.C.
Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, N. Mex.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Ill.
Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Ill.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nev.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn.
Richland Operations Office, Federal Building, Richland, Wash.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif.
Savannah River Operations Office, Savannah River Plant, Aiken, S.C.

Copies of the final statement have been furnished to those who commented on the draft statement that was issued by the Energy Research and Development Administration on June 29, 1976, and participants of the public hearing, which was held on the draft statement on February 1 and 3, 1977. Copies are also available for public inspection at designated Federal Depository Libraries.

A limited number of single copies of the final statement are available for distribution by the Technical Information Center, P.O. Box 62, Oak Ridge, Tenn. 37830, 615-483-8611, Extension 34672. The statement is also available from the National Technical Information Service, Springfield, Va. 22161.

Dated at Germantown, Md. this 30th day of September 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-31022 Filed 10-25-77; 8:45 am]

[3128-01]

[ERDA-1537]

WASTE MANAGEMENT OPERATIONS, SAVANNAH RIVER PLANT, S.C.

Availability of Final Environmental Impact Statement

Notice is hereby given that a Final Environmental Impact Statement, ERDA-1537, Waste Management Operations, Savannah River Plant, S.C., was issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement was prepared to assess the environental impact of continuing the waste management operations at the Savannah River Plant site in South Carolina, 25 miles southeast of Augusta, Ga.

Copies of the Final Environmental Impact Statement are available for public inspection at the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Avenue NW., Washington, D.C. 20545.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, N. Mex. 87115.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Ill. 60439.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho 83401.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nev. 89114.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn. 37830.
Richland Operations Office, Federal Building, Richland, Wash. 99352.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif. 94612.
Savannah River Operations Office, Savannah River Plant, Aiken, S.C. 29801.

Copies of the Final Environmental Impact Statement have been furnished to those who commented on the draft statement that was issued by the Energy Research and Development Administration on October 29, 1976. Copies are also available for public inspection at designated Federal Depository Libraries.

A limited number of single copies of the Final Environmental Impact Statement are available for distribution by the Technical Information Center, P.O. Box 62, Oak Ridge, Tenn. 37830, 615-483-8611, Extension 34672. The statement is also available from the National Technical Information Service, Springfield, Va. 22161.

Dated at Germantown, Md., this 30th day of September 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-31023 Filed 10-25-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 808-4, OPP-180151]

OREGON STATE DEPARTMENT OF AGRICULTURE

Issuance of a Specific Exemption To Control Twospotted Spider Mite on Commercial Hop Crop

The Environmental Protection Agency (EPA) has granted a specific exemption to the Oregon State Department of Agriculture (hereafter referred to as the "Applicant") to use TEPP (tetraethyl pyrophosphate) for the control of twospotted spider mites which are threaten-

ing to destroy the commercial hop crop in Clackamas, Josephine, and Marion Counties, Oreg. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Room E-315, Washington, D.C. 20460.

According to the Applicant, an infestation of the Twospotted Spider Mite (*Tetranychus urticae* Koch) can occur any time conditions are favorable. The frequency of a mite outbreak is not predictable, and is based mainly on favorable weather conditions. Although other miticides are registered for use on hops, the Applicant alleged that none of them are satisfactory options. Most registered miticides are not suitable in situations where a mite outbreak occurs at or near harvest, due to a pre-harvest interval restriction of seven (7) days or more.

A tolerance for residue levels of TEPP on hops has not been established; however, it should be noted that a TEPP residue tolerance level of 0.01 ppm (part per million) has been accepted for the following raw agricultural commodities: apple, cabbage, cauliflower, orange, peach, and potato. These commodities are generally more prevalent in the human diet than hops, which are consumed only through beer. TEPP has not been hazardous to the environment when used on hops at the rate requested, which was two pounds actual pesticide per acre; nor has TEPP been shown to be a hazard to the ultimate consumer, since raw hops are never consumed. Raw hops are kiln-dried following harvest. Then, one-quarter (¼) pound of hops is added to each thirty-one (31) gallons of beer. Fermentation in the brewing vats results in additional breakdown of pesticide residues.

The Applicant proposed to treat 5,500 acres of commercial hops with two (2) pounds of active TEPP per acre in a single aerial application to suppress populations of the twospotted spider mite which are threatening this crop in Clackamas, Josephine, and Marion Counties. A three (3) day pre-harvest interval will be maintained. The Applicant estimated that the potential economic loss attributable to the mites from a major outbreak in Oregon is valued at $750,000. The Applicant further stated that TEPP had been used in Oregon in previous years by aerial applicators with no adverse problems.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of twospotted spider mites has or is about to occur; (b) there is no pesticide presently registered and available for use to control the twospotted spider mites in Oregon; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the twospotted spider mites are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until September 30, 1977, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. Aerial applications are limited to one (1) at the rate of two (2) pounds of active ingredient per acre;
2. Total acreage treated shall not exceed 5,500 acres;
3. A maximum of 11,000 pounds of active TEPP will be applied;
4. All applications will be limited to Clackamas, Josephine, and Marion Counties;
5. A three (3) day pre-harvest interval will be observed;
6. The Applicant is responsible for monitoring the aerial applications of TEPP;
7. Liaison shall be established between the Oregon State Departments of Agriculture, and Fisheries and Game to minimize any adverse effects on fish and wildlife resources;
8. The EPA shall be immediately informed of any adverse effects resulting from the use of this pesticide in connection with this exemption;
9. All applicable directions, restrictions, and precautions on the EPA-registered label will be observed;
10. All precautions will be taken to avoid or minimize spray drift to nontarget areas; and
11. Hops with residue levels not exceeding 0.1 ppm (part per million) of TEPP may be offered in interstate Commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action.

Statutory Authority: Section 18 of the Federal Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated: October 18, 1977.

JAMES M. CONLON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-31047 Filed 10-25-77;8:45 am]

[6560-01]

[FRL 808-6; OPP-00062A]

STATE-FEDERAL IMPLEMENTATION ADVISORY COMMITTEE (SFFIAC), WORKING GROUP ON INTEGRATED PEST MANAGEMENT

Cancellation of Meeting

The two-day meeting of the State-Federal FIFRA Implementation Advisory Committees Working Group on Integrated Pest Management scheduled for Tuesday, November 1, and Wednesday, November 2, 1977, has been canceled due to Congressional hearings being held on those days on integrated pest management. Notice of this meeting was published in the FEDERAL REGISTER on October 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. P. H. Gray, Jr., SFFIAC Executive Secretary, Operations Division (WH-570), Office of Pesticide Programs, Rm. E-507, EPA, 401 M Street SW., Washington, D.C. 20460, telephone: 202-755-7014.

(Section 25(d) of FIFRA, as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.) and sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).)

Dated: October 20, 1977.

JAMES M. CONLON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-31046 Filed 10-25-77;8:45 am]

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (77-69)]

RESEARCH AND TECHNOLOGY ADVISORY COUNCIL INFORMAL COMMITTEE ON HYPERSONIC RESEARCH AND TECHNOLOGY

Meeting

The Committee named above will meet as announced in FR Doc. 77-29952, NASA Notice 77-67, dated Friday, October 14, 1977, on page 55318. The previously announced date and place will remain the same. The meeting will be opened to the public with the exception of a closed session from 4:30-5:30 p.m., October 31, 1977. The agenda has been revised as follows:

OCTOBER 31, 1977

9:00 a.m.—Opening remarks.
9:30 a.m.—Hypersonic overview.
10:15 a.m.—Hypersonic propulsion.
11:15 a.m.—Hypersonic aerodynamics and systems.
1:00 p.m.—Hypersonic structures.
2:00 p.m.—Discussion and facility tour.
4:30 p.m.—Hypersonic vehicles and systems (closed session).
5:30 p.m.—Adjournment.

NOVEMBER 1, 1977

8:00 a.m.—Opening remarks.
8:15 a.m.—NASA planned program.
8:45 a.m.—Hypersonic propulsion.
9:15 a.m.—Hypersonic aerodynamics and systems.
9:45 a.m.—Hypersonic structures.
10:15 a.m.—Committee discussion and formulation of recommendations.
4:30 p.m.—Adjournment.

For further information, contact Arthur Henderson, 202-755-8501, or C. Robert Nysmith, Executive Secretary of the Research and Technology Advisory

Council, 202–755–8550, NASA Headquarters, Washington, D.C. 20546.

KENNETH R. CHAPMAN,
Assistant Administrator for DOD and Interagency Affairs.

OCTOBER 19, 1977.

[FR Doc.77-30932 Filed 10-25-77;8:45 am]

[6712–01]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21418; FCC 77–715]

AMATEUR RADIO SERVICE

Inquiry Into Alleged Improper Issuance of Licenses and Call Signs; Order

Adopted: October 13, 1977.

Released: October 19, 1977.

By the Commission: Chairman Wiley not participating; Commissioner White concurring in the result.

1. The Commission has under consideration information indicating:

(a) That certain applicants and licensees in the Amateur Radio Service have made payments of cash or other consideration in connection with issuance of licenses, upgraded licenses, or call signs for which they were not qualified.

(b) That certain applicants and licensees in the Amateur Radio Service have received licenses, upgraded licenses, or call signs for which they were not qualified without any payment.

(c) That certain applicants and licensees in the Amateur Radio Service have received call signs in a manner inconsistent with the Amateur Radio Service Rules then in effect.

2. The above-described practices may be in violation of law and/or Commission Rules. Participation in such practices may raise serious questions regarding qualifications to become or to remain Amateur Radio Service licensees.

3. Therefore, *it is ordered*, on the Commissions own motion, pursuant to Sections 403 and 409 of the Communications Act of 1934, as amended, that an inquiry is hereby instituted to determine whether applicants or licensees in the Amateur Radio Service have engaged in the above-described practices and, if so, the extent and circumstances of such practices.

4. *It is further ordered*, pursuant to Section 5(d)(1) of the Communications Act of 1934, as amended, that, for the purpose of this inquiry, authority is hereby delegated to the Chief Administrative Law Judge of the Commission to require by subpoena the production of books, papers, correspondence, memoranda and other records deemed relevant to the inquiry, to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and to perform such other duties in connection therewith as may be necessary or appropriate to the compilation of a complete record concerning the subject matter of this inquiry.

5. *It is further ordered*, That the Chief, Administrative Law Judge is specifically authorized to designate a Presiding Judge to exercise the authority conferred by this Order, and to require witnesses to testify and to produce evidence under authority of, and in the manner provided in, Section 409 of the Communications Act of 1934, as amended, when requested to do so by Commission counsel.

6. *It is further ordered*, That the subpoena powers delegated by this Order shall be exercised in accordance with Sections 1.331 through 1.340 of the Commission's Rules. Motions to quash or limit subpoenas shall be directed to the Presiding Judge in accordance with Section 1.334 of the Rules. Applications for reiew of the Presiding Judges rulings on such motions may be filed with the Commission within ten (10 days) after the issuance by the Presiding Judge of such rulings.

7. *It is further ordered*, That the provisions of Section 1.27 of the Commissions Rules shall apply to the production of oral and documentary evidence under subpoena.

8. *It is further ordered*, That, pursuant to Section 5(d)(1) of the Communications Act of 1934, as amended, the authority to decide the question of when the public interest would be served by holding non-public sessions in this proceeding is hereby delegated to the Presiding Judge.

9. *It is further ordered*, That upon conclusion of the inquiry ordered herein, the Presiding Judge shall certify the record thereof to the Commission for appropriate action.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc.77-31020 Filed 10-25-77;8:45 am]

[6712–01]

CANADA–USA TELEVISION AGREEMENT

Channel Assignments and Allocations

OCTOBER 18, 1977.

In the matter of amendment of Table A of the Canada-U.S.A. Television Agreement of 1952 (TIAS–2594). Supplement No. 7 to the table of Canadian television channel assignments and allocations within 250 miles of the Canada-U.S.A. border, dated October 4, 1977, as revised to April 12, 1977.

Pursuant to exchange of correspondence between the Department of Communications of Canada and the Federal Communications Commission, Table A of the Canada-U.S.A. Television Agreement has been amended as set forth in the attached list. It is to be noted that those representing assignments will indicate call signs plus parameters.

Further additions, changes, and deletions will be issued as reported to the Commission by the Canadian Department of Communications.

Copies of the basic Table of Allocations may be obtained from Downtown Copy Center, 1730 K Street NW., Washington, D.C. 20036, telephone 202–452–1422.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

TV ENGINEERING DATA BASE LISTING - INDEX KEY STATE,CITY,CHAN OCT 04, 1977 PAGE 1
FEDERAL COMMUNICATIONS COMMISSION - BROADCAST BUREAU
NOTICE UNOFFICIAL SECONDARY SOURCE. USE PRIMARY SOURCES FOR OFFICIAL INFORMATION ***NOTICE***

CBRFT	CO LIC	CALGARY	AB	51-03-54.0	16 Z	4.4(KW)	840(FT)		770908
		ZONE 2 **USA BORDER**		114-12-47.0	DA	HOR			
CKYATV	CO LIC	FISHER BRANCH	MB	51-04-50.0	08 -	62(KW)	449(FT)		770908
		ZONE 2 **USA BORDER**		97-38-55.0	DA	HOR			
CKRSTV	CO APP	JONQUIERE	QU	48-24-29.0	12 +	41(KW)	2016(FT)		770922
		ZONE 2 **USA BORDER**		71-14-52.0	DA	HOR	CANADIAN PROPOSAL		
	CO	STE ANNE DES MONTS	QU	49-08-06.0	08 -				770908
		ZONE 2 **USA BORDER**		66-20-12.0			LTD TO 100 KW & 1500' HAAT AT SITE SPECIFIED TO PROTECT WAGMTV		
	CO ADD	BAIE COMEAU	QU	49-13-00.0	07 -				770908
		ZONE 2 **USA BORDER**		68-09-00.0			CANADIAN PROPOSAL		
	CO ADD	GRANDE VALLES	QU	49-13-00.0	06 -				770908
		ZONE 2 **USA BORDER**		65-08-00.0			CANADIAN PROPOSAL		
	CO DEL	MATANE	QU	48-51-00.0	09 -				770908
		ZONE 2 **USA BORDER**		67-31-00.0			CANADIAN PROPOSAL		
	CO ADD	MURDOCHVILLE	QU	48-58-00.0	10 -				770908
		ZONE 2 **USA BORDER**		65-31-00.0			CANADIAN PROPOSAL		
	CO ADD	ST MICHEL DES SAINTS	QU	46-24-00.0	07 +				770908
		ZONE 1 **USA BORDER**		73-33-00.0			CANADIAN PROPOSAL		
	CO ADD	ST RENE DE MATANE	QU	48-41-06.0	30 Z				770908
		ZONE 2 **USA BORDER**		67-21-15.0			CANADIAN PROPOSAL		

[FR Doc.77-31018 Filed 10-25-77;8:45 am]

[6712–01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Public Law 92–463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Members of Special Committee No. 65 "SHIP RADAR," notice of 59th meeting, Thursday, November 10, 1977—1:30 p.m., Conference Room 8210, 2025 M Street NW., Washington, D.C.

Agenda for SC–65 Committee Meeting appears later in this notice.

SC–65 Working Group schedule. To be held at 2025 M Street NW., Washington, D.C.

Working Group: Reliability.

Room: 8210.

Date: November 10.

Time: 9:30 a.m.

If other Working Group meetings are scheduled, Group Members will be notified.

NOTE.—Meeting Room location is subject to change. Check at Room 8210 first.

AGENDA

1. Call to Order; Chairman's Report; Adoption of Agenda.
2. Acceptance of SC–65 Summary Records; Appointment of Rapporteur.[1] October 19, 1977—Paper 184–77/SC 65–248.
3. Progress Report of Reliability Working Group.
4. Mini-meeting of: (a) BRWG on Updating of Radar Specs; (b) REWG on Reliability; and (c) CAWG on Evaluation.
5. Other business.
6. Establishment of next meeting date (proposed December 1, 1977).[1]

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat phone: 202–632–6490.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc.77–31021 Filed 10–25–77;8:45 am]

[6712–01]

STANDARD BROADCAST APPLICATIONS

Ready and Available for Processing

Adopted: October 7, 1977.

Released: October 19, 1977.

By the Chief, Broadcast Bureau:

Notice is hereby given, pursuant to § 1.571(c) of the Commission's Rules, that on December 15, 1977, the standard broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the Commission's Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 14, 1977, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. by the close of business on December 14, 1977. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached Appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to Section 1.571(c) of the Commission's Rules.

The attention of any party in interest desiring to file pleadings concerning any pending standard broadcast applications, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to Section 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Acting Secretary.

APPENDIX

BP–19,618 (KLAD), Klamath Falls, Oreg., 960 Radio, Inc., Has: 960 kHz, 5 kW, D. Req: 960 kHz, 5 kW, DA–N, U.

BP–20,336 (new), Warner Robins, Ga., WAFA Broadcasting, Inc. Req: 1470 kHz, 1 kW, 0.5 kW–LS, DA–N, U.

BP–20,342 (WPMP), Pascagoula, Moss Point, Miss., Crest Broadcasting Co., Inc. Has: 1580 kHz, 1 kW, D. Req: 1580 kHz, 5 kW, DA–D.

BP–20,343 (WBFC), Stanton, Ky., Rev. Forest Drake. Has: 1470 kHz, 500 W, D. Req: 1470 kHz, 1 kW, D.

BP–20,344 (WBOB), Galax, Va., Carroll-Grayson Broadcasting Corp. Has: 1360 kHz, 1 kW, D. Req: 1360 kHz, 5 kW, D.

BP–20,346 (WEOO), Smithfield, Va., Radio Tidewater, Inc. Has: 940 kHz, 1 kW, DA–D. Req: 940 kHz, 10 kW, DA–D.

BP–20,350 (KKYN), Plainview, Tex., Panhandle Broadcasting, Inc. Has: 1090 kHz, 1 kW, D. Req: 1090 kHz, 500 W, 5 kW–LS, DA–2, U.

BP–20,351 (KBAI), Morro Bay, Calif., Morro Bay Investment Corp. Has: 1150 kHz, 500 W, D. Req: 1150 kHz, 5kW, DA–N, U.

BP–20,353 (WIID), Livonia, Mich., Grace/Wolpin Broadcasting Co., Inc. Has: 1090 kHz, 250 W, DA–D (Garden City, Mich.). Req: 1090 kHz, 500 W, 250W–LS, DA–2, U (Livonia, Mich.).

BP–20,356 (WCHK), Canton, Ga., Cherokee, Broadcasting Co., Inc. Has: 1290 kHz, 1 kW, D. Req: 1290 kHz, 500 W, 5 kW–LS, DA–N, U.

BP–20,363 (KYKR), Port Arthur, Tex., KYKR Radio. Has: 1510 kHz, 1 kW, D. Req: 1510 kHz, 5 kW, DA–D.

BP–20,365 (new), Hudson, Wis., Cornwall Broadcasting Co. Req: 740 kHz, 500 W, DA–D.

BP–20,368 (WCPK), Chesapeake, Va., Payne of Virginia, Inc. Has: 1600 kHz, 1 kW, D. Req: 1600 kHz, 5 kW, D.

BP–20,373 (WCNR), Bloomsburg, Pa., Columbia Montour Broadcasting Co. Has: 930 kHz, 1 kW, D. Req: 930 kHz, 500 W, 1 kW–LS, DA–N, U.

BP–20,374 (WABD), Fort Campbell, Ky., Fort Campbell Broadcasting Co. Has: 1370 kHz, 500 W, D. Req: 1370 kHz, 1 kW, D.

BP–20,744 (KHCS), Tolleson, Ariz., Howard S. Schwartz and Associates, Inc. Has: 1010 kHz, 500 W, D (Phoenix, Ariz.). Req: 1010 kHz, 250 W, 1 kW–LS, U (Tolleson, Ariz.).

BP–20,873 (WARE), Ware, Mass., Central Broadcasting Corp. Has: 1250 kHz, 1 kW, DA–N, U. Req: 1250 kHz, 1.0 kW, 5 kW–LS, DA–2, U.

BP–20,880 (new), Whitefish, Mont., Benny Bee. Req: 1400 kHz, 250 W, 1 kW–LS, U.

[FR Doc.77–31019 Filed 10–25–77;8:45 am]

[1505–01]

FEDERAL MARITIME COMMISSION

STANLEY O. SHER ET AL.

Agreements Filed

Correction

In FR Doc. 77–30226, appearing at page 55495 in the issue of Monday, October 17, 1977, the sixth line of the third paragraph, now reading, "2, 1977, in which this notice appears," should read, "7, 1977."

[6740–02]

FEDERAL POWER COMMISSION

[Docket Nos. CP76–492, etc.]

NATIONAL FUEL GAS SUPPLY CORP ET AL.

Order Providing Formal Hearing, Granting Intervention, and Consolidating Proceedings

OCTOBER 19, 1977.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95–91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the

[1] For approval at this meeting.

FERC entitled "Transfer Proceedings to the Secretary of Energy and the FERC," 10 CFR _____. *Provided*, That this proceedings would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On June 29, 1977, Transcontinental Gas Pipe Line Corp. (Transco) in Docket No. CP77–472, on July 25, 1977, Columbia Gas Transmission Corp. (Columbia) in Docket Nos. CP77–518 and CP77–519, and on August 17, 1977, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Tennessee), in Docket Nos. CP77–569, CP77–570, and CP77–571 filed applications pursuant to section 7(c) of the Natural Gas Act for certificates for public convenience and necessity authorizing the transportation of natural gas in interstate commerce for certain specified customers. Applicants state that the proposed transportation services will enable Delmarva Power & Light Co. (Delmarva), Elizabethtown Gas Co. (Elizabethtown), UGI Corp. (UGI), Orange and Rockland Utilities, Inc. (Orange and Rockland), Central Hudson Gas & Electric Corp. (Central Hudson), and Lowell Gas Co. (Lowell) to take advantage of the long-term underground gas storage service which National Fuel Gas Supply Corp. (National Supply) and National Gas Storage Corp. (National Storage) have requested authorization to render in Docket No. CP76–492.

In Docket No. CP77–472, Transco seeks permanent authorization to transport storage injection and withdrawal volumes for Delmarva and Elizbabethtown. The application indicates that Transco will transport a total volume of 1,500,000 Mcf of natural gas for each customer in daily volumes not to exceed 15,000 Mcf. It is stated that injection quantities will be delivered to National Supply through Transco's existing facilities at the Wharton Storage Field in Pennsylvania, and that withdrawal quantities will be dedelivered by National Supply to Transco at that point for transportation and redelivery to Delmarva and Elizabethtown at existing points of delivery in Pennsylvania and New Jersey. Transco proposes to retain three percent of the gas transported during injection and four percent transported during withdrawal for compressor fuel and line loss makeup and to charge an initial rate of 9.55 cents per dekatherm for the quantities transported.

In Docket No. CP77–518, Columbia requests authorization to transport storage injection and withdrawal volumes on a best efforts basis for UGI for a period of five years. Columbia states that it will deliver 2,000 to 25,000 Mcf/d of UGI's CDS rate schedule entitlement to National Supply during the summer injection periods at a point of interconnection between Columbia and National Supply located near Emporium in Cameron County, Pa. During winter withdrawal periods, Columbia states that it will receive 5,000 to 35,000 Mcf of natural gas per day from National Supply at the Emporium delivery point for transportation and redelivery to UGI at existing points of interconnection in eastern Pennsylvania. Columbia proposes to charge 22.21 cents per Mcf for the transportation of withdrawal volumes and to retain for company-use and unaccounted-for gas a percentage of the total volume of gas delivered into its system by National Supply for UGI's account, which percentage is currently 3.1 percent.

The application filed by Columbia in Docket No. CP77–519 indicates that Orange and Rockland has requested Columbia to deliver up to 1,000,000 Mcf of natural gas annually to Tennessee for injection into storage, to receive from Tennessee up to 1,000,000 Mcf annually of gas withdrawn from storage, and to transport and redeliver equivalent volumes to Orange and Rockland at existing points of delivery, for a period of five years. Columbia asserts that it will deliver a portion of Orange and Rockland's CDS rate schedule entitlement to Tennessee during summer injection periods at its existing South Ceredo delivery point in Wayne County, W. Va., and, during winter withdrawal periods, will receive up to 10,000 Mcf of gas per day from Tennessee at Tennessee's existing Milford sales meter station delivery point in Pike County, Pa. It is stated that the withdrawal quantities so received will be transported on an interruptible basis for redelivery to Orange and Rockland at existing points of delivery in eastern New York. Columbia proposes to charge 22.21 cents per Mcf for the transportation of the withdrawal volumes and to retain for company-use and unaccounted-for gas a percentage of the total volume of such withdrawal volumes, which percentage is currently 3.1 percent.

In Docket No. CP77–569, Tennessee requests authorization to transport storage injection and withdrawal volumes for Central Hudson for a period of 15 years ending March 31, 1993, and to construct and operate interconnecting facilities in Potter County, Pennsylvania, for delivery and receipt of natural gas from National Storage. Tennessee states that it will transport and deliver up to 1,387 Mcf/d of Central Hudson's Rate Schedule CD–5 entitlement during Period 1 (April 1, 1978 through March 31, 1983) and up to 3,467 Mcf/d of such volumes during Period 2 (April 1, 1983 through March 31, 1993), to National Storage at a new point of interconnection to be established in Potter County, Pennsylvania, for injection into storage. When requested by Central Hudson, Tennessee states that it will receive from National Storage, for Central Hudson's account, up to 1,818 Mcf/d of withdrawal volumes during Period 1 and up to 4,545 Mcf/d during Period 2 for transportation and redelivery to Central Hudson at an existing point of delivery in Albany County, New York. Total annual injection volumes will not exceed 208,000 Mcf during Period 1 and 520,000 Mcf during Period 2, and total annual withdrawal volumes will not exceed 200,000 Mcf during Period 1 and 500,000 Mcf during Period 2.

For this transportation service, Tennessee proposes to charge Central Hudson 10.79 cents per Mcf of base gas transported for injection into storage, 15.91 cents per Mcf of top gas withdrawals transported, and an added volume charge of 14.7 cents per Mcf times the displaced volume. In addition, Tennessee proposes to retain 1.57 percent of the daily withdrawal volumes for fuel and use requirements.

In Docket No. CP77–570, Tennessee seeks authorization to transport storage injection and withdrawal volumes for Lowell, an existing resale customer, for a period of 15 years ending March 31, 1993. Tennessee states that it will receive up to 13,867 Mcf/d of Lowell's Rate Schedule CD–6 entitlement for transportation and delivery to National Storage at a new point of interconnection to be established in Potter County, Pennsylvania, for injection into storage. When so requested by Lowell, Tennessee asserts that it will receive up to 18,182 Mcf/d of withdrawal volumes from National Storage for transportation and redelivery to Lowell at an existing point of delivery in Middlesex County, Massachusetts. Tennessee states that the total annual injection volumes will not exceed 2,080,000 Mcf and the total annual withdrawal volumes will not exceed 2,000,000 Mcf.

For this transportation service, Tennessee proposes to charge Lowell 17.61 cents per Mcf of base gas transported for injection, 25.98 cents per Mcf of top gas withdrawals transported, and an added volume charge of 25.31 cents per Mcf times the displaced volume. In addition, Tennessee proposes to retain 1.57 percent of the daily withdrawal volumes for fuel and use requirements.

In Docket No. CP77–571, Tennessee proposes to transport storage injection and withdrawal volumes for Orange and Rockland for a period of 15 years ending March 31, 1993. Tennessee proposes to receive from Orange and Rockland and/or from Columbia, for the account of Orange and Rockland, daily volumes of natural gas nominated by Orange and Rockland from Rate Schedule CD–5 entitlements from Tennessee and/or from Rate Schedule CDS entitlements from Columbia and to transport and deliver such volumes to National Storage for the account of Orange and Rockland. When so requested by Orange and Rockland, Tennessee states that it will receive daily withdrawal volumes from National Storage, for the account of Orange and Rockland, and will transport and deliver equivalent volumes to Orange and Rockland and/or to Columbia for the account of Orange and Rockland.

The application indicates that the maximum daily injection volume which Orange and Rockland may request Tennessee to receive for transportation and delivery to National Storage is 6,933 Mcf for volumes received from Orange and Rockland and 7,111 Mcf for volumes re-

ceived from Columbia, for the account of Orange and Rockland, and the total injection volume which Orange and Rockland may request Tennessee to transport during the April 1 through October 31 injection period of each year is 1,040,000 Mcf. The application indicates further that the maximum daily withdrawal volume which Orange and Rockland may request Tennessee to receive from National Storage for transportation and delivery to Orange and Rockland, or to Columbia, for the account of Orange and Rockland, is 9,091 Mcf, and the total withdrawal volume which Orange and Rockland can request Tennessee to transport during the November 1 through March 31 withdrawal period of each year is 1,000,000 Mcf.

Tennessee states that all volumes will be received from and delivered to Orange and Rockland at Tennessee's existing Pearl River sales meter station delivery point in Rockland County, New York, and that all volumes will be received from Columbia by Tennessee, for the account of Orange and Rockland, for transportation and delivery to National Storage at Tennessee's existing South Ceredo sales meter station in Wayne County, West Virginia. Tennessee states further that all volumes will be delivered to Columbia by Tennessee, for the account of Orange and Rockland, at Tennessee's existing Milford sales meter station in Pike County, Pennsylvania, and that all volumes will be delivered to and received from National Storage by Tennessee at a new point of interconnection to be established in Potter County, Pennsylvania.

For this transportation service, Tennessee proposes to charge Orange and Rockland 9.34 cents per Mcf of base gas transported for injection into storage, 17.19 cents per Mcf of injection volumes made available by Columbia, for the account of Orange and Rockland, 12.53 cents per Mcf of top gas withdrawals transported, and an added volume charge of 14.78 cents per Mcf times the displaced volume. In addition, Tennessee proposes to retain 2.5 percent of injection volumes made available by Columbia, 1.36 percent of the daily withdrawal volumes delivered to Orange and Rockland, and 1.08 percent of the daily withdrawal volumes delivered to Columbia, for the account of Orange and Rockland, as fuel and use requirements.

Each transportation agreement with Tennessee provides for a minimum annual bill approaching 100 percent of all withdrawal volumes. Specifically, the agreement with Central Hudson provides for a 98.43 percent minimum annual bill; the agreement with Lowell provides for a 97.45 percent minimum annual bill; and the agreement with Orange and Rockland provides for a 98.92 percent minimum annual bill. By order issued September 9, 1977, in Docket No. CP77-298, *et al.*, the Commission denied a similar 100 percent minimum bill provision contained in Tennessee's transportation contracts with Lowell and Connecticut Natural Gas Corporation (CNG) and, in lieu thereof, adopted a two-thirds minimum bill, compatible with the minimum bill provisions of Tennessee's contract demand rate schedules.

After due notice of the applications by publication in the FEDERAL REGISTER, the following petitions to intervene were filed:

Docket No.	*Date filed*
CP77-472:	
National Fuel Gas Supply Corp. and National Gas Storage Corp.	Aug. 3, 1977.
CP77-518:	
National Fuel Gas Supply Corp. and National Gas Storage Corp.	Aug. 29, 1977.
CP77-519:	
National Fuel Gas Supply Corp. and National Gas Storage Corp.	Do.
Orange and Rockland Utilities, Inc.	Do.
CP77-569:	
Connecticut Natural Gas Corp.	Sept. 19, 1977.
CP77-570:	
Commonwealth Gas Co.	Do.
Boston Gas Co.	Do.
Connecticut Natural Gas Corp.	Do.
Lowell Gas Co.	Do.
CP77-571:	
Connecticut Natural Gas Corp.	Do.
CP76-492:	
Penn Fuel Gas, Inc.	Feb. 10, 1977.
Tennessee Gas Pipeline Co.	Feb. 14, 1977.
Haverhill Gas Co. (late)	Feb. 15, 1977.
Boston Gas Co.	Sept. 19, 1977.

Two of the petitioners, Commonwealth Gas Company (Commonwealth) and Boston Gas Company (Boston Gas) request a formal hearing in these proceedings. In its petition to intervene, Commonwealth asserts that it is an existing customer of Tennessee and states that the application filed in Docket No. CP77-570 is one of a number of similar applications being filed by Tennessee to request long-term authorization to transport natural gas for the benefit of certain of Tennessee's existing resale customers. Commonwealth expresses concern that it will be seriously prejudiced in its anticipated utilization of its fair share of surplus pipeline capacity if Tennessee is permitted to commit a substantial portion of its presently existing surplus capacity for long periods of time to certain customers. Boston Gas, in its petition to intervene in Docket No. CP77-570, also expresses concern that it will be preempted from utilizing the spare capacity on Tennessee's system which is attributable to its curtailments and volumetric limitations.

The Commission finds that all of the petitioners to intervene have a real and substantial interest in these proceedings and should be allowed to intervene. In addition, the late intervention of Haverhill Gas Company will not delay the proceedings in these dockets and should be permitted. Without passing on the merits of the allegations of Commonwealth and Boston, the Commission further finds that a full evidentiary hearing should be held for the purpose of determining whether it is in the public interest to grant the requested transportation authorizations. The hearing should develop a record regarding, but not limited to, the reasonableness of Tennessee's proposed charge for transportation of base gas for injection, the reasonableness of the added volume charge, the reasonableness of the minimum bill provisions, and the allocation considerations raised by the petitions to intervene. The Commission is also concerned with the end use of the gas to be stored and transported and with the possible reliance by existing customers for long term service if currently surplus pipeline capacity from storage is made available on a best efforts basis. These concerns should also be addressed at the hearing in these consolidated proceedings.

Presently, in Docket No. CP76-492, a hearing is being held on the proposed storage project in order to determine whether its construction and operation is in the public interest. The transportation of the gas is an integral part of the proposed operations. In the event the Commission should determine that the applications should not be granted or should be conditioned in such a manner which is unacceptable to the pipelines, the storage project would be moot inasmuch as there would be diminished ability to inject and withdraw the supplies into and from the storage facilities. Therefore, we conclude that the instant transportation applications should be consolidated for hearing with the storage proposals in Docket No. CP76-492.

The Commission finds: (1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the matters involved and the issues presented in these proceedings.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that these proceedings to be consolidated with the proceedings in Docket No. CP76-492.

(3) Participation by the petitioners to intervene in these proceedings may be in the public interest.

The Commission orders: (A) The applications filed in Docket No. CP77-472 by Transcontinental Gas Pipeline Corporation, in Docket Nos. CP77-518 and CP77-519 by Columbia Gas Transmission Corporation, and in Docket Nos. CP77-569, CP77-570 and CP77-571 by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., are hereby consolidated and set for hearing with Docket No. CP 76-492, National Fuel Gas Supply Corporation and National Gas Storage Corporation.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 5 and 15 thereof, the Commission's rules of practice and procedure (18 CFR Chapter I, Subchapter E), a public hearing shall be held in a hearing room of the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, D.C., 20426, concerning the matters involved in and the issues presented by these consolidated proceedings. The Administrative Law judge previously designated to preside over the proceedings in Docket No. CP76-492 shall preside at the hearing in these consolidated proceedings, with authority to establish and change all procedural dates and to rule on all motions with the exception of petitions to intervene, motions to consolidate and sever, and motions to dismiss, as provided for in the Commission's rules of practice and procedure.

(C) The petitioners for leave to intervene are permitted to intervene in the instant consolidated proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their respective petitions to intervene: *And, provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in these proceedings.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-30935 Filed 10-25-77;8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

ACORN FINANCIAL CORP.

Formation of Bank Holding Company

Acorn Financial Corp., Oak Park, Ill., has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Suburban Trust and Savings Bank, Oak Park, Ill. The factors that are considered acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 15, 1977.

Board of Governors of the Federal Reserve System, October 18, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-31015 Filed 10-25-77;8:45 am]

[6210-01]

FIRST MISSOURI BANKS, INC.

Acquisition of Bank

First Missouri Banks, Inc., Creve Coeur, Mo., has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 50 percent or more of the voting shares of Bank of Dutzow, Dutzow, Mo. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 11, 1977.

Board of Governors of the Federal Reserve System, October 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-31014 Filed 10-25-77;8:45 am]

[6210-01]

JUNCTION CITY FIRST NATIONAL CO.

Formation of Bank Holding Company

Junction City First National Co., Junction City, Kans., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 94 percent or more of the voting shares of The First National Bank of Junction City, Kans., Junction City, Kans. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 15, 1977.

Board of Governors of the Federal Reserve System, October 19, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-31016 Filed 10-25-77;8:45 am]

[6210-01]

PACESETTER FINANCIAL CORP.

Acquisition of Bank

Pacesetter Financial Corp., Grand Rapids, Mich., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire indirectly 100 percent (less directors' qualifying shares) of the voting shares of First National Bank of Southwestern Michigan, Niles, Mich., and First National Bank of Cassopolis, Cassopolis, Mich., through the acquisition of 100 percent of the voting shares of Western Michigan Corporation, Niles, Mich. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 11, 1977.

Board of Governors of the Federal Reserve System, October 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-31017 Filed 10-25-77;8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-061179 and AA-6661-A]

ALASKA NATIVE CLAIMS SELECTION

Application

OCTOBER 14, 1977.

On August 20, 1973, November 19 and 27, 1973, and April 10, 1974, Eklutna, Inc., for the Native village of Eklutna, filed selection application and amendments AA-6661-A under the provisions of section 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (Supp. V, 1975)), for the surface estate of certain lands in the Eagle River area, including lands in T. 15 N., R. 1 W., Seward Meridian.

On March 19, 1964, the State of Alaska filed selection application A-061179 pursuant to section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. ch. 2, sec. 6(b) (1970)), for all available public lands in T. 15 N., R. 1 W., Seward Meridian.

Village selection application AA-6661-A, as amended, described lands withdrawn by sections 11(a)(1) and 11(a)(2) of the Alaska Native Claims Settlement Act (ANCSA). Section 11(a)(2) of ANCSA specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by section 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Statehood Act, supra. Section 26 of ANCSA further provides that to the extent that there is a conflict between any provisions of ANCSA and any other Federal laws applicable to Alaska, the provisions of ANCSA shall govern.

As to the lands described below, the village selection, as amended, was properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, State selection application A-061179 is rejected for the below-described lands. The surface estate of the following described lands, selected pursuant to section 12(a), aggregating approximately 2,816.85 acres,

is considered proper for acquisition by Eklutna, Inc., and is hereby approved for conveyance pursuant to section 14 (a) of the Alaska Native Claims Settlement Act:

SEWARD MERIDIAN (SURVEYED)

T. 15 N., R. 1 W.
Sec. 4, lots 5, 6, 7, 9, 11, 12, 14, 15, 18, 19, 30, 31, 40, 49 and 50;
Sec. 5, lots 3, 14, 17, inclusive, lots 24 to 27, inclusive, lots 29, 30, 31, 37, 42 to 45, inclusive, lots 51, 53, 55, 56, 62, 65, 68, 78, 79, 87, 91, 104, 110 to 117, inclusive, SE¼NW¼, SE¼SW¼NW¼;
Sec. 7, lots 1 to 5, inclusive, lots 8 to 19, inclusive, lots 22, 24 to 35, inclusive, lots 37, 40 to 63, inclusive, lots 70 to 92, inclusive, N½NE¼;
Sec. 8, lots 3, 87, 104, 105, 106, 119, 120, 126, 134, 135, 136, 142, 143, 144, 161, 162, 163, 168, 173 to 176, inclusive, lots 178, 184 to 187, inclusive, lots 191, 193 to 197, inclusive, lots 204 to 208, inclusive, lots 212, 213, and 214;
Sec. 9, lots 11, 36, 41, 50, 53, 58, 72, 75, 79, 100, 102, 103, 104, 114, 117, 118, 120, 124, 125, 128, 133, 135, 139, 140, 144, 145, 148, 149, 150, S½SW¼SW¼, SW¼SE¼SW¼;
Sec. 17, lots 4, 5, 6, 11 to 14, inclusive, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼,SW¼SE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼;
Sec. 18, lot 6, 11 to 28, inclusive, lots 42 to 57, inclusive, lots 76 to 88, inclusive, lots 108 to 118, inclusive, lots 126, 138 to 144, inclusive, lots 160, 162, 163, 164, 166, 167, 185, 200, 206, 209, 211 to 216, inclusive, E½SE¼, NE¼SW¼SE¼;
Sec. 19, lots 1, 4, 13, 17, 27, 39, 47, S½NE¼, SE¼NW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, W½SW¼SE¼SE¼;
Sec. 20, lots 3, 4, 5, 8, 9, 12 to 15, inclusive, lots 17, 18, 19, 21, 24, 29, 32, S½NE¼NE¼, SE¼NE¼, NW¼NW¼, W½SW¼NW¼, E½NE¼S¼, E½NW¼SE¼SW¼, E½SE¼SW¼, SE¼;
Sec. 30, lots 10 to 20, inclusive, lots 25 to 33, inclusive, lots 43, 44, 54, 55, 67, 68, 79, 88, 89, 91, 94, 96 to 99, inclusive, lots 104, 105, 107, 108, 109, E½NW¼, E½W½NW¼, NW¼NE¼NW¼SW¼ NW¼SE¼NW¼S¼, NE¼SW¼SW¼.
Containing 2,654.35 acres.

SEWARD MERIDIAN (UNSURVEYED)

T. 15 N., R. 1 W.
Sec. 5, SW¼ (that portion lying north and west of the Alaska Railroad withdrawal, Public Land Order 3577);
Sec. 9, lot 5 (that portion excluding highway lot applications A–063477, A–063478, A–063481, A–063480, A–063483, A–063482, A–063449, A–063448, A–063447, A–063464 and A–063494);
Sec. 17, lot 8 (that portion excluding highway lot applications A–063513, A–063514, A–063484, A–063512, A–063519, A–063497, A–063498, A–063487);
Sec. 19, E½SW¼ (that portion lying easterly of the west boundary of the 300-foot Federal aid highway right-of-way, AA–2559);
Sec. 20, lot 2 (that portion excluding highway lot applications A–063487, A–063511, A–063518, A–063516, A–063517, A–063510, A–063496, A–063486, A–063495, A–063468, A–063506, A–063520 and A–063509).

Containing approximately 162.50 acres more or less.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, as prescribed and directed by the act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. A right-of-way thereon for the construction of railroads, telegraph, and telephone lines, as prescribed and directed by the act of March 12, 1914, 38 Stat. 305, 43 U.S.C. 975d;

3. The surface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975));

4. A right-of-way, AA–2559, for a Federal aid highway. Act of August 27, 1958, as amended, 23 U.S.C. 317;

5. That right-of-way, A–022452, and all appurtenances thereto constructed by the United States through, over, or upon the lands herein described and the right of the United States, its agents or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States;

6. A right-of-way, AA–5611, for a Federal aid highway. Act of August 27, 1958, as amended, 23 U.S.C. 317;

7. A right-of-way, A–057718, for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

8. A right-of-way, A–054476, for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

9. A right-of-way, A–060326, for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

10. A right-of-way, A–050815, for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

11. A right-of-way, A–050811, for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

12. A right-of-way, A–050814 for a Federal aid material site. Act of August 27, 1958, as amended, 23 U.S.C. 317;

13. The right to itself, its permittees or licensees, the right to enter upon, occupy and use, any part or all of that portion lying within fifty (50) feet of the centerline of the transmission line right-of-way of Power Project No. 350, for the purpose set forth in and subject to the conditions and limitations of section 24 of the Federal Power Act of June 10, 1928, as amended (41 Stat. 1075; 16 U.S.C. 818);

14. A right-of-way, AA–8095, Parcel 1A; for a Federal aid highway. Act of August 27, 1958, as amended, 23 U.S.C. 317; and,

15. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the followlowing public easements, referenced by easement identification number (EIN) on the easement maps in case file AA–6661–EE, are reserved to the United States and subject to further regulation thereby:

a. (EIN 3 D9, D1, L, C1) An easement for a historic access trail twenty-five (25) feet in width for the Iditarod Trail as it crosses the selected lands in secs. 9, 17, 19, 20 and 30, T. 15 N., R. 1 W., Seward Meridian between Eagle River and Eklutna. The alignment of this trail is within the right-of-way for the old Glenn Highway. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

b. (EIN 7 D9) A site easement upland of the ordinary high water mark in sec. 30, T. 15 N., R. 1 W., Seward Meridian, on the north shore of Upper Fire Lake. The site is one-half (½) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping and vehicle use.

c. (EIN 7a D9) An easement for an existing access trail twenty-five (25) feet in width from the old Glenn Highway to site easement 7 D9 on Upper Fire Lake located in sec. 30, T. 15 N., R. 1 W., Seward Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

d. (EIN 50 C, D) A continuous linear easement twenty-five (25) feet in width upland of and parallel to the mean high tide line in order to provide access to and along the marine coastline and use of such shore for purposes such as beaching of watercraft or aircraft, travel along the shore, recreation, and other similar uses. Deviations from the waterline are permitted when specific conditions so require, e.g., impassable topography or waterfront obstruction. This easement is subject to the right of the owner of the servient estate to build upon such easement a facility for public or private purposes, such right to be exercised reasonably and without undue or unnecessary interference with or obstruction of the easement. When access along the marine coastline easement is to be obstructed, the owner of the servient estate will be obligated to convey to the United States an acceptable alternate access route, at no cost to the United States, prior to the creation of such obstruction.

e. (EIN 52 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other survey purposes is reserved, together with the right to do all things necessary in connection therewith.

f. (EIN 53 C) Easements for the transportation of energy, fuel, and natural resources which are the property of the United States or which are intended for delivery to the United States or which are produced by the United States. These easements also include the right to build any related facilities necessary for the exercise of the right to transport energy, fuel, and natural resources, including those related facilities necessary during periods of planning, locating, constructing, operating, maintaining, or terminating transportation systems. The specific location of these easements shall be determined only after consultation with the owner of the servient estate. Whenever the use of such easements will require removal or relocation of any structure owned or authorized by the owner of the servient estate, such use shall not be initiated without the consent of the owner of such improvement; provided, however, that the United States may exercise the right of eminent domain if such consent is not given. Only those portions of these easements that are actually in use or that are expressly authorized on March 3, 1996, shall continue to be in force.

g. (EIN 54 C4, D1) An easement one-hundred (100) feet in width for the existing Birchwood Loop Road from the old Glenn Highway easterly to the new Glenn Highway and then northerly and easterly looping back to the new Glenn Highway. This easement is centered on the existing road alignment. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

The grant of lands by interim conveyance shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

The grant of lands by interim conveyance and patent shall be subject to:

1. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. ch. 2, sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

2. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

3. The easement as established by Public Land Order 1613 (23 FR 2376), pursuant to the act of August 1, 1956 (70 Stat. 898), for highway purposes including appurtenant protective, scenic and service areas;

4. A right-of-way, A-021429, ten (10) feet each each side of the centerline for an electrical distribution line for the Matanuska Electric Association, Inc., under the act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959 (1970));

5. A right-of-way, A-050466, fifty (50) feet each side of the centerline for a transmission line for the Matanuska Electric Association, Inc., under the act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959 (1970));

6. A right-of-way, A-057949, fifteen (15) feet each side of a centerline for a telephone pole line for the Matanuska Telephone Association, Inc., under the act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959 (1970));

7. A reservation for a right-of-way, A-063653, thirty-seven and a half (37.5) feet each side of a centerline for a telephone cable for the Matanuska Telephone Association, Inc., under the act of February 15, 1901, as amended (31 Stat. 790; 43 U.S.C. 959 (1970));

8. Airport lease AA-8578, for the Birchwood Airport containing 173 acres, more or less, located in secs. 5 and 7, T. 15 N., R. 1 W., Seward Meridian, Alaska, issued to the State of Alaska, Division of Aviation, under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970));

9. The terms and conditions of the agreement dated January 18, 1977, between the Secretary of the Interior, Cook Inlet Region, Inc., Eklutna, Inc., and other Cook Inlet village corporations. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Eklutna, Inc., serialized AA-6661-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501; and,

10. The following third party interests, if valid, created and identified by the State of Alaska, as provided by section 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(g) (Supp. V, 1975)). All of these interests are located in T. 15 N., R. 1 W., Seward Meridian:

a. Right-of-way permits:

(1) ADL 37265 for a Federal aid highway project No. F-042-1(1), that portion located in secs. 9, 17, 18 and 19;

(2) ADL 43336 located within lot 133, sec. 9, for an electric powerline;

(3) ADL 43335 located within lot 216, sec. 18 for an electric powerline;

(4) ADL 27959, that portion located within lot 200, sec. 18, for an electric distribution line;

(5) ADL 35136 located within sec. 19 and sec. 30, NW¼, for a controlled access public highway;

b. Letters of nonobjection:

(1) ADL 44289, that portion located within lots 15 and 16, sec. 30, for the Department of Highways to construct a road access to highway project FAP-42; and,

(2) ADL 39509 located within sec. 17, N½, for the Department of Highways in connection with Federal aid highway project No. F-042-1(1).

Conveyance of the remaining entitlement to Eklutna, Inc., will be made at a later date. Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above shall be granted to Cook Inlet Region, Inc., when conveyance is granted to Eklutna, Inc., for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the lands described above.

There is expected and reserved any element of ownership from the lands hereby conveyed, including but not restricted to any estate or interest in property, or permit, or other right, transferred by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (81 Stat. 441-444; 40 U.S.C. 771-792).

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the FEDERAL REGISTER and once a week, for four (4) consecutive weeks, in the ANCHORAGE TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, PO Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until November 25, 1977, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

4. If Eklutna, Inc., or Cook Inlet Region, Inc., objects to any easement which is identified herein for reservation in the conveyance, which is subject to the discretion of the State Director and not reserved pursuant to an express Secretarial directive, a petition for reconsideration must be filed within 30 days from receipt of service with the State Director, Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501. A copy of the petition should be served upon the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. If a petition for reconsideration is not filed, it will be deemed that the right to contest any such easement has been waived.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of, and requirements for, filing an appeal may be obtained from the Bureau of Land Management, 555 Cordova Street, Anchorage, Alaska 99501.

SUE A. WOLF,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-30931 Filed 10-25-77;8:45 am]

[7536-01]

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

ADVISORY COMMITTEE RESEARCH GRANTS PANEL

Meeting

OCTOBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended,) notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 am. to 5:30 pm. on November 10, 1977.

The purpose of the meeting is to review the applications submitted to the Research Tools Program of the National Endowment for the Humanities, for projects in the fields of Linguistics and Lexicography beginning October 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b)(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee, Management Officer.

[FR Doc. 77-30919 Filed 10-25-77;8:45 am]

[7536–01]

ADVISORY COMMITTEE RESEARCH GRANTS PANEL

Meeting

OCTOBER 11, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that a meeting of the Research Grants Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on November 11, 1977.

The purpose of the meeting is to review the applications submitted to the Research Tools Program of the National Endowment for the Humanities, for projects in the fields of History, Social Science and Philosophy beginning October 1, 1978.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Acting Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 2, 1977, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202–724–0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc.77–30920 Filed 10–25–77;8:45 am]

[8010–01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–14059; File No. SR–MSE–77–29]

MIDWEST STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on August 29, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The following proposal is presented as a stated policy of the Midwest Stock Exchange, Incorporated:

In determining whether or not the issuer of an underlying security has complied with the requirements of Provision (b) of Interpretations and Policies .01 of Article XLI, Rule 3 ("Provision (b)"), the following criteria will be used:

(a) If the issuer has filed a registration statement on Form S–16 or S–7 and such registration statement has become effective, the issuer will be deemed to be in compliance with Provision (b) as of the date of the effectiveness of the S–7 or S–16 registration statement.

(b) For periods subsequent to the effectiveness of an S–7 or S–16 registration statement, or in the absence of an effective S–7 or S–16 registration statement during the past three years, the issuer will be deemed to be in compliance with Provision (b) if the issuer has not stated otherwise in Item 6 of Form 8–K (for periods prior to March 1, 1977) or Item 4 of Form 10Q (for periods subsequent to March 1, 1977).

In determining whether or not the issuer of an underlying security has complied with the requirements of Provision (c) of Interpretations and Policies .01 of Article XLI, Rule 3 ("Provision (c)"), if the issuer has filed a registration statement on Form S–7 or S–16 and such registration becomes effective, the issuer will be deemed to be in compliance with Provision (c) as of the date of the effectiveness of the S–7 or S–16 registration statement.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of this proposal is to simplify the process by which the Exchange must determine whether or not an options class qualifies for listing on the Exchange. If approved, the Exchange will substantially reduce its costs and substantially reduce the expenditure of time on this matter by the employees of the Exchange. Further, this process will add a greater degree of certainty to the qualification determination, thus reducing the risks of the Exchange of violating its rules and providing greater certainty to the public that options transactions will not have to be reversed. It will also reduce the amount of time spent on these matters by the Securities and Exchange Commission staff members in both the Division of Market Regulation and the Division of Corporation Finance.

We believe this proposal to be clearly consistent with the provisions of the Act in that it provides greater operational efficiency for the Exchange and protects the public in that it provides greater certainty for members and public investors. Both of these benefits far outweigh any perceived reduction in listing standards.

The Midwest Stock Exchange, Incorporated has neither solicited nor received any comments.

The Midwest Stock Exchange, Incorporated believes that no burdens have been placed on competition.

On or before November 30, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 25, 1977.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 17, 1977.

[FR Doc.77–30929 Filed 10–25–77;8:45 am]

[8010–01]

[Release No. 14062; SR–MSE–77–17]

MIDWEST STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 18, 1977.

On June 6, 1977, the Midwest Stock Exchange, Inc. ("MSE"), 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b–4 thereunder, copies of a proposed rule change to eliminate wording from Article V, Rule 1 of the MSE Rules which would otherwise restrict option-only members from entrance to the Exchange's stock floor.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13627, (June 14, 1977)) and by publication in the FEDERAL REGISTER (42 FR 32862 (June 28, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities ex-

changes, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on June 6, 1977, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-30922 Filed 10-25-77;8:45 am]

[Release No. 14061; SR-MSE-77-14]

MIDWEST STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

OCTOBER 18, 1977.

On May 18, 1977, the Midwest Stock Exchange, Inc. ("MSE"), 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to Section 19(b) of the Securites Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change which amends Sections 1 and 3 of Article II of the MSE Constitution to permit options-only members to become registered market makers in those equity securities which underlie options traded on the Exchange.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13574, (May 27, 1977)) and by publication in the FEDERAL REGISTER (42 FR 29134 (June 7, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on May 18, 1977, be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-30921 Filed 10-25-77;8:45 am]

[8010-01]

[Release No. 14053; SR-MSRB-77-5]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Proposed Rule Change

OCTOBER 14, 1977.

On June 7, 1977, the Municipal Securities Rulemaking Board (the "Board"), Suite 507, 1150 Connecticut Ave. NW., Washington, D.C. 20036, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change to the Board's Rule G-8(a)(vi), (vii), (xi)(G) and (K), and Rule G-9(b)(viii)(E). The proposed change clarifies the nature of authorization and notice required with respect to the pledging of customer securities in conformity with Commission Rule 8c-1 (17 CFR 240.8c-1) and Rule 15c2-1 (17 CFR 240.15c2-1) under the Act. It also alters the required record of authorization to effect transactions in customer accounts pursuant to a power of attorney and in joint, corporate or partnership accounts.

Notice of this proposed rule change, together with its terms of substance, was given in Securities Exchange Act Release No. 13732 (July 8, 1977), 42 FR 36577 (July 15, 1977). The Board filed one substantive amendment to the proposed rule change, and notice of the change, together with its terms of substance, was given in Securities Exchange Act Release No. 13980 (September 19, 1977), 42 FR 49854 (September 28, 1977). No comments have been received.

The text of the proposed rule change is as follows.

Rule G-8. Books and records to be made by municipal securities brokers and municipal securities dealers.

(a) Description of books and records required to be made. Except as otherwise specifically indicated in this rule, every municipal securities broker and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such municipal securities broker or municipal securities dealer: (i) through (v) No change; (vi) Record for agency transactions.

A memorandum of each agency order and any instructions given or received for the purchase or sale of municipal securities pursuant to such order, showing the terms and conditions of the order and instructions, and any modification thereof, the account for which entered, the date and time of receipt of the order by such municipal securities broker or municipal securities dealer, the price at which executed, the date of execution and, to the extent feasible, the time of execution and, if such order is entered pursuant to a power of attorney or on behalf of a joint account, corporation or partnership, the name and address (if other than that of the account) of the person who entered the order. If any agency order is cancelled by a customer, such records shall also show the terms, conditions and date of cancellation, and, to the extent feasible, the time of cancellation. Orders entered pursuant to the exercise of discretionary power by such municipal securities broker or municipal securities dealer shall be designated as such. For purposes of this subparagraph, the term "agency order" shall mean an order given to a municipal securities broker or municipal securities dealer to buy a specific security from another person or to sell a specific security to another person, in either case without such municipal securities broker or municipal securities dealer acquiring ownership of the security. Customer inquiries of a general nature concerning the availability of securities for purchase or opportunities for sale shall not be considered to be orders. For purposes of this subparagraph and subparagraph (vii) below, the term "memorandum" shall mean a trading ticket or other similar record. For purposes of this subparagraph, the term "instructions" shall mean instructions transmitted within an office with respect to the execution of an agency order, including, but not limited to, instructions transmitted from a sales desk to a trading desk.

(vii) Records for transactions as principal. A memorandum of each transaction in municipal securities (whether purchase or sale) for the account of such municipal securities broker or municipal securities dealer, showing the price and date of execution and, to the extent feasible, the time of execution; and in the event such purchase or sale is with a customer, a record of the customer's order, showing the date and time of receipt, the terms and conditions of the order, and the name or other designation of the account in which it was entered and, if such order is entered pursuant to a power of attorney or on behalf of a joint account, corporation, or partnership, the name and address (if other than that of the account) of the person who entered the order.

(viii) through (x) No change.

(xi) Customer account information. A record for each customer, other than an institutional account, setting forth the following information to the extent applicable to such customer:

(A) through (F) No change.

(G) Signature of municipal securities representatives or general securities representative introducing the account and signature of a municipal securities principal or general securities principal indicating acceptance of the account;

(H) With respect to discretionary accounts, customer's written authorization to exercise discretionary power or authority with respect to the account, written approval of municipal securities principal who supervises the account, and written approval of municipal securities principal with respect to each transaction in the account, indicating the time and date of approval;

(I) Whether customer is employed by another broker, dealer or municipal securities dealer; and

(J) In connection with the hypothecation of the customer's securities, the written authorization of, or the notice provided to, the customer in accordance with Commission rules 8c-1 and 15c2-1. For purposes of this subparagraph, the terms "general securities representative" and "general securities principal" shall mean such persons as so defined by the rules of a national securities exchange or registered securities association. For purposes of this subparagraph, the term "institutional account" shall mean the account of an investment company as defined in section 3(a) of the Investment

Company Act of 1940, a bank, an insurance company, or any other institutional type account. Anything in this subparagraph to the contrary notwithstanding, every municipal securities broker and municipal securities dealer shall maintain a record of the information required by items (A), (C), (G), (H), and (J) of this subparagraph with respect to each customer which is an institutional account.

(xii) No change.

(b) through (g) No change.

Rule G–9. Preservation of records.

(a) No change.

(b) Records to be preserved for three years. Every municipal securities broker and municipal securities dealer shall preserve the following records for a period of not less than three years.

(i) through (vii) No change.

(viii) The following records, to the extent made or received by such municipal securities broker or municipal securities dealer in connection with its business as such municipal securities broker or municipal securities dealer and not otherwise described in this rule:

(A) through (D) No change.

(E) All powers of attorney and other evidence of the granting of any authority to act on behalf of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(ix) No change.

(c) through (g) No change.

* * * * *

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder[1] applicable to the Board and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

Pursuant to Section 19(b)(2) of the Act, the Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof unless it finds good cause for so doing and publishes its reasons for so finding.

Since the changes proposed in Amendment No. 1, published in 42 FR 49854 (September 28, 1977), served to effect the purposes and policies set forth in the initial proposal published in 42 FR 36577 (July 15, 1977) and since no comments were received in response to the initial proposal, in light of the importance of establishing appropriate recordkeeping standards in this area for municipal securities brokers and municipal securities dealers, the Commission finds good cause for approval of the proposed rule change prior to the thirtieth day after publication of notice of the amended filing.

However, the Board has requested that the effective date of the amendments be postponed until November 15, 1977. In order to permit municipal securities brokers and municipal securities dealers to become familar with the amended recordkeeping and record-retention requirements and to establish a reasonable time in which they may implement any necessary changes in their recordkeeping systems or procedures, these amendments will become effective on November 15, 1977.[2]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved and that the proposed rule change become effective on November 15, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 14, 1977.

[FR Doc. 77-30923 Filed 10-25-77;8:45 am]

[1] While the proopsed amendments are inconsistent in certain respects with the requirements of Rule 17a-3(a) (6), (7), and (9) and 17a-4(b)(6), the Commission finds that, based on the nature of transactions in municipal securities, these variations are not inappropriate.

[2] The application of paragraphs (a)(xi)(G) and (K) of Rule G-8 has been suspended until November 15, 1977 (SR-MSRB-77-14) (Securities Exchange Act Release No. 14052 (October 14, 1977)).

[8010-01]

[Release No. 9961; 812-4174]

NEWTON INCOME FUND, INC. ET AL.

Filing of Application To Exempt a Proposed Merger and To Exempt an Issuance of Securities

OCTOBER 17, 1977.

Notice is hereby given that Newton Income Fund, Inc. ("Income") and Newton Select Fund, Inc. ("Select"), 733 North Van Buren Street, Milwaukee, Wis. 53202, both open-end, diversified management investment companies registered under the Investment Company Act of 1940 ("Act"), and Heritage Investment Advisors, Inc. ("Heritage") the investment adviser for Income and Select, filed an application on August 15, 1977, for orders, pursuant to Section 17(b) of the Act, exempting from Section 17(a) of the Act the proposed merger of Select into Income; pursuant to Section 17(d) of the Act and Rules 17d-1 thereunder, permitting Income, Select, and Heritage to participate in the proposed transactions; and pursuant to Section 6(c) of the Act, exempting the issuance of shares of Income from Section 22(c) of the Act and Rule 22c-1 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that on July 31, 1977, Income had net assets of $5,578,396 and Select had net assets of $3,413,139. On that date, Income had approximately 2,762 stockholders and Select had approximately 83 stockholders. Income's investment objective is to achieve above-average current income consistent with preservation of capital. By contrast, Select's objective is to achieve long-term capital and current income is incidental to its investment objective.

Income and Select, both Maryland corporations, have no sales load, act as their own underwriters, have identical executive officers, and employ the same legal counsel, custodian, transfer agent, and auditors. The funds have five common directors on their seven member boards of directors. Section 2(a)(3) of the Act, in pertinent part, defines an affiliated person of another person to include any person, directly or indirectly, controlling, controlled by, or under common control with, such other person, any officer, or director of such other person and any investment adviser, if such other person is a registered investment company. Accordingly, Heritage is an affiliated person of both Income and Select, and Income and Select may be deemed to be affiliated persons of each other.

Applicants represent that they have entered into an agreement of reorganization whereby Select will transfer substantially all of its assets to Income in exchange for shares of Income ("Income Shares") which will then be distributed on a pro rata basis to the stockholders of Select pursuant to a plan of liquidation. At closing, Income will issue and deliver to Select a certificate for the number of shares having an aggregate net asset value equal to the net value of Select's assets, as computed as of the close of business on the business date immediately preceding the closing. The net asset value of Select will be reduced by its expense of liquidation, all known and contingent liabilities and the estimated $1,000 expense of selling the portfolio securities of Select that may be inconsistent with Income's investment objective.

The proposed transaction and an amendment to the Articles of Incorporation to allow such a transaction will be submitted to the shareholders of Select for approval. Approval of the transaction by the shareholders will also constitute their approval and adoption of Income's investment objective. The stockholders of Income also will meet to vote on the proposal. The agreement of reorganization is also subject to the receipt of a ruling by the Internal Revenue Service that the proposed transaction will constitute a tax-free reorganization.

On or before the date chosen to compute the net asset values for Select and Income, Select will declare and pay a dividend to its stockholders of record on the close of business on that date. No adjustments in the net asset value of the Income Shares or the net assets of Select will be made to compensate for any potential federal income tax impact on the stockholders of Select or Income which might result from differences in realized and unrealized capital gains or losses in the portfolios of Income and Select.

The aggregate expenses of Income and Select in connection with the proposed merger will be shared by Income and Select in proportion to the value of their

respective net assets. Heritage, however, will pay the first $5,000 of expenses deemed to be common to Income and Select, which represents the amount of estimated savings which, as a result of the merger, will accrue to Heritage during Income's fiscal year ending July 31, 1978.

Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell to or purchase from such registered investment company any security or other property unless the Commission, pursuant to Section 17(b) of the Act, grants an exemption from Section 17(a) after finding that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned with the general purposes of the Act.

Applicants represent that the terms of the Agreement are reasonable and fair and do not involve overreaching on the part of any person concerned in that the merger will be accomplished on the basis of the net asset values of Income and Select determined at the same time. Applicants assert that the shareholders of Income and Select will benefit by the reduction of certain presently duplicated expenses. Applicants assert that the transactions contemplated by the agreement will be consistent with the policies of Income and Select, assuming that the shareholders of the latter vote to change its investment objectives, and with the general purposes of the Act.

Rule 17d–1 provides, in pertinent part, that no affiliated person of any registered investment company and no affiliated person of such person shall participate in, or effect any transaction in connection with, a joint enterprise in which such registered investment company is a participant unless an application regarding such joint enterprise has been filed with the Commission and has been granted by order. In passing upon such application, the Commission will consider whether the participation of such registered investment company is consistent with the policies, provisions and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

Since by the terms of the agreement, Heritage agreed to assume $5,000 of the expenses common to Income and Select and since Income and Select agreed to share common expenses on a basis proportional to their net asset values, each may be deemed to be a participant in a joint enterprise and thus subject to the provisions of Section 17(d) of the Act and Rule 17d–1 thereunder. Applicants represent that the transactions contemplated by the agreement are consistent with the provisions, policies and purposes of the Act. Select and Income each assert that its respective participation in the transaction is not on a basis different from or less advantageous than any other party.

Section 22(c) of the Act and Rule 22c–1 thereunder prohibit registered investment companies from issuing redeemable securities except at a price based on the current net asset value of such securities which is next computed after receipt of an order to purchase. Section 6(c) authorizes the Commission, upon application, to exempt any transaction from any provision of the Act or any rule thereunder, if it finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants state that under the terms of the agreement, the valuation of Select's assets and the Income Shares will be determined as of the close of business on the business date immediately preceding the closing date, which procedure may be in violation of Rule 22c–1. Applicants assert that they desire to fix the value of Select's assets and Income's shares at such time in order that the parties will know the exchange ratio at the closing which is to be held on the following day. Income asserts that the computation of the value of Income's shares at such time will not give rise to the type of speculative activity which Rule 22c–1 was designed to prohibit. Therefore, Income asserts that the grant of the order requested is necessary and appropriate, is in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Notice is further given that any interested person may, not later than November 11, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-30924 Filed 10-25-77;8:45 am]

[8010-01]

[Rel. No. 20215; 70-6067]

NINEVEH WATER CO. AND PENNSYLVANIA ELECTRIC CO.

Proposed Issue and Sale of Notes by Subsidiary to Holding Company

OCTOBER 18, 1977.

Notice is hereby given that Pennsylvania Electric Co. ("Penelec"), 1001 Broad Street, Johnstown, Pa. 15907, an electric utility subsidiary company of General Public Utilities Corp., 1001 Broad Street, Johnstown, Pa. 15907, a registered holding company, and Nineveh Water Co. ("Nineveh"), a water company subsidiary of Penelec, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 9(a), 10, and 12(b) of the Act and rules 43 and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

By previous order (HCAR No. 20192) dated October 3, 1977, this Commission authorized Penelec to make cash capital contributions of up to $200,000 to Nineveh during 1977, such capital contributions to be used by Nineveh to restore service and effect certain short-term repairs of facilities damaged by the Johnstown, Pa., flood which occurred in July 1977. Applicants-declarants state that repair and restoration work will require expenditures in addition to those described in connection with the cash capital contributions. Such additional expenditures include: (1) The construction of 5,600 feet of 12" permanent line before cold weather sets in, in order to service customers, including Penelec's Seward Station, which has been out of service since July 20, 1977, but which is expected to resume service in October 1977; (2) dredging and repair of dam and breast work at the Findley Run Dam; and (3) the modification of the Findley Run Dam spillway. The breakdown of the additional expenditures is as follows:

Findley Run Dam, dredging	$186,000
Findley Run Dam, dam repair and breast work	114,000
Cost of removal and salvage	2,000
Replace piping and new installation, Cramer area	40,000
Standby pump	5,000
Install 5,600 feet 12" main line	220,000
Findley Run Dam, modify spillway	190,000
Miscellaneous	43,000
Total	800,000

In order to finance these additional expenditures, Nineveh proposes to issue and sell to Penelec, and Penelec proposes to purchase from Nineveh, from time to time during 1977 notes in an aggregate amount not to exceed $800,000. Such notes will bear interest at a rate of 1.25 times the prime rate in effect from time to time at Mellon Bank N.A. Interest on the unpaid balances of the notes shall be paid by Nineveh only if and to the extent that the "available net income," as defined in the notes, is sufficient to pay such interest.

Nineveh filed an application for a disaster loan with the Small Business Administration ("SBA") on September 15, 1977, in the amount of $856,000. Because the amount of such loan that the SBA may be willing to grant is not known, application for Commission authorization in connection therewith will be made when such information is available. Subject to Commission approval, the proceeds of such SBA loan will be applied by Nineveh to reduce or pay in full the notes issued by Nineveh as proposed herein. Pending disposition of Nineveh's SBA loan application, the time to process which is not now known, it is necessary for Nineveh to have a source of funds for the repair and restoration of its system. It is stated that Nineveh's borrowing capacity is limited and its only source of funds is through Penelec.

The fees are expenses to be incurred in connection with the proposed transaction are estimated at $7,000, including legal fees of $4,500. It is stated that the Pennsylvania Public Utilities Commission has jurisdiction with respect to Nineveh's proposed issue and sale of notes to Penelec and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 11, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by such application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-30925. Filed 10-25-77;8:45 am]

[8010-01]

[Rel. No. 20216; 70-6068]

OHIO EDISON CO.

Proposed Issuance and Sale of Common Stock At Competitive Bidding

OCTOBER 19, 1977.

Notice is hereby given that Ohio Edison Co. ("Ohio Edison"), 76 South Main Street, Akron, Ohio 44308, a registered holding company and a public utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(a) and 7 of the Act and rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Ohio Edison proposes to issue and sell up to 6,000,000 shares of its authorized but unissued Common Stock, par value $9 per share ("Additional Common Stock"), and to sell the same to underwriters, at competitive bidding. Ohio Edison states that the reason for the proposed issue is to enable Ohio Edison to continue its ongoing construction program and to repay unsecured short-term debt, estimated to aggregate $45,000,000 at the time of the issuance of the Additional Common Stock. Ohio Edison estimates its construction expenditures for 1977 at $351,013,000.

It is stated that the Public Utilities Commission of Ohio has jurisdiction over the proposed issue and sale of the Additional Common Stock. It is further stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than November 18, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77-30926 Filed 10-25-77;8:45 am]

[8010-01]

[Release No. 34-14058; File No. SR-PSE-77-26]

PACIFIC STOCK EXCHANGE INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on September 9, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Pacific stock Exchange Incorporated ("PSE") has adopted as a stated policy, practice or interpretation a criteria for determining whether or not the issuer of an underlying security has complied with the requirements of subsection (b) of Commentary .01 of Rule VI, section 12 ("subsection (b)"). The criteria used are as follows:

(a) If the issuer has filed a registration statement on Form S-16 or S-7 and such registration statement has become effective, the issuer will be deemed to be in compliance with subsection (b) as of the date of the effectiveness of the S-7 or S-16 registration statement.

(b) For periods subsequent to the effectiveness of an S-7 or S-16 registration statement, or in the absence of an effective S-7 or S-16 registration statement during the past three years, the issuer will be deemed to be in compliance with subsection (b) if the issuer has not stated otherwise in Item 6 of Form 8-K (for periods prior to March 1, 1977) or Item 4 of Form 10Q (for periods subsequent to March 1, 1977).

In determining whether or not the issuer of an underlying security has com-

plied with the requirements of subsection (a) of Commentary .01 of Rule VI, section 12 ("subsection (a)"), if the issuer has filed a registration statement on Form S–7 or S–16 and such registration becomes effective, the issuer will be deemed to be in compliance with subsection (a) as of the date of the effectiveness of the S–7 or S–16 registration statement.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of this proposal is to simplify the process by which the Exchange must determine whether or not an options class qualifies for listing on the Exchange. If approved, the Exchange will substantially reduce its costs and substantially reduce the expenditure of time on this matter by the employees of the Exchange. Further, this process will add a greater degree of certainty to the qualification determination, thus reducing the risks of the Exchange of violating its rules and providing greater certainty to the public that options transactions will not have to be reversed. It will also reduce the amount of time spent on these matters by the Securities and Exchange Commission staff members in both the Division of Market Regulation and the Division of Corporation Finance.

We believe this proposal to be consistent with the provisions of the Act in that it provides greater operational efficiency for the Exchange and protects the public in that it provides greater certainty for members and public investors. Both of these benefits far outweigh any perceived reduction in listing standards.

The Pacific Stock Exchange Incorporated has neither solicited nor received any comments.

The Pacific Stock Exchange Incorporated believes that no burdens have been placed on competition.

On or before November 30, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 25, 1977.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 17, 1977.

[FR Doc.77–30930 Filed 10–25–77;8:45 am]

[8010–01]

PHILADELPHIA STOCK EXCHANGE, INC.

Application for Unlisted Trading Privileges and of Opportunity for Hearing

OCTOBER 17, 1977.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the securities of the companies as set forth below, which securities are listed and registered on one or more other national securities exchanges:

Data Terminal Systems, Inc., Common Stock, $0.20 par value; File No. 7–4997.
National Industries, Inc., Common Stock, $1.00 par value; File No. 7–4998.
Ward Foods, Inc., Common Stock, $1.00 par value; File No. 7–4999.

Upon receipt of a request, on or before November 2, 1977 from any interested person, the Commission will determine whether the application with respect to the company named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to the particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–30927 Filed 10–25–77;8:45 am]

[8010–01]

[Rel. No. 9962; 812–4148]

TEMPLETON GROWTH FUND, LTD. AND SECURITIES FUND INVESTORS, INC.

Filing of Application of the Act for an Exemption To Permit an Offer of Exchange

OCTOBER 18, 1977.

Notice is hereby given that Templeton Growth Fund, Ltd. (the "Fund"), 155 University Ave., Toronto, Ontario M5H 3B7, a Canadian mutual fund corporation, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), and Securities Fund Investors, Inc. ("SFI"), 50 North Franklin Turnpike, Hohokus, New Jersey 07423, the principal underwriter for the Fund (collectively the "Applicants"), filed an application on June 20, 1977, for an order of the Commission (1) pursuant to Section 11(a) of the Act to permit the Fund to offer its common shares for shares of The Reserve Fund, Inc. ("Reserve"), upon payment of a $5.00 exchange fee and (2) pursuant to Section 6(c) of the Act to exempt Applicants from the provisions of Section 22(d) of the Act and the rules thereunder to the extent necessary to permit such an offer of exchange. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

SFI, as principal underwriter for the Fund, maintains a continuous public offering of the shares of the Fund at their net asset value plus a sales charge. On purchases of less than $10,000, the maximum sales charge is 8.50 percent which is reduced on larger purchases. There is no sales charge imposed on the reinvestment of dividends and capital gains from shares of the Fund.

The application states that Reserve, an open-end investment company registered under the Act, invests primarily in short-term money market instruments and acts as its own distributor. Reserve imposes no sales or administrative charge in connection with the sale of its shares. Since the Fund imposes no charge on redemption of its shares, a shareholder of the Fund may redeem his shares in the Fund and purchase shares of Reserve (provided that the minimum initial investment in Reserve shares is $1,000) without payment of any redemption or sales charges. A $5.00 service fee will be charged by New England Merchants National Bank (the "Bank"), the United States custodian and transfer agent for the Fund, for each investment in shares of Reserve.

Applicants propose to permit a Reserve shareholder to exchange shares of Reserve acquired either (1) by investing the net proceeds from a redemption of shares of the Fund and held for such shareholder in a Templeton Exchange Account ("Account") in the name of

such shareholder at Reserve or (2) by the reinvestment of income dividends and capital gain distributions paid on all Reserve shares held in such Account, for shares of the Fund, in either case without the imposition of the customary sales charge described in the prospectus of the Fund (hereinafter referred to as the "Exchange Privilege"). Reserve shares acquired in any other manner than as described above would not qualify for the Exchange Privilege.

The participant in an Account would be able to exercise his Exchange Privilege at any time by instructing Reserve to redeem shares of Reserve in his Account and apply the redemption proceeds to the acquisition of shares of the Fund. No charge on the exchange of Reserve shares for shares of the Fund will be imposed by Reserve or Applicants. The Exchange Privilege will not be available to the proceeds from a redemption of Reserve shares which are paid directly to the investor or at his direction to any person other than the Fund. The Fund and Reserve have reserved the right to establish a limit on the number of exchanges pursuant to the Exchange Privilege which any investor may make within a certain period. The Exchange Privilege will be subject to termination by the Fund or by Reserve on not less than six months' prior written notice to holders of an Account. An investor maintaining an Account will receive the current prospectus of both Reesrve and the Fund provided the investor remains entitled to the Exchange Privilege. The Exchange Privilege will lapse for an investor if his Account balance of shares of the Fund shows a zero balance for a period of three consecutive years.

Section 11(a) provides, in part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 22 (d) of the Act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person except at a current offering price described in the prospectus.

Applicants submit that an exercise of the Exchange Privilege would result in an exchange on a basis other than the relative net asset values of the shares since a $5.00 service charge will be imposed on each exchange of shares of the Fund for shares of Reserve. Applicants state that the Exchange Privilege might also violate Section 22(d) of the Act since an investor would be able to purchase shares of the Fund without the customary sales charge described in the Fund's prospectus. Applicants state that, because any investor eligible for the Exchange Privilege will have been an investor in shares of the Fund and will continue to receive current prospectuses of the Fund while he holds the Account with Reserve, no additional sales efforts will be incurred by SFI in connection with the reacquisition of shares of the Fund, and that no sales charge should be imposed on the investor in connection with his reacquisition of shares of the Fund. Applicants represent that the $5.00 service charge will defray the administrative costs involved in each exchange. It is asserted that the Exchange Privilege will not enable any investor to avoid payment of the applicable sales charge on his original investment in shares of the Fund.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class of persons, securities, or transactions from any provision or provisions of the Act and the rules promulgated thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 14, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZIMMONS,
Secretary.

[FR Doc.77-30928 Filed 10-25-77;8:45 am]

[8010-01]

[Release No. 34-14060; File No. SR-NYSE-77-27]

NEW YORK STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 11, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The text of the proposed amendment is attached as Exhibit I-A.

PURPOSE OF PROPOSED RULE CHANGE

The basic purpose of the amendment is to incorporate into the rule standards under which members or member organizations may share office space with securities related individuals and organizations whether members or non-members.

The Exchange retains authority to restrict joint office space arrangements involving only members or member organizations in order to be certain that clear lines of responsibility are established with regard to customer accounts. Examples of potential problems would relate to such areas as maintaining the confidential nature of customers' accounts, the commingling of securities or the specific extent of the insurance coverage of each member or member organization. Furthermore, the standards set forth in the rules are designed to protect the public and to give the customer full disclosure as to the person with whom he is dealing.

Although present Exchange rules do not require members or member organizations to obtain Exchange approval to share unsegregated office space with nonsecurities organizations or individuals, Rule 343 was also revised to clearly set this forth and eliminate any possible ambiguity.

In addition, the specific exceptions for sharing office space with corporate affiliates, guaranteed corporate subsidiaries and fellow members of another exchange have been deleted, since such arrangements will be governed by the standards set forth for all securities oriented individuals or organizations to prevent unfair discrimination. It is contemplated that the Exchange would grant approval for such arrangements depending on the nature of the business, the degree of control, the responsibilities of the member organization's employees, etc.

Finally, the Rule 343 provision prohibiting a person in charge of any office being paid a gross sum for the expenses of such office has been eliminated.

BASIS UNDER THE ACT

(i) The proposed amendments will better enable the Exchange to enforce compliance by its members and persons associated therewith with the rules of the Exchange and the Act by segregating the activities of its members from other member and non-member securities organizations.

(ii) They are consistent with Section 6(b)(2) of the Act in that they enhance the ability of a registered broker or dealer to become an Exchange member by removing office space restrictions relating to the paying of gross sums for office expenses.

(iii) Is inapplicable.

(iv) Is inapplicable.

(v) The proposed amendments are consistent with Section 6(b)(5) of the Act because they contain standards for sharing office space which are designed to prevent misrepresentation and protect investors. The remaining exceptions foster cooperation and coordination between clearing and non-clearing members. The deleted exceptions relating to affiliates, subsidiaries and fellow members of another exchange eliminate discrimination between brokers or dealers. Finally, the provision regarding the paying of gross sums for office expenses has been rescinded because it does not relate to a matter regulated by the Act.

(vi) Is inapplicable.

(vii) Is inapplicable.

(viii) Is inapplicable.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS

No comments were solicited or received with respect to the subject amendments.

BURDEN ON COMPETITION

The proposed rule change will not impose any burden on competition not necessary or appropriate for the protection of investors and the public interest.

On or before November 30, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 16, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

OCTOBER 18, 1977.

EXHIBIT I–A

RULE 343 AS AMENDED

Offices—Sole Tenancy, Hours Display of Membership Certificates

Rule 343. (a) Unless otherwise permitted by the Exchange, each office or foreign incorporated branch of a member or member organization shall not be occupied jointly with any other broker or dealer, investment advisor, or other person who conducts a securities or commodities business with the public. Types of office space arrangements deemed permissible are described below:

(1) Clearing member organizations may furnish office space, telephone, ticker or any other facilities, to their introducing nonclearing member organizations.

(2) A branch or main office sales area of a member or member organization may be shared with any other broker or dealer, investment advisor or other person who conducts a securities or commodities business with the public: *Provided,* The member or member organization furnishes the Exchange with the following written assurances:

(A) The arrangement is not contrary to the rules of any self-regulatory organization; and

(B) There is little or no customer traffic in the office of either organization; and

(C) Sufficient separation exists to enable customers who do visit to identify the individual or organization with which they are transacting business; and

(D) Employees can be clearly identified as to their respective employer; and

(E) Clearance has been obtained from the member organization's fidelity insurance carrier and auditors.

(3) Notwithstanding the requirements set forth in (2) above, the Exchange will permit a member or member organization to share office space with any other broker or dealer, investment advisor or other person who conducts a securities or commodities business with the public if the following conditions are met:

(A) Such space is separated by ceiling-high solid walls; and

(B) Such space has direct access to a public hall, main corridor or street; and

(C) The name of each organization is placed on the door to such space; and

(D) There are no connecting doors or windows between the space to be jointly occupied; and

(E) The names are not listed under the same telephone number, and the telephone number of the member is not used on the letterhead or on any advertising of any other member or nonmember. (Also see Rule 36.30.)

(b) Members and member organizations may share office space with any person who is not a broker or dealer, an investment advisor, or who does not conduct a securities or commodities business with the public.

(c) Unless otherwise permitted by the Exchange, the main office of every member or member organization shall remain open for business on every full business day during the trading hours on the New York Stock Exchange.

(d) Members and member organizations maintaining customers' offices are required to display in each such office a certificate of membership provided by the Exchange. Such certificate shall be at all times the property of the Exchange, and every such certificate shall be returned upon termination of the office or of the status as a member or member organization.

* * * Supplementary Material: Information Regarding Office Space Arrangements.

.10. A non-clearing member organization which has been afforded facilities by its clearing member organization may permit its registered employees to perform their regular duties in the board room of the clearing organization, only if such employees of the non-clearing organization wear badges identifying them as employees of such organization. When two or more nonclearing member organizations share the facilities of a single board room all employees of such member organizations must wear badges identifying them as employees of their respective member organization employers. It is the duty of the clearing organization to see that this requirement is observed.

[FR Doc.77-31004 Filed 10-25-77; 8:45am]

[4710-01]

DEPARTMENT OF STATE

[Public Notice CM-7/125]

OVERSEAS SCHOOLS ADVISORY COUNCIL

Meeting

The Overseas Schools Advisory Council, Department of State, will hold its annual meeting on Tuesday, December 6, 1977, 9:30 a.m., in Conference Room 1406, Department of State building, Washington, D.C.

Agenda items scheduled for discussion are as follows:

I. Welcome and Introduction of Members.

II. Greetings from the Department of State.

III. Report of Action of Executive Committee Meeting of June 1, 1977.

IV. Review of Council's Fund-Raising Activities 1968–76.

V. Report from Overseas Schools:

A. Local Fund-Raising Programs Undertaken by Overseas Schools.

B. Regional Meetings and Conferences During School Year 1977–78.

C. Activities of Regional Associations.
VI. Activities Relating to Council's Second Phase:
A Letter to 1300 U.S. Corporations and Foundations, Enclosing Directory of American-Sponsored Overseas Schools and a Sample of Updated Fact Sheets.
B. Annual Letter to U.S. Corporations and Foundations.
C. *Fund-Raising Handbook* and its Distribution to Overseas Schools and U.S. Chiefs of Mission.
VII. Report of /I/D/E/A/'s Efforts.
VIII. Other Business.

For purposes of fulfilling building security, members of the public desiring to attend the meeting should call Ms. Judy Knott, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703–235–9600, prior to December *6*. The public may participate in discussions at the Chairman's instructions.

Dated: October 17, 1977.

ERNEST N. MANNINO,
Executive Secretary, Overseas Schools Advisory Council.

[FR Doc.77–31002 Filed 10–25–77;8:45 am]

[4710–01]

[Public Notice CM–7/126]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

Meeting

A meeting of the Secretary of State's Advisory Committee on Private International Law will be held at 10 a.m. on Friday, November 18, 1977, in room 5519 of the Department of State. Members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The purpose of the meeting will be to review: instructions for the U.S. delegation to a UNIDROIT meeting on hotelkeepers' liability; the work of the Hague Conference Special Commission on agency; the UNCITRAL Working Group meeting on formation and validity of international sales contracts; the Inter-American Convention on International Commercial Arbitration and implementing legislation; negotiations relating to recognition and enforcement of foreign judgments; and to discuss selection of a special rapporteur on the subject of childnapping.

Entrance to the Department of State building is controlled, and members of the general public should use the C Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and address to Miss Dorothy Fagan, Office of the Legal Adviser, Department of State, prior to November 18, 1977. The telephone number is area code 202–632–8134.

Dated: October 17, 1977.

RICHARD D. KEARNEY,
Chairman.

[FR Doc.77–31003 Filed 10–25–77;8:45 am]

[4710–01]

[Public Notice CM–7/128]

ADVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY

Notice of Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on November 9, 1977, at the Department of State in Conference Room 1105 from 9:30 a.m. to 1 p.m.

The purpose of this open meeting will be to discuss the following topics:

1. Issues concerning possible United States adherance to the Berne Convention.

2. Developments concerning the use of electronic computers.

3. Report on work relating to the use of video cassettes and audiovisual discs.

4. Report on UNESCO/WIPO Working Group on problems raised by the distribution of television programs by cable.

5. Protection of translators.

6. Report on Tunis Model Law on Copyright for Developing Countries.

The public attending may, as time permits and subject to the instructions of the Chairman, participate in the discussions or may submit their views in writing to the Chairman prior to or at the meeting for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. Entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Members of the general public who plan to attend the meeting are requested to provide their name, affiliation and address to Mr. L. Stuart Allan, Office of Business Practices, Department of State, telephone 202–632–3491 prior to November, 9, 1977. All non-government attendees at the meeting should use the C Street Entrance to the building.

Dated: October 21, 1977.

HARVEY J. WINTER,
Executive Secretary.

[FR Doc.77–31128 Filed 10–25–77;8:45 am]

[7035–01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 509]

ASSIGNMENT OF HEARINGS

OCTOBER 20, 1977.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearngs in which they are interested.

MC 142830, Transhield Trucking, Inc., now assigned November 10, 1977, at Chicago, Ill., is canceled and transferred to Modified Procedure.

MC 117119 (Sub-No. 633), Willis Shaw Frozen Express, Inc., now assigned December 12, 1977, at Philadelphia, Pa., is cancelled and transferred to Modified Procedure.

MC 82492 (Sub-No. 154), Michigan & Nebraska Transit Co., Inc., now assigned December 9, 1977 at Chicago, Ill., is canceled, transferred to Modified Procedure.

MC 116273 (Sub-No. 211), D & L Transport, Inc., now being assigned January 20, 1978 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 124211 (Sub-No. 293), Hilt Truck Line, Inc., now being assigned December 9, 1977 (1 day), at Chicago, Ill., in a hearing room to be later designated.

MC 142738 (Sub-No. 2), Sagelaw Corp., d.b.a. Deluxe America Tours, now being assigned January 9, 1978 (1 week), at Houston, Tex., in a hearing room to be later designated.

AB 12 (Sub-No. 56), Southern Pacific Transportation Co., abandonment between Brenham and Giddings in Washington, Fayette, and Lee Counties, Tex., now being assigned January 4, 1978 (3 days), at Brenham, Tex., in a hearing room to be later designated.

MC 125433 (Sub-No. 110), F–B Truck Line Co., MC 113855 (Sub-No. 377), International Transport, Inc., and MC 135231 (Sub-No. 25), North Star Transport, Inc., now being assigned for hearing on November 14, 1977 (2 days), at San Francisco, Calif., in Room 510, 5th Floor, 211 Main St.

MC 138407 (Sub-No. 2), Lahmann International Corp., now being assigned November 29, 1977 (3 days), at Cincinnati, Ohio, in a hearing room to be later designated.

MC 67866 (Sub-No. 23), Film Transit, Inc., now being assigned for hearing on January 17, 1978 (9 days), at Memphis, Tenn., in a hearing room to be later designated.

MC 118288 (Sub-No. 48), Frost Truck Lines, Inc., now assigned December 13, 1977, at Los Angeles, Calif., is postponed indefinitely.

MC 115826 (Sub-No. 267), W. J. Digby, Inc., now assigned December 5, 1977, at San Francisco, Calif., is postponed indefinitely.

MC 113855 (Sub-No. 372), International Transport, Inc., now assigned November 29, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 South West Yamhill Street.

MC 142998, Laughlin Lines, Inc., now assigned November 30, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 South West Yamhill Street.

MC 128527 (Sub-No. 70), May Trucking Co., now assigned December 1, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 South West Yamhill Street.

MC 113678 (Sub-No. 651), Curtis, Inc., now assigned December 5, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 SW Yamhill Street.

MC 124679 (Sub-No. 75), C. R. England & Sons, Inc., now assigned December 7, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 SW Yamhill Street.

MC 112989 (Sub-No. 46), West Coast Truck Lines, Inc., now assigned December 12, 1977, at Portland, Oreg., will be held in Room 103, Pioneer Court House, 555 SW Yamhill Street.

MC-F-13129, Kaw Transport Co.—Control—Royal Transport, Inc., now assigned January 30, 1978, at Kansas City, Mo., is canceled.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-31033 Filed 10-25-77;8:45 am]

[7035-01]

[No. MC-C-9765]

ATLANTA, GA. SUPERHIGHWAY OPERATIONS

Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: By petition filed July 21, 19777, petitioner Brown Transport Corp., seeks a ruling as to whether it can render service between Atlanta, Ga., and Jacksonville, Fla., wtihout observing an Augusta, Ga., gateway, under the Superhighway rules-motor common carriers of property, 49 CFR 1042.3.

DATES: Comments on or before November 25, 1977.

ADDRESSES: Send comments to: The Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Assistant Deputy Director, Section of Operating Rights, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423, 202-275-7292.

SUPPLEMENTARY INFORMATION: Petitioner holds regular-route general commodities (with the usual exceptions) authority to operate between Atlanta, Ga., and Jacksonville, Fla., pursuant to certificates in No. MC 56679 (Sub-Nos. 2, 7, and 41) as follows: From Atlanta, Ga., over U.S. Highway 278 to Augusta, Ga., thence over U.S. Highway 25 to Waynesboro, Ga., thence over Georgia Highway 56 to Swainsboro, Ga., thence over U.S. Highway 1 to Baxley, Ga., thence over U.S. Highway 1 to Jacksonville, Fla., and return over the same routes. Petitioner's certificated authority in No. MC 56679 (Sub-No. 41) is restricted to the transportation of shipments moving from, to, or through Augusta, Ga. Petitioner contends that the "from, to, or through August, Ga.," restriction imposed upon its underlying regular service route authority does not prevent petitioner from utilizing an otherwise appropriate superhighway route pursuant to the Commission's Superhighway rules—motor common carriers of property, even though the super-highway route by-pass Augusta, Ga., and petitioner does not otherwise observe Augusta, Ga., in its proposed superhighway operations.

Petitioner describes the following operation as that which it performs between Atlanta, Ga., and Jacksonville, Fla., in reliance on the Property Motor Carrier Superhighway Rules: From Atlanta, Ga., over Interstate Highway 75 to junction Interstate Highway 475 at or near Macon, Ga., thence over Interstate Highway 475 to junction Interstate Highway 10, thence over Interstate Highway 10 to Jacksonville, Fla., and return over the same routes.

It is petitioner's position that it can render its described superhighway operation between Atlanta, Ga., and Jacksonville, Fla., because of the following reasons: (1) the "from, to, or through Augusta, Ga.," restriction was imposed upon the petitioner's underlying certificated service route authority in No. MC-56679 (Sub-No. 41) in order to prevent operations between Florida and southeastern Georgia by making that service unduly circuitous [see Brown Transport Corp. Ext.—Florida Points, 121 M.C.C. 521, 535 and 537 (1975)]; the restriction was not designed to curtail movements between Atlanta and Florida points, (2) the proposed superhighway operations are consistent with the Property Motor Carrier Superhighway Rules in that the distance over the described superhighway route between the point of departure from and the point of return to the petitioner's described authorized regular service routes is not less than 80 percent (i.e., 83.67 percent) of the distance between such points over the petitioner's authorized regular service routes and petitioner does not seek by its proposed superhighway operation, to "receive or deliver freight from or to any person at any point not otherwise specifically authorized to be served by [it]," see Superhighway Rules Motor—motor common carriers of property, 49 CFR 1042.3 (a)(2) and (b), (3) because of the manner in which petitioner seeks to conduct the proposed operations, the Property Motor Carrier Superhighway Rules do not require those operations to be conducted "in the same manner and subject to corresponding service limitations as described in" petitioner's underlying regular service route authority. See Superhighway rules motor common carriers of property, 49 CFR 1042.3(b), and (4) the Superhighway Rules should be construed broadly and there is no basis to conclude that a "from, to, or through" restriction constitutes an exception to the Superhighway Rules.

Petitioner requests a formal ruling of the Commission that the proposed superhighway operations are within the scope of the Superhighway Rules. Petitioner states that the ruling requested will have no effect of any kind on the quality of the human environment.

No oral hearing is contemplated, however any person (including petitioner) desiring to participate in this proceeding shall file an original and fifteen (15) copies (wherever possible) of written representations, views, and arguments in the matter on or before November 25, 1977. A copy of each representation shall be filed on petitioner's representative.

Written material or suggestions submitted will be available for public inspection at the Office of the Interstate Commerce Commission, 12th and Constitution Ave., Washington, D.C., during regular business hours.

Notice to the general public of the matter herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-31036 Filed 10-25-77;8:45 am]

[7035-01]

[AB 1 (Sub-No. 56)]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Abandonment Between Marshall Junction and Vesta, in Lyon and Redwood Counties, Minn.

OCTOBER 17, 1977.

The Interstate Commerce Commission gives notice that comments received in response to the environmental threshold assessment survey (TAS) in the above-entitled proceeding have not caused the Commission's Section of Energy and Environment to modify its previous conclusion that this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The comments pointed out the suitability of the rail right-of-way for alternative public use if the abandonment request is authorized. Accordingly, the Section recommends a condition giving local agencies the first right of purchase of the rail right-of-way upon abandonment.

The comments have been responded to in an addendum to the TAS which is available upon request to the Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7011.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-31034 Filed 10-25-77;8:45 am]

[7035-01]

[Notice No. 138TA]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 20, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL

REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 78400 (Sub-No. 54TA), filed October 4, 1977. Applicant: BEAUFORT TRANSFER CO., Box 151, Gerald, Mo. 63037. Applicant's representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glasshouse pots and accessories*, requiring protection from freezing service, and (2) *refractory and refractory products*, from the plantsite and facilities of Laclede-Christy Clay Products Co. at Owensville, Mo., to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper(s): Laclede-Christy Clay Products Co., P.O. Box 550, Owensville, Mo. 65066. Send protests to: J. P. Werthmann, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, Mo. 63026.

No. MC 82063 (Sub-No. 86TA), filed October 5, 1977. Applicant: KLIPSCH HAULING CO., 10795 Watson Road, Sunset Hills, Mo. 63127. Applicant's representative: W. E. Klipsch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Formaldehyde*, in bulk, in tank vehicles, from Malvern, Ark., to Tuscaloosa, Ala., Kansas City, Kans., Moncure, N.C. and Houston, Tex., for 180 days. Supporting shipper(s): Reichhold Chemicals, Inc., 525 N. Broadway, White Plains, N.Y. 10603. Send protests to: J. P. Werthmann, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, Mo. 63101.

No. MC 82492 (Sub-No. 167TA), filed October 6, 1977. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris, 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, Mich. 49003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic granules and plastic magnetic stripping*, from the facilities of the B. F. Goodrich Co. located in Washington County, Ohio, to the facilities of the B. F. Goodrich Co. in New Ulm, Minn., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): The B. F. Goodrich Co., Akron, Ohio. 44318. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 106603 (Sub-No. 162TA), filed October 5, 1977. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., P.O. Box 8008, Grand Rapids, Mich. 49508. Applicant's representative: Martin J. Leavitt, P.O. Box 400, Northville, Mich. 48167. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products*, from Elkhart and Syracuse, Ind., to points in Arkansas, Delaware, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, New Jersey, New York, Ohio, Pennsylvania, South Dakota, West Virginia and Wisconsin, for 180 days. Supporting shipper(s): Weyerhaeuser Co., Chesapeake, Va. 23324. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, Mich. 48933.

No. MC 109708 (Sub-No. 75TA), filed September 29, 1977. Applicant: INDIAN RIVER TRANSPORT CO., d.b.a. INDIAN RIVER TRANSPORT, INC., P.O. Box AG, 2580 Executive Road, Dundee, Fla. 33828. Applicant's representative: Bruce A. Bullock, 530 Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Alcoholic liquors*, in bulk, in tank vehicles, from Laredo, Tex., to Chicago, Ill.; Lawrence, Ind.; Bardstown, Louisville, and Owensboro, Ky.; New Orleans, La.; St. Louis, Mo.; Schenley, Pa.; and (2) *alcoholic liquors and wine*, in bulk, in tank vehicles, between points in California, Oregon, and Washington, on the one hand, and, on the other, points in Indiana, Kentucky, Missouri, Pennsylvania and Tenn.; (3) *alcoholic liquors*, in bulk, in tank vehicles, from New Orleans, La., points in Kentucky, and points in New Jersey, to St. Louis, Mo. (Authority from New Jersey restricted to foreign commerce only.) There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 8 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, Fla. 33166.

No. MC 114969 (Sub-No. 66TA), filed October 5, 1977. Applicant: PROPANE TRANSPORT, INC., 1734 State Route 131, P.O. Box 232, Milford, Ohio 45150. Applicant's representative: James M. Roudebush (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, from Robinson, Ill., to Charlestown and New Washington, Ind., for 180 days. Supporting shipper(s): T. D. Porter, Senior Vice President, California Liquid Gas Corp., P.O. Box 28397, Sacramento, Calif. 95828. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514–B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 115651 (Sub-No. 35TA), filed October 7, 1977. Applicant: KANEY TRANSPORTATION, INC., 7222 W. Cunningham Road, Rockford, Ill. 61102. Applicant's representative: R. D. Higgins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of CF Industries, Inc., at or near Albany, Ill., to points in Iowa, Wisconsin, Illinois, and Minnesota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 5 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, Ill. 60604.

No. MC 115669 (Sub-No. 162TA), filed October 5, 1977. Applicant: DAHLSTEN TRUCK LINE, INC., P.O. Box 95, 101 West Edgar Street, Clay Center, Nebr. 68933. Applicant's representative: Howard N. Dahlsten (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products*, from Kansas City, Mo., to points in Arkansas and Oklahoma, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gary Newstrom, Transportation Assistant, Manager-Truck, Cargill, Inc., Salt Department, P.O. Box 9300, Minneapolis, Minn. 55440. Send

protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 115841 (Sub-No. 557TA), filed October 4, 1977. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., P.O. Box 168, Concord, Tenn. 37922. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery and confectionery products*, from the plantsite and storage facilities utilized by American Candy Manufacturing Co., at or near Selma, Ala., to points in Arizona, Colorado, Florida, Georgia, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Kentucky, Indiana, Oklahoma, Utah, Idaho, North Dakota, Missouri, Delaware, Maryland, Connecticut, Rhode Island, Wisconsin, points in Kansas south of U.S. Highway 70, and points in Iowa south of U.S. Highway 34, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Candy Mfg. Co., P.O. Box 879, 1107 Washington Street, Selma, Ala. 36701. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Suite A–422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 115841 (Sub-No. 559TA), filed October 5, 1977. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, Tenn. 37919. Applicant's representative: Chester G. Groebel, 9041 Executive Park Drive, Knoxville, Tenn. 37919. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods and ingredients* used in their production, from Winchester, Ind., to points in Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wick's Foods, Inc., Wick's Pies, Inc., 217 Greeneville Avenue, Winchester, Ind. 47394. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Suite A–422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 118555 (Sub-No. 107TA), filed October 5, 1977. Applicant: TIONA TRUCK LINE, INC., 111 S. Prospect, Butler, Mo. 64730. Applicant's representative: Tom Ventura, 111 S. Prospect, Butler, Mo. 64730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry corn and soybean products*, from the plant and storage facilities of Archer Daniels Midland Co. and its subsidiaries in North Kansas City, Mo., to points in Illinois, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Colorado, New Mexico, Texas, Louisiana. Mississippi, Alabama, Tennessee, and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Archer Daniels Midland Co., P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62625. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 119493 (Sub-No. 162TA), filed September 8, 1977. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, Mo. 64801. Applicant's representative: Lawrence F. Kloeppel, P.O. Box 1196, Joplin, Mo. 64801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Clay and clay products and animal and/or fish food* (except in bulk, in tank vehicles), from Ochlocknee, Ga., to points in that part of the United States in and east of Montana, Wyoming, Colorado and New Mexico; (2) (a) *Clay and clay products and fish food* (except in bulk, in tank vehicles), from Red Bay, Ala., and Tupelo, Miss., to points in that part of the United States in and east of Montana, Wyoming, Colorado, and New Mexico; and (3) *Animal and poultry feeds and ingredients thereof* (except in bulk, in tank vehicles), from Red Bay, Ala., and Tupelo, Miss., to Alabama, Arkansas, Louisiana, Mississippi, and Tennessee, for 180 days. Supporting shipper(s): The Anschutz Corp., 518 Seventeenth Street, Denver, Colo. 80202. Sunshine Feed Mills, Inc., P.O. Drawer 5, Red Bay, Ala. 35582. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Wanut Street, Kansas City, Mo. 64106.

No. MC 124078 (Sub-No. 749TA), filed October 5, 1977. Applicant: SCHWERMAN TRUCKING CO., 511 South 28 Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bulk, in tank vehicles, from the facilities of Mississippi Chemical Corp. at or near Sneads, Fla., to points in Alabama and Georgia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mississippi Chemical Corp., P.O. Box 388, Yazoo City, Miss. 39194. (Lamar Self) Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wis. 53202.

No. MC 124658 (Sub-No. 11TA), filed October 6, 1977. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, Wash. 98953. Applicant's representative: Charles C. Flower, 303 East "D" Street, Suite 2, Yakima, Wash. 98901. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Newsprint*, in rolls, for the account of Crofton Paper Co., Inc., from Seattle, Wash., to Logan, Utah, on traffic having a prior movement by water, under a continuing contract, or contracts, with Crofton Paper Co., Inc., for 30 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Crofton Paper Co., Inc., 3000 Sandhill Rd., Menlo Park, Calif. 94025. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, Oreg. 97204.

No. MC 126079 (Sub-No. 5 TA), filed October 4, 1977. Applicant: STOUT CORP., P.O. Box 186, Provo, Utah 84601. Applicant's representative: D. Michael Jorgensen, Nelson, Harding, Richards, Leonard & Tate, P.O. Box 2465, Salt Lake City, Utah 84110. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated steel pipe and related installation materials*, from Fontana, Calif., to points in Utah, under a continuing contract, or contracts, with Pacific Corrugated Pipe Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pacific Corrugated Pipe Co., 1155 West 2300 North, Lehi, Utah. 84043. N. T. Bingham, Director, Utah Operations. SEND PROTESTS TO: Lyle D. Helfer District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 126899 (Sub-No. 118TA), filed October 6, 1977. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, Ky. 42001. Applicant's representative: William P. Whitnew, Jr., 708 McClure Building, Frankfort, Ky. 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers, and *related advertising material and empty malt beverage conatiners on return*, from Louisville, Ky., to points in Ga., for 180 days. Supporting shipper(s): Falls City Brewery Co., 3050 West Broadway, Box 1091, Louisville, Ky. 40201. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, Tenn. 38103.

No. MC 128007 (Sub-No. 112TA), filed September 29, 1977. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: Larry E. Gregg, 641 Harrison, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Livestock feeders, yard carts, boat trailers, fly control units and pond de-icers* (except plastic containers and commodities in bulk), from plantsite of Poli-Tron, Inc., located in Crawford County, Kans., to points in the United States (except Alaska and Hawaii), and materials and supplies

used or useful in the manufacture of the above-described commodities (except plastic containers and commodities in bulk), from points in the United States (except Alaska and Hawaii), to the plantsite of Poli-Tron, Inc., located in Crawford County, Kans. Restriction: The operations authorized immediately above are restricted to the transportation of shipments originating at or destined to the above named plantsite, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Poli-Tron, Inc., P.O. Box 581, Pittsburg, Kans. 66762. Send protests to: M. E. Taylor District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, Kans. 67202.

No. MC 128030 (Sub-No. 117TA), filed September 28, 1977. Applicant: THE STOUT TRUCKING CO., INC., P.O. Box 177, Urbana, Ill. 61801. Applicant's representative: James R. Madler, 120 W. Madison, Room 718, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps and closures thereof and corrugated boxes*, from Terre Haute, Ind., to Columbus, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bernard Stein Director of Transportation, Midland Glass Co., P.O. Box 557, Cliffwood, N.J. 07721. Send protests to: District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 128205 (Sub-No. 37TA), filed October 7, 1977. Applicant: BULK-MATIC TRANSPORT CO., 12000 S. Doty Avenue, Chicago, Ill. 60628. Applicant's representative: Arnold L. Burke, 180 N. La Salle Street, Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn and soybean products*, dry, from the plant and storage facilities of Archer Daniels Midland Co., and its subsidiaries in North Kansas City, Mo., to points in Illinois, Iowa, Nebraska, Kansas, Oklahoma, Arkansas, Missouri, Colorado, New Mexico, Texas, Louisiana, Mississippi, Alabama, Tennessee, and Kentucky, for 180 days. Supporting shipper(s): Archer Daniels Midland Co., Jerry C. Slaughter General Traffic Manager, P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62625. Send protests to: Patricia A. Roscoe Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219, S. Dearborn Street, Room 1386, Chicago, Ill. 60604.

No. MC 129387 (Sub-No. 40 TA), filed October 6, 1977. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, S. Dak. 57350. Applicant's representative: Scott E. Daniel, P.O. Box 82028, incoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from the facilities of Chef Pierre, Inc., at or near Traverse City, Mich., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming, for 180 days. Supporting shipper(s): Chef Pierre, Inc., P.O. Box 1009, Traverse City, Mich. 49684. James R. LaFaive Traffic Manager. Send protests to: J. L. Hammond District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, S. Dak. 57501.

No. MC 134922 (Sub-No. 241 TA), filed October 5, 1977. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams, Route 6, Box 15, North Little Rock, Ark. 72118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum and stainless steel cookware*, from Wooster, Ohio, to Oakland and Los Angeles, Calif., for 180 days. Supporting shipper(s): Regal Ware, Inc., 700 Spruce Street, Wooster, Ohio. 44691. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 134922 (Sub-No. 242TA), filed October 6, 1977. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams, Route 6, Box 15, North Little Rock, Ark. 72118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles and plastic materials* (except in bulk), from Tiffin, Ohio to Miami, Fla., for 180 days. Supporting shipper(s): Du-al Industries, 700 South McMilliam, Owosso, Mich. 48067. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 136268 (Sub-No. 6TA), filed September 8, 1977. Applicant: WHITEHEAD SPECIALTIES, INC., 1917 Third Avenue, Monroe, Wis. 53566. Applicant's representative: Wayne W. Wilson, P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Prefabricated buildings* (knocked-down or in sections), and *materials, equipment, and supplies* incidental to the erection and completion of such buildings when shipped therewith, from (a) Brodhead and Phelps, Wis., to points in Illinois, Indiana, Iowa, Michigan, Minnesota and Ohio; and (b) from the town of Roscoe, Winnebago County, Ill., to points in Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin, (2) *rejected shipments* of the commodities described in part one, (a) from Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio to Brodhead and Phelps, Wis., and (b) from Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin, to the town of Roscoe, Winnebago County, Ill., restricted to shipments originating at the facilities of Amwood Homes, Inc., and destined to the named States, and further restricted to traffic moving on shipper-owned trailers, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Amwood Homes, Inc., 1002 E. Sixth Avenue, Brodhead, Wis. 53520. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, Wis. 53703.

No. MC 136464 (Sub-No. 32 TA), filed October 4, 1977. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, N.C. 28052. Applicant's representative: Eric Meierhoefer, Suite 712, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Zippers, thread, binding, braid, lace, tape, webbing, ribbon, sewing aids, and materials and supplies* used in the manufacture and sale thereof, between the facilities of Talon, Division of Textron, Inc., located at or near Meadville, Pa., and Charlotte, N.C., under a continuing contract, or contracts, with Talon, Division of Textron, Inc., of Meadville, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Talon, Division of Textron, Inc., 626 Arch Street, Meadville, Pa. 16335. Send protests to: Terrell Price District Supervisor, Interstate Commerce Commission, 800 Briar Creek Road, Mart Office Building, Room CC516, Charlotte, N.C. 28205.

No. MC 138157 (Sub-No. 45 TA), filed October 5, 1977. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, Tenn. 37412. Applicant's representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, Tenn. 37412. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flexible ductwork and air conditioning registers*, from the facilities of Goodman Manufacturing Corp., at or near Houston, Tex., to points in the United States (except Alaska and Hawaii), restricted to traffic originating at the facilities of Goodman Manufacturing Corp., for 180 days. Supporting shipper(s): Goodman Manufacturing Corp., 1021 W. Loop, North (off Katy Road) Houston, Tex. 77055. Send protests to: Joe J. Tate District Supervisor, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, Tenn. 37203.

No. MC 142423 (Sub-No. 4TA), filed September 22, 1977. Appliant: BIG D. CARTAGE, INC., 28091 Kingsberry Drive, Mount Clemens, Mich. 48043. Applicant's representative: Robert E. McFarland, McFarland & Bullard, 999 West Big Weaver Road, Suite 1002, Troy, Mich. 48084. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, (1) from Fulton, N.Y., to points in Wayne and Oakland Counties, Mich., with empty containers on return, and (2) from Milwaukee, Wis.,

to points in Wayne and Oakland Counties, Mich., with empty containers on return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Metes & Powers, Inc., 2000 Pontiac Drive, Pontiac, Mich. 48053. Gerald Powers Vice President, (2) Eastown Distributors, 13542 Helen, Detroit, Mich. 48212 (President Joseph Quasarano), (3) Action Distributing Co., Inc., 35901 Veronica, Livonia, Mich. 48050 (Benedetto Celeni President), and (4) D.B.D., Inc., 6031 Joy Road, Detroit, Mich. 48204 (Larry Smith President). Send protests to: Erma W. Gray Secretary, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, Mich. 48226.

No. MC 143236 (Sub-No. 3TA), filed October 5, 1977. Applicant: WHITE TIGER TRANSPORTATION, INC., 115 Jacobus Avenue, Kearny, N.J. 07032. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal and plastic parts* for Electro Mechanical Subassemblies, between the facilities of Integrated Electronics Corp., Dover, N.J., on the one hand, and, on the other, Miami, Fla., restricted to shipments having prior or subsequent movement by air or water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Integrated Electronics Corp., P.O. Box 213, Dover, N.J. 07801. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 143688 TA, filed September 7, 1977. Applicant: PEARL CONTRACT CARRIERS, INC., Rt. 4, Box 98, Lawton, Okla. 73501. Applicant's representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, Okla. 73106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages*, in containers, from points in Arkansas, Altus, California, Cutler, Guerne Ville, Madera, Modesto, San Jose, St. Helena, Sonoma, Florida, Jacksonville, Indiana, Lawrenceburg, Illinois, Chicago, Pekin, Peoria, Plainfield, Lamont, Kentucky, Clermont, Bardstown, Frankfort, Louisville, Lawrenceburg, Loretto, Owensboro, Paducah, Maryland, Baltimore, to points in Michigan, Allen Park, Detroit, Missouri, Kansas City, St. Louis, New Jersey, Dayton, Jersey City, Kerney, Little Ferry, Newark, Lindon, Scobeyville, New York, Brooklyn, Fairborn, Long Island City, Manhattan, New Hyde Park, New York City, Queens, Ohio, Cincinnati, Tennessee, and Lynchburg, under a continuing contract, or contracts, with Central Liquor Company, for 180 days. Supporting shipper(s): Central Liquor Co., P.O. Box 1194, Oklahoma City, Okla. 73101. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, Tex. 76102.

No. MC 143774TA, filed September 23, 1977. Applicant: ROBERT J. SALZ, 1908 Cedar Avenue, Broomfield, Colo. 80020. Applicant's representative: Raymond M. Kelley, 450 Capitol Life Center, Denver, Colo. 80203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel cable, iron castings, steel bars and plates, hydraulic lifting equipment, hydraulic stressing equipment and galvanized tubing*, from the facilities of VSL Corp., located at or near Campbell, Calif., to job sites, construction sites, or warehouse facilities of VSL Corp. located at or near Covington, Ind., Alum Creek, Ohio, Portland, Oreg., Pottstown, Pa., Seattle, Wash., and Snoqualimie Pass, Wash., (2) *steel bars and plates*, from Coatesville, Pa., to the facilities of VSL Corp., at or near Campbell, Calif., (3) *iron and steel castings*, from Columbus, Ga., to the facilities of VSL Corp., at or near Campbell, Calif., under a continuing contract, or contracts, with VSL Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): VSL Corp., 1077 Dell Avenue, Campbell, Calif. 95008. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, Colo. 80202.

No. MC 143812 TA, filed October 3, 1977. Applicant: MARTIN E. VAN DIEST, d.b.a. M. VAN DIEST CO., 8087 Victoria Avenue, Riverside, Calif. 92504. Applicant's representative: William J. Monheim, 15942 Whittier Boulevard, P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in bulk, from points in Calif., to ports of entry between the United States and Canada located in the State of Wash., for 180 days. Supporting shipper(s): Calona Wines, Ltd., 1125 Richter Street, Kelowna, B.C. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-31035 Filed 10-25-77;8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

FEDERAL ADVISORY COUNCIL ON UNEMPLOYMENT INSURANCE

Meeting

A meeting of the Federal Advisory Council on Unemployment Insurance will be held on November 7, 1977, beginning at 8:30 a.m., and adjourning at approximately 5 p.m. The meeting will be held in Room S5215A, B, and C, Labor Department Building, which is located at 200 Constitution Avenue NW., Washington, D.C.

The agenda is as follows:

8:30 a.m., meeting convenes.
8:45 a.m., UI program developments.
9:15 a.m., report of the Ad Hoc Committee on UI financing issues.
12:00, lunch.
1:15 p.m., report of the UI Research Subcommittee.
3:00 p.m., business meeting.
5:00 p.m., adjournment.

Members of the public are invited to attend the proceedings. Written data, views, or arguments pertaining to the agenda must be received by the Council's Executive Secretary prior to the meeting date. Twenty duplicate copies are needed for distribution to the members and for inclusion in the meeting minutes.

Telephone inquiries and communications concerning this meeting should be directed to:

Mrs. Phyllis Fineshriber, Executive Secretary, Federal Advisory Council on Unemployment Insurance, Room 7000, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

Mrs. Fineshriber's telephone number is area code 202-376-7034.

Signed at Washington, D.C., this 21st day of October 1977.

Ernest G. Green,
Assistant Secretary for Employment and Training.

[FR Doc.77-31140 Filed 10-25-77;8:45 am]

[4510-30]

Office of the Secretary

STATE OF NEW HAMPSHIRE DEPARTMENT OF EMPLOYMENT SECURITY

Postponement of Hearing

There was published in the Federal Register of October 7, 1977 (42 FR 54630), a notice announcing an opportunity for hearing for the State of New Hampshire Department of Employment Security on the question of whether the State of New Hampshire has fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade Act of 1974. On the basis of the proceedings in this matter, it will be decided whether there shall be a reduction of 15 percent in the tax credits allowable to New Hampshire employers pursuant to section 3302 of the Internal Revenue Code of 1954 for the taxable year 1977.

The counsel for the New Hampshire Department of Employment Security has requested a postponement of the hearing to allow the State and interested parties additional time to prepare their arguments. For that reason, it has been determined that valid grounds for a continuance in this matter has been shown. Therefore, the second paragraph in the Department of Labor notice published on

October 7, 1977, at 42 FR 54630 (FR Doc. 77-29725) is revised to read as follows:

Now, therefore, pursuant to section 3302 (c)(3) of the Internal Revenue Code of 1954, and § 91.63(e) of Title 29, Code of Federal Regulations, notice is hereby given that a hearing will be held beginning at 10 o'clock in the morning on October 31, 1977, in the United States Court of Appeals Courtroom, Fifteenth Floor, John W. McCormack Post Office and Courthouse, Post Office Square, Boston, Massachusetts, on the question stated above.

The notice shall otherwise remain unchanged.

Signed at Washington, D.C., on October 21, 1977.

F. RAY MARSHALL,
Secretary of Labor.

[FR Doc.77-31141 Filed 10-25-77;8:45 am]

[4510-26]

Occupational Safety and Health Administration

WASHINGTON STATE STANDARDS

Proposed Rejection of Various Washington State Scaffold Standards; Hearing

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Intent to reject; notice of hearing.

SUMMARY: This notice informs all interested persons that a hearing will be held in Seattle, Wash., on November 29, 1977, to determine whether various Washington scaffold standards promulgated under the Washington occupational safety and health plan approved by the U.S. Department of Labor, January 19, 1973 (Subpart F, 29 CFR Part 1952), are as effective as the comparable Federal scaffold standards.

DATES: Notices of Intention to Appear must be filed no later than November 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Irving Weisblatt, Director, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-523-8041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 16, 1977, a notice was published in the FEDERAL REGISTER (42 FR 41335) titled Washington State Standards—Intent to Reject. This notice described the technical requirements of four Washington State Scaffold Standards and the corresponding Federal OSHA Standard reviewed by the Regional Administrator. This standards review is required by and conducted pursuant to section 18(c)(2) of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) which among other things, requires a State under an approved plan to provide for the development and enforcement of safety and health standards, which "* * * are or will be at least as effective in providing safe and healthful employment and places of employment as the [OSHA] standards, promulgated under section 6." Following his review of the State scaffold standards [WAC 296-155-485(1)(e); WAC 296-155-485(18)(k) and (L); note to WAC 296-155-18(1)], the Regional Administrator, under a delegation of authority from the Assistant Secretary for Occupational Safety and Health (hereinafter Assistant Secretary) (29 CFR 1953.4), determined that the State standards, for the reasons cited in the August 16, 1977, notice are not at least as effective as the comparable Federal safety-standards. Consistent with 29 CFR 1953.23(d)(2), such a finding is followed by an opportunity for the State to submit a revised standards submission or, in the alternative, to show cause why a proceeding should not be commenced for rejection of the State standards. Although meetings and discussions between Federal and State personnel were held to resolve the differences in the scaffold standards, these letter dated September 1, 1977, the State of Washington requested a hearing on the matter. The notice of Intent to Reject (42 FR 41335) included a summary of the differences between the State and Federal scafford standards, the basis for rejection and an invitation to interested persons to submit written data, views, and arguments by September 16, 1977, concerning whether the State standards should be approved. In response to this notice, comments were received from Lathers International Union local No. 104, 2800 First Avenue, Seattle, Wash.; Plasters Union Local No. 77 Labor Temple, Seattle, Wash. 98121; Northwest Lath and Plaster Bureau, Inc., 215 W. Harnson St., Seattle, Wash. 98119; Advance Scaffolds—Northwest, Inc., 3636 E. Marginal Way S., Seattle, Wash. 98134; Associated General Contractors of America, E. 4935 Trent Avenue, Spokane, Wash. 99220, requesting a hearing concerning the proposed rejection.

PUBLIC PARTICIPATION—NOTICE OF HEARING

Pursuant to section 18 of the Act, §§ 1953.4, 1953.23(d)(2) of Title 29, Code of Federal Regulations, notice is hereby given that a hearing will be held to resolve the issues with regard to the proposed rejection of the Washington scaffold standards at issue herein. The hearing granted herein will be convened on November 29, 1977, at 9:30 a.m., in the Federal Building, Court Room 514, 915 Second Ave., Seattle, Wash. 98174. Interested persons, including the State, may file a notice of intent to appear and request to present views, evidence, and arguments and to participate in the hearing.

The notice of intent to appear and the data, views, and arguments that are submitted must be postmarked on or before November 11, 1977, and submitted in quadruplicate to:

H. Stephen Gordon, Chief Administrative Law Judge, U.S. Department of Labor, Suite 720, Vanguard Building, 1111 20th Street NW., Washington, D.C. 20210 and/or John Granchi, Asst. Regional Administrator, U.S. Department of Labor—OSHA, Rm. 6003, Federal Office Bldg., Seattle, Wash. 98174.

The notices of intention to appear will be available for inspection and copying at the above addresses and must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time requested for the comment or argument;
4. The specific scaffold standards provisions that will be addressed;
5. A statement of the position that will be taken with respect to each provision; and
6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

CONDUCT OF HEARING

The hearing will be presided over by Administrative Law Judge Rhea Burroughs, appointed by the Chief Administrative Law Judge of the U.S. Department of Labor who shall have all the powers necessary and appropriate to conduct a fair, full, and impartial hearing. Any interested person who has filed a request to appear, in accordance with the above requirements, may submit written and/or oral data, views, evidence, or arguments and call witnesses, submit rebuttal evidence, and conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the presiding Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious. The hearing shall be reported verbatim and a transcript will be available to any interested party on such terms as the presiding administrative law judge may provide.

Upon completion of the oral presentations, the transcript and all written submissions on the proposed rejection shall be certified by the presiding Administrative Law Judge to the Regional Administrator. The Regional Administrator shall within a reasonable period of time issue a tentative decision either rejecting the State standards as being not as effective as the comparable Federal standards or accepting the State standards as being as effective as the Federal standards. Within 30 days after receipt of notice that the transcript of the testimony and submissions has been certified from the Administrative Law Judge to the Regional Administrator for his initial decision, interested persons may file with the Regional Administrator proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief on the matters in issue. The tentative decision, unless waived by the State and other interested persons par-

ticipating in the hearing, shall be published in the FEDERAL REGISTER, and shall become final upon the 30th day after service thereof unless exceptions are filed thereto.

Unless the initial decision is waived, interested persons may file with the Regional Administrator written exceptions to the tentative decision. Such exceptions shall refer to the specific findings of fact and conclusions of law and proposed order excepted to. An original and four copies of any exceptions shall be filed. If exceptions are filed the Regional Administrator shall transmit the record of the proceeding to the Assistant Secretary for review. Thereafter the Assistant Secretary shall issue a final decision ruling upon each exception filed. The final decision may affirm, modify, or set aside in whole or in part the decision of the Regional Administrator.

Section 18(g) of the Act provides, in connection with the judicial review of withdrawal of approval or rejection of a State plan, that determinations of the Secretary shall be conclusive if supported by substantial evidence in the record. Although this proceeding is not directly concerned with either withdrawal or rejection of the Washington plan as a whole, section 18(g) in conjunction with §§ 1902.17 and 1953.23(d)(2) of Title 29 CFR indicates this evidentiary basis as the appropriate basis for review of the Assistant Secretary's final decision on whether any State plan component is as effective as its Federal counterpart. Only a final decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 667.)

Signed at Washington, D.C., this 21st day of October 1977.

JACK JONES,
Acting Regional Administrator.

[FR Doc.77-31164 Filed 10-25-77;12:02 am]

[4510-26]

OREGON STATE STANDARDS

Proposed Rejection of Oregon Roll-Over Protective Structures (ROPS) Standards; Hearing

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Intent to reject; Notice of Hearing.

SUMMARY: This notice informs all interested persons that a hearing will be held in Pendleton, Oregon on December 1, 1977 to determine whether Oregon roll-over protective structures standards for tractors used in agricultural operations promulgated under the Oregon occupational safety and health plan approved by the United States Department of Labor December 28, 1972 (Subpart D, 29 CFR Part 1952), are as effective as the comparable Federal roll-over protective standards for tractors used in agricultural operations.

DATE: Notices of Intention to Appear must be filed no later than November 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Irving Weisblatt, Director, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Washington, D.C. 20210, 202-523-8041.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 16, 1977, a notice was published in the FEDERAL REGISTER (42 FR 41333) entitled Oregon State Standards—Intent to Reject. This notice described the technical requirements of the Oregon safety standards for Roll-Over Protective Structures (ROPS) for tractors used in agricultural operations and the corresponding Federal OSHA standards reviewed by the Regional Administrator. This standards review is required by and conducted pursuant to Section 18(c)(2) of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) which among other things, requires a State under an approved plan to provide for the development and enforcement of safety and health standards, which "* * * are or will be at least as effective in providing safe and healthful employment and places of employment as the [OSHA] standards, promulgated under section 6". Following his review of the State standards the Regional Administrator, under a delegation of authority from the Assistant Secretary for Occupational Safety and Health (hereinafter Assistant Secretary) (29 CFR 1953.4) determined that the State standards, which provide for an exemption from the roll over protective structure requirements for track-type agricultural tractors and for the reasons cited in the August 16, 1977 notice are not at least as effective as the comparable Federal safety-standards. Consistent with 29 CFR 1953.23(d)(2) such a finding is followed by an opportunity for the State to submit a revised standards submission or, in the alternative, to show cause why a proceeding should not be commenced for rejection of the State standards. Although meetings and discussions between Federal and State personnel were held in order to resolve the differences in the ROPS standards, these discussions proved unfruitful and by letter dated September 8, 1977 Oregon requested a hearing on the matter. The notice of Intent to Reject (42 FR 41333) included a summary of the differences between the State and Federal ROPS standards, the basis for rejection and an invitation to interested persons to submit written data, views and arguments by September 16, 1977, concerning whether the State standards should be approved. In response to this notice, comments were received from the Grain Growers Assn. Membership and Insurance Trust, P.O. Box 538, Lewiston, Idaho 83501 requesting a hearing concerning the proposed rejection.

PUBLIC PARTICIPATION—NOTICE OF HEARING

Pursuant to section 18 of the Act, §§ 1953.4, 1953.23(d)(2) of Title 29, Code of Federal Regulations, notice is hereby given that a hearing will be held to resolve the issues with regard to the proposed rejection of the Oregon ROPS standards at issue herein. The hearing granted herein will be convened on December 1, 1977 at 9:30 a.m., in the Red Lion Indian Hills Motor Inn, Walla Walla Room, Highways 80 N. and 11, P.O. Box 1556, Pendleton, Oreg. 97801. Interested persons, including the State, may file a notice of intent to appear and request to present views, evidence, and arguments and to participate in the hearing.

The notice of intent to appear and the data, views and arguments that are submitted must be postmarked on or before quadruplicate to:

H. Stephen Gordon, Chief Administrative Law Judge, U.S. Department of Labor, Suite 720, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20210.
and/or
John Granchi, Assistant Regional Administrator, U.S. Department of Labor, OSHA, Room 6003, Federal Office Building, Seattle, Wash. 98174.

The notices of intention to appear will be available for inspection and copying at the above addresses and must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear:
3. The approximate amount of time requested for the comment or argument;
4. A statement of the position that will be taken with respect to the standard; and
5. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

CONDUCT OF HEARING

The hearing will be presided over by Administrative Law Judge Rhea Burroughs appointed by the Chief Administrative Law Judge of the United States Department of Labor who shall have all the powers necessary and appropriate to conduct a fair, full and impartial hearing. Any interested person who has filed a request to appear in accordance with the above requirements may submit written and/or oral data, views, evidence or arguments and call witnesses, submit rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Administrative Law Judge may exclude evidence which is irrelevant, immaterial or unduly repetitious. The hearing shall be reported verbatim and a transcript will be available to any interested party on such terms as the presiding administrative law judge may provide.

Upon completion of the oral presentations the transcript and all written submissions on the proposed rejection shall

be certified by the presiding Administrative Law Judge to the Regional Administrator. Regional Administrator shall within a reasonable period of time issue a tentative decision either rejecting the State Standards as being not as effective as the comparable Federal standards or accepting the State standards as being as effective as the Federal standards. Within 30 days after receipt of notice that the transcript of the testimony and submissions has been certified from the Administrator for his initial decision, any interested person may file with the Regional Administrator proposed findings of fact, conclusions of law and a proposed order together with a supporting brief on the matters in issue. The tentative decision, unless waived by the State and other interested persons participating in the hearing, shall be published in the FEDERAL REGISTER and shall become final upon the 30th day after service thereof unless exceptions are filed thereto.

Unless the tentative decision is waived, interested persons may file with the Regional Administrator written exceptions to the tentative decision. Such exceptions shall refer to the specific findings of fact and conclusions of law and tentative order excepted to. An original and four copies of any exceptions shall be filed. If exceptions are filed the Regional Administrator shall transmit the record of the proceeding to the Assistant Secretary for review. Thereafter the Assistant Secretary shall issue a final decision ruling upon each exception filed. The final decision may affirm, modify, or set aside in whole or in part the decision of the Regional Administrator.

Section 18(g) of the Act provides, in connection with the judicial review of withdrawal of approval or rejection of a State plan, that determinations of the Secretary shall be conclusive if supported by substantial evidence in the record. Although this proceeding is not directly concerned with either withdrawal or rejection of the Oregon plan as a whole, Section 18(g) in conjunction with §§ 1902.17 and 1953.23(d)(2) of Title 29 CFR indicates this evidentiary basis as the appropriate basis for review of the Assistant Secretary's final decision on whether any State plan component is as effective as its Federal counterpart. Only a final decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 667.)

Signed at Washington, D.C. this 21st day of October 1977.

JACK JONES,
Acting Regional Administrator.

[FR Doc.77-131165 Filed 10-25-77;12:02 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409), 5 U.S.C. 552b(e)(3).

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[6715–01]

1

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, October 27, 1977 at 10:00 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

I. Future meetings.
II. Correction and approval of minutes.
III. Advisory opinion: AO 1977–41.
IV. Appropriations and budget.
V. Pending legislation.
VI. Clearinghouse. (a) Library of Congress and Commerce Clearinghouse Contracts; (b) New Clearinghouse Advisory Panel members; and (c) Training of Election Officials contract.
VII. Classification actions.
VIII. Liaison with other Federal Agencies.
IX. Report on pending litigation.
X. Routine administrative matters.

Portions closed to the public (executive session): Audit matters. Compliance. Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, press officer, telephone: 202–523–4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S–1645–77 Filed 10–20–77;2:50 pm]

[4910–06]

2

NATIONAL RAILROAD PASSENGER CORPORATION.

BOARD OF DIRECTORS MEETING—ADDITIONAL AGENDA ITEM FOR MEETING

In accordance with rule 4d. of Appendix A of the By-laws of the National Railroad Passenger Corporation, notice is given that the following item will be added to the agenda for the Board of Directors meeting of October 26, 1977:

9. Status of The Lake Shore Limited Experimental Route.

Board members Besson, Lorentzsen, MacDonald, Langdon, Head, Luna, Quinn, Jacobs, Reistrup, and Sullivan determined by recorded vote that the business of the Corporation requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time. Board member Dunlop could not be reached for the vote.

The revised agenda to be discussed at the meeting follows:

AGENDA: NATIONAL RAILROAD PASSENGER CORPORATION—MEETING OF THE BOARD OF DIRECTORS, OCTOBER 26, 1977

(9:30) CLOSED SESSION

1. Internal Personnel Matters.

(10:00) OPEN SESSION

2. Approval of Minutes of Special Meeting of September 19, 1977 and Regular Meeting of September 28, 1977.

3. Commitment Approval Requests: 76–294–S2 FY 1978 Installment for Purchase of the Northeast Corridor; 77–26–S1 Improvements—Northeast Corridor Headquarters; 77–31–S1 Bi-Level Food Service Equipment; 78–1 Retire 38 Passenger Cars; and 78–3 Station Construction—Dearborn, Mich.

4. Board Committee Reports: A. Planning/Equipment: (1) Northeast Corridor Schedules and Equipment—1982; (2) Pollution/Fueling Requirements; (3) Auto Ferry Service—Chicago/Denver; (4) Equipment Retirements—Fourth Quarter; and (5) CAR Procedures—Proposed Changes. B. Audit/Finance. C. Northeast Corridor Improvement Project: (1) Update on Improvement Master Plan; (2) Status on 1977 Program; (3) Status of Concrete Ties and TLS Equipment; (4) Status of Woonasquatucket River Bridge; and (5) Status of Labor Situation. D. Track Policy.

5. President's Reports: A. Operations: (1) National Operations; (2) Operations Support; and (3) Northeast Corridor Operations (a) Traffic Density in the Northeast Corridor. B. Marketing. C. Government Affairs. D. Other.

6. Financial Reports.

7. Capital Reprogramming—Fourth Quarter FY 1977.

8. Status of Floridian.

9. Status of Lake Shore Limited Experimental Route.

10. Route Criteria and Procedures: A. Report on Results of Tasks I and II. B. Authorization to Proceed to Tasks III and IV: (1) Oakland-Bakersfield; (2) Kansas City and Chicago-New York/Washington; (3) Chicago-Seattle (north and south routes); (4) Chicago-Houston and Chicago-Laredo; (5) Chicago-San Francisco and Chicago-Los Angeles and Salt Lake City-Seattle; and (6) Chicago-New York/Boston.

11. Report on Commuter Project.

12. Renewal of Pennsylvania Liquor License.

13. Proposal to Cancel November Board Meeting.

14. New Business.

15. Adjournment.

Inquiries regarding the agenda for the October 26, 1977, Board meeting should be directed to the Corporate Secretary at 202–484–7679.

Dated: October 19, 1977.

ELYSE G. WANDER,
Corporate Secretary.

[S–1644–77 Filed 10–19–77;4:39 pm]

3

[7020–02]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 F.R. 55671 (10/18/77).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Tuesday, October 25, 1977.

CHANGES IN THE MEETING: Additional item added to the agenda as follows:

8. Investigation AA1921–169—172 (Animal Glue and Inedible Gelatin from Yugoslavia, Sweden, The Netherlands, and West Germany)—vote.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202–523–0161.

[FR Doc. S–1646–77 Filed 10–21–77;9:10 am]

federal register

WEDNESDAY, OCTOBER 26, 1977
PART II



CONSUMER PRODUCT SAFETY COMMISSION

■

CHILDREN'S SLEEPWEAR

Proposed Flammability Standards

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1615 and 1616]

FLAMMABILITY STANDARDS FOR CHILDREN'S SLEEPWEAR

Proposed Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: In this document the Commission proposes amendments to the standards for the flammability of children's sleepwear: sizes 0 through 6X (FF 3-71) and 7 through 14 (FF 5-74). The amendments would delete requirements for residual flame time in FF 3-71, delete coverage for sizes below size 1 in FF 3-71, and revise the method of testing trim in both FF 3-71 and FF 5-74. The reason for these amendments is to reduce the necessity for the use of flame retardant chemicals in children's sleepwear, and in fabric and trim used in children's sleepwear because of the recent national concern over the addition of the chemical tris (2,3 dibromopropyl) phosphate (TRIS), a potential carcinogen, to children's sleepwear garments and fabrics. These amendments will increase the possibility of consumer choice as to types of materials available for use in garments and as to garment styling. The Commission also solicits comment on whether noncomplying sleepwear below size 1 should be labeled to indicate that the garment does not comply with FF 3-71.

DATES: Written comments: Comments concerning the proposal must be received by November 25, 1977.

ORAL PRESENTATIONS

An opportunity for an oral presentation on the proposed amendments is scheduled for Wednesday, November 16, 1977.

EFFECTIVE DATE: The proposed effective date for the amendments is upon publication of the final rule in the FEDERAL REGISTER.

ADDRESSES: Written comments on the proposed amendments should be sent to Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Requests to make an oral presentation of views should be sent to Richard Danca, Consumer Product Safety Commission, Washington, D.C. 20207, 202-634-7700.

FOR FURTHER INFORMATION CONTACT:

George Anikis, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6453.

SUPPLEMENTARY INFORMATION: The standards for the flammability of children's sleepwear for sizes 0-6X (FF 3-17) (16 CFR Part 1615) and sizes 7-14 (FF 5-74) (16 CFR Part 1616) were issued as a result of deaths and injuries to children from fires involving sleepwear. The analysis of accident data showed that children are injured at particularly high frequencies and severity from ignition and burning of sleepwear. Laboratory tests showed sleepwear ignited and burned relatively easily.

The sleepwear standards require that children's sleepwear in sizes 0-6X and 7-14 meet certain flammability test requirements. While the standards do not require that chemicals be added to garments or fabric to meet the standards, some manufacturers have added chemical flame retardants to some fibers or fabrics to insure that sleepwear garments produced from these fibers or fabrics consistently comply with the standards. Because of the recent national concern over the addition of the chemical tris (2,3 dibromopropyl) phosphate (TRIS), a potential carcinogen, to children's sleepwear garments and fabrics, the Commission examined steps that could be taken to modify the sleepwear standards to reduce the need for adding chemical flame retardants to comply with the standards while generally maintaining the level of protection afforded by these standards. On the basis of information contained in staff briefing papers and a Commission meeting with its staff on September 15, 1977, the Commission has determined that an amendment to the standards may be needed. Accordingly, it publishes below, proposed amendments to the sleepwear standards that would eliminate the residual flame time requirement in FF 3-71, eliminate coverage of sizes below 1 in FF 3-71 and modify trim testing requirements in both FF 3-71 and FF 5-74. If the amendments are adopted by the Commission, appropriate changes will be made in the rules and regulation for the sleepwear standards.

RESIDUAL FLAME TIME

FF 3-71 (16 CFR Part 1615) includes a residual flame time (RFT) requirement. This provision addresses the situation where flaming material from a burning garment melts and falls or drips (melt drip) onto another portion of the garment or a different garment or textile item, and causes it to ignite; or falls on the individual wearing the garment, resulting in a burn. A requirement for residual flame time was not included in FF 5-74 on the basis that older children are better able than younger children to protect themselves in case of a garment ignition.

Chemical flame retardants have been used with some fibers and fabrics so they can consistently comply with the RFT requirement in FF 3-71. This provision of the standard primarily affects man-made fibers such as polyester and nylon.

The RFT requirement applies where melt drip burns for more than 10 seconds after the ignition source in the test method is removed. It does not eliminate melt drip which falls early in the test but burns less than the stated 10 seconds. Also, it does not eliminate melt drip which does not burn at all, but which can cause localized burns if it hits the skin. The RFT requirement, therefore, while addressing a major part of the injury and secondary ignition potential of melt drip, does not eliminate the problem entirely.

The Commission has investigated injury potential from flaming melt drop addressed by the residual flame time requirement of 3-71. It is, however, difficult to obtain injury information focusing solely on melt-drip. Data in the Flammable Fabrics Accident Case and Testing System (FFACTS) as of July 1975, shows 4,172 cases, of which 714 involved chilwear. Of these cases, 312 involved children through the age of 12. In 12 cases it was reported that the sleepwear garment melted or dripped. In 2 of these cases the melt drip appears to have contributed to or caused the burn injury. The garment in 1 of the 2 cases was chemically flame retarded. In 2 other cases, the garment melted, adhering to the clothing worn underneath, but did not appear to contribute to the victims' injuries. In the 8 remaining cases, the relationship of melt-drip to the injury was not specified.

Information available to the Commission indicates that deletion of the residual flame time requirement from FF 3-71 (16 CFR Part 1615) could increase the amount of nonchemically flame retarded polyester and nylon fabrics available for use in children's sleepwear by about 10-15 percent. This would result in an increase of use of these fabrics in the size 0-6X sleepwear market from 15-25 percent to 25-40 percent of that market. In addition, deletion of the residual flame time requirement will increase the possibility of consumer choice as to types of materials available for use in garments and as to garment styling.

In view of the small number of injuries that appear to be addressed by the requirement for residual flame time, the desirability of reducing the use of flame retardant chemicals in children's sleepwear and the possibility of increasing consumer choice, the Commission believes FF 3-71 should be amended to delete the residual flame time requirements. The basic flammability requirement, however, that the garment self-extinguish after the ignition source is removed, is retained in the standard.

DELETION OF COVERAGE FOR SLEEPWEAR IN SIZES BELOW SIZE 1

FF 3-71 (16 CFR Part 1615), which was issued by the Department of Commerce in July 1972, presently applies to sleepwear in sizes 0-6X. Sizes below 1 were included in the standard because children who wear those size garments are largely immobile and cannot be expected to act on their own to escape fire. If ignition of their sleepwear garments occur, the probability is high that they would be severely burned.

A review of injury data for the 12-month and under age group (the age group that generally wears sleepwear under size 1) revealed relatively few incidents. For calendar year 1976, the Commission was unable to find any injury data in the National Electronic Injury Surveillance System (NEISS) involving children age 12 months and

under. Similarly, there are no death certificates in CPSC's computerized death certificate file, which dates from January 1973, representing children age 12 months and under.

The Commission, however, does have on file 6 in-depth investigations of cases involving sleepwear and burn injuries to children age 12 months and under. There are also 3 additional cases in the FFACTS file. In all of these cases the infant played a passive role in the ignition sequence.

Two of the Shriners Hospital Burn Centers (Boston and Galveston) that were contacted by the Commission had no current burn cases involving sleepwear and children, age 12 months and younger. However, two sleepwear cases were reported in the past by the Boston Burn Center, one of which is one of the same cases in the CPSC in-depth investigation. The Galveston Burn Center has not received a clothing burn case involving a child age 12 months and younger in the past 11 years.

The Commission has considered the frequency, nature, severity and potential for injuries associated with children's sleepwear in sizes below 1. It believes that sleepwear garments in sizes below 1 do not present a hazard sufficient to warrant a flammability standard for those sizes. In addition, exemption of sizes below 1 from FF 3–71 would allow additional production of sleepwear that does not need to be chemically flame retarded. This could increase the possibility of consumer choice as to the types of materials available for use in garments and as to garment styling. Sleepwear in these sizes would still be required to comply with the requirements of the standard for the flammability of clothing textiles, CS 191–53.

In view of the foregoing, the Commission concludes that sleepwear in sizes below 1 should be deleted from the standard.

Trim Testing

Trim is tested under both FF 3–71 and FF 5–74 in a vertical mode which is the most stringent test position. However, in many cases, trim is placed on a sleepwear garment in a horizontal position. When trim is used on a garment in a horizontal position, a vertical test method may not accurately reflect the decreased hazard presented by trim in a horizontal position. In this connection, laboratory tests show that trim tested in a horizontal position burns less rapidly than trim tested in a vertical position. Modifying the standards to provide for horizontal testing of trim when the trim is used in a horizontal configuration would reduce the necessity for the use of flame retardant chemicals for trim used on children's sleepwear. Because trim placed on garments in a horizontal position presents less of a flammability hazard than trim used in a vertical position, the Commission believes that trim used on garments in a horizontal position should be tested in a horizontal position. The revision of the trim testing requirements should also increase consumer choice as to the amount and type of trim available on garments they purchase.

Labeling

In regard to the proposal to delete sizes below 1 from FF 3–71, the Commission is considering requiring that non-complying sleepwear in sizes below 1 be labeled to state that it does not comply with FF 3–71. The basis for this labeling requirement would be that since sizes below 1 have in the past been subject to the standard and the public is aware of this coverage, the public should be made aware that sizes below 1 no longer need to comply with the standard. The Commission is particularly interested in receiving comments on whether it should require that sleepwear garments in sizes less than 1 that do not comply with the flammability requirements be so labeled.

EFFECTIVE DATE: The Commission proposes that the amendments be effective immediately upon publication of the final rule in the Federal Register. The Commission finds that an immediate effective date is in the public interest to reduce the need to include flame retardant chemicals in children's sleepwear. In addition, 5 U.S.C. 553(d) provides that a rule which relieves a restriction may be effective immediately. The Commission is aware that the timing of the amendment's effective date may be a significant issue for segments of the industry. The Commission is particularly interested in comments on the proposed effective date.

Environmental Issues

The proposed modifications are expected to reduce the use of flame retardant chemicals and avoid bottlenecks in the supply of children's sleepwear. Any reduction in the use of flame retardant chemicals should in general have beneficial impacts on the environment.

Conclusions

In proposing to amend the children's sleepwear standards, to delete the provision for residual flame time, to delete coverage of sizes below 1, and modify the requirements for trim testing, the Commission has considered the injury data discussed above, the potential for injury if the provisions are modified as proposed, the desirability of reducing the necessity for the use of flame retardant chemicals for children's sleepwear and the desirability of increasing the possibility of consumer choice. The Commission preliminarily finds that based on its consideration of these factors, the amendments to the sleepwear standards proposed below will not result in an unreasonable risk of the occurrence of fire leading to death, injury or significant property damage, that the proposed amendments are reasonable and appropriate; and that the amendments are limited to those fabrics determined not to present an unreasonable risk of injury. In making this determination, the Commission has given considerable weight to the desirability of reducing the necessity for the use of flame retardant chemicals in order for fabric or sleepwear garments to comply with the standards.

Therefore, pursuant to provisions of the Flammable Fabrics Act (Pub. L. 90–189, Sec. 4(a), 4(b), 81 Stat. 569; 15 U.S.C. 1193(a), (b), 1201, the Commission proposes that Title 16, Chapter II, be amended as follows:

1. The title to Part 1615 is amended to read as shown below:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 1 THROUGH 6X (FF 3–71)

2. Section 1615.1 is amended as shown below:

Sections 1615.1 (a), (b) and (e) are amended to read as follows; (g) is deleted and reserved.

§ 1615.1 Definitions.

(a) "Childrens' Sleepwear" means any product of wearing apparel sizes 1 through 6X, such as nightgowns, pajamas, or similar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping. Diapers and underwear are excluded from this definition.

(b) "Sizes 1 through 6X" means the sizes defined in Department of Commerce Voluntary Product Standard, previously identified as Commercial Standard, CS 151–50 "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children."

* * * * *

(e) "Test Criteria" means the maximum char length which a sample or specimen may exhibit in order to pass an individual test.

* * * * *

(g) [Reserved]

§ 1615.3 [Amended]

3. Section 1615.3(a) is amended and (b)(3) is deleted as shown below:

(a) *Summary of Test Method.* Five conditioned specimens, 8.9 x 25.4 cm. (3.5 x 10 in.), are suspended one at a time vertically in holders in a prescribed cabinet and subjected to a standard flame along their bottom edge for a specified time under controlled conditions. The char length is measured.

(b) * * *

(3) [Deleted].

§ 1615.4 [Amended]

4. Section 1615.4(c) (1) and (3) are amended as follows:

(c) * * *

(1) *Normal Sampling.* Select one Sample from the beginning of the first Fabric Piece (Piece) in the Unit and one Sample from the end of the last Piece in the Unit, or select a sample from each end of the Piece if the Unit is made up of only one Piece. Test the two selected Samples. If both Samples meet all the Test Criteria of § 1615.3(b), accept the unit. If either or both of the Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If two or more of the individual specimens, from the 10 selected speci-

mens fail the 25.4 cm. (10 in.) char length, .3(b) (2), (3), reject the Unit. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the Piece in which the failure occurred, all five to be taken in the fabric direction in which the specimen failure occurred. If this additional Sample passes all the test criteria, accept the Unit. If this additional Sample fails any part of the test criteria, reject the Unit.

(2) * * *

(3) *Tightened Sampling.* The level of sampling required for acceptance shall be increased when a Unit is rejected under the Normal Sampling plan. The Tightened Sampling shall be the same as Normal Sampling except that one additional Sample shall be selected and cut from a middle Piece in the Unit. If the Unit is made up of less than two pieces, the Unit shall be divided into at least two Pieces. The division shall be such that the Pieces produced by the division shall not be smaller than 100 linear yards or greater than 2,500 linear yards. If the Unit is made up of two Pieces, the additional Sample shall be selected from the interior end of one of the Pieces. Test the three selected Samples. If all three selected Samples meet all the test criteria of § 1615.3(b), accept the Unit. If one or more of the three selected Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If two or more of the individual specimens from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), reject the unit. If only one individual specimen, of the 15 selected Specimens fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the same piece in which the failure occurred, all five to be taken in the fabric direction in which the Specimen failure occurred. If this additional Sample passes all the test criteria, accept the Unit. If this additional Sample fails any part of the test criteria, reject the Unit. Tightened Sampling may be discontinued and Normal Sampling resumed after five consecutive Units have all been accepted using Tightened Sampling. If Tightened Sampling remains in effect for 15 consecutive Units, production of the specific fabric in Tightened Sampling must be discontinued until that part of the process or component which is causing failure has been identified and the quality of the end product has been improved.

* * * * *

5. Section 1615.4(c)(4)(iv) is amended as shown below:

(c) * * *

(4) * * *

(iv) Select and cut a Sample from each end of each adjoining Piece beginning adjacent to the Piece which failed. Test the two Samples from the Piece. If both Samples meet all the test criteria of § 1615.3(b), the Piece is acceptable. If one or both of the two selected Samples fail the 17.8 cm. (7.0 in.) average char length criterion, § 1615.3(b)(1), the Piece is unacceptable. If two or more of the individual Specimens, from the 10 selected specimens, fail the 25.4 cm. (10 in.) char length § 1615.3(b)(2), the Piece is unacceptable. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select five additional specimens from the same end of the Piece in which the failure occurred, all five to be taken in the fabric direction in which the specimen failure occurred. If this additional Sample passes all the test criteria, the Piece is accceptable. If this additional Sample fails any part of the test criteria, the Piece is unacceptable.

* * * * *

6. Section 1615.4(c)(4)(vi) is amended as shown below:

(c) * * *

(4) * * *

(vi) Alternatively, individual Pieces from a rejected Unit containing three or more Pieces may be tested and accepted or rejected on a Piece-by-Piece basis according to the following plan, after removing the Piece or Pieces, the failure of which resulted in Unit rejection. Select four Samples (two from each end) from the Piece. Test the four selected Samples. If all four samples meet all the Test Criteria of § 1615.3(b), accept the Piece. If one or more of the Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the Piece. If two or more of the individual Specimens from the 20 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(1), reject the Piece. If only one individual specimen, from the 20 selected specimens, fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select two additional Samples from the same end of the Piece in which the failure occurred. If these additional two Samples meet all the Test Criteria of § 1615.3(b), accept the Piece. If one or both of the two additional Samples fail any part of the Test Criteria, reject the Piece.

* * * * *

7. Section 1615.4(d)(2)(i) is amended as shown below:

(d) * * *

(2) * * *

(i) *Seams.* Make three Samples (15 specimens) using the longest seam type and three Samples using each other seam type 10 inches or longer that is to be included in the garment. Prior to testing, assign each specimen to one of the three Samples. Test each set of three Samples and accept or reject each seam design in accordance with the following plan:

(A) If all three Samples meet all the test criteria of § 1615.3(b), accept the seam design. If one or more of the three Samples fail the 17.8 cm (7 in.) average char length criterion, § 1615.3(b)(1), reject the seam design. If three or more of the individual Specimens from the 15 selected specimens fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), reject the seam design. If only one of the individual specimens from the 15 selected specimens fails the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), accept the seam design.

(B) If two of the individual specimens from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), select three more Samples (15 speciments) and retest. If all three additional Samples meet all the test criteria of § 1615.3(b) accept the seam design. If one or more of the three additional Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the seam design. If two or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3(b)(2), reject the seam design. If only one of the individual specimens from the 15 selected specimens, fails the 25.4 cm. (10 in.) char length § 1615.3(b)(2) accept the seam design.

* * * * *

8. Section 1615.4(d)(2)(ii) (A) and (B) are revised as shown below:

(d) * * *

(2)— * * *

(ii) *Trim* (A)(*1*) Make three samples (15 specimens) from each type of trim to be included in the garment. For trim used only in a horizontal configuration on the garment, specimens shall be prepared by sewing or attaching the trim horizontally to the bottom edge of an appropriate section of untrimmed fabric. Sleeve and neckline trim may not be tested in this manner. Where more than one row of trim is used on the garment, specimens shall be prepared with the same configuration (same number of rows and spacing between rows up to the limit of the specimen size) as the garment.

(2) For trim used in other than a horizontal configuration, specimens shall be prepared by sewing or attaching the trim to the center of the vertical axis of an appropriate section of untrimmed fabric, beginning the sewing or attachment at the lower edge of each specimen.

(3) For either configuration, the sewing or attachment shall be made in the manner in which the trim is attached in the garment.

(B)(*1*) Sewing or otherwise attaching the trim shall be done with thread or fastening material of the same composition and size to be used for this purpose in the garment and using the same stitching or seamtype. Trim used in the horizontal configuration shall be sewn or fastened the entire width (smaller dimension) of the specimen. Trim used in other than the horizontal configuration shall be sewn or fastened the entire length (longer dimension) of the specimen.

(2) Prior to testing, assign each specimen to one of the three samples. Test the sets of three samples and accept or reject the type of trim and design on the same basis as seam design. A type of trim and design accepted when tested in a vertical configuration, may be used in a horizontal configuration without further testing.

9. Section 1615.4(d)(3)(i)(A) is amended as shown below:

(d) * * *

(3) * * *

(i)(A) From each Unit select at random sufficient garments and cut three Samples (15 specimens) from the longest seam type. No more than five specimens may be cut from a single garment. Prior to testing, assign each specimen to one of the three Samples. All specimens cut from a single garment must be included in the same Sample. Test the three selected Samples. If all three Samples meet all the test criteria of § 1615.3(b), accept the Unit. If one or more of the three Samples fail the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), reject the Unit. If four or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm (10 in.) char length, § 1615.3(b)(2), reject the Unit. If three or less of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length, § 1615.3 (b)(2), accept the Unit.

* * * * *

10. Section 1615.4(d)(3)(i)(B)(3) is amended as shown below:

(d) * * *

(3) Test the three Samples. If all three Samples pass the 17.8 cm. (7 in.) average char length criterion, § 1615.3(b)(1), and if three or less individual specimens fail by charring the entire specimen length, accept the Unit. If the Unit is not accepted in the above test, three Samples (15 specimens) of the longest seam type shall be made using fabric and thread from production inventory and sewn on production machines by production operators. The individual fabric sections prior to sewing must be no larger than 20.3 x 63.3 cm. (8 in. x 25 in.) and must be selected from more than one area of the base fabric. Test the three prepared Samples. Accept or reject the Unit as described previously in this subsection.

11. Section 1615.4(g)(2)(i) is amended as shown below:

(g) * * *

(2) Specimen Burning and Evaluation. (i) One at a time, the mounted specimens shall be removed from the desiccator and suspended in the cabinet for testing. The cabinet door shall be closed and the burner flame impinged on the bottom edge of the specimen for 3.0±0.2 seconds. Flame impingement is accomplished by moving the burner under the specimen for this length of time, and then removing it.

12. Section 1615.4(g)(3) is amended as shown below:

(g) * * *

(3) *Report.* Report the value of char length, in centimeters (inches), for each specimen, as well as the average char length for each set of five specimens.

* * * * *

Subpart B—Rules and Regulations

Section 1615.31 is amended as shown below:

13. Section 1615.31(a)(1) and (2) are amended as shown below:

§ 1615.31 Labeling, recordkeeping, advertising, retail display and guaranties.

(a)(1) "Standard" means the Standard for the Flammability of Children's Sleepwear: Sizes 1 through 6X (FF 3–71) (Subpart A of this Part) promulgated by the Secretary of Commerce in the FEDERAL REGISTER of July 29, 1971 (36 FR 14062), and amended by him in the FEDERAL REGISTER of July 21, 1972 (37 FR 14624).

(2) "Children's sleepwear" means "children's sleepwear" as defined in § 1615.1(a) of the Standard; that is, "any product of wearing apparel, sizes 1 through 6X, such as nightgowns, pajamas, or simliar or related items, such as robes, intended to be worn primarily for sleeping or activities related to sleeping. Diapers and underwear are excluded from this definition."

* * * * *

14. Section 1615.31(d)(2) and (3) are amended as shown below:

(d) * * *

(2) Display all other items of children's sleepwear, sizes 1 through 6X, at a separate location within the store and identify these items with at least one sign, with black letters at least 2.5 centimeters (1 inch) in height against a solid white background, bearing the statement "Flammable. Does Not Meet Standard for the Flammability of Children's Sleepwear (DOC FF 3–71)."

(3) Segregate those items of children's sleepwear, sizes 1 through 6X, which comply with the Standard, and for which the seller has documentary evidence of such compliance, so that they shall not be located within 91 centimeters (36 inches) of any other items of children's sleepwear, size 1 through 6X, when displayed for sale to consumers.

15. Section 1615.31(e)(1)(iii) is amended as shown below:

(e) * * *

(1) * * *

(iii) Test results and details of all tests performed, both prototype and production, including char lengths of each specimen tested, average char length of the samples required to be tested, details of the sampling procedure employed, name and signature of persons conducting tests, date of tests, and all other records necessary to demonstrate compliance with the test procedures and sampling plan specified by the standard or authorized alternate sampling plan.

Subpart C—Interpretations and Policies

§ 1615.62 [Amended]

16. Section 1615.62(a) is amended as shown below:

(a) The Standard for the Flammability of Children's Sleepwear: Sizes 1 through 6X (FF 3–71) (Subpart A of this et seq., and amended in the FEDERAL REGISTER on July 29, 1971, at 36 FR 14062 et seq., and amended in the FEDERAL REGISTER of July 21, 1972 (37 FR 14624). The Notice of Standard provided at 36 FR 14063 that "Items in inventory or with the trade on the effective date of the Standard are exempt. All concerned parties shall be required to maintain records that these items offered for sale after the effective date of the Standard are eligible for the exemption."

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14 (FF 5–74)

1. Section 1616.4(c)(2)(ii) (A) and (B) are revised as shown below:

§ 1616.4 Sampling and Acceptance Procedures.

* * * * *

(c) * * *

(2) * * *

(ii) Trim (A) Make three samples (15 specimens) from each type of trim to be included in the garment. For trim used only in a horizontal configuration on the garment, specimens shall be prepared by sewing or attaching the trim horizontally to the bottom edge of an appropriate section of untrimmed fabric. Sleeve and neckline trim may not be tested in this manner. Where more than one row of trim is used on the garment, specimens shall be prepared with the same configuration (same number of rows and spacing between rows up to the limit of the specimen size) as the garment. For trim used in other than a horizontal configuration, specimens shall be prepared by sewing or attaching the trim to the center of the vertical axis of an appropriate section of untrimmed fabric, beginning the sewing or attachment at the lower edge of each specimen. For either configuration, the sewing or attachment shall be made in the manner in which the trim is attached in the garment.

(B) Sewing or otherwise attaching the trim shall be done with thread or fastening material of the same composition and size to be used for this purpose in the garment and using the same stitching or seamtype. Trim used in the horizontal configuration shall be sewn or fastened the entire width (smaller dimension) of the specimen. Trim used in other than the horizontal configuration shall be sewn or fastened the entire length (longer dimension) of the specimen. Prior to testing, assign each specimen to one of the three samples. Test the sets of three samples and accept or reject the type of trim and design on the same basis as seam design. A type of trim and design accepted when tested in a vertical configuration, may be used in a horizontal configuration without further testing.

* * * * *

Interested persons are invited to submit written comments concerning any aspect of the proposed amendments. Comments must be received in the Office of the Secretary no later than November 25, 1977. Interested persons will be afforded an opportunity to make an oral presentation of data, views, or arguments on November 16, 1977. The pro-

ceedings for the oral presentation will be held at 9:30 a.m. in the 3rd floor Hearing Room, 1111 18th Street NW., Washington, D.C. The procedural regulations for oral presentations, 16 CFR 1109 will govern this proceeding.

All persons wishing to make an oral presentation must notify Richard Danca, of the Office of the Secretary, 202–634–7700, no later than November 9, 1977. A summary or outline of each oral presentation should be filed with the Office of the Secretary at least 48 hours prior to the oral presentation.

Written submissions, and any accompanying data or materials should be sent to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments received on the proposal may be seen or copies obtained from the Office of the Secretary between 8:30 a.m. and 5:00 p.m., Monday through Friday.

Dated: October 20, 1977.

RICHARD E. RAPPS,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-31041 Filed 10-25-77;8:45 am]

federal register

WEDNESDAY, OCTOBER 26, 1977

PART III



ENVIRONMENTAL PROTECTION AGENCY

■

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Cadmium

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 807-6; OPP-30000/20]

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Pesticide Products Containing Cadmium

The Deputy Assistant Administrator, Office of Pesticide Programs, Environmental Protection Agency (EPA), has determined that a rebuttable presumption exists against registration and continued registration of all pesticide products containing cadmium.[1]

I. REGULATORY PROVISIONS

A. *General.* Title 40, Part 162.11, of the Code of Federal Regulations for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136 et seq.), provides that a rebuttable presumption against registration shall arise if the Agency determines that a pesticide meets or exceeds any of the risk criteria relating to acute and chronic toxic effects set forth in § 162.11(a)(3). If it is determined that such a rebuttable presumption has arisen, the regulations require that the registrant be notified by certified mail and afforded an opportunity to submit evidence in rebuttal of the presumption. In addition, the Agency has determined that the public should also be given notice of the bases for the presumption to provide an opportunity for comment and to solicit additional information relevant to the presumption.

A notice of rebuttable presumption against registration is issued when the evidence related to risk meets the criteria set forth in § 162.11(a)(3). It is emphasized that a notice of rebuttable presumption against registration and continued registration of a pesticide is not a notice of intent to cancel the registration of a pesticide, and may or may not lead to cancellation. The notice of intent to cancel is issued only if it is determined that the pesticide may generally cause unreasonable adverse effects to the environment after careful consideration of both the risks and benefits.

Accordingly, all registrants and applicants for registration are invited pursuant to 40 CFR 162.11(a)(4) to submit evidence in rebuttal of the presumptions listed in Part II of this notice and, in the case of oncogenicity, to submit information which relates to the assessment of oncogenic risks as set forth in the Agency's Interim Procedures and Guidelines for Health Risk and Economic Impact Assessment of Suspected Carcinogens (May 25, 1976; 41 FR 21402). Registrants and other interested parties may also submit for consideration data on benefits which they believe would justify registration or continued registration. In addition, any registrant may petition the Agency to voluntarily cancel a current registration pursuant to Section 6(a)(1) of FIFRA.

B. *Rebuttal Criteria.* Section 162.11(a)(4) provides that a registrant may rebut the presumption by sustaining the burden of proving:

(1) In the case of a pesticide presumed against pursuant to the chronic toxicity criteria, "that when considered with proposed restrictions on use and widespread and commonly recognized practices of use, the pesticide will not concentrate, persist or accrue to levels in man or the environment likely to result in any significant chronic adverse effects" (40 CFR 162.11(a)(4)(ii)); or

(2) That "the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error" (40 CFR 162.11(a)(4)(iii)).

C. *Benefits Information.* In addition to submitting evidence to rebut the presumption of risk, § 162.11(a)(5)(iii) provides that a registrant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the risk presumptions are not rebutted, the benefit evidence submitted by the registrant,[2] applicants, and other interested persons will be considered by the Administrator in determining the appropriate regulatory action. Specifically, § 162.11(a)(5)(iii) provides that if the "benefits appear to outweigh (the) risks," the Administrator may issue a notice of intent to hold a hearing pursuant to Section 6(b)(2) of FIFRA rather than a notice of intent to cancel or deny registration pursuant to Section 3(c)(6) of FIFRA. Alternatively, if the "benefits do not appear to outweigh the risks, the Administrator shall issue a notice pursuant to Section 3(c)(6) or Section 6(b)(1) of the Act, as appropriate." Moreover, if at any time the Administrator determines that a pesticide poses an "imminent hazard" to humans or the environment, a notice of suspension may be issued pursuant to Section 6(c) of the Act.

Stated below are the § 162.11(a)(3) risk criteria which the Agency has found to have been met or exceeded by registrations and applications for registration of pesticide products containing cadmium. The Agency's basis for concluding that these risk criteria have been met or exceeded is set out in "Cadmium: Position Document 1," which follows. Copies of attachments to the Position Document which are not published with this notice are available for public inspection in the Office of Special Pesticide Reviews. Information protected from disclosure pursuant to Section 10 of FIFRA cannot be provided. Specific inquiries concerning the Position Document, as well as requests for access to these files, should be directed to the Project Manager, Mr. Richard Troast, Office of Special Pesticide Reviews (WH-566), EPA, Room 447, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-755-8050.

II. PRESUMPTIONS

A. *Oncogenicity.* 40 CFR 162.11(a)(3)(ii)(A) provides that a rebuttable presumption shall arise if a pesticide [i]nduces oncogenic effects in experimental mammalian species or in man as a result of oral, inhalation, or dermal exposure. * * *

On the basis of scientific studies summarized in the Position Document, the Agency has concluded that this risk index has been exceeded by all registrations and applications for registration of pesticide products containing cadmium, and that a rebuttable presumption against new or continued registration of such products has therefore arisen.

B. *Mutagenicity.* 40 CFR 162.11(a)(3)(ii)(A) provides that a rebuttable presumption shall arise if a pesticide "induces mutagenic effects, as determined by multitest evidence."

On the basis of scientific studies and information summarized in the Position Document, the Agency has concluded that this risk index has been exceeded by all registrations and applications for registration of pesticide products containing cadmium, and that a rebuttable presumption against new or continued registration of such products has therefore arisen.

C. *Other Chronic or Delayed Toxic Effects.* 40 CFR 162.11(a)(3)(ii)(B) provides that a rebuttable presumption shall arise if a pesticide "[p]roduces any other chronic or delayed toxic effect in test animals at any dosage up to a level, as determined by the Administrator, which is substantially higher than that to which humans can reasonably be anticipated to be exposed, taking into account ample margins of safety * * *."

On the basis of scientific studies and information summarized in the Position Document, the Agency has concluded that the risk index for teratogenicity and fetotoxicity has been exceeded by add registrations and applications for registration of pesticide products containing cadmium which are for home use, and that a rebuttable presumption against new or continued registration of such products has therefore arisen.

III. ADDITIONAL GROUNDS FOR REVIEW

As discussed in more detail in the attached Position Document, cadmium has been implicated as affecting a number of

[1] A position document containing an appendix of references, background information, and other material pertinent to the issuance of this notice, has been prepared by the Agency Working Group on cadmium and is also published with this notice.

[2] Registrants or other interested persons who desire to submit benefit information should consider submitting information on the following subjects, along with any other relevant information they desire to submit:

1. Identification of the uses of the pesticide, including estimated quantities used by application.

2. Identification of registered alternative products for the uses set forth in (1) above, including an estimate of their availability.

3. Determination of the change in costs to the user of providing equivalent pesticide treatment with any available substitute products.

4. Assessment of regulation impact upon user productivity from using available substitute pesticides or from using no other pesticides.

body systems, including lungs, kidneys, liver, cardiovascular, gonads, skeleton, hematopoietic, and central nervous systems. The data and analyses available at this time with respect to these effects are not sufficient to warrant the issuance of Rebuttable Presumption. The Agency specifically solicits further evidence bearing on these possible adverse effects. All comments and information received with respect to these potential adverse effects, including analysis thereof, may serve as a basis for a final decision as to the registerability of cadmium pesticides (40 CFR 162.11(a)(6)).

IV. Registration and Products Subject to the Notice

All registrants and applicants for registration listed below are being notified by certified mail of the rebuttable presumption existing against registration and continued registration of their products.

The registrants and applicants for registration shall have 45 days from the date this notice is sent or until December 12, 1977, to submit evidence in rebuttal of the presumption. However, the Administrator may, for good cause shown, grant an additional 60 days during which such evidence may be submitted. Notice of such an extension, if granted, will appear in the Federal Register.

A registrant or applicant for registration may, if it desires, assert a business confidentiality claim covering part or all of the information submitted in rebuttal. The registrant or applicant may assert the claim by placing on or attaching to the information a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise nonconfidential documents should be clearly marked.

If a confidentiality claim is asserted, the information covered by the claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B (41 FR 36906, September 1, 1976). If no confidentiality claim accompanies the information at the time it is received by EPA, EPA will place the information in the public comment file where it will be available for public inspection.

If a registrant or applicant does assert a confidentiality claim for some, but not all, of the information submitted to EPA in rebuttal, the registrant or applicant should furnish two copies of the information to EPA. The first copy should contain all of the information submitted in rebuttal with information claimed as confidential clearly identified. The second copy should be identical to the first except that all information claimed as confidential should be deleted. The second copy will be placed in the public comment file. The first copy will be treated in accordance with the procedures set out above.

V. Duty to Submit Information on Adverse Effects

Registrants are required by law to submit to EPA any additional information regarding any adverse effects on man or the environment which comes to a registrant's attention at any time, pursuant to Section 6(a)(2) of FIFRA and 40 CFR 162.8(d). If any registrant of cadmium products has any published or unpublished information, studies, reports, analyses, or reanalyses regarding any adverse effects in animal species or humans, residues, and claimed or verified accidents to humans, domestic animals, or wildlife, which have not been previously submitted to EPA, the material must be submitted immediately. When responding to this notice, each registrant shall submit a written certification to the Agency that all information regarding any adverse effects known to the registrant has been submitted. In addition, the registrants should notify EPA of any studies currently in progress, including the purpose of the study, the protocol, the approximate completion date, and a summary of all results observed to date.

VI. Public Comments

During the time allowed for submission of rebuttal evidence, specific comments on the presumptions set forth in this notice and on the material contained in the Position Document are solicited from the public. In particular, any documented episodes of adverse effects to humans, domestic animals, or wildlife, and information as to any laboratory studies in progress or completed, are requested to be submitted to EPA as soon as possible. Specifically information on the degree of human exposure to cadmium and the possible effects thereof is solicited.

Similarly, any studies or comments on the benefits from the use of cadmium are requested to be submitted. All comments and information received, as well as any other relevant information and analysis thereof, which come to the attention of the Agency may serve as a basis for final determination pursuant to § 162.11(a)(5).

All comments and information should be sent to:

Federal Register Section, Technical Services Division (WH-569), Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

Three copies of the comments or information should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments and information should bear the identifying notation "OPP-30000/20." Comments and information received within the specified time limit shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii).

Comments received after the specified time period will be considered only to the extent feasible, consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments and information filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. during normal working days.

Interested persons are encouraged to take advantage of the opportunity to inspect Agency files during normal working hours since (1) all of the information received may serve as a basis for final determination pursuant to § 162.11(a)(5), and (2) the Agency will not generally publish a summary of information received in the Federal Register at the close of the rebuttal period.

Your cooperation is solicited in identifying any errors or omissions which may have been made in the following computer listings. Corrections to the listings may not necessarily be published in the Federal Register, but rather handled by mail with affected parties. Omissions will be corrected by notice in the Federal Register.

Dated: October 18, 1977.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

Cadmium: Position Document 1

CADMIUM WORKING GROUP, RICHARD TROAST, PROJECT MANAGER, OFFICE OF SPECIAL PESTICIDE REVIEWS, U.S. ENVIRONMENTAL PROTECTION AGENCY

I. *Background*

A. *General Chemistry.* Cadmium occurs naturally, belongs to Group IIB in the periodic table of elements and has a molecular weight of 112.4. It constitutes 0.0001 percent of the earth's crust and is found primarily as the Mineral Greenockite (cadmium sulfide), which is not mined commercially but is extracted during zinc and lead mining operations. Electrolysis of smelted ore yields 99.9 percent pure metallic cadmium. The melting point and boiling point of elemental cadmium at 321° and 765°C, respectively; its density is 8.642 g/ml (1).

B. *Production.* About 12,000 pounds of pesticidal cadmium were produced in 1975. The production for 1976 is reported to have exceeded 20,000 pounds; that for 1977 is estimated to be as high as 40,000 pounds.

Section 7(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires manufacturers and formulators to submit information on production, distribution, and sales of pesticidal cadmium compounds. Under Section 7(d) and 10 of FIFRA this information is considered confidential and may not be made available to the public.

The information is available to the Administrator in a confidential appendix to this report.

World-wide production of cadmium was reported as 17 million kilograms for 1975. To supplement domestic cadmium production, the United States imported 2.5 million kilograms in 1975 to meet an industrial demand of 5.6 million kilograms. Manufacture of cadmium pesticides accounted for less than 0.1 percent of the total amount of carmium used in the United States (2).

C. *Registered Uses.* Pesticidal cadmium compounds are registered as fungicides in sprays, dusts, and granular powders for application on ornamental turf, professional turf, and home lawns at a rate of 0.2 to 1.0 ounce of actual cadmium per 1000 square feet. Application rates vary depending on whether cadmium is applied alone or in combination with other fungicides.

There are 35 Federally registered cadmium products and one State registration for which Federal registration is pending (Table 1).

TABLE 1.—*Federal registrations and registrants of pesticidal cadmium compounds*

Compound	Registrations (number)	Registrants (number)
Cadmium chloride	*25	22
Cadmium carbonate	4	2
Cadmium sebecate	2	2
Cadmium succinate	3	3
Anilocadmium dilactate	1	1

*There is 1 pending Federal registration.

D. *Alternative Pesticides.* Alternative pesticides registered for use as fungicides on turf include dyrene, folpet, thiram, the ethylenebisdithiocarbamates, parachloronitrobenzene, captan, and benomyl. Of these, benomyl, the ethylenebisdithiocarbamates, and parachloronitrobenzene are themselves under review by the Office of Special Pesticide Reviews.

E. *Environmental Occurrence.*

1. *Soil.* Cadmium occurs in soil as a natural component, as a residue of fungicides applied directly to turf, and as a pollutant from industrial operations.

In soil samples taken from golf courses treated with cadmium fungicides, residues ranged from none detectable to 62.5 ppm. with a mean of 8.4 ppm. The greatest amounts were found in the top 4 inches of the soil, a fact that indiactes that cadmium does not migrate downward. Cadmium's translocation laterally through the soil is evidenced by its presence in the sediment of streams and ponds on the golf courses which have used cadmium pesticides. Half of the samples of sediment contained cadmium in amounts up to 94.4 ppm, with a mean of 1.5 ppm (3).

Industrial pollution from several sources deposits cadmium in the soil Cadmium particulates in the air settle to the ground and add measurably to the amount of cadmium in soils. The use of landfills for repositories of sludge creates areas of abnormally high concentrations of cadmium. The effluent from sewage treatment facilities contains 22 to 57 metric tons of cadmium per year (4). The concentration of cadmium averaged 3 ppm in the liquid effluent and 12 ppm in the sludge (5).

The amount of cadmium in soils is relatively low in nonindustrialized areas. Des Moines, Iowa, had means of 0.89 and 0.28 ppm in the urban and suburban areas, respectively, in contrast to Pittsburgh, Pa., an industrial center, which had a mean of 1.21 ppm for urban and 0.90 ppm for suburban areas (6).

2. *Air.* The amount of cadmium in the air depends on the degree of industrialization in a particular area. In 1969 survey, the concentration of cadmium in air ranged from 0.006 mg/m³ in San Francisco, Calif., to 0.036 mg/m³ in St. Louis, Mo. The highest concentration recorded in the United States, 0.12 mg/m³, was measured in 1964 in El Paso, Tex. (7). A 1970 survey, although limited, confirmed the 1969 study (7). IARC reported that contrations of cadmium worldwide average less than 0.003 mg/m³ in rural areas but as much as 0.050 mg/m³ in industrialized cities. In the vicinity of cadmium-emitting industries concentrations as great as 0.5 mg/m³ were recorded (2).

3. *Water.* Once deposited in water, cadmium is freely mobile (7). In rural areas, most cadmium comes from naturally occurring sources. In urban areas, naturally occurring cadmium is augmented by cadmium from industrial and commercial sources. Data from the Office of Water Supply in EPA indicate that cadmium is present in drinking water in amounts ranging from 0.01 ppm, the limit of detection, to 0.7 ppm.

4. *Food.* Cadmium (0.01 to 0.2 ppm) has been detected in foods of all categories monitored by FDA in its Market Basket Survey. The highest amounts were generally found in leafy vegetables and canned foods (8). The cadmium found in leafy vegetables probably does not result from application of cadmium pesticides because such pesticides are not registered for use on food crops.

The high concentrations found in green plants probably result from translocation of cadmium from soil, which is fortified by small amounts of cadmium impurities contained in phosphate fertilizers (9) and by unabsorbed cadmium ingested by animals and eliminated and redeposited in the soil or landfill (7).

5. *Other.* Humans are also exposed to cadmium in cigarette smoke. The IARC reports that each cigarette contains 1.7 μg of cadmium, up to 10 percent of which can be absorbed through the lungs into the circulatory system. In one year, a moderate smoker (one pack per day) may increase his total body burden of cadmium by 0.5 mg (2).

6. *Body Burden.* The total body burden varies with country and occupation. To arrive at a general mean, IARC (2) discounted occupational exposures and calculated the daily intake of cadmium from all other sources (table 2).

TABLE 2.—DAILY CADMIUM INTAKE

Country	Cadmium (μg/day)
Czechoslovakia	60
Japan	47–59
United States	4–92

Cadmium accumulates in sensitive target organs in which calcium has an important metabolic function. In the United States the average concentration of cadmium in the adult kidney was reported as 40 μg per gram wet weight, a value approximately one-half that for Japan (7).

Cadmium deposits in the body reach a maximum at about age 50 and thereafter decline logarithmically. The total body burden estimated at age 50 is 40 mg, the urinary excretion rate being less than 12 μg per liter of urine (10).

Once absorbed, cadmium is bound by metallothionein, a low molecular weight protein found in all organs associated with high concentrations of cadmium. Although metallothionein is thought to function in detoxifying or storing potentially toxic heavy metals, the amount of protection afforded is not known (7).

F. TOXICOLOGY

Cadmium has been the subject of a number of studies designed to identify and evaluate potential toxicological effects. These studies have used a variety of common cadmium compounds, some of which are not registered as pesticides. An EPA scientist at Research Triangle Park Laboratory advised the Cadmium Working Group that regardless of the cadmium salt used, the results observed can be attributed to the cadmium ion (11). Thus, the Cadmium Working Group has considered some studies which used cadmium compounds not registered as pesticides.

1. *Human.* Cadmium has been reported to affect many organ systems (7). A more detailed analysis of these effects in relation to exposure and dosage is addressed in Sections III and IV.

2. *Wildlife.* Data on the effects of cadmium to wildlife have not been reported in as much detail as the effects of cadmium on humans. A summary of some of the available data is presented below.

The LC_{50} for bluegills has been measured as 80μg/liter in water hardness of 200 mg/liter. Higher concentrations of cadmium did not inhibit spawning of surviving fish, but newly hatched progeny were deformed (12).

A study of the toxicity of cadmium to brook trout reported an LC_{100} of 6.4 μg of cadmium per liter in water hardness of 44 mg/liter. A concentration of 3.2 μg/liter killed the males either before or just after mating. The number of surviving embroys was smaller at this dosage. At a concentration of 1.7 μg/liter cadmium had no apparent effect on the reproductive capacity of the males or females (13).

The 96 hour LC_{50} of cadmium for flagfish was reported as 2500 μg/liter in water hardness of 4 mg/liter. The mortality of fish exposed to lower amounts of cadmium (31 μg/liter and 16 μg/liter) for up to 60 days was greater than that of controls. Growth of the fish exposed to cadmium in these concentrations was also reduced (14).

In 3-week-old chicks cadmium (9.5 mg/kg) interfered with the normal intestinal absorption of iron, causing an anemic condition typical of that found in mammals chronically exposed to low amounts of cadmium (15).

Japanese quail fed cadmium (75 mg/kg/day) for 6 weeks after hatching experienced various adverse effects when other minerals were deficient in their diet. Birds fed a diet deficient in zinc developed testicular hypoplasia, and their growth was retarded. Diets deficient in iron produced anemia and bone mar-

row hyperplasia. In both cases the heart was hypertrophied within 2 weeks after the experiment began (16).

The LC_{50} for quail fed formulated cadmium succinate was reported as 1700 mg/kg; that for mallard ducks was 5000 mg/kg (17).

Since cadmium pesticides are not applied directly to water, the hazard to aquatic species from normal application of cadmium pesticides seems minimal. The limited use of cadmium on home lawns and golf turf suggests that hazard to avian or mammalian species from cadmium pesticides would be similarly unlikely. Therefore, the Working Group has concluded that none of the data concerning toxicity to wildlife are sufficient to meet the criteria of 40 CFR 162.11(a)(3)(i)(B) and 162.11(a)(3)(ii)(c).

II. *Regulatory History*

Until 1968 cadmium compounds were registered both for use on turf and for limited use on food crops. Tolerances were established for these uses under the "no residue/zero tolerance" provisions of the regulations then in effect. After the U.S. Department of Agriculture discontinued the application of the "zero tolerance/no residue" principle, all registrations for the use of cadmium on food crops were cancelled by PR Notice 68–6, dated February 1, 1968, since data supporting finite tolerances were not submitted. The turf uses of cadmium were not affected by this notice.

The Administrator of EPA has placed a high priority on collection and review of data on cadmium (18). Many nonpesticidal uses of cadmium are subject to regulation under the Toxic Substances Control Act (TSCA) and regulatory action has been initiated under the Safe Drinking Water Act of 1974, which requires standards of purity in the Nation's drinking water supply. In its report to EPA the National Academy of Sciences recommended that the amount of cadmium in drinking water be limited to 10 μg/l (69). This standard was incorporated into the National Interim Primary Drinking Water Regulations which became effective on June 24, 1977 (70).

The National Cancer Institute is evaluating the oncogenicity of cadmium compounds injected into rodents.

The National Institute for Occupational Safety and Health (NIOSH) has recommended that occupational exposure not exceed 40 $\mu g/m^3$ per 10 hour day. NIOSH has also recommended that systems of medical examination, keeping medical records, sampling and analysis, area labeling, providing of protective clothing, training employees, and improving general work practices be used by industry (1).

III. *Summary of Scientific Evidence to Support Rebuttable Presumption: Chronic Toxicity*

40 CFR 162.11(a)(3) provides that a rebuttable presumption shall arise if a pesticide's ingredients, metabolites, or degradation products meet or exceed (i) acute toxicity risk criteria relating to hazards to humans, domestic animals, or wildlife, or (ii) chronic toxicity risk criteria relating to oncogenic, mutagenic, and delayed toxic effects in man or test animals, or relating to population reductions in nontarget organisms or fatalities to members of endangered species.

The Cadmium Working Group has concluded that pesticide products containing cadmium meet or exceed the chronic risk criteria relating to oncogenesis and mutagenesis. Certain uses of cadmium pesticides also meet or exceed the criteria relating to teratogenicity and fetotoxicity. Therefore, a presumption has arisen against all pesticides containing cadmium.

A. *Oncogenic Effects.* The Carcinogen Assessment Group (CAG) of EPA has reviewed laboratory studies on the oncogenic properties of cadmium administered orally and parenterally to animals and epidemiologic studies of human exposed to cadmium by inhalation or dermal contact. The CAG concluded that (i) the number of tumors at sites removed from the site of injection increased significantly in animals injected with cadmium; (ii) significant increases in prostate cancer were found in persons occupationally exposed to cadmium; and (iii) chronic oral studies, although reported as negative by their authors, must be considered inconclusive because of protocol deficiencies. The CAG also noted that some mutagenic actions of cadmium, including mammalian cellular transformations, have a high correlation with oncogenicity (19).

The CAG has considered all data bearing on the potential oncogenicity of cadmium regardless of the route of exposure. However, a rebuttable presumption on the basis of oncogenic effects arises only if such effects are observed in man or animals following oral, dermal, or inhalation exposure. The Working Group has concluded that the epidemiological data alone indicate that cadmium pesticides pose an oncogenic risk and are sufficient evidence to warrant a rebuttable presumption. The epidemiological studies are directly applicable to cadmium pesticide use since the routes of exposure in these studies (dermal and inhalation) are the same as the routes of exposure to cadmium pesticides.

Four occupational epidemiology studies (20, 21, 22, and 23) were reviewed by the CAG. In all of them, an association between prostate cancer and cadmium is suggested. In two of these studies, Kipling and Waterhouse (21) and Lemen et al. (22), the results obtained were statistically significant. The remaining two studies (20 and 23) suggest a correlation between cadmium exposure and excess prostate cancer mortality although no statistical analysis was completed. While these studies involved small numbers, the consistency of their findings raise a serious question as to the relationship of cadmium exposure and prostate cancer.

Berg and Burbank (24) reported that the presence of cadmium (3 μg/liter) in the drinking water supplies of the United States was positively correlated with the incidence of cancer in those areas. Cancers for which there was positive correlation included cancer of the pharynx, esophagus, intestine, larynx, lung, and bladder. The authors did not include the incidence of prostatic cancer among their data. A second drinking water study also indicated that a high concentration of trace metals, including cadmium, was positively correlated with the incidence of cancer in Czechoslovakia (25).

Accordingly a presumption has arisen against cadmium pesticides on the basis of the oncogenic effects observed in epidemiological studies.

B. *Mutagenic Effects.* The potential mutagenic effects of cadmium have been described in several comprehensive reviews and papers which have been evaluated by Agency scientists. Their analysis concludes that "cadmium does show the potential of interferring with the genetic material in living organisms" (26) and that "there is supportive evidence that cadmium may cause DNA damage leading to point mutations" (27). The valid studies indicate that cadmium is a point (gene) mutagen and can cause chromosomal damage.

Primary damage to DNA by cadmium has been observed in *in vitro* mammalian cell systems, bacteria and yeast. Chinese hamster embryo cells underwent unscheduled DNA synthesis after exposure to cadmium chloride and cadmium acetate, indicating an attempt by the cell to repair DNA damage presumably caused by the cadmium (28). Cadmium chloride induced a statistically significant increase of mispaired nucleotides when added to the *in vitro* DNA synthesis system (29). Cadmium chloride produced mutant recombinants using the recombinant assay test system in strains of *Bacillus subtilis*. Cadmium nitrate, which is not registered as a pesticide, was negative (30).

Cadmium chloride produced abnormal mitotic and meiotic recombinations in yeast, *Sacharomyces cerevisiae*, indicating that cadmium is capable of producing potential heritable damage in eukaryotic cells (31).

Cultured human leukocytes were exposed to cadmium sulfide for 4 to 8 hours. Cells examined microscopically for chromosomal aberrations revealed chromatid breaks, isochromatid breaks, translocations, and dicentrics (32). Similar chromosomal aberrations were found in human leukocytes from persons diagnosed with Itai-Itai disease. In addition the frequency of these aberrations was statistically greater in the Itai-Itai patients than in normal persons serving as controls (33).

Cadmium is capable of penetrating germinal tissue barriers and causing direct chromosomal damage. In an *in vivo* germinal cytogenetics test female mice were treated with an acute dose of cadmium chloride (3 or 6 mg/kg) and sacrificed after stimulation of ovulation. When examined microscopically, oocytes of treated animals revealed numerical chromosomal anomalies including hypoploidy, hyperploidy and diploidy. No such effects were observed in untreated

controls. Cadmium chloride also blocked development of metaphase I chromosomes in some of the animals and caused hemorrhaging of the ovaries (34).

Cadmium that penetrates the blood-testis barrier can affect development of mature sperm. When the rates of spermatogenesis in rats were measured at different times during development, more immature sperm cells were found after introduction of cadmium chloride than were found in controls. The rate of incorporation of radioactively labelled amino acid was also depressed, a fact that reflects a decreased rate of protein synthesis. The data also show a decreased fertility index for 50 days after the rats were injected intraperitoneally with cadmium at 1 mg/kg and then mated. After 50 days the fertility index returned to 80% of the initial levels (35). See also page 28 for additional gonadal effects.

The negative studies which were analyzed were either not sufficiently sensitive to mutagenicity for an accurate evaluation (36,37), lacked sufficient sample numbers (38), or were encumbered by other environmental factors which may have impacted on the stated results (39). A complete summary of all tests pertaining to mutagenicity is included in Table 3.

TABLE 3.—*Summary of tests pertaining to mutagenicity*

Test system	Genetic effect	Presence (+) or absence (−)	Appendix
Systems in vitro			
Chinese hamster cells	Point mutation	+	28
Polynucleotides	Base mispa'ring	+	29
Human cells	Chromosomal damage	+	32
B. subtilis—Recombinant assay	Gene mutation	+	30
S. cerevisiae	Point mutation	+	31
Systems in vivo			
Human	Chromosomal damage	+	33
Do	do	−	38
Rat	Altered spermatogenesis	+	35
Mouse	Dominant lethal mutations	−	36
Do	Cytogenetic damage	+	34
D. melanogaster	Sex-linked recessive lethal	−	37
Mammals	Chromosomal abnormalities	−	34

This evidence is ample to meet the definition of "multitest evidence" required by 40 CFR 162.11. The Working group has concluded, therefore, that a presumption has arisen against all pesticides containing cadmium on the basis of their mutagenic effects.

C. *Teratogenic Effects and Fetotoxic Effects.* Many publications have reported that cadmium is a potent animal teratogen and fetotoxic agent. For the purpose of this document 24 papers were reviewed by Battelle Memorial Laboratories, Columbus, Ohio. Their analysis concluded that cadmium is teratogenic in rats, mice, and hamsters (40). None of the studies which were reviewed established a no observable effect level.

Cadmium is transferred across the placenta to the fetus (41). This fact is extremely important because it demonstrates that cadmium can act directly upon the embryo, as well as indirectly by inducing toxic effects in the mother, which in turn might affect development. Battelle reviewed the available evidence and concluded that cadmium is a fetotoxic agent and that it inhibits postnatal survival and breeding.

Unlike most other chronic effects which manifest themselves very slowly over long periods, teratogenic and fetotoxic effects can be induced by one exposure occurring at a critical time. The evidence suggests that cadmium may exert such effects regardless of its route of administration or the time during gestation at which it is given.

When cadmium was administered to mice on day 7 of gestation, the adverse effects included decreased weight, exencephalia, excessive nucleic acid synthesis, and decreased growth of the brain (42). When cadmium was administered on days 14 to 17 of gestation, death of the embryo ensued attended by uterine hemorrhaging and other alterations in the vascular system (44). These data have been substantiated in a feeding study in which the death rates of the young and the production of runts of treated and control aniamls were significantly different. For lack of animals, the experiment was terminated with the F_2 generation (45).

In rats, the fetotoxic and teratogenic effects of cadmium (1.6 mg/kg in drinking water) included fetal mortality and decreased gross weight, hydrocephaly, cryptorchidism, hydronephrosis, and anophthalmia or microphthalmia (46). When rats were subcutaneously injected with cadmium (4 to 12 mg/kg), fetuses developed agnathia, cleft palate, and hypoplastic lungs (47). The differences in effects observed in these studies may be attributable to the different routes of administration and the days of treatment (gestation days 9 to 11 and 14 to 17, respectively).

In hamsters given cadmium intravenously (2 mg/kg given on gestation day 8) adverse effects included resorption of the fetus and formation of cleft palates and deformities in the primitive neural tube (exencephalia and microphthalmia) In another experiment, intravenous administration of cadmium at the same dose and time produced statistically significant gross malformations of the fore and hind limbs, including amelia, micromelia, and ectodactyly (48).

In a Germany study (41), women from three areas of differing degrees of industrialization were examined for cadmium levels in their placentas. Women in the most highly industrialized area, Rhine-Ruhr, had a mean level of 74.5 μg of cadmium in their placentas. This level was statistically higher than the two other lesser industrialized areas evaluated, Middle Frankonia (51.9 μg of cadmium) and Bavaria (55.1 μg of cadmium). This report did not evaluate the rate of miscarriage or the size of the children to assess any impact of cadmium on the pregnancy. However, another report stated that women occupationally exposed to cadmium did have abnormally small children (49). Because this study was not a controlled experiment, its data must be considered inconclusive.

Unlike the presumptions based on oncogenicity and mutagenicity, EPA regulations require that a presumption based on "other chronic effects" such as teratogenicity and fetotoxicity, must take into account human exposure in determining whether the criterion has been exceeded. The Working Group is unaware of any definitive data indicating the precise quantities of cadmium to which humans are exposed as the result of the use of cadmium pesticides. The Criteria and Evaluation Division (CED) of OPP has prepared a document titled "Preliminary Analysis of Human Exposure to Cadmium from the Use of Cadium Turf Fungicide" (50). In the absence of empirical evidence regarding human exposure, this analysis necessarily relies on certain assumptions, but its conclusions provide the best estimate available. The Working Group specifically solicits further exposure data, particularly from actual use.

In its analysis, the CED assumed that women of child-bearing age would only be exposed to cadmium pesticides from their use around the home. The professional use of cadmium pesticides on golf courses does not appear to result in significant exposure to women since only 6 of over 12,000 turf-maintenance supervisors are women (51). The CED document further assumes that as much as one pint of prepared cadmium spray could come in contact with the applicator during each use. Assuming 2% absorption to the sprays, the report concluded that an applicator could absorb as much as 0.8 mg of cadmium through dermal exposure to the sprays. Inhalation of a coarse water droplet was considered unlikely. In applying the dust a person could be exposed to as much as 0.8 mg of cadmium through combined dermal and inhalation exposure. The estimate assumes that normal clothing will limit dermal absorption to 0.5 mg and that the only inhalation exposure would result from the actual loading of the application equipment (0.3 mg of cadmium). Although cadmium pesticides are applied at most 12–14 times a year, only one exposure at a critical time is necessary to produce teratogenic and fetotoxic effects.

If a 60 kg woman were exposed to 0.8 mg of cadmium, she would receive a dose of 0.014 mg/kg. The Working Group does not consider the difference between this estimate of possible exposure and the lowest dosage which caused effects in the experimental studies great enough to ensure that no hazard will be posed to women that use cadmium pesticides. The difference becomes especially important since none of the studies reviewed demonstrated a no-effect level.

For the reasons stated above the Working Group concludes that the risk criterion is met and that a presumption based on teratogenicity and fetotoxicity has arisen against cadmium pesticides registered for home use.

IV. *Other Effects*

Cadmium is known to cause a number of adverse health effects in humans who have been exposed for relatively long periods of time to relatively high levels of cadmium. In addition, laboratory studies indicate that cadmium can cause a variety of adverse effects in test animals exposed to cadmium by several routes of exposure. However, it does not appear that any of the effects described below will occur at levels to which humans might reasonably be anticipated to be exposed from the use of pesticides, taking into account ample margins of safety. Moreover, the frequency and duration of exposure required to produce these effects does not seem comparable to exposure from application of cadmium pesticides. For these reasons the Cadmium Working Group has concluded that none of the effects discussed below warrants issuance of a presumption at this time.

A continuing effort will be made by the Working Group to collect additional data from all sources, including other regulatory groups and scientific organizations to determine if, with additional data, the criteria expressed in 40 CFR 162.11 are met for cadmium pesticides. In addition, the Agency, with the assistance of the United States Golf Association, has intiated a study of professional applicators of cadmium pesticides to determine if such persons exhibit signs of proteinuria, a condition often associated with excessive cadmium exposure and believed to be a possible indication of other adverse effects. If any of the data received or generated indicates potential risk, the Agency will consider additional regulatory action, including the issuance of a supplemental Notice of Rebuttable Presumption Against Registration.

The Working Group recommends solicitation of any additional information on the cadmium effects described in the following sections or any other effects which may be attributable to the pesticidal cadmium.

A. *Effects on the Lungs.* In humans, acute effects of doses of cadmium smaller than the estimated LD_{50} (approximately 2,400 mg-min/m^3) manifest themselves within 4 to 10 hours after exposure. Nonlethal effects of such doses in fumes or aerosols usually consist of pulmonary edema and interstitial pneumonitis from which damage in the form of perivascular and peribronchial fibrosis results (1, 7).

Emphysema has been observed in humans following lengthy exposure to low doses of cadmium (1, 7). Animal studies indicated that cellular changes typical of early stages of emphysema occur in rats given 17.2 μg/ml of cadmium in water daily for 6 to 41 weeks (52). Emphysema was induced in rats and guinea pigs by daily intratracheal administration of cadmium (2.5 mg/kg) for 4 and 7 months, respectively (53). A single intratracheal dose of cadmium chloride in an aerosol (9 mg/kg) induced preliminary symptoms of emphysema (54). However, an aerosol particle is much smaller and more readily absorbed than the coarse water droplet which would be encountered in the application of cadmium pesticides.

B. *Effects on the Kidneys.* Industrial workers accidentally inhaling high levels of cadmium fumes have suffered from acute renal necrosis (55). Temporary proteinuria has developed in humans exposed to subacute amounts cadmium for short periods (56), and renal failure is believed to have caused the death of a worker exposed to unmeasured levels of cadmium (20). Renal lesions, particularly formation of fatty bodies and degeneration of tubules, develop in animals exposed to large amounts of cadmium (1).

The effects of chronic exposure to cadmium are primarily proteinuria, glucosuria, excretion of amino acids in the urine, and decreased renal function (1). A specific protein, B–2 microglobulin, has recently been identified in the urine of Swedish workers and Japanese farmers exposed to cadmium (67).

When cadmium was given to rats in drinking water (0.2, 2.0, 20, and 200 ppm) changes (either constriction or dilation) to the renal arterial blood vessels resulted. These changes were not dose dependent, but seemed to be related to the dietary calcium levels. Rats with normal calcium levels in their diet experienced less alteration to the diameter of the blood vessels examined than those with low calcium levels (57).

Rats given cadmium in their drinking water (10, 50, and 300 ppm) for up to 40 weeks had an increased number of lysosomes in the kidney tubular epithelium. This increase was postulated by the authors to be related to the degeneration of renal tubules as previously theorized by other workers (43).

C. *Effects on the Liver and Carbohydrate Metabolism.* Early studies indicate that acute exposure to cadmium oxide fumes alters liver function. Autopsies have revealed microscopic changes in the liver, but these were slight compared to other acute effects (7).

The evidence suggests that workers chronically exposed to cadmium have impaired liver function (7). However, effects on the liver have not been examined as extensively as those on other organs.

Cadmium given intraperitonally to rats, either 1.0 mg/kg or 0.25 mg/kg every second day for 40 days, altered the glucose metabolic activity (58). Cadmium fed to rats, 1.0 mg/kg/day for 60 days, produced a statistically significant decrease in phosphorylase A enzyme activity. The same dosage resulted in a substantial decrease in the Pi/O ratio, suggesting an uncoupling of oxidative phosphorylation. In addition, a dose of 0.1 mg/kg/day for 42 days resulted in a significant decrease in aldolase activity (59). Insulin levels were significantly decreased in rats given seventy doses of 0.5 mg/kg cadmium every second day, whereas a 0.25 mg/kg dose did not produce these effects (58). In another study additional enzyme activities including ascorbic acid synthesis were altered in rats fed a dose of 60 mg/kg for four weeks (60).

D. *Effects on Cardiovascular System.* Cadmium in acutely toxic amounts increases the blood pressure in many rodent species (7), but there are no reports of this effect in exposed humans. However, epidemiologic evidence indicates that hypertension is less prevalent in areas of the world where the total body burden of cadmium is less (68).

Chronic human exposure has been epidemiologically linked to hypertension in some reports, but this is an area of some disagreement (7). Animal studies clearly indicate that hypertension is produced by cadmium given orally or by injection (1, 7). Rats given cadmium (5 ppm or 10 ppm for life) in their drinking water developed hypertension (62). Cadmium (5 ppm in drinking water) administered for the life of the animal induced arteriosclerosis by reducing the amount of circulating cholesterol (63).

E. *Effects on the Gonads.* When testicles were injected subcutaneously with cadmium (2.24 mg/kg), microscopic changes were evident within a few hours. Capillary stasis and interstitial edema were followed by severe hemorrhage and necrosis 24 to 48 hours later (7). Necrosis was dose-dependent and reversible.

Testicular necrosis also occurred when cadmium (28 and 64 mg/kg) was administered in food, painted on the skin, or injected intravenously or intraperitoneally (7). In a recent study, treatment with an amount of cadmium that produces general toxic effects (3 mg/kg in drinking water) also produced gonadotoxic effects including membrane thickening, hypertrophy and proliferation of Sertoli cells, and swelling of arteriolar walls (61). The lowest single subcutaneous dose which has produced acute testicular necrosis in the most sensitive laboratory animals, certain strains of mice, is 1 mg/kg (7).

Chronic effects on the gonads have been induced in animals fed cadmium or given repeated subcutaneous injections of cadmium. However, no testicular necrosis has been reported in humans industrially exposed to cadmium (1, 7).

F. *Effects on the Skeleton.* Cadmium is not known to accumulate in bone and correspondingly does not appear to have any acute effect upon the skeleton (67).

However, cadmium apparently affects the metabolism of calcium and phosphorus. Itai-Itai disease, probably the most insidious result of chronic exposure to cadmium in the food and water, is thought to have resulted from combined effects of interference of calcium and phosphous metabolism by cadmium, vitamin D deficiency, and a low protein diet. Low protein diets deficient in vitaman D are typical of Toyama Prefecture, Japan, the only area in which the disease has been found. Pseudo-fractures and decalcification have been found in humans exposed to cadmium for up to 20 years (1, 7).

Cadmium (5 and 10 ppm given in water for 50 days) causes tooth discoloration in rats (64). Bone disorders, in particular decalcification, develop in animals fed 1 to 2 mg/kg in food for 120 days (65).

G. *Effects on the Hematopoietic System.* Elevated hemoglobin concentrations are the only hematopoietic abnormality caused by açute exposure to cadmium. However, the edema that appeared concurrently may have been the primary result of exposure to cadmium, the elevated hemoglobin being only a consequence of the edema (7).

Chronic exposure to small quantities of cadium has been linked epidemiologically to decreased hemoglobin levels. White cell counts have been found to be essentially normal, with the exception of an increase in the number of eosinophiles. Bone marrow in all of these surveys showed no pathological changes. (7).

Animals treated with cadium have been shown to develop anemia and lowered hemoglobin levels. Dosages as low as 2.0 mg/kg fed to rats for four months have produced these effects. However, these effects can be mitigated by the simultaneous increase of additional iron to the diet. Dose response levels have been determined in rats given injections of cadium, but no dose-response levels have been determined in studies using other routes of exposure with levels ranging from 0.5 to 10 $\mu g/g$ for up to one year (7).

H. *Effects on the Central Nervous System.* Chronic cadium exposure produced headache and vertigo in one human (7). Physical examination revealed that he had altered neuromuscular reflexes. Olfactory disturbances, anosmia, and hyposmia were found to be common in a worker population, 50 percent of which had been exposed for at least 10 years at concentrations of 3 to 15 mg/m^3 (1).

Cadium injected intraperitoneally (0.25 and 1.0 mg/kg/day) for 45 days accumulated in the rat brain and acted on several indicators of brain activity such as the concentration of norepinephrine, acetylcholine, and 5-hydrotryptamine (66).

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REGISTRANT *NAME AND ADDRESS*

* 000004 BONIDE CHEMICAL CO. INC.
2 WURZ AVE.
YORKVILLE NY 13495

********** PRODUCT NAME **********

**00161* BONIDE LAWN FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 000168 WASATCH CHEMICAL DIVISION ENTRADA IND INC
P O BOX 6219
SALT LAKE CITY UT 84106

********** PRODUCT NAME **********

**00331* MORGRO PLUS FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 000239 CHEVRON CHEMICAL COMPANY
ORTHO DIVISION 940 HENSLEY WAY
RICHMOND CA 94801

********** PRODUCT NAME **********

**01426* ORTHO LAWN AND TURF FUNGICIDE

**01522* ORTHO LAWN DISEASE CONTROL

**02228* ORTHO GOLF AND TURF FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 000318 RUSSELL GIBALDI S
25-16 50TH ST
WOODSIDE II NY 11377

********** PRODUCT NAME **********

**00039* RUSSELL'S GRANULAR LAWN FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 000334 HYSAN CORPORATION
919 W 38TH ST
CHICAGO IL 60609

********** PRODUCT NAME **********

**00256* GCC-690 GROUND CONTROL CHEMICALS

REGISTRANT *NAME AND ADDRESS*

* 000358 NOTT MANUFACTURING COMPANY INC
PLEASANT VALLEY NY 12569

********** PRODUCT NAME **********

**00041* NOTT'S FUNGI-NOT, LAWN FUNGICIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 000372 MALLINCKRODT INC
SECOND AND MALLINCKRODT STREETS
ST LOUIS, MO 63160

********** PRODUCT NAME **********

**00015* MALLINCKRODT CADMINATE

**00024* MALLINCKRODT APPROVED KROMAD BROAD SPECTRUM FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 000603 CHEMTECH IND INC
3033 GLENFIELD, PO BOX 24440
DALLAS, TX 75224

********** PRODUCT NAME **********

**00027* GRASS-AID

REGISTRANT *NAME AND ADDRESS*

* 000605 GUARD CHEM COMPANY
ONE AVENUE L
NEWARK NJ 07105

********** PRODUCT NAME **********

**00002* PURATURF 177

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 000702 ALFCO INCORPORATED
P O 267
MARIETTA, OH 45750

********** PRODUCT NAME **********

**00024* CADEX A LIQUID CADMIUM TURF FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 001001 CLEARY W R CORPORATION
1049 SOMERSET ST.
SOMERSET NJ 08873

********** PRODUCT NAME **********

**00010* CADDY

**00049* CAD-TRETE TURF FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 001159 SEACOAST LABORATORIES INC
257 HIGHWAY 18
E BRUNSWICK NJ 08816

********** PRODUCT NAME **********

**00136* TWIN LIGHT GRANULAR LAWN FUNGICIDE

**00182* TWIN LIGHT SNOW MOLD TURF FUNGICIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 001769 NATIONAL CHEMSEARCH DIV
USACHEM INC
2727 CHEMSEARCH BLVD
IRVING TX 75060

********** PRODUCT NAME **********

**00093* NATIONAL CHEMSEARCH C-A-D

REGISTRANT *NAME AND ADDRESS*

* 002124 GRACE W R & COMPANY AGR CHEM C H TIDWELL
PO BOX 277 100 N MAIN ST
MEMPHIS TN 38101

********** PRODUCT NAME **********

**00760* WONDER-GRO-TURF FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 002474 HALCO DIVISION OF WAGNER SEED CO INC
81 SECATOGUE AVENUE
FARMINGDALE NY 11735

********** PRODUCT NAME **********

**00047* HALCO GRANULAR TURF FUNGICIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 002749 ACETO CHEMICAL COMPANY INC
126-02 NORTHERN BLVD
FLUSHING NY 11368

********** PRODUCT NAME **********

**00090* CADDY

**00127* ACETO CADET LIQUID CADMIUM FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 002853 VINELAND CHEM COMPANY
PO BOX 745
VINELAND NJ 08360

********** PRODUCT NAME **********

**00010* VI-CAD A LIQUID CADMIUM TURF FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 003442 USS AGRI-CHEMICALS DIV US STEEL CORP
PO BOX 1685
ATLANTA GA 30301

********** PRODUCT NAME **********

**00622* ARMOUR VERTAGARD BROAD-SPECTRUM K TURF FUNGICIDE

**00626* ARMOUR VERTAGARD CADMIUM TURF FUNGICIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 004828 ABCO INC
230 INDUSTRY BLVD
NORTH HUNTINGTON, PA 15642

********** PRODUCT NAME **********

**00080* TF-15 AN EFFICIENT TURF FUNGICIDE IN WETTABLE POWDER FORM

REGISTRANT *NAME AND ADDRESS*

* 005348 PATCO PRODUCTS INC
DIV OF VAUGHAN'S SEED CO
CHIMNEY ROCK ROAD
BOUND BROOK, NJ 08805

********** PRODUCT NAME **********

**00008* PATCO'S LAWN MEDIC A LAWN AND GRASS FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 005535 ADIKES INC J & L
182-12 93RD AVE
JAMAICA NY 11423

********** PRODUCT NAME **********

**00002* GRO-WELL CRAB-B-WEED

**00034* GRO-WELL LAWN FUNGICIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT *NAME AND ADDRESS*

* 005605 FARMINGDALE GARDEN LABS
136 VERDI ST
FARMINGDALE NY 11735

********** PRODUCT NAME **********

**00085* FARMINGDALE CADMIUM LAWN FUNGICIDE (FORMULA B)

REGISTRANT *NAME AND ADDRESS*

* 006190 SANICO
13143 SATICOY ST
N HOLLYWOOD CA 91605

********** PRODUCT NAME **********

**00002* LP-34 LIQUID FUNGICIDE

REGISTRANT *NAME AND ADDRESS*

* 009235 AMERICAN RESEARCH CORPORATION
6899 PEACHTREE IND BLVD
NORCROSS, GA 30071

********** PRODUCT NAME **********

**00007* ABCIDE LIQUID CADMIUM CHLORIDE

08/23/77 FEDERALLY REGISTERED PRODUCTS CONTAINING CADMIUM

REGISTRANT	*NAME AND ADDRESS*
* 010663	SENTRY CHEMICAL COMPANY 1481 ROCK MOUNTAIN BLVD STONE MOUNTAIN GA 30083

********** PRODUCT NAME **********

**00007* TF 33

REGISTRANT	*NAME AND ADDRESS*
* 011515	ABC CHEMICAL CORPORATION 17000 W. EIGHT MILE ROAD SOUTHFIELD, MI 48075

********** PRODUCT NAME **********

**00014* CURMITE LIQUID TURF FUNG FOR CONTROL OF DOLLAR SPOT AND COPPER SPO

REGISTRANT	*NAME AND ADDRESS*
* 011694	DYMON, INC. 3401 KANSAS AVENUE KANSAS CITY, KS 66106

********** PRODUCT NAME **********

**00007* FCC 20 FUNGICIDE FOR CONTROLLING COPPER SPOT AND DOLLAR SPOT ON TURF

08/23/77 APPLICANTS FOR REGISTRATION OF PRODUCTS CONTAINING CADMIUM

REGISTRANT	*NAME AND ADDRESS*
* 037347	UNI-CHEM CORP. OF FLORIDA BOX 6336 - 2801 N.W. 55TH CT. FT. LAUDERDALE, FL 33310

********** PRODUCT NAME **********

**03116* PREVENT

[FR Doc.77-30778 Filed 10-25-77;8:45 am]

federal register

WEDNESDAY, OCTOBER 26, 1977
PART IV



DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for August 1977

[6170-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for August 1977

In accordance with the provisions of 10 CFR 211.67 relating the domestic crude oil allocation program of the Department of Energy (DOE), administered by the Economic Regulatory Administration (ERA) of the DOE, the monthly notice specified in § 211.67(i) is hereby published.

Based on reports for August 1977 submitted to the DOE by refiners and other firms as to crude oil receipts, crude oil runs to stills, eligible product imports and imported naphtha utilized as a petrochemical feedstock in Puerto Rico; application of the entitlement adjustment for residual fuel oil production for sale in the East Coast market provided in § 211.67(d)(4); September 1977 deliveries of crude oil for storage in the Strategic Petroleum Reserve; and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for August 1977 is calculated to be .265978.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of August 1977, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper tier crude oil is equal to .343608 of a barrel of deemed old oil.

The issuance of entitlements for the month August 1977 to refiners and other firms is set forth in the Appendix below to this notice. The Appendix below lists the name of each refiner or other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR 211.67(i)(4), the price at which entitlements shall be sold and purchased for the month of August 1977, is hereby fixed at $8.75, which is the exact differential as reported for the month of August between the weighted average per barrel costs to refiners of old oil and of imported and exempt domestic crude oil, less the sum of 21 cents.

In accordance with 10 CFR 211.67(b), each refiner that has been issued fewer entitlements for the month of August 1977, than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month of August 1977, equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of August 1977, in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for that month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. In addition, certain refiners are required to purchase or sell entitlements to effect corrections for reporting errors for the months September 1975 through July 1977, pursuant to 10 CFR 211.67(j)(1).

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by ERA pursuant to § 211.67(h).

The listing contained in the Appendix below identifies in a separate column additional entitlements issued to refiners pursuant to relief granted by ERA's Office of Administrative Review (prior to October 1, 1977, the Office of Exceptions and Appeals of the Federal Energy Administration). Also set forth in this column are adjustments for relief granted by the Office of Administrative Review for 1975 and 1976, which adjustments are reflected in monthly installments. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, "see Beacon Oil Company, et al," 4 FEA par. 87,024 (November 5, 1976).

For purposes of the adjustments to refiners' crude run volumes under § 211.67(d)(4), total production of residual fuel oil for sale in the East Coast market (in excess of the first 5,000 barrels per day thereof for each refiner reporting such production) was 12,587,773 barrels for August 1977. For that month, imports of residual fuel oil eligible for entitlement issuances totaled 36,411,474 barrels.

The total number of entitlements required to be purchased and sold under this notice is 25,604,531.

Based on reports submitted to the DOE by refiners as to their adjusted crude oil receipts for August 1977, the pricing composition and weighted average costs thereof are as follows:

Category	Volumes	Weighted average cost	Percent of total volumes*
Lower tier	$108,222,205	$5.60	22.5
Upper tier	93,114,335	11.35	19.4
Exempt domestic:			
Stripper	34,922,712	14.49	7.2
Naval petroleum reserve	3,257,727	12.62	.6
Total domestic	239,516,979	$9.23	49.9
Imported	240,279,064	14.60	50.0
Total reported crude oil receipts	479,796,043	11.92	100.0

*Numbers may not add due rounding.

Payment for entitlements required to be purchased under 10 CFR 211.67(b) for August 1977, must be made by October 31, 1977.

On or prior to November 10, 1977, each firm which is required to purchase or sell entitlements for the month of August 1977, shall file with the DOE the monthly transaction report specified in 10 CFR 211.66(i) certifying its purchases and sales of entitlements for the month of August. The monthly transaction report forms for the month of August have been mailed to reporting firms. Firms that have been unable to locate other firms for required entitlement transactions by October 31, 1977, are requested to contact the ERA at 202-254-6296 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to October 31, 1977, the ERA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR 211.67(k).

This notice is issued pursuant to Subpart G 10 CFR Part 205. Any person aggrieved hereby may file an appeal with ERA's Office of Administrative Review in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before November 25, 1977.

Issued in Washington, D.C., on October 18, 1977.

DAVID J. BARDIN,
Acting Administrator, Economic Regulatory Administration.

APPENDIX
ENTITLEMENTS FOR DOMESTIC CRUDE OIL
AUGUST 1977

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
A-JOHNSON	0	142,004	0	0	0	0	142,004
ALLIED	55,041	80,877	0	0	0	0	25,836
AMER-PETROFINA	2,033,192	1,367,770	0	0	0	665,422	0
AMERADA-HESS	1,180,660	4,318,019	0	270,599	0	0	3,137,359
AMOCO	12,168,128	8,688,326	0	0	0	3,479,802	0
APCO	304,339	392,996	0	0	0	0	88,657
ARCO	5,994,164	6,455,020	0	0	0	0	460,856
ARIZONA	82,987	53,204	6,771	0	0	29,783	0
ASAMERA	199,692	201,282	0	0	0	0	1,590
ASHLAND	1,791,745	2,978,651	0	0	0	0	1,186,906
ASIATIC	0	252,945	0	252,945	0	0	252,945
BASIN	25,491	43,533	0	0	0	0	18,042
BAYOU	53,648	68,809	0	0	0	0	15,161
BEACON	329,943	170,267	1,349	0	0	159,676	0
BELCHER	0	91,236	0	91,236	0	0	91,236
BI-PETRO	10,113	121,468	0	0	0	0	111,355
C&H	0	80,377	0	0	0	0	80,377
CALCASIEU	0	33,046	0	0	0	0	33,046
CALUMET	26,046	34,022	0	0	0	0	7,976
CANAL	74,300	63,597	0	0	0	10,703	0
CARIBOU	84,952	111,412	0	0	0	0	26,460
CHAMPLIN	2,371,586	1,478,930	0	0	0	892,656	0
CHARTER	831,692	1,140,401	590,993	0	0	0	308,709
CHEVRON	7,193,070	9,771,589	0	43,322	0	0	2,578,519
CIRILLO	0	90,875	0	90,875	0	0	90,875
CITGO	2,635,162	1,613,614	0	0	0	1,021,548	0
CLAIBORNE	92,008	77,064	0	0	0	14,944	0
CLARK	316,995	993,005	0	0	0	0	676,010
COASTAL	356,821	1,425,791*	0	34,903	0	0	1,068,970
COLONIAL	0	53,725	0	53,725	0	0	53,725
CONOCO	3,336,325	2,966,406	0	17,990	0	369,919	0
CORCO	0	1,411,743	238,902	315,369	0	0	1,411,743
CRA-FARMLAND	427,211	630,690	0	0	0	0	203,479
CROSS	34,409	64,347	0	0	0		29,959

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
CROWN	356,547	726,035	0	0	0	0	369,488
CRYSTAL-OIL	174,253	199,758	0	0	0	0	25,505
CRYSTAL-REF	22,442	31,610	0	0	0	0	9,168
DEEPWATER	0	2,884	0	2,884	0	0	2,884
DELTA	193,574	403,885	26,282**	0	0	0	210,311
DEMENNO	1,277	22,144	0	0	0	0	20,867
DERBY	0	92,410***	0	0	0	0	92,410
DIAMOND	639,169	491,441	0	0	0	147,728	0
DILLMAN	0	599	0	0	0	0	599
DORCHESTER	9,443	14,798	0	0	0	0	5,355
DSW	110,768	182,818	0	0	0	0	72,050
E-SEABOARD	0	33,726	0	33,726	0	0	33,726
ECO	2,954	24,619	0	0	0	0	21,665
EDDY	45,276	125,708	0	0	0	0	80,432
ENERGY-COOP	47,514	1,115,112	0	0	0	0	1,067,598
ENERGY-FUELS	0	33,175	0	33,175	0	0	33,175
EVANGELINE	56,990	41,609	0	0	0	15,381	0
EXXON	14,385,585	10,878,490	0	542,292	0	3,507,095	0
EZ-SERVE	26,668	40,254	0	0	0	0	13,586
FARMERS-UN	236,461	399,746	0	0	0	0	163,285
FLETCHER	12,856	199,406	0	0	0	0	186,550
FLINT	10,079	10,531	0	0	0	0	452
GARY	45,628	63,262	0	0	0	0	17,634
GETTY	1,707,436	1,744,123	0	0	0	0	36,687
GIANT	58,212	73,922	0	0	0	0	15,710
GLACIER-PARK	109,498	61,216	0	0	0	48,282	0
GLADIEUX	82,150	140,003	0	0	0	0	57,853
GLENROCK	1,866	2,550	0	0	0	0	684
GOLDEN-EAGLE	-87	201,817	0	0	0	0	201,904
GOLDKING	72,011	75,261	0	0	0	0	3,250
GOOD-HOPE	54,031	346,061	0	0	0	0	292,030
GUAM	0	357,802	0	0	0	0	357,802
GULF	9,451,469	7,481,321	0	39,205	0	1,970,148	0
GULF-STS	50,986	36,814	0	0	0	14,172	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
HIRI	0	576,939	0	0	0	0	576,939
HOWARD	0	80,243	0	80,243	0	0	80,243
HOWELL	306,204	344,505	0	0	0	0	38,301
HUDSON-OIL	22,316	220,327	0	0	0	0	198,011
HUNT	267,740	339,360	0	0	0	0	71,620
HUSKY	639,169	639,169	221,379	0	0	0	0
INDEPENDENT-REF	172,410	178,482	0	0	0	0	6,072
INDIANA-FARM	76,452	243,172	0	0	0	0	166,720
INGER-OIL	1,141	2,739	0	0	0	0	1,598
J&W	98,767	59,239	0	0	0	39,528	0
KENCO	35,022	44,384	0	0	0	0	9,362
KENTUCKY	5,371	8,527	0	0	0	0	3,156
KERN	770,116	824,090	417,300	0	0	0	53,974
KERR-MCGEE	1,319,902	1,213,073	0	0	0	106,829	0
KOCH	264,994	998,951	0	3,166	0	0	733,957
LAGLORIA	442,965	441,115	0	0	0	1,850	0
LAKESIDE	13,577	20,829	0	0	0	0	7,252
LAKETON	162,986	162,986	21,102	0	0	0	0
LITTLE-AMER	1,379,581	1,401,393	839,211	0	0	0	21,812
LOUISIANA-LAND	408,528	397,384	0	0	0	11,144	0
MACMILLAN	58,725	139,374	0	0	0	0	80,649
MARATHON	3,876,185	3,500,561	0	0	0	375,624	0
MARION	174,514	241,764	0	0	0	0	67,250
METROPOLITAN	0	100,094	0	100,094	0	0	100,094
MID-AMER	36,518	107,645	0	0	0	0	71,127
MID-TEX	18,640	32,164	0	0	0	0	13,524
MIDLAND	0	-10,075	-10,075	0	0	10,075	0
MOBIL	7,538,829	5,782,028	0	26,988	0	1,756,801	0
MOBILE-BAY	0	95,823	0	0	0	0	95,823
MOHAWK	401,243	391,196	81,461	0	0	10,047	0
MONOCO	0	13,779	0	13,779	0	0	13,779
MONSANTO	427,640	359,091	0	0	0	68,549	0
MORRISON	21,829	16,543	0	0	0	5,286	0
MOUNTAINFER	9,483	9,298	0	0	0	185	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
MT-AIRY	39,700	143,188	0	0	0	0	103,488
MURPHY	858,079	747,476	0	0	0	110,603	0
N-AMER-PETRO	46,215	150,114	0	0	0	0	103,899
NATL-COOP	368,768	498,128	0	0	0	0	129,360
NAVAJO	377,400	377,400	51,420	0	0	0	0
NEVADA	5,194	8,830	0	0	0	0	3,636
NEW-EDGINGTON	540,286	514,911	271,554	0	0	25,375	0
NEW-ENGL-PETRO	0	510,988	0	510,988	0	0	510,988
NEWHALL	261,980	255,991	74,943	0	0	5,989	0
NORTHEAST-PETRO	0	38,373	0	38,373	0	0	38,373
NORTHLAND	53,738	109,042	0	0	0	0	55,304
NORTHVILLE	0	20,118	0	20,118	0	0	20,118
OKC	211,397	282,830	1,873	0	0	0	71,433
OXNARD	13,197	13,941	0	0	0	0	744
PASCO	0	-65,005	-65,005	0	0	65,005	0
PENNZOIL	418,388	465,018	0	0	0	0	46,630
PESTER	157,507	259,438	0	0	0	0	101,931
PETRO-HEAT-CT	0	8,242	0	8,242	0	0	8,242
PHILLIPS	2,950,820	1,164,730	0	0	0	1,786,090	0
PHILLIPS-PR	0	245,236	0	245,236	0	0	245,236
PIONEER	75,994	75,100	0	0	0	894	0
PLACID	245,836	391,178	0	0	0	0	145,342
PLATEAU	149,736	178,412	0	0	0	0	28,676
POWERINE	42,673	326,718	0	0	0	0	284,045
PRIDE	180,153	257,213	0	0	0	0	77,060
PRINCETON	2,538	87,384	0	0	0	0	84,846
QUAKER-ST	55,885	254,631	0	0	0	0	198,746
RANCHO-REF	10,697	72,281	0	0	0	0	61,584
RICHARDS	-783	82,680	0	0	0	0	83,463
RICO	0	35,012	0	35,012	0	0	35,012
ROAD-OIL	0	5,988	0	0	0	0	5,988
ROCK-ISLAND	317,595	352,257	-38,703	0	0	0	34,662
SABER-TEX	28,548	344,422	0	0	0	0	315,874
SABRE-CAL	101,691	105,911	52,984	0	0	0	4,220

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
SAGE-CREEK	3,743	4,955	0	0	0	0	1,212
SAN-JOAQUIN	187,400	187,400	48,059	0	0	0	0
SEARS	0	12,022	0	12,022	0	0	12,022
SEMINOLE	13,111	65,204	0	0	0	0	52,093
SHELL	12,440,532	8,723,847	0	0	0	3,716,685	0
SIGMOR	14,826	137,359	0	0	0	0	122,533
SO-HAMPTON	51,414	202,659	0	0	0	0	151,245
SOHIO	1,489,594	3,571,768	0	0	0	0	2,082,174
SOMERSET	43,733	69,793	0	0	0	0	26,060
SOUND	46,680	79,684	0	0	0	0	33,004
SOUTHERN-UNION	258,406	330,074	0	0	0	0	71,668
SOUTHLAND	488,094	542,736	289,889	0	0	0	54,642
SOUTHWESTERN	-23,334	-504	0	0	0	0	22,830
SPRAGUE	0	32,598	0	32,598	0	0	32,598
STEUART	0	142,046	0	142,046	0	0	142,046
SUNLAND	4,249	181,061	56,299	0	0	0	176,812
SUNOCO	5,157,917	4,449,485	0	0	0	708,432	0
SWANN	0	61,281	0	61,281	0	0	61,281
TENNECO	1,139,967	980,797	0	0	0	159,170	0
TESORO	866,450	574,578	0	0	0	291,872	0
TEXACO	10,594,939	8,702,986	0	265,291	0	1,891,953	0
TEXAS-AMERICAN	16,026	82,347	0	0	0	0	66,321
TEXAS-ASPH	5,092	98,153	0	0	0	0	93,061***
TEXAS-CITY	579,345	705,669	0	0	0	0	126,324
THAGARD	791,488	791,488	526,235	0	0	0	0
THRIFTWAY	39,343	47,049	0	0	0	0	7,706
THUNDERBIRD	111,677	146,724	0	0	0	0	35,047
TIPPERARY	6,590	44,155	0	0	0	0	37,565
TONKAWA	43,518	80,629	0	0	0	0	37,111
TOSCO	2,188,702	1,793,697	227,234	0	0	395,005	0
TOTAL-PETROLEUM	296,408	353,941	0	0	0	0	57,533
TRANS-OCEAN	0	141,933	0	0	0	0	141,933
UCC-CARIBE	0	168,854	0	168,854	0	0	168,854
UNION-OIL	5,431,426	3,722,024	0	0	0	1,709,402	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	********** TOTAL ISSUED	ENTITLEMENT POSITION EXCEPTIONS AND APPEALS	PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	REQUIRED TO BUY	********** REQUIRED TO SELL
UNION-PETRO	0	13,865	0	13,865	0	0	13,865
UNTD-IND	10,534	5,655	0	0	0	4,879	0
UNTD-REF	239,868	413,495	0	0	0	0	173,627
US-OIL	19,693	228,128	0	0	0	0	208,435
USA-PETROCHEM	68,117	172,728	0	0	0	0	104,611
VICKERS	390,080	550,410	0	0	0	0	160,330
VULCAN	42,911	173,288	0	0	0	0	130,377
WALLER	0	7,979	0	7,979	0	0	7,979
WARRIOR	44,879	46,024	11,203	0	0	0	1,145
WEST-COAST	67,031	148,312	0	0	0	0	81,281
WESTERN	90,374	99,071	0	0	0	0	8,697
WINSTON	140,875	184,609	0	0	0	0	43,734
WIREBACK	0	887	0	0	0	0	887
WITCO	65,765	189,418	0	0	0	0	123,653
WYATT	0	26,432	0	26,432	0	0	26,432
YETTER	0	1,186	0	0	0	0	1,186
YOUNG	118,480	118,480	64,927	0	0	0	0
TOTAL	140,024,798	140,024,798	4,007,587	3,634,853	0	25,604,531	25,604,531

* Same as ***, except number is 347,435.

** Reflects adjustments for 1975 exceptions relief as provisionally modified by FEA pending agency review consistent with court order. For discussion, see December entitlement notice, 42 FR 12133 (March 2, 1977).

*** Includes entitlements issued for 200,182 barrels of imported crude oil purchased by the United States Government for storage in the Strategic Petroleum Reserve.

**** This does not include the purchase obligation stayed by court order in Texas Asphalt & Refinery Co. v. FEA Civ. Action No. 4-75-268 (N.D. Tex., filed October 31, 1975).

[FR Doc. 77-30840 Filed 10-19-77;11:39 am]

Department	Billing Code
Legal Services Corporation	6820-35
Libraries and Information Science, National Commission	7527-01
Library of Congress/Copyright Office	1410-03
Management and Budget Office	3110-01
Marine Mammal Commission	6820-31
National Aeronautics and Space Administration	7510-01
National Capital Planning Commission	7520-01
National Center for Productivity and Quality of Working Life	3151-01
National Credit Union Administration	7535-01
National Endowment for the Humanities	7536-01
National Institute of Education	4110-39
National Labor Relations Board	7545-01
National Mediation Board	7550-01
National Science Foundation	7555-01
National Transportation Policy Safety Commission	6820-36
Navy Department:	
DCPA U 8	3810-01
Navy: Judge Advocate General	3810-71
Nuclear Regulatory Commission	7590-01
Occupational Safety and Health Review Commission	7600-01
Overseas Private Investment Corporation	3210-01
Panama Canal Company	3640-01
Pennsylvania Avenue Development Corporation	7630-01
Pension Benefit Guaranty Corporation	7708-01
Postal Rate Commission	7715-01
Postal Service	7710-12
Railroad Retirement Board	7905-01
Railway Association, U.S	8240-01
Renegotiation Board	7910-01
Science and Technology Policy, Office of	7555-02
Securities and Exchange Commission	8010-01
Selective Service System	8015-01
Small Business Administration	8025-01
Smithsonian Institution	8030-01
State Department	4710-01
Susquehanna River Basin Commission	7040-01
Technology Assessment, Office of	1630-01
Telecommunications Policy Office	3160-01
Tennessee Valley Authority	8120-01
Trade Negotiations, Special Representative for	3190-01
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Federal Railroad Administration	4910-06
Federal Aviation Administration	4910-13
Coast Guard	4910-14
Federal Highway Administration	4910-22
Urban Mass Transportation Administration	4910-57
National Transportation Safety Board	4910-58
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Revenue Sharing	4810-28
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Comptroller of the Currency	4810-33
Engraving and Printing	4810-34
Government Finance Operations	4810-35
Mint, Bureau	4810-37
Public Debt	4810-40
Secret Service	4810-42
Internal Revenue Service	4830-01
U.S. Information Agency	8230-01
Veterans Administration	8320-01
Water Resources Council	8410-01
White House Office	3195-01

If your agency's name does not appear above, GPO may not have received your printing and binding requisition (Standard Form 1). Your documents can not be printed in the FEDERAL REGISTER without a billing code.

INFORMATION AND ASSISTANCE: Mr. William Rose, 202-275-2867.

NEW BILLING PROCEDURES FOR AGENCIES

As part of the new billing procedures announced in the FEDERAL REGISTER of August 24, 1977, and to insure that each agency is correctly billed for only its own documents, the Office of the Federal Register requests agencies to insert the proper billing code on all of their documents. The six-digit billing code should be typed or handwritten in ink at the top of the first page on all three copies of documents submitted to the Office of the Federal Register for publication, as follows:

BILLING CODE: 0000-00

The list of agency billing codes assigned by the Government Printing Office follows:

Department	*Billing Code*
Action	6050-01
Administrative Conference of the United States	6110-01
Agency for International Development	4710-02
Agriculture Department:	
Secretary	3410-01
Agricultural Marketing Service	3410-02
Agricultural Research Service	3410-03
Agricultural Stabilization and Conservation Service	3410-05
Farmer Cooperative Service	3410-06
Farmer's Home Administration	3410-07
Federal Crop Insurance Corporation	3410-08
Extension Service	3410-09
Forest Service	3410-11
National Agricultural Library	3410-12
Rural Electrification Administration	3410-15
Soil Conservation Service	3410-16
Economic Research Service	3410-18
Statistical Reporting Service	3410-20
Cooperative State Research Service	3410-22
Food and Nutrition Service	3410-30
Rural Development Service	3410-32
Animal and Plant Health Inspection Service	3410-34
Economic Management Support Center	3410-35
Food Safety and Quality Service	3410-37
National Agriculture Library	3410-12
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Office of Automated Data Systems	3410-94
Office of Personnel	3410-96
Office of Operations	3410-98
Office of General Sales Manager	3410-21
Foreign Agricultural Service	3410-10
Air Force Department	3910-01
American Battle Monuments Commission	6120-01
Arms Control and Disarmament Agency	6820-32
Army Adjutant General Center	3710-08
Defense Communications	3610-05
Chief of Engineers/Civil Works	3710-92
Blind and Other Severely Handicapped Committee	6820-33
Civil Aeronautics Board	6320-01
Civil Rights Commission	6335-01
Civil Service Commission	6325-01
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Maritime Administration	3510-03
National Technical Information Service	3510-04
Bureau of Economic Analysis	3510-06
Census Bureau	3510-07
U.S. Travel Service	3510-11
National Oceanic and Atmospheric Administration	3510-12
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Office of Secretary	3510-18
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Domestic and International Business Administration	3510-25
National Fire-Prevention and Control Administration	3510-49
Telecommunications Office	3510-60
Commodity Futures Trading Commission	6351-01
Community Services Administration	6315-01
Consumer Product Safety Commission	6355-01
Cost Accounting Standards Board	1620-01
Defense Logistics Agency	3620-01
Delaware River Basin Commission	6360-01
Defense, Office of Secretary	3810-70
Economic Advisers Council	3120-01
Energy Research and Development Administration	6170-01
Environmental Protection Agency	6560-01
Environmental Quality Council	3125-01
Equal Employment Opportunity Commission	6570-06
Export-Import Bank of the United States	6690-01
Farm Credit Administration	6705-01
Federal Communications Commission	6712-01
Federal Deposit Insurance Corporation	6714-01
Federal Election Commission	6715-01
Federal Energy Administration	3128-01
Federal Home Loan Bank Board	6720-01
Federal Maritime Commission	6730-01
Federal Mediation and Conciliation Service	6732-01
Federal Power Commission	6740-02
Federal Reserve System/Board of Governors	6210-01
Federal Trade Commission	6750-01
Fine Arts Commission	6330-01
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International Trade Commission	7020-02
Interstate Commerce Commission	7035-01
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