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Highlights

15855 **Eligibility of Rwanda to Purchase Defense Articles and Defense Services** Presidential determination

16090 **Polychlorinated Biphenyls (PCB's)** EPA addresses the manufacture process, distribution in commerce, use in electrical equipment and the court order on inspection and maintenance of PCB's; effective 5-11-81 for the inspection and maintenance program (Part III of this issue)

16096 **Polychlorinated Biphenyls (PCB's)** EPA publishes advanced notice of proposed rulemaking regarding PCB's in electrical equipment; comments by 12-7-81 (Part III of this issue)

15953 **Continental Shelf** Interior/GS issues receipt of a proposed development and production plan for oil and gas and sulphur operations

15938 **Chemicals** EPA announces the availability of two reports on population exposure to selected chemicals of concern that are emitted into the atmosphere; comments by 5-11-81

15873 **Hydroelectric Power** DOE/FERC publishes final rule regarding small hydroelectric power projects with an installed capacity of five megawatts or less

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Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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15866 **Securities** SEC announces adoption of rule establishing procedures and requirements for joint industry plans in connection with planning, developing, operating or regulating a national market system; effective 5–11–81

16058 **Administrative Practice and Procedure** Foreign Service Labor Relations Board, FLRA and the Foreign Service Impasse Disputes Panel release an interim rule governing the processing of cases; effective 2–15–81; comments by 6–15–81 (Part II of this issue)

15895 **Model Regulations** Administrative Conference of the United States requests comments by 4–24–81, on draft model regulations for the implementation of the Equal Access to Justice Act

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Presidential Documents

Title 3—

The President

Presidential Determination No. 81–3 of February 27, 1981

Eligibility of Rwanda To Purchase Defense Articles and Defense Services Under the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 3(a)(1) of the Arms Export Control Act, I hereby find that the sale of defense articles and defense services to the Government of Rwanda will strengthen the security of the United States and promote world peace.

You are directed on my behalf to report this finding to the Congress.

This finding, which amends Presidential Determination No. 73–10 of January 2, 1973 (38 FR 7211), as amended by Presidential Determinations No. 73–12 of April 26, 1973 (38 FR 12799), No. 74–9 of December 13, 1973 (39 FR 3537), No. 75–2 of October 29, 1974 (39 FR 39863), No. 75–21 of May 20, 1975 (40 FR 24889), No. 76–1 of August 5, 1975 (40 FR 37205), No. 76–11 of March 25, 1976 (41 FR 14163), No. 76–12 of April 14, 1976 (41 FR 18281), No. 77–5 of November 5, 1976 (41 FR 50625), No. 77–17 of August 1, 1977 (42 FR 40169), No. 77–20 of September 1, 1977 (42 FR 48867), No. 79–5 of February 6, 1979 (44 FR 12153), No. 79–11 of June 21, 1979 (44 FR 38437), No. 80–12 of March 3, 1980 (45 FR 16995), No. 80–14 of March 13, 1980 (45 FR 19211), No. 80–29 of December 4, 1980 (45 FR 82619), and No. 81–1 of December 31, 1980 (46 FR 3491), shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, February 27, 1981.

[FR Doc. 81-7599
Filed 3-6-81; 4:21 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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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.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 27 and 28

General Accounting Office Personnel Board; Organization and Procedures

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Interim rules with requests for comment.

SUMMARY: This rule (1) establishes on an interim basis the procedures pursuant to which the General Accounting Office Personnel Appeals Board will operate when performing its duties under section 4 of the General Accounting Office Personnel Act of 1980, 94 Stat. 29, while the Board is seeking and considering comments on proposed final regulations to implement this Act, and (2) requests comments on these interim procedures to implement section 4 of the Act. This interim issuance is necessary in order to provide the Board a means of addressing matters under its cognizance while considering adoption of its final rules.

DATES: The rules are effective on an interim basis as of March 1, 1981. Comments which are received by May 1, 1981, will be considered.

ADDRESS: Send comments to: Personnel Appeals Board, General Accounting Office, Room 4057, 441 G Street, N.W., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Carl D. Moore, General Counsel, Personnel Appeals Board at telephone (202) 275–6137.

SUPPLEMENTARY INFORMATION: On February 15, 1980, Congress passed the General Accounting Office Personnel Act of 1980 (Pub. L. No. 96–191). The Act establishes an independent personnel system for employees of the General Accounting Office. The legislation was intended to address a congressional concern regarding the potential for conflict of interest between GAO and various executive branch agencies such as the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission.

On the one hand, GAO has responsibility for evaluating personnel programs across agency lines, concentrating on policy and control agencies, such as the three agencies recited above. On the other hand, these agencies regulated personnel management in GAO. To minimize these conflicts of interest, the legislation exempts GAO from executive branch administered laws and regulations relating to matters such as appointments, promotions, reassignments, details, classifying and downgrading positions, compensation, adverse actions, reductions-in-force, and appeals.

Congress was also concerned, however, that the legislation provide adequate safeguards for the rights of employees and applicants. Under the provisions of the legislation, GAO must establish a personnel management system which adheres to principles of merit and existing provisions of law relating to personnel management as set forth in the GAO Personnel Act. Employee appeals and complaints are to be adjudicated fairly and impartially by an independent personnel appeals board established by the legislation. These interim rules establish the procedures to be followed by the General Accounting Office Personnel Appeals Board.

In general, the Personnel Appeals Board is designed to perform at GAO the same functions performed in the executive branch by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Special Counsel of the Merit Systems Protection Board, and the Federal Labor Relations Authority. Under the statute and these proposed rules, the Board has appellate authority over personnel actions that allegedly violate merit system principles or that allegedly constitute prohibited personnel practices and over a wide range of labor relations matters. The General Counsel for the Board under the statute and under these rules has broad investigative responsibilities in matters dealing with equal employment opportunity, prohibited political activities, prohibited personnel practices, and unfair labor practices. The Board is authorized to take corrective action in this broad spectrum of personnel jurisdiction as well as disciplinary action against employees who violate the provisions of the statute.

Informal and Formal Procedures

It is the intention of the Board to establish a process for hearing appeals and complaints that is as simple and non-legalistic as possible, but with sufficient structure to insure a fair and impartial process and to insure that employees are accorded all the rights due them under the various statutory provisions. To this end, all appeals and complaints are filed in the same manner with the General Counsel of the Board. Most appeals and complaints are processed in accordance with the formal procedure found in Subpart B. To the extent that certain types of appeals and complaints require some special rules, these special rules are briefly set out at Subparts D, E, and F (EEO cases, representation proceedings, and labor relations disputes, respectively). Under the formal procedure of Subpart B, the General Counsel of the Board receives all appeals and complaints, and investigates the allegations. The General Counsel will make an effort to resolve the dispute before referring the matter to the Board for final action. When the General Counsel finds little or no merit to the employee appeal or complaint, the employee is so advised and may elect to pursue the appeal or complaint, on his/her own. When the General Counsel finds merit to the employee appeal or complaint, the General Counsel will represent the employee in settlement negotiations with management and, if necessary, will represent the employee in proceedings before the Board.

Once the appeal or complaint is referred to the Board by the General Counsel, the Board will, at the request of one of the parties or on its own motion, hold a hearing in the matter. In any event, the Board will decide the appeal or complaint based upon the submissions from the General Counsel and the parties and, where a hearing is held, upon the evidence developed in the hearing.

Oversight Procedures

Subpart C sets out the general authority of the Board in its oversight of

the Equal Employment Opportunity Program at GAO. This includes review by the Board of GAO equal employment opportunity programs; investigative authority in the General Counsel to inquire into possible equal employment opportunity violations with or without an allegation of discrimination; and prosecutorial responsibility in the General Counsel where violations of the equal employment opportunity program are found.

Special Procedures

Subpart D provides special rules for complaints and appeals that involve alleged discrimination. One of the difficulties under the Civil Service Reform Act is the question of how to deal with cases that allege discrimination and, therefore, suggest one appeals process, but also allege another basis for appeal, suggesting a different appeals process. Under the Civil Service Reform Act such cases before the Merit Systems Protection Board are referred to as "mixed cases." However, the problem can arise in other circumstances.

A discrimination complaint is also a prohibited personnel practice and subject to the investigative jurisdiction of the Special Counsel for the Merit Systems Protection Board. A discrimination allegation might also arise in the context of a labor dispute and be heard by the Federal Labor Relations Authority with ultimate review by the Equal Employment Opportunity Commission. The GAO Board's general policy is to simplify the procedures and avoid, to the maximum extent possible, such potential conflict or confusion in procedures.

Therefore, these rules require that an employee, who is alleging EEO violations, exhaust the agency complaint process before perfecting an appeal to the Board. These rules reflect the policy of the Board to encourage the use of the agency EEO complaint process and the settlement of disputes at the lowest possible level. Therefore, an EEO complaint filed in the agency complaint process dealing with allegations of discrimination, but also with allegations regarding any other area of jurisdiction for the Board, including, for instance, disciplinary action, an alleged unfair labor practice, or other alleged prohibited personnel practice, would be handled by the agency in the complaint process. A subsequent timely appeal to the Board from the agency EEO complaint process would be regarded by the Board as a timely appeal of the other issues raised in the complaint.

Subparts E and F deal with representation issues and other labor-management matters such as unfair labor practices, national consultation rights, negotiability disputes, negotiation impasses, standards of conduct for labor organizations, and review of arbitration awards. Prior to the publication of these rules, the Board held a series of meetings with representatives of management and employee groups at GAO. Comments were received at that time suggesting that Subparts E and F exceeded the Board's statutory authority. In order not to impede the regulatory process, the Board chose to issue most of its rules as interim rules and for public comment with the exception of Subparts E and F. These two Subparts are being published simultaneously as proposed rules. Further details appear in the Background material accompanying Subparts E and F. In these interim rules, Subparts E and F are reserved. Should any labor issues arise before final rules are published, the Board is confident they can be adequately dealt with under the procedures of Subpart B.

Disciplinary and Stay Proceedings

The Act provides that the Board may request the General Counsel of the Board to investigate matters under the jurisdiction of the Board. Subpart G acknowledges the statutory authority of the General Counsel to investigate allegations of prohibited personnel practices and prohibited political activities and further specifies that the Board may request the General Counsel to investigate any personnel action under the Board's jurisdiction to determine whether reasonable grounds exist upon which to bring disciplinary action against the employee of GAO or whether implementation of any personnel action should be stayed. It shall not be the policy of the Board or of the General Counsel to preempt management at GAO in the discipline of employees. Nevertheless, the General Counsel is charged with initiating and conducting investigations regarding violation of EEO laws and the Board is charged with initiating and the General Counsel with conducting investigations dealing with misconduct in any other area subject to the Board's jurisdiction and, where the General Counsel deems appropriate, charges may be brought against GAO employees for such misconduct. Also under this Subpart, the General Counsel is empowered to initiate stay proceedings where the General Counsel has reasonable grounds to believe that the personnel action involved was taken, or is to be taken, in violation of the rights guaranteed under the Act.

Appeals by Members of the Senior Executive Service

Subpart H provides that members of the senior executive service may appeal to the Board in accordance with the provisions of subchapter V, Chapter 75 of Title 5 of the U.S. Code and in accordance with the general procedures of Subpart B of these rules.

Freedom of Information and Privacy Act

Subpart I provides for Freedom of Information Act and the Privacy Act procedures.

Excluded from these interim regulations (and proposed regulations) published here are proposed regulations which are published elsewhere in today's edition of the **Federal Register** which deal with labor management and representation matters. Therefore, Title 4 of the Code of Federal Regulations is amended by adding Parts 27 and 28 to read as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD—ORGANIZATION

Sec.
27.1 The board.
27.2 The chair.
27.3 The general counsel.

Authority: Sec. 4, Pub. L. 96–191, 94 Stat. 29 (31 U.S.C. 52–3).

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of Section 4 of Public Law No. 96–191, 94 Stat. 29, the General Accounting Office Personnel Act of 1980. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority, subject to later reconsideration by the Board.

§ 27.2 The Chair.

The members of the Board shall select from among the members of the Board a chairperson, hereinafter the Chair, who shall serve as the chief executive and administrative officer of the Board.

§ 27.3 The General Counsel.

The Comptroller General shall appoint the individual selected by the Chair to serve as the General Counsel of the Board.

The General Counsel, at the request of the Board or of any member of the Board, shall investigate matters under

the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD—PROCEDURES

Subpart A—Purpose and General Definitions

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Authority: Sec. 4, Pub. L. 96-191, 94 Stat. 29 (31 U.S.C. 52-3).

Subpart A—Purpose and General Definitions

§ 28.1 Purpose and scope.

(a) The purpose of these rules is to establish the procedures to be followed:

(1) by the GAO, in its dealings with the Board;

(2) by employees of the GAO or applicants for employment by the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) by employees or organizations petitioning for protection of rights or extension of benefits granted to them under the Act; and

(4) by the Board, in carrying out its responsibilities under the Act.

(b) The scope of the Board's operations encompasses the investigation and, where necessary, adjudication of cases arising under section 4(h) of the Act. In addition, the Board performs the oversight function of reviewing the policies, evaluating the operations, and, where necessary, ordering corrective action respecting the equal employment opportunity programs of the GAO.

(c) The intent of the Act is to provide the GAO independence in administering its labor and employee relations function intended by the Act, while ensuring that "GAO employees are entitled to the same rights and protections as employees in the executive branch." H.R. Rep. No. 96-494, 15 (1980). Such a broad scope of authority would normally require the promulgation of rules and regulations, in respect to the GAO, as extensive as those of all the agencies covering the relevant activities of the entire executive branch. To do so for but one agency, however, seems to the Board to be unnecessarily burdensome to all concerned. Instead, these regulations are designed to establish general guidelines which meet the immediate purpose of providing to all parties early and clear access to the Board.

§ 28.3 General Definitions.

In this part—

(a) "Act" means the General Accounting Office Personnel Act of 1980.

(b) "Board" means the General Accounting Office Personnel Appeals Board as established by Section 4 of the Act.

(c) "Comptroller General" means the Comptroller General of the United States.

(d) "Days" means calendar days.

(e) "GAO" means the General Accounting Office.

(f) "General Counsel" means the General Counsel of the General Accounting Office Personnel Appeals Board, as provided for under Section 4 (f) and (g) of the Act.

(g) "Hearing Officer" means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction, and authorized to prepare a recommended Decision and Order of the Board. A Hearing Officer may be a member of the Board, an employee of the Board, an Administrative Law Judge or any individual qualified by experience or training to conduct a hearing.

(h) "Labor Organization" means any organization or employee representative committee or group in which employees participate, and which exists for the purpose, in whole or in part, of dealing with the GAO concerning any aspect of labor-management relations or working conditions.

(i) "Person" means an employee or applicant for employment, a labor organization or the GAO.

(j) "Personnel Management System" means the personnel management system established by the Comptroller General, as required by Section 3(a) of the Act.

(k) "Petition" means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of the Act.

(l) "Petitioner" means any person filing a petition for Board consideration.

Subpart B—Informal and Formal Procedures

§ 28.5 Informal procedures.

(a) Petitioners or prospective petitioners may seek informal advice on all aspects of the Board's procedures by contacting the General Counsel.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.7 Formal procedures—general.

The procedures described in this Subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent Subparts to which they are particularly applicable.

§ 28.9 Notice of appeal rights.

The GAO shall be responsible for insuring that employees are regularly advised of their appeal rights to the Board and that employees, who are the object of an adverse action, are, at the time of the action, adequately advised of their appeal rights to the Board.

§ 28.11 Filing of petition.

(a) Who may file. Any GAO employee or applicant for employment claiming to be affected adversely by GAO action or inaction within the provisions of the Act.

(b) When to file. (1) Petitions for review of adverse actions based on conduct or performance must be filed

within 20 days after the effective date of the action.

(2) Petitions for review of other personnel actions must be filed within 20 calendar days after the petitioner knew or should have known of the action.

(3) Petitions for review of discrimination complaints may be filed any time after 45 days have passed since the filing of a formal complaint of discrimination with GAO, except that, when GAO has issued a final agency decision, the petition for review must be filed within 20 calendar days from receipt by the petitioner of the final agency decision. See Subpart D.

(4) The General Counsel or the Board may waive these time limits for good cause shown.

(c) How to file. Petitions may be filed with the Board in person at the Office of the Board (GAO Building, Room 4057, Washington, D.C.) or by certified mail addressed to the General Counsel, GAO Personnel Appeals Board, Room 4057, Washington, D.C. 20548. The General Counsel shall serve copies of the petition on affected persons with directions regarding response to the petition.

(d) What to file. The petitioner should include in any petition for Board action the following information:

(1) Name of the petitioner or a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names of organizational affiliations and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper, including specific references to each section of the Act which the petitioner alleges has been violated;

(5) Remedies sought by the petitioner;

(6) Name of the representative, if any, who will act for the petitioner in any further stages of the matter;

(7) Copies of all relevant documentation;

(8) Signature of the petitioner and representative, if any.

§ 28.13 Amendments to petitions.

The Board at its discretion may allow amendments to a petition as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations.

§ 28.15 GAO response.

Within 20 days after receiving a copy of a petition filed in accordance with § 28.11, where GAO is a party from whom the petitioner seeks relief, the GAO shall file a response containing at least the following:

(a) A complete statement of the GAO position with respect to each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition.

(b) All documents or true copies thereof contained on the GAO records regarding the matter.

(c) Designation of, and signature by, the GAO representative authorized to act for GAO in the matter.

§ 28.17 General Counsel procedures.

(a) All petitions filed in accordance with § 28.11 will be received by the General Counsel for the Board. The General Counsel will investigate the matter, refine the issues where appropriate, and attempt settlement of all matters at issue.

(b) The General Counsel may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence and order the taking of depositions and order responses to written interrogatories in connection with any investigation under these Rules by the General Counsel. Employees of GAO who are required by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) If, following the investigation, the General Counsel determines that there is not a prima facie case of prohibited discrimination or that there is not reasonable evidence to believe that the petitioner's rights under the Act have been violated, then the General Counsel shall issue to the petitioner a Right to Appeal Letter. This letter advises the petitioner of the results of the General Counsel's investigation and advises the petitioner of his/her right to pursue an appeal to the Board. This letter is not subject to discovery and may not be introduced into evidence in any proceeding before the Board.

(d) If, following the investigation, the General Counsel determines that there is a prima facie case of prohibited discrimination or that it is reasonable to believe that the petitioner's rights under the Act have been violated, then the General Counsel shall—

(1) transmit to the Board an investigative report together with a settlement of the case that has been agreed to by the parties;

(2) transmit to the Board an investigative report together with a proposed disposition of the case and a waiver by the parties to a hearing. Copies of the report will be transmitted to the parties, who will have 30 calendar days from receipt in which to furnish further argument to the Board; or

(3) transmit to the Board an investigative report specifying the basis for petitioner's appeal and represent the petitioner in proceedings before the Board or a hearing officer of the Board.

§ 28.19 Board procedures—pre-hearing.

(a) Where the petitioner under § 28.17(c) receives a Right to Appeal Letter and petitions the Board for relief, the Board shall order a hearing at the request of the petitioner or, absent such request, may issue a Decision and Order based upon the written submissions of the parties and, where it deems necessary, an oral argument called for the purpose of eliciting further views.

(b) Where the General Counsel under § 28.17(d)(1) transmits a settlement agreed to by the parties, the settlement agreement shall be the final disposition of the case.

(c) Where the parties under § 28.17(d)(2) have not requested a hearing, and where the Board does not consider it necessary to conduct a hearing, the Board may issue a Decision and Order based on the General Counsel's proposed disposition, the written submissions before it, and, where it deems necessary, on an oral argument called for the purpose of eliciting further views.

§ 28.21 Board procedures—formal hearings.

(a) After a petition is filed and processed in accordance with §§ 28.17 and 28.19, the Board shall order a hearing on a petition at the request of any party or on a motion by the Board.

(b) Where two or more parties have filed petitions containing identical or similar issues, the Board may consolidate such petitions for hearing purposes.

(c) Where a petitioner has filed two or more petitions, the Board may join these for purposes of conducting the hearing.

(d) A formal hearing on a petition may be conducted:

(1) before the Board as a whole, in which case the Chairman shall preside;

(2) before one of its members chosen by the Board to be the Hearing Officer;

(3) before a panel of two or more Board members chosen by the Board for the purpose, one of whom shall preside;

(4) before a qualified Hearing Officer chosen by the Board for that purpose.

(e) The Board shall issue a notice to all parties specifying the date, time and place of the scheduled hearing. In no case shall the hearing be held earlier than 15 days after the notice is issued.

unless all parties agree to an earlier date.

(f) Upon request by the Board, the GAO shall provide appropriate space to hold the hearing.

(g) The Hearing Record shall be prepared and maintained under the supervision of the Hearing Officer. It shall include a transcript of all testimony, exhibits, motions, and other material submitted by the parties and accepted by the Hearing Officer. This transcript shall constitute the sole official record of the proceeding. Copies of all or portions of the Record shall be provided to the petitioner and the GAO upon request; other parties may be furnished a copy, at their request and at their own expense, or they may examine a copy at a time and place set by the Board.

(h) Generally, hearings shall be closed to the public unless the petitioner requests the Hearing Officer to order the hearing or part of the hearing to be open. However, the Hearing Officer may, for good cause shown, close any or all portions of the hearing, over the petitioner's objections, stating the reason therefor on the record.

(i) Although the rules of evidence shall not apply, the Hearing Officer shall conduct the hearing so as to ensure that all relevant and material facts are placed into the record and all parties are given full opportunity to present their evidence on the issues.

(j) The Hearing Officer shall conduct the hearing in a manner designed best to achieve a balance of fairness, justice and equity in terms of the objectives of the Act and the proper interests of the parties; he/she shall have the authority needed to function effectively, including, but not restricted to authorizing the taking of depositions, ruling on admissibility of evidence, issuing subpoenas, requiring briefs, and administering oaths.

(k) The Hearing Officer shall rule on all questions of procedure and conduct raised at the hearing following appropriate administrative procedures consistent with 5 U.S.C. 7701 and 7702. Objections to rulings of the Hearing Officer, with reasons therefor, shall be part of the record; however, the hearing shall proceed as ordered by the Hearing Officer.

(l) Upon application to the Board, or to the Hearing Officer at a hearing already in progress, any party prospectively affected by matters at issue in any petition may be given the status of an intervenor in all formal proceedings relating to the petition. As such, any intevenor shall have the right to participate in the hearing and to be notified, as is the petitioner, of all Board actions respecting the processing of the case. However, intervenors shall pay any costs related to their participation in the processing of the petition.

(m) The costs involved in the appearance of witnesses in any Board hearing shall be allocated as follows:

(1) Persons employed by the GAO shall, upon request by the Hearing Officer to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a Board hearing shall, at the request of the Hearing Officer to such agencies, be in official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraphs (m)(3) and (p) of this section.

(3) The fees and expenses of other persons called to testify at a Board hearing shall, in the first instance, be paid by the party requesting their appearance, subject to a subsequent decision otherwise in accordance with paragraph (p) of this section.

(n) Prior to closing the hearing, the Hearing Officer may permit oral argument by representatives of each of the parties.

(o) The Hearing Officer may afford the parties an opportunity to file briefs within a specific period after the close of the hearing, copies of which shall be served by the submitting party on all other parties.

(p) Within 20 days after a decision of the Board becomes final, the employee-petitioner may submit a request for reasonable attorney fees and costs. After providing GAO with a reasonable period in which to respond, the Board or a member of the Board shall rule on the request. This decision on attorney fees shall be final and appealable in accordance with § 28.27.

§ 28.23 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) it is a performance based action and is supported by substantial evidence; or

(2) it is brought under any other provision of law, rule or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner—

(1) shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b);

(3) shows that the decision was not in accordance with law.

(c) In any other appeal to the Board, the petitioner shall have the responsibility of presenting the evidence in support of the appeal and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

§ 28.25 Board procedures—Decisions and Orders.

(a) Where a Board member or panel of Board members hears a case, a recommended decision shall be issued to the Board, the General Counsel, and to the parties. The recommended decision shall contain the date upon which the decision will become final, which will be at least 30 days from issuance. The recommended decision shall be final on the date indicated in the decision unless, prior to that date, a party files a motion to reopen and reconsider or unless the Board reopens on its own motion. If the Board reopens a case, the subsequent decision of the Board shall be final.

(b) A motion to reopen and reconsider a recommended decision may be filed with the Board in person at the Office of the Board (GAO building, Room 4057, Washington, D.C.) or by certified mail addressed to the Personnel Appeals Board, GAO, Room 4057, Washington, D.C. 20548. The petition for review shall set forth objections to the initial decision, supported by references to applicable laws or regulations, and with specific reference to the record. After providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed; or

(2) The decision of the Hearing Officer is based on an erroneous interpretation of statute or regulation.

(c) A person required to take any action under the terms of a Board Order shall carry out its terms promptly, and shall, within 30 days of its issuance, provide the Board with a compliance report specifying:

(1) the manner in which the provisions of the Order have been complied with;

(2) the reasons any provisions have not yet been fully complied with; and

(3) the steps being taken to ensure full compliance.

(d) Where the Board's Decision or Order is being appealed to the United States Court of Appeals in accordance with section 4(l)(1) of the Act, the person so appealing shall be afforded a delay in filing the compliance report required under paragraph (c) of this section; however, such a delay shall apply only to those matters which are the subject of the appeal.

§ 28.27 Board procedures—judicial review.

(a) Appeals other than discrimination complaints. Any final decision by the Board under subsections 4(h) (1), (2), (3), (6), and (7) of the Act may be appealed to the United States Court of Appeals in which the petitioner resides or to the United States Court of Appeals for the District of Columbia. See also § 28.55.

(b) The Board may designate the General Counsel or any other qualified individual to represent it in any judicial appeals from its Decisions taken in accordance with Section 4(l) of the Act.

Subpart C—Oversight procedures

§ 28.31 General.

Section 3(g) of the Act provides that, with respect to employees and applicants for employment in the GAO, the authority granted in the legislation under section 3(g)(3) of the Act, which involves oversight of the EEO program and appeals relating to EEO matters, shall be exercised by the Board. The appeals procedures are delineated in Subpart D of these regulations. This Subpart specifies the oversight procedures required to ensure that the goals of the legislation will be attained through the development and administration of personnel procedures as well as by dealing with specific cases involving allegations of illegal practices.

§ 28.33 Oversight of GAO EEO program.

(a) In order to carry out the purpose of this Subpart, the Board may require from GAO the following:

(1) Such plans, procedures and regulations as GAO may develop in order to carry out the purposes enumerated in § 28.41;

(2) Reports regarding its efforts to publicize to its employees the procedures to be followed for receiving advice and for filing complaints regarding the enforcement of laws prohibiting discrimination in employment;

(3) Monthly reports of pre-complaint counseling and of pending complaints, in a manner prescribed by the Board;

(4) An annual report on its equal employment opportunity affirmative action program and its Federal Equal Employment Opportunity Recruitment Program; and

(5) Any other information requested by the Board regarding equal employment opportunity within the GAO.

(b) The Board shall review and evaluate the regulations, procedures and practices of the GAO, including the reports filed with it in accordance with § 28.33(a), and shall:

(1) Require the GAO to make any changes the Board determines are needed to meet the objectives of the Act.

(2) Report to the Congress on the overall progress being made in effectuating the purposes of the Act.

(c) The Board delegates to the General Counsel responsibility for conducting investigations, in the absence of an allegation, for the purpose of determining whether there are reasonable grounds to believe that a violation of 3(g)(3) of the Act exists. For these purposes the provisions of § 28.17(b) shall apply.

(d) If the General Counsel determines that disciplinary action should be taken against an employee after any investigation under this section, the General Counsel shall prepare a written complaint against the employee containing his/her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board for processing in accordance with Subpart G.

Subpart D—Special Procedures—Equal Employment Opportunity Cases

§ 28.41 Purpose and scope.

The procedures in this Subpart relate to complaints filed against any GAO policies or specific actions which petitioners claim are in violation of:

(a) Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination based on race, color, religion, sex or national origin;

(b) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a) prohibiting discrimination on account of age;

(c) Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination in wages on the basis of sex;

(d) Sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of handicap; or

(e) "[A]ny other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin, political affiliation, marital status or handicapping condition * * *" Act, Section 3(g)(3).

§ 28.43 Applicability of general procedures.

Except where a different procedure is provided for in this Subpart, the procedures to be followed by all parties in cases arising under this subpart shall be the General Procedures as prescribed in Subpart B of these regulations.

§ 28.47 Class action appeals.

(a) Petitions alleging violation of rights of employees of the GAO under this Subpart may be filed by individuals, by labor organizations on behalf of a member or group of members, or by any individual or group or labor organization on behalf of a class of persons affected adversely by a GAO action, or to be affected by a proposed action, which it is alleged may violate rights encompassed by the legislation referred to in § 28.41. The Board may hear the case as a class action if it finds a class action to be the most efficient and fair way to adjudicate the appeal and will adequately protect the interests of all parties.

(b) In determining whether it is appropriate to treat an appeal as a class action, the Board will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

§ 28.51 Petitions to the Board.

(a) The purposes and policies of the various statutes that prohibit discrimination can best be achieved through conscientious use by employees and management of the agency complaint process. To this end, the Board and the General Counsel will encourage full utilization by the parties of the EEO complaint process with GAO. Therefore, if an employee is alleging EEO related improprieties, the employee must generally pursue the agency EEO complaint process before petitioning the Board.

(b) A petition for review of GAO's disposition of any EEO complaint may be submitted for consideration of the Board when:

(1) The complaint or a portion thereof has been rejected by the GAO;

(2) A period of more than 45 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or

(3) The complaint has been resolved by a GAO decision which, in whole or in part, has not satisfied the complainant.

(c) Where a complaint filed in the agency EEO complaint process raises allegations that are within the Board's

jurisdiction in addition to EEO related allegations, the subsequent petition to the Board under subparagraph (b) of this section shall be considered a timely appeal of the non-EEO issues.

(d) A petition filed with the General Counsel under the provisions of this subpart shall state the issues briefly, and shall spell out clearly the reason the petitioner believes the action of the GAO to be contrary to the law.

(e) The petitioner shall file the petition with the General Counsel in accordance with § 28.11. The General Counsel shall serve the GAO with a copy of the petition and request any GAO complaint file that may exist.

(f) Within 10 days after receipt of a request filed in accordance with paragraph (e) of this section, the GAO shall transmit the complaint file or the certified copy thereof to the General Counsel.

§ 28.53 Processing of petitions.

(a) In addition to submitting the complaint file under § 28.51(f), GAO may file a response to the petition in accordance with § 28.15.

(b) The provisions of sections 28.17 through 28.25, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(c) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back-pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes is proper to correct the effect of the discrimination found to have occurred.

§ 28.55 Civil action—discrimination complaints.

(a) An employee alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 120 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO.

(b) An employee alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 120 days from filing an appeal with the Board if there is no final decision on that discrimination appeal or within 30 days of receipt of notice of final action taken by the Board.

(c) Employees or applicants for employment alleging discrimination based upon a handicapping condition (29 U.S.C. 791, 794a—Rehabilitation Act), or age discrimination (29 U.S.C. 631, 633a—Age Discrimination in Employment Act), or salary inequity due to sex (29 U.S.C. 206d—Equal Pay Act provisions of the Fair Labor Standards Act) need not exhaust administrative appeals to GAO or to the Board before filing suit in the Federal District Court.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Disciplinary and Stay Proceedings

§ 28.101 General authority.

The procedures in this Subpart relate to the Board's functions "to consider, decide and order corrective or disciplinary action (as appropriate) in cases arising" from any area within the Board's jurisdiction.

§ 28.103 Investigative authority.

In addition to the authority vested by the Act in the General Counsel to investigate allegations of prohibited personnel practices and prohibited political activities, the Board may request the General Counsel to investigate any personnel matter in a case under the Board's jurisdiction to determine whether reasonable grounds exist upon which to bring disciplinary action against an employee of GAO.

§ 28.105 Disciplinary proceedings.

(a) If the General Counsel determines after any investigation under § 28.103 of this part or § 4(g) of the Act that disciplinary action should be taken against an employee, the General Counsel shall prepare a written complaint against the employee containing his/her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board in accordance with paragraph (b) and (c) of this section.

(b) In the case of an employee in a confidential, policy making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate, the complaint and statement referred to in paragraph (a) of this section with any response by the employee, shall be presented to the President and the Congress for appropriate action in lieu of being presented under paragraph (d) of this section.

(c) Any employee against whom a complaint has been presented to the Board under paragraph (a) of this section is entitled to:

(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) be represented by an attorney or other representative;

(3) a hearing before the Board or a member designated by the Board;

(4) have a transcript kept of any hearing under paragraph (c)(3) of this section; and

(5) a written decision and reasons therefor at the earliest practicable date, including a copy of a final order imposing disciplinary action.

(d) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from GAO employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of civil penalty not to exceed $1,000.

(e) There may be no administrative appeal from an order of the Board under subparagraph (d). An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States Court of Appeals for the judicial circuit in which the employee resides or to the United States Court of Appeals for the District of Columbia in accordance with § 4(1) of the Act.

§ 28.107 Stay proceedings.

(a) If the General Counsel determines after an investigation under these rules that there are reasonable grounds to believe that a personnel action was taken, or is to be taken, in violation of the rights guaranteed under the Act, the General Counsel may request any member of the Board to order a temporary stay of the personnel action for a period of not more than 60 days.

(b) A Board member shall order a temporary stay under paragraph (a) of this section unless the member determines that such a stay would not be appropriate. Unless denied, any temporary stay requested shall be granted within 3 working days after the date of request.

(c) The Board may grant a further temporary stay or a permanent stay if the Board concurs in the determination of the General Counsel and after an opportunity for oral or written comment by the General Counsel and GAO.

Subpart H—Appeals by Members of the Senior Executive Service

§ 28.111 Appeals by SES members.

Appeals by members of the Senior Executive Service established by GAO shall generally be conducted in accordance with the procedures set forth at Subpart B and subchapter V of Chapter 75 of title 5 of the U.S. Code.

Subpart I—Public Information, Privacy and Disclosure

§ 28.121 Freedom of Information.

(a) In the administration of the Act, the Board shall carry out the purposes of the Freedom of Information Act, as amended, 5 U.S.C. 552, to disseminate information on matters of interest to the public, and to disclose to members of the public, on request, such information contained in its records as is compatible with the discharge of the responsibilities of the Board.

(b) any individuals wishing to obtain material from the Board shall file a request in a form prescribed by the Board.

(c) When the Board finds it appropriate to grant the request for information, it shall supply such information and may charge reasonable fees for searching, copying and transmitting it.

(d) If the Board finds the material requested to be included among matters not required to be divulged, it may refuse the request.

§ 28.123 Privacy.

(a) In the administration of the Act, the Board shall carry out the purposes of the Provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, applying to all records containing information about an individual.

(b) The Board shall:

(1) authorize an individual's access to any records it maintains concerning that individual;

(2) limit access by any other person to those records; and

(3) permit an individual to request the amendment or correction of records about the individual.

(c) The Board may assess reasonable charges for supplying information in response to requests filed under this subpart.

Edward C. Gallas,

Chairman.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 294, Amdt. 2]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action increases the quantity of California-Arizona lemons that may be shipped to the fresh market during the period March 1–7, 1981. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: This amendment is effective for the period March 1–7, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This is not a major rule under E.O. 12291. This amendment is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A regulatory impact analysis on the marketing policy is available from William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again on March 4, 1981, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports continued good order business for lemons.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.594 Lemon Regulation 294 (46 FR 14339; 15493) is revised to read as follows:

§ 910.594 Lemon Regulation 294.

The quantity of lemons grown in California and Arizona which may be handled during the period March 1, 1981, through March 7, 1981, is established at 260,000 cartons.

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

Dated: March 5, 1981.

D. S. Kuryloski,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 81-7524 Filed 3-9-81; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Parts 21, 216, 326, 563a and 748

Joint Notice of Elimination of Form Reports Required Under Regulations Implementing the Bank Protection Act

AGENCIES: The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: The agencies represented on the Examination Council have reviewed the reporting requirements imposed on financial institutions under the above regulations. These regulations (except for those imposed by the National Credit Union Administration) were originally adopted pursuant to the Bank Protection Act (12 U.S.C. 1881–84). The agencies have determined that certain of these reporting requirements impose unnecessary reporting burdens upon the financial institutions. The usage of these forms is quite limited. Accordingly, in keeping with the objective of removing regulations that are no longer justified,

the agencies are deleting their "reports on security devices" regulations and, for those that have them, their requirements that financial institutions submit copies of their written security programs and exceptions statements for agency filing. Federal examiners will continue to review each institution's compliance with agency security regulations during regular supervisory examinations.

EFFECTIVE DATE: March 10, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Board of Governors of the Federal Reserve System, (202) 452–3622; Jesse G. Snyder, Federal Deposit Insurance Corporation, (202) 389–4415; James Stewart, Federal Home Loan Bank Board, (202) 377–6457; Layne Bumgardner, National Credit Union Administration, (202) 357–1065; and Robert M. Taylor, III, Office of the Comptroller of the Currency, (202) 447–1880.

SUPPLEMENTARY INFORMATION: This amendment revises 12 CFR 21.5, 216.5, 326.5, 563a.5, and 748.4 by removing the requirements for submission of "Reports on security devices." Currently, four of the five regulatory agencies represented on the Examination Council have regulations which require financial institutions to submit, periodically, form reports on security devices. These form regulations are contained in 12 CFR 21.5(c) (Comptroller of Currency Form CC–9030–01); 12 CFR 216.5(b) (Federal Reserve Board Form P–1); 12 CFR 326.5(c) (Federal Deposit Insurance Corporation Form P–1); and 12 CFR 563a.5(b) (Federal Home Loan Bank Board Form P–1). The National Credit Union Administration requires a similar report from insured credit unions pursuant to the insuring of the credit union (12 CFR 748.4 and appendix to 12 CFR Part 748).

The Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board and the National Credit Union Administration also are amending their regulations to eliminate a requirement that the financial institutions under their respective jurisdictions file with those agencies copies of their written security programs and their statements of justification for exceptions to the agencies' standards for security. The Board of Governors is deleting the filing requirements for state member banks found in 12 CFR 216.3 and 216.4; the Federal Home Loan Bank Board is deleting the filing requirements for FSLIC-insured savings and loan associations in 12 CFR 563a.3 and 563a.4; and the National Credit Union Administration is deleting the filing requirements for Federally-insured credit unions found in 12 CFR 748.0(b), 748.3(c) and 748.4(a). The existing regulations of the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency do not include these filing requirements.

This amendment will lessen the regulatory burden upon financial institutions by relieving them of unnecessary reporting requirements. Therefore, the agencies have determined, in accordance with 5 U.S.C. 553, that notice and public procedure requirements and delayed effectiveness are unnecessary and would be contrary to the public interest.

The notices of individual agency actions to amend their respective regulations follow.

Drafting Information:

The principal drafter of this document is Robert M. Taylor, III, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219.

Adoption of Amendments:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 216—Notice of Amendment

12 CFR Part 216 is amended as follows:

PART 216—MINIMUM SECURITY DEVICES AND PROCEDURES FOR FEDERAL RESERVE BANKS AND STATE MEMBER BANKS

1. The authority citation for Part 216 is as follows:

Authority: 12 U.S.C. 1881–1884.

§ 216.3 [Amended]

2. Section 216.3 is amended by removing from the last sentence of paragraph (c) the words: "and forward a copy of that statement to the Federal Reserve Bank for the District in which its main office is located."

§ 216.4 [Amended]

3. Section 216.4 is amended by removing from the last sentence of paragraph (a) the words: "and a copy shall be filed with the Federal Reserve Bank for the District in which the main office of the bank is located."

§ 216.5 [Amended]

4. Section 216.5 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and redesignating paragraph (d) as paragraph (c).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326—Notice of Amendment

12 CFR Part 326 is amended as follows:

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES FOR INSURED NONMEMBER BANKS

1. The authority citation for Part 326 is as follows:

Authority: 12 U.S.C. 1881–1884.

§ 326.5 [Amended]

2. Section 326.5 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and redesignating paragraph (e) as paragraph (d).

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563a—Notice of Amendment

PART 563—OPERATIONS

12 CFR Part 563a is amended as follows:

1. The authority citation for Part 563a is as follows:

Authority: 12 U.S.C. 1881–1884.

§ 563a.3 [Amended]

2. Section 563a.3 is amended by removing the phrase "and forward a copy of that statement to the Chief Examiner" at the end of paragraph (c).

§ 563a.4 [Amended]

3. Section 563a.4 is amended by removing the phrase "and a copy shall be filed with the Chief Examiner" at the end of paragraph (a).

§ 563a.5 [Amended]

4. Section 563a.5 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and redesignating paragraph (d) as paragraph (c).

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748—Notice of Amendment

12 CFR Part 748 is amended as follows:

PART 748—MINIMUM SECURITY DEVICES AND PROCEDURES

1. The authority citation for Part 748 is as follows:

Authority: Section 205 (12 U.S.C. 1785).

§ 748.0 [Amended]

2. Section 748.0(b) is amended by removing "If a federally insured credit

union does not believe it can comply with any section of this Part, such credit union shall submit the reasons therefor to the Regional Director for approval or disapproval."

§ 748.3 [Amended]

3. Section 748.3(c) is amended by removing "and forward a copy of that statement to the Regional Director. In the case of federally insured State-chartered credit unions, this statement shall be mailed to the Regional Director. If the appropriate State supervisory authority desires, this statement shall be mailed to the Regional Director via the State supervisory authority. In any event, a copy of the statement shall always be sent to the appropriate State supervisory authority.", and by inserting a period (.) after "decision."

§ 748.4 [Amended]

4. Section 748.4(a) is amended by removing "and a copy shall be filed with the Regional Director with the certification required by Section 748.5 below and with the appendix to this Part pertaining to the Report on Security Measures. In the case of federally insured State-chartered credit unions, these items shall be mailed to the Regional Director. If the appropriate State supervisory authority desires, these items shall be mailed to the Regional Director via the State supervisory authority. In any event, copies of these items shall always be sent to the appropriate State supervisory authority.", and by inserting a period (.) after "effectiveness."

5. Remove Part 748 appendix "Report on Security Measures."

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR Part 21—Notice of Amendment

12 CFR Part 21 is amended as follows:

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES FOR NATIONAL AND DISTRICT BANKS

1. The authority citation for Part 21 is as follows:

Authority: 12 U.S.C. 1881–1884.

§ 21.5 [Amended]

2. Section 21.5 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and redesignating paragraph (e) as paragraph (d).

On behalf of their respective agencies:

Dated: March 3, 1981.

James McAfee,

Assistant Secretary, Board of Governors of the Federal Reserve System.

Dated: March 3, 1981.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: March 3, 1981.

J. J. Finn,

Secretary to the Board, Federal Home Loan Bank Board.

Dated: March 3, 1981.

Rosemary Brady,

Secretary to NCUA Board, National Credit Union Administration.

Dated: March 3, 1981.

Paul M. Homan,

Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency.

[FR Doc. 81-7386 Filed 3-9-81; 8:45 am]

BILLING CODE 6722-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-17580; File No. S7-814]

National Market System Plans; Procedures and Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of a rule establishing procedures and requirements for joint industry plans in connection with planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. The rule establishes procedures relating to Commission approval of national market system plans and amendments to such plans.

EFFECTIVE DATE: May 11, 1981.

FOR FURTHER INFORMATION CONTACT: Bruce Beatt (202–272–2838), Room 390, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission" or "SEC") today announced the adoption of Rule 11Aa3–2[1] under the Securities Exchange Act of 1934[2] ("Act"), which establishes approval of joint industry plans in connection with the planning, developing, operating or regulating of a national market system (or a subsystem thereof) or one or more facilities thereof ("NMS Plans"). Rule 11Aa3–2 specifies procedures for filing and amending NMS Plans (including amendments initiated by the Commission) and establishes certain minimum procedural and substantive requirements applicable to NMS Plans.

I. Background

On December 7, 1979, the Commission issued a release ("Proposing Release") publishing for comment proposed Rule 11Aa3–2 ("Rule") under the Act.[3] The proposed Rule, which was designed to implement the provisions of Section 11A(a)(3)(B) of the Act,[4] would have established certain procedures and requirements applicable to NMS Plans,[5] including the following:

[1] 17 CFR 240.11Aa3–2.

[2] 15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] *See* Securities Exchange Act Release No. 16410 (December 7, 1979), 44 FR 72606.

[4] 15 U.S.C. 78k–1(a)(3)(B). Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. In the Proposing Release, the Commission reviewed its historical commitment to joint industry action to achieve the goals and facilities of a national market system. *See* Proposing Release, *Id.*, at 2–11, 44 FR 72607–72608.

[5] Currently, NMS Plans include (1) the joint industry plan to govern the implementation and operation of the consolidated transaction reporting system ("CTA Plan") (*see* Securities Exchange Act Release Nos. 10787 (May 10, 1974) and 16589 (February 19, 1980), 39 FR 17799 and 45 FR 12377); (2) the joint industry plan to govern the implementation and operation of the consolidated quotation system ("CQ Plan") (*see* Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521); (3) the joint industry plan to govern the implementation and operation of the Intermarket Trading System ("ITS Plan"), approved by the Commission on a temporary basis (*see* Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069). In addition, a joint industry plan to govern the reporting of options last sale and quotation information has been filed with the Commission in order to obtain Commission approval of the plan under Section 11A(a)(3)(B). *See* Securities Exchange Act Release No. 16519 (January 22, 1980), 45 FR 6677.

Furthermore, the Commission recently has adopted Rule 11Aa2–1 under the Act, which establishes procedures by which securities or classes of securities would be designated as qualified for trading in a national market system. *See* Securities Exchange Act Release No. 17549 (February 17, 1980) ("Designation Release"). Paragraph (c) of that rule requires that, by July 15, 1981, the National Association of Securities Dealers, Inc., ("NASD") file with the Commission a designation plan to establish various designation procedures. Because the designation plan would be filed by a single self-regulatory organization ("SRO"), it would not be subject to Rule 11Aa3–2.

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(1) procedures relating to the filing and approval of NMS Plans and amendments thereto as proposed by NMS Plan sponsors;[6] (2) procedures relating to amendments to NMS Plans proposed by the Commission;[7] (3) requirements regarding the content of NMS Plans;[8] (4) subject to various exceptions, a requirement that competitive bidding be conducted in connection with certain aspects of the development or operation of facilities contemplated by NMS Plans;[9] (5) a requirement that NMS Plans required to be filed pursuant to another Commission rule comply with all other provisions of that rule;[10] and (6) a requirement that NMS Plan sponsors and participants comply with the terms of NMS Plans and that each SRO, absent reasonable justification or excuse, enforce compliance with any NMS Plan by its members and persons associated with its members.[11]

II. Discussion of Comments

In response to the proposal of Rule 11Aa3–2, the Commission received comments from six persons, including three national securities exchanges, the NASD, one broker-dealer and one securities information vendor.[12] While the commentators were generally in favor of adoption of the Rule, all but one of the commentators strongly criticized the competitive bidding requirement contained in the Rule. In addition, various commentators suggested changes in the procedural provisions of the Rule. After considering these comments, the Commission has determined to adopt Rule 11Aa3–2 in a revised format, effective sixty days following publication in the **Federal Register**. In particular, the Commission has withdrawn the competitive bidding requirement and replaced it with a requirement that NMS Plan sponsors provide the Commission with a statement explaining the reasons for the selection of any person to act as plan processor in connection with the operation of any NMS Plan facility. In addition, the Commission has made certain changes in the procedural provisions of the Rule.[13]

A. *Competitive Bidding.* As indicated, commentators strongly criticized the competitive bidding requirement contained in the Rule. The SROs argued that a competitive bidding requirement was not necessary to deal with any perceived national market system concern, was inconsistent with the industry cooperation which has characterized national market system developments to date, and would involve substantial costs which could not be justified by the benefits which might be obtained.[14] On the other hand, the only securities information processor which commented on the Rule supported the competitive bidding requirement.[15]

The Commission believes that the differing positions of commentators may reflect differing competitive interests. Most national market system and related facilities implemented to date have been designed and built by the SROs themselves or related entities.[16] While the Commission has not determined that the resultant facilities have been poorly designed or inefficiently operated, it would appear that securities information processors which do not possess any control relationship with an SRO have found it difficult to participate effectively in national market system planning and development.

The Commission's responsibility under the Act is not to act as the arbiter of individual competitive interests but instead to further the objectives set forth in Section 11A of the Act, including those relating to the enhancement of competition in the securities industry.[17] While the Commission has not concluded that competitive bidding is a necessary requirement to further these objectives,[18] the Commission believes that it is important that SROs give adequate consideration to alternative plan processors in connection with the operation of national market system facilities. Consideration of alternative processors would appear to be in the sponsors' interest since such consideration may result in achieving long-run cost savings and operating efficiencies. On the other hand, the Commission recognizes the concerns expressed by commentators that any effective competitive bidding requirement would be burdensome and costly. As a consequence, the Commission has determined to withdraw the competitive bidding requirement contained in the Rule as proposed and to replace it with a requirement that, in connection with the selection of any person to act as an NMS Plan processor, the NMS Plan sponsors file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.[19] The Commission

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although it will be subject to similar procedural provisions, which are contained in paragraphs (d) and (e) of Rule 11Aa2–1. However, if in connection with a designation plan filed pursuant to Rule 11Aa2–1, other changes are made to an existing NMS Plan, such as the CTA Plan, those changes would be subject to the Rule.

Finally, the Commission has requested the various SROs to develop and implement a joint plan to provide a mechanism to ensure price protection for public limit orders. *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360. *See also* Securities Exchange Act Release No. 15770 (April 26, 1979), 44 FR 26692.

[6] Proposed Rule 11Aa3–2(b) and (c).

[7] *Id.*

[8] Proposed Rule 11Aa3–2(b).

[9] Proposed Rule 11Aa3–2(b)(6).

[10] Proposed Rule 11Aa3–2(b)(5).

[11] Proposed Rule 11Aa3–2(d).

[12] *See* letter from J. Stephen Putnam, President, F.L. Putnam & Company, Inc. to George A. Fitzsimmons, Secretary, SEC, dated January 30, 1980; letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE"), to George A. Fitzsimmons, Secretary, SEC, dated March 14, 1980 ("NYSE Letter"); letter from Scott L. Lager, Executive Vice President and General Counsel, Chicago Board Options Exchange, Inc. ("CBOE"), to George A. Fitzsimmons, Secretary, SEC, dated March 19, 1980, re File No. S7–807 ("CBOE Letter I"); further letter from Scott L. Lager, Executive Vice President and General Counsel, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated March 19, 1980, re File No. S7–814 ("CBOE Letter II"); letter from Murray Sumner, Bunker Ramo Corporation, to George A. Fitzsimmons, Secretary, SEC, dated March 14, 1980 ("Bunker Ramo Letter"); letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated April 1, 1980 ("NASD Letter"); and letter from Robert J. Birnbaum, President, American Stock Exchange, Inc. ("Amex"), to George A. Fitzsimmons, Secretary, SEC, dated April 8, 1980 ("Amex Letter"). These letters (including CBOE Letter II) are contained in File No. S7–814.

[13] In connection with the adoption of the Rule, the Commission is also modifying Rule 11Aa3–1 [17 CFR 240.11Aa3–1] to conform that rule to the provisions of the Rule. See Securities Exchange Act Release No. 16589 (February 19, 1980), at 10 n. 16, 45 FR 12377, 12379 n. 16, and Proposing Release, *supra* note 3, at 12 n. 18, 44 FR 72606 n. 18. In incorporating the appeals provision contained in the Rule, the modification of Rule 11Aa3–1 deletes the words "and other users of transaction reports or last sale data" in former paragraph (g) of Rule 11Aa3–1. However, this modification is not intended to have the effect of limiting the class of aggrieved persons who may bring appeals to the Commission. Finally, the modifications to Rule 11Aa3–1 do not reflect the amendments to that rule adopted recently in the Designation Release (*see* note 5, *supra*) because those amendments are not due to be effective until February 1982.

[14] *See, e.g.*, NYSE Letter, *supra* note 12, at 7–8 and Appendix 1 thereto; and NASD Letter, *supra* note 12.

[15] *See* Bunker Ramo Letter, *supra* note 12.

[16] For example, the Securities Industry Automation Corporation, the CTA, CQ and ITS Plan processor, is a joint subsidiary of the Amex and NYSE, and NASD Market Services Inc., which is involved in ongoing enhancements of the NASDAQ system, is a subsidiary of the NASD.

[17] *See* Section 11A(a)(1) (C)(ii) and (D) of the Act, 15 U.S.C. 78k–1(a)(1) (C)(ii) and (D).

[18] *See Bradford National Clearing Corp.* v. *SEC*, 590 F. 2d 1085 (D.C. Cir. 1978). *Cf.* Securities Exchange Act Release No. 17562 (February 20, 1981).

[19] *See* Rule 11Aa3–2(b)(6). The new requirement would not apply to any selection of a plan processor

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anticipates that the information obtained in connection with the receipt of these statements will enable it ultimately to determine whether it is necessary to require competitive bidding or any other measure in order to foster competition and enhance efficiency in this aspect of the securities industry.

B. *Procedural Requirements.* A number of commentators argued that the procedures contained in Rule 11Aa3–2 should be analogous in all relevant respects to the procedural requirements contained in Section 19 of the Act.[20] Specifically, these commentators asserted that the Rule should be modified to require Commission action on NMS Plans and amendments thereto within the time periods specified in Section 19(b) of the Act, to provide for summary effectiveness of certain filings as also specified in Section 19 of the Act and to provide more precise parallels between the appeals procedure contained in the Rule and that contained in Section 19 of the Act.

The Commission does not believe that it was the intent of Congress to treat NMS Plans as analogous to SRO rules and thereby incorporate the provisions of Section 19 into Section 11A(a)(3)(B). To the contrary, the legislative history of the Securities Acts Amendments of 1975 [21] ("1975 Amendments") indicates that Congress viewed the Commission's authority in Section 11A(a)(3)(B) as distinct from its authority contained in Section 19 or any other provision of the Act.[22] Moreover, had Congress wished to make clear an intention that Section 11A(a)(3)(B) be subject to the procedures contained in Section 19, it could have simply incorporated by reference the provisions contained in Section 19 into Section 11A(a)(3)(B) or repeated those provisions in Section 11A(a)(3)(B).[23]

Notwithstanding the foregoing, the Commission believes that certain of the specific suggestions of the commentators with respect to the procedures governing NMS Plans are appropriate and should be included in the Rule.[24] First, the Rule as adopted provides that, within 120 days of the date of publication of notice of filing of an NMS Plan or an amendment to an effective NMS Plan, or within a longer period of up to 180 days if the Commission finds such longer period appropriate or such longer period as to which the NMS Plan sponsors consent, the Commission shall approve the NMS Plan or amendment subject to the Commission having made the necessary findings required by the Rule.[25] Second, the Rule as adopted provides that a proposed amendment to an NMS Plan may be put into effect upon filing with the Commission if designated by the NMS Plan sponsors as (a) establishing a fee or other charge collected on behalf of all of the NMS Plan sponsors and/or participants in connection with access to, or use of, any facility contemplated by the NMS Plan; (b) concerned solely with the administration of the NMS Plan, or involving the governing or constituent documents relating to any person (other than an SRO) authorized to implement or administer the NMS Plan; or (c) involving only technical matters. However, at any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that it be refiled in accordance with the otherwise applicable procedures contained in the Rule.[26] Third, the Rule as adopted contains procedures relating to Commission review of any action taken or failure to act by any person in connection with an NMS Plan which more closely parallel the provisions of Sections 19(d) and (f) of the Act than the Rule as proposed.[27]

C. *Commission Initiation of Amendments to NMS Plans.* While no commentator questioned the Commission's authority to initiate amendments to MNS Plans,[28] several commentators [29] argued that the procedures followed by the Commission in initiating any amendment should be analogous to those required in connection with Commission action to amend the rules of an SRO under Section 19(c) of the Act.[30] In addition, one commentator suggested that, because of the broad authority which the Commission could exercise in initiating amendments to an NMS Plan, and the possibility that the potential exercise of this authority might reduce cooperation among NMS Plan participants, the circumstances under which the Commission might initiate amendments to NMS Plans "should be set forth in the Rule with greater specificity." [31]

For the reaons articulated above, the Commission does not believe that there is any legal requirement that Commission initiated amendments to NMS Plans be processed in accordance with the procedures specified in Section 19(c) of the Act. Moreover, as a policy matter, the Commission does not believe it is appropriate to require oral presentation of views at an on-the-record hearing for Commission initiated

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prior to the effective date of the Rule. In addition, the requirement would not apply to the selection of a person to supply hardware or software in connection with an NMS Plan facility. In this connection, the Commission notes that the SROs have generally purchased hardware and software for national market system related facilities from independent entities and that, as a result, the selection of a person to provide hardware or software does not necessarily involve regulatory concerns similar to those related to the selection of a person to act as NMS Plan processor.

[20] *See, e.g.*, NYSE Letter, *supra* note 12, at 9–10; CBOE Letter II, *supra* note 12, at 1–10. Thus, the NYSE took the position that "NMS Plans are conceptually simply joint SRO rules—in effect, a special series of rules subject to Section 19." The CBOE stated that "[b]ecause of the similarity between amending SRO rules and amending joint SRO plans it appears to us that the starting point for the establishment of procedures to be followed under section 11A should be those that are contained in subsections 19 (b) and (c), modified as may be necessary to reflect their application to joint SRO action under section 11A." Among other things, Section 19 of the Act contains requirements applicable to the filing by SROs of proposed rule changes. *See* Section 19(b) of the Act, 15 U.S.C. 78s(b).

[21] Pub. L. No. 94–29 (June 4, 1975).

[22] Thus, the Senate Report on the bill which was the precursor of the 1975 Amendments, in discussing proposed Section 19(c) of the Act (authorizing the Commission to amend SRO rules and providing certain specialized procedures applicable to Commission action), stated that

> In order to avoid any doubt as to the SEC's authority in areas where its direct authority overlaps its indirect authority, Section 19(c)(4) would make clear that where the Commission has direct authority, it would not be required to proceed under Section 19(c) or to follow the procedures specified in that section.

See Senate Comm. on Banking, Housing & Urb. Aff., *Report to Accompany S. 249*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 31 (1975), reprinted in [1975] U.S. Code Cong. & Ad. News 179, 209.

[23] In this regard, it is noteworthy that the modifications in Commission oversight of SRO rulemaking in Section 19 and the inclusion of Section 11A(a)(3)(B) were both considered in connection with the enactment of the 1975 Amendments.

[24] In addition, the Commission has retained various other provisions in the proposed Rule which are analogous to provisions contained in Section 19. For example, the Commission has retained, with certain modifications, the provision permitting the Commission to approve an amendment summarily upon publication of notice on a temporary basis. Rule 11Aa3–2(c)(4). *Cf.* Section 19(b)(3)(B) of the Act.

[25] *See* Rule 11Aa3–2(c)(2). *Cf.* Section 19(b)(2) of the Act.

[26] *See* Rule 11Aa3–2(c)(3). *Cf. Section 19(b)(3)(A) and (C) of the Act.*

[27] *See* Rule 11Aa3–2(e).

[28] *See* Proposing Release, *supra* note 3, at 14 n. 22, 44 FR 72609 n. 22. The Rule provides that Commission initiation of an amendment to an NMS Plan shall be by rule. The Commission would note, however, that the Commission is also authorized under Section 11A(a)(3)(B) to act by order.

[29] *See e.g.*, NYSE Letter, *supra* note 12, at 12; Amex Letter, *supra* note 12, at 10–12.

[30] The Commission's action under Section 19(c) is governed by the requirements contained in the Administrative Procedure Act, 5 U.S.C. 553 *et seq.*, for rulemaking not on the record, with certain exceptions. Most significantly, the Commission is required under Section 19(c) to give interested persons an opportunity for oral presentation of data, views, and arguments (in addition to an opportunity to make written submissions), and a transcript must be kept of any oral presentation.

[31] *See* Amex Letter, *supra* note 12, at 11.

amendments to MNS Plans. The Commission believes that, in light of Congress' desire to provide the Commission with maximum flexibility in facilitating the development of a national market system, such a requirement would be inappropriate. The Commission has, however, provided procedures which are similar to those for SRO sponsored amendments which have been derived from Section 19(b) of the Act.

With respect to the comment that the Commission should specifically set forth the circumstances under which the Commission might initiate amendments to NMS Plans, the Commission would reiterate its views expressed in the Proposing Release.[32] The Commission hopes that the Commission and industry will cooperate to the maximum extent feasible in the development of the national market system and therefore anticipates that it will be necessary to use the Commission's authority only in extraordinary circumstances. In addition, the Commission does not believe that it would be practicable to attempt to delineate the particular circumstances in which the Commission might deem it appropriate to exercise its authority. For these reasons, the Commission has determined not to attempt to set forth in the Rule as adopted the circumstances under which it might exercise its authority to propose amendment to NMS Plans.

D. *Information Contained in NMS Plans.* For a number of reaons, several commentators criticized paragraphs (b)(3) and (4) of the Rule which specify certain information required to be contained in any NMS Plan filed with the Commission.[33] Specifically, these commentators argued that the actual manner in which an NMS Plan facility may develop is unpredictable and that as a result the requirement to provide particularized information with respect to the implementation and operation of the NMS Plan at the time the NMS Plan is filed with the Commission might adversely affect the administration of an NMS Plan. In addition, a number of the specific items of information were criticized. In particular, it was argued that the requirement in Rule 11Aa3-2(b)(3)(iv) as proposed that the NMS Plan or amendment include "an analysis of the impact on competition of implementation of the plan or amendment or any facility contemplated by the plan or amendment" was unclear without an indication of how the Commission would interpret the term "analysis," and it was suggested that this requirement be revised to require only a statement as to whether any burden on competition would be imposed by the adoption of the plan or amendment and, if so, an explanation of why the imposition of the burden would be consistent with the requirements of the Act.[34] In addition, it was argued that the specific fees or charges in connection with the NMS Plan should not be required to be contained in the NMS Plan because of the administrative burdens and delays which could occur after the NMS Plan was filed, unless these fees and charges could be changed without obtaining prior Commission approval.[35]

With one exception, the Commission has retained the substance of the informational requirements contained in Rule 11Aa3-2(b)(3) and (4).[36] While the Commission recognizes that NMS Plans may well be modified in the course of their development, the Commission does not believe that this factor should preclude the requirement of particularized information with respect to the NMS Plan when it is filed with the Commission.[37] Rather, the Commission would anticipate that the NMS Plan participants will use their best efforts to provide the required information. In the event that material changes occur in the development of the NMS Plan which would make the information filed inaccurate, the NMS Plan participants should file an amendment to the NMS Plan with the Commission. The Commission will cooperate with the NMS Plan participants in minimizing administrative concerns by exercising its authority to approve amendments to NMS Plans summarily on a temporary basis where appropriate.[38]

This Commission is unable to agree with the view that an analysis of the impact on competition of implementation of the NMS Plan should not be required of the NMS Plan sponsors. It would seem beyond question that the NMS Plan sponsors are in the best position to provide the information necessary for the Commission to ascertain the effects of an NMS Plan on competition. In addition, because NMS Plans involve joint action by NMS Plan sponsors and participants, the Commission believes that it must be particularly cognizant of, and sensitive to, the effects of an NMS Plan on competition in connection with the exercise of the Commission's statutory authority to approve NMS Plans. Accordingly, the Commission believes that statements made by the NMS Plan sponsors with respect to the effects of the NMS Plan on competition must be sufficiently detailed and specific to support a Commission finding that the NMS Plan furthers the objectives [39] set forth in Section 11A of the Act with respect to competition.[40]

Finally, the Commission believes that it has met concerns expressed regarding the required description of specific fees or charges in an NMS Plan by its addition to the Rule of a provision permitting such fees or charges to be put into effect immediately upon publication of notice of the filing thereof, subject to the Commission's right to abrogate those fees or charges summarily within 60 days thereafter.[41]

E. *Compliance Provisions.* One commentator argued that the provisions contained in paragraphs (b)(5) and (d) of the Rule as proposed should be deleted.[42] Proposed Rule 11Aa3-2(b)(5) provided that any NMS Plan required to be filed pursuant to a Commission rule [43] comply with all other provisions of that Commission rule. Rule 11Aa3-2(d) provided that every SRO and non-member broker or dealer shall comply with the terms of any NMS Plan of which it is a sponsor or a participant. In addition, it provided that every SRO shall, absent reasonable justification or excuse, enforce compliance with any NMS Plan by its members and persons

[32] *See* Proposing Release, *supra* note 3, at 13, 44 FR 72609.

[33] *See, e.g.*, NYSE Letter, *supra* note 12, at 3-4; CBOE Letter II, *supra* note 12, at 4-5; Amex Letter, *supra* note 12, at 13.

[34] *See* Amex Letter, *supra* note 12, at 13.

[35] *See* Amex letter, *supra* note 12, at 14-15; CBOE Letter I, *supra* note 12, at 5-7.

[36] Since the Commission has withdrawn the proposed competitive bidding requirement, the Commission has determined to withdraw the requirement contained in proposed Rule 11A3-2(b)(3)(iii) that an NMS Plan provide a statement of the method by which any significant contracts for any phase of development and implementation will be let.

The requirements contained in paragraphs (b)(3) and (4) of the Rule as proposed are contained in paragraphs (b)(4) and (5) of the Rule as adopted.

[37] However, the informational requirements would not apply to any NMS Plan or amendment approved prior to the effective date of the Rule.

[38] In addition, the Commission would note that it has delegated to the staff its authority to approve NMS Plan amendments. *See* 17 CFR 200.30-3(29).

[39] *See* text and note at note 17, *supra*.

[40] It may be noted that similar comments were received in connection with the Commission's proposal to amend Form 19b-4, the form on which SRO proposed rule changes are filed, to specify in detail the information that a SRO should provide in a discussion of effects of a proposed rule on competition. For reasons similar to those articulated herein, the Commission rejected the view that a detailed discussion would be too burdensome, and it adopted the proposal. *See* Securities Exchange Act Release No. 17258 (October 30, 1980), at 14-15, 45 FR 73906, 73909.

[41] *See* text and note at note 26, *supra*.

[42] CBOE Letter II, *supra* note 12, at 12-13.

[43] This provision would, for example, apply to plans filed pursuant to Rule 11Aa3-1 under the Act. *See* notes 5 and 13, *supra*.

associated with its members.[44] Although the validity of these provisions was not questioned, it was argued that the burdens imposed by these provisions were excessive and inappropriate. In this connection, it was asserted that NMS Plans should be analogized to contractual relationships, subject to ordinary legal means for enforcing contracts and assessing damages, rather than rule-type measures.[45]

The Commission has determined to retain these provisions.[46] Since the enactment of the federal securities laws in the 1930's, the concept of self-regulation has been a cornerstone of Commission and industry regulatory structure. While the Commission recognizes that the SROs should have flexibility in the operation of NMS Plans and facilities, the Commission believes that an essential part of the self-regulatory structure should be the obligation on the part of these entities to enforce the provisions of NMS Plans. Thus, the Commission continues to believe that Rule 11Aa3-2(b)(7) and (d) are appropriate provisions which advance the important role that the Commission has historically attached to joint industry action to achieve the goals and facilities of a national market system.[47] The Commission anticipates that the legal significance accorded NMS Plans by these provisions will underscore the need for SROs and broker-dealers to treat NMS Plans as controlling their behavior and thereby further the goals of a national market system. The Commission also would note that these provisions are analogous to other provisions added by the 1975 Amendments.[48]

F. *Technical Amendments.* The Commission has made a number of technical changes in the Rule in response to comments. First, several commentators argued that the definition of the term "national market system plan" in the Rule as proposed[49] was not confined to NMS Plans between or among two or more SROs and that as a result virtually any individual SRO facility might be deemed to come within the definition.[50] While the Commission believes that the definition of the term and other provisions of the Rule as proposed were adequately circumscribed,[51] the Commission has added the term "joint self-regulatory organization plan" to the Rule in order to remove any doubt that the Rule was not intended to apply to facilities which relate solely to an individual SRO.[52] Second, several commentators argued that the requirement for a description of fees or charges in proposed Rule 11Aa3-2(b)(4)(ii) might be broad enough to require a description of the fees or charges collected on behalf of an individual SRO rather than all NMS Plan sponsors jointly.[53] The Commission has modified this provision of the Rule to clarify that the required description would apply only to fees or charges collected on behalf of all NMS sponsors jointly. Finally, the Commission has removed certain definitions and modified other provisions of the Rule in order to simplify the Rule.

III. Effects on Competition

Section 23(a)(2) of the Act[54] requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has examined Rule 11Aa3-2 in light of the standards set forth in Section 23(a) and concludes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

IV. Text of Rule and Amendments

The Securities and Exchange Commission hereby amends Title 17, Chapter II, of the Code of Federal Regulations pursuant to its authority under the Securities Exchange Act of 1934[55] and particularly Sections 2, 3, 6, 9, 10, 11A, 15, 15A, 17 and 23[56] as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By adding § 240.11Aa3-2, to read as follows:

§ 240.11Aa3-2 Filing and amendment of national market system plans.

(a) *Definitions.* For purposes of this section, (1) The term "national market system plan" shall mean any joint self-regulatory organization plan in connection with

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof, or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations, their members or non-member brokers and dealers with any section of this subpart promulgated pursuant to section 11A of the Act.

(2) The term "effective national market system plan" shall mean any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to this section.

(3) The term "self-regulatory organization" shall mean any national securities exchange ("exchange") or national securities association ("association").

(4) The term "joint self-regulatory organization plan" shall mean a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.

(5) The term "sponsors," when used in connection with a national market system plan, shall mean any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan.

(6) The term "participant," when used in connection with a national market system plan, shall mean any self-regulatory organization or non-member broker or dealer which has agreed to act in accordance with the terms of the plan but which is not a signatory of such plan.

(7) The term "plan processor" shall mean any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.

(8) The term "vendor" shall have the meaning provided in § 240.11Aa3-1 (Rule 11Aa3-1 under the Act).

(9) The term "non-member broker or dealer" shall mean any broker or dealer which is not a member of an exchange or association.

(b) *Filing of national market system plans and amendments thereto.* (1) Any two or more self-regulatory

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[44] These provisions would, of course, apply to all NMS Plans approved by the Commission, whether or not approved by the Commission prior to the effective date of the Rule.

[45] On the other hand, this commentator, in arguing that the procedures contained in the Rule should be analogous to those in Section 19 of the Act, analogized NMS Plans to joint SRO rules. *See* CBOE Letter II, *supra* note 12, at 2-3.

[46] Proposed Rule 11Aa3-2(b)(5) has been redesignated as Rule 11Aa3-2(b)(7).

[47] *See* notes 4 and 5, *supra.*

[48] *Cf.* Sections 6(b)(1), 15A(b)(2) and 19(g)(1) of the Act.

[49] Proposed Rule 11Aa3-2(a)(1).

[50] *See, e.g.*, NYSE Letter, *supra* note 12, at 2-3.

[51] *See* proposed Rule 11Aa3-2(b)(2).

[52] *See* Rule 11Aa3-2(a)(4).

[53] *See, e.g.*, NYSE Letter, *supra* note 12, Appendix 2 at 4.

[54] 15 U.S.C. 78w(a)(2).

[55] 15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94-29 (June 4, 1975).

[56] 15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78k-1, 78o, 78o-3, 78g, and 78-w(a).

organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan ("proposed amendment") by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (b)(4) and (b)(5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (c) of this section.

(3) Self-regulatory organizations are authorized to act jointly in (i) planning, developing, and operating any national market subsystem or facility contemplated by a national market system plan, (ii) preparing and filing a national market system plan or any amendment thereto, or (iii) implementing or administering an effective national market system plan.

(4) Every national market system plan filed pursuant to this section, or any amendment thereto, shall be accompanied by (i) copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors and (ii), to the extent applicable,

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or particpants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.

(5) Every national market system plan, or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable,

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this subpart shall, in addition to compliance with this section, also comply with the requirements of such other section.

(c) *Effectiveness of national market system plans.* (1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (c)(3) of this section.

(2) Within 120 days of the date of publication of notice of filing of a national market system plan or an amendment to an effective national market system plan, or within such longer period as the Commission may designate up to 180 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the sponsors consent, the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Approval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as (i) Establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the sponsors and/or participants);

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (b)(1) of this section and reviewed in accordance with paragraph (c)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and

orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (c)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with (i) the planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof, or (ii) the development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this subpart promulguated pursuant to section 11A of the Act, approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either temporarily or on a permanent basis) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; *Provided, however,* That all terms and conditions associated with any such approval (including time limitations) shall continue to be applicable; and, *Provided, further,* That any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(d) *Compliance with terms of national market system plans.* Each self-regulatory organization and non-member broker or dealer shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.

(e) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or if it finds that such action or failure to act imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(f) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, non-member broker or dealer, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–l))

2. Section 240.11Aa3–1 is amended as follows:

(a) By removing paragraphs (a)(8), (b)(3), (b)(5), and (c);

(b) By redesignating paragraphs (a)(9) through (a)(13), and (b)(4) as paragraphs (a)(8) through (a)(12) and (b)(3) respectively. The introductory text of redesignated paragraph (b)(3) is revised. Paragraphs (d) through (h) are redesignated as paragraphs (c) through (g) respectively. A new paragraph (b)(4) is added and redesignated paragraphs (d) and (f) are revised to read as follows:

§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

* * * * *

(b) *Filing and effectiveness of transaction reporting plans.* * * *

* * * * *

(3) Any transaction reporting plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission, and considered for approval, in accordance with the procedures set forth in paragraphs (b) and (c) of § 240.11Aa3–2 governing national market system plans. Any such plan, or amendment thereto, shall specify, at a minimum:

* * * * *

(4) No transaction reporting plan filed pursuant to this section, or any amendment to an effective transaction reporting plan, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 240.11Aa3–2 (Rule 11Aa3–2 under the Act) governing national market system plans.

* * * * *

(d) *Retransmission of transaction reports or last sale data.* On and after

July 5, 1980, notwithstanding any provision of any effective transaction reporting plan, no exchange or association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan: *Provided, however,* That an exchange or association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (e) of this section are collected.

* * * * *

(f) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of paragraph (e) of § 240.11Aa3–2.

* * * * *

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29,89 Stat. 111 (15 U.S.C. 78k–1))

By the Commission.

George A. Fitzsimmons,

Secretary.

February 26, 1981.

[FR Doc. 81-7309 Filed 3-9-81; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM80–65]

Final Rule Governing Exemption From All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects With an Installed Capacity of Five Megawatts or Less

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order modifying order and denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission modifies a previous order dismissing as untimely an application for rehearing of the order establishing a case-specific procedure of exempting from all or part of Part I of the Federal Power Act any small hydroelectric power project with a proposed installed capacity of 5 megawatts or less and denies the application for rehearing on its merits. The application raises no new issues that would serve as a basis on which to grant rehearing.

FOR FURTHER INFORMATION CONTACT:

Kristina Nygaard, Acting Assistant General Counsel for Hydroelectric Licensing, Office of the General Counsel, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8448

James Hoecker, Division of Regulatory Development, Office of the General Counsel, 825 N. Capitol Street, N.E., Washington, D.C. 20426, (202) 357–9342

SUPPLEMENTARY INFORMATION:

Order Modifying an Order Granting Rehearing for Purposes of Further Consideration and Denying Rehearing of Order No. 106

Issued: March 2, 1981.

On November 7, 1980, the Commission issued Order No. 106 in Docket No. RM80–65. Order No. 106 establishes a case-specific procedure for exempting from all or part of Part I of the Federal Power Act (Act) any small hydroelectric power project with a proposed installed capacity of 5 megawatts or less. The rule implements in part section 408 of the Energy Security Act of 1980 (ESA) and creates Subpart K of Part 4 of the Commission's regulations.

On January 7, 1981, the Commission granted rehearing for the purpose of affording further time for consideration of two timely petitions for rehearing.[1] In that order, the Commission also dismissed a similar application for rehearing filed by the Municipal Electric Utilities of Wisconsin and the City of Shawano, Wisconsin (MEUW) because it appeard not to have been filed within the period provided for that purpose in § 1.34(a) of the Commission's regulations.

MEUW now applies to the Commission for rehearing of the order of January 7, 1981, based on its contention that the Commission received its petition for rehearing within the 30-day period provided in the regulations and that the petition was therefore timely filed, although not date stamped until after the last date for filing applications. MEUW requests that the order be modified to indicate that the application was timely filed.

Evidence of MEUW's timely filing under § 1.34(a) consists of Federal Express forms which demonstrate that a package allegedly containing the application at issue was received in the Commission mailroom, with a variety of unrelated material, on the last date for filing applications. MEUW argues that such delivery consititues proper filing because the Commission's regulations specify neither the office number of Commission's Secretary nor any other appropriate room for filing such documents.

Section 375.105(c) of the Commission's regulations states that hand-delivered documents must be filed in Room 3110 of the Commission's Washington headquarters. However, that section is of questionable applicability here. The filing provision in § 1.14(a) of the Commission's regulations, relied on by the applicant, does not identify a specific location for hand delivery. In any case, it may be difficult to obtain hand delivery to a specific room in a Federal building by means of courier service from outside the District of Columbia.

While the evidence submitted in support of MEUW's application does not conclusively show that the document which arrived on December 8, 1980 was the rehearing application at issue, the Commission will accept MEUW's attestation to that effect.

The Commission has previously addressed the issues raised in MEUW's application for rehearing of Order No. 106 and disposed of those arguments.[2] The Commission still finds no basis on which to grant rehearing of Order No. 106.

The Commission Orders

1. The request for modification of the Order Granting Rehearing for Purposes of Further Consideration filed in the form of an application for rehearing by the Municipal Electric Utilities of Wisconsin and the City of Shawano, Wisconsin is granted and its

[1] The Commission denied these petitions for rehearing of Order No. 106 on January 26, 1981, 46 FR 10458, February 3, 1981.

[2] The Commission's Order Denying Rehearing in Docket No. RM80–65, after reviewing the arguments made by other applicants with respect to construction of section 408 of the Energy Security Act of 1980, stated in a footnote (*mimeo*, at 3):

"This and related arguments are made in an application for rehearing filed by the Municipal Electric Utilities of Wisconsin and the City of Shawano, Wisconsin which was not filed on a timely basis and was therefore dismissed. Were the Commission to consider that application, it would find its arguments for rehearing similarly unpersuasive for the same reasons stated in this order."

Application for Rehearing of Order No. 106 is deemed timely filed.

2. The application for rehearing of Order No. 106 filed by the Municipal Electric Utilities of Wisconsin and the City of Shawano, Wisconsin in Docket No. RM80-65 is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7344 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

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18 CFR Part 250

[Docket No. RM76-15]

Regulation of Small Producers Order Denying Rehearing

Issued: March 3, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing and amending regulation.

SUMMARY: On August 10, 1977, and August 15, 1977, applications for rehearing and/or clarification of Order No. 568, *Order Amending and Clarifying Small Producer Regulations*, issued July 14, 1977, were filed. Order No. 568 amended regulations exempting small producers from certain filing requirements in 18 CFR 157.40. On September 7, 1977, the Commission granted rehearing for purposes of further consideration. This order denies the petitions for rehearing, and amends § 250.10 by inserting a copy of the application form small producers are required to file.

EFFECTIVE DATE: March 3, 1981.

FOR FURTHER INFORMATION CONTACT:
Richard E. Kelly, (202) 357-8315.

SUPPLEMENTARY INFORMATION: On August 10, 1977, and August 15, 1977, respectively, applications for rehearing and/or clarification of Order No. 568, *Order Amending and Clarifying Small Producer Regulations*, issued July 14, 1977, were filed by Texas Oil & Gas Corp., *et al.* (TXO) and American Liberty Company (American Liberty). Order No. 568 amended regulations exempting small producers from certain filing requirements in § 157.40. On September 7, 1977, the Commission [1] granted rehearing for purposes of further consideration.

I

Section 157.40(a)(1) provides that a small producer applicant's total annual jurisdictional sales volumes include the jurisdictional sales volumes of a pipeline company with which the applicant is affiliated. In its application for rehearing TXO contests this provision.

TXO states that the regulations provide that a producer need only include its own sales and sales by "affiliated producers" in computing its total annual jurisdictional sales volumes. It follows, TXO claims, that sales made by a pipeline company should not be included since a pipeline, by definition, is not a producer.

TXO further asserts that the same volumes may be counted twice where the small producer applicant makes sales to its affiliated pipeline since the gas will be counted once in the producer's sale and a second time in the pipeline's resale. TXO also states that if the jurisdictional sales of an affiliated pipeline company are to be considered, it is unclear whether the direct sales volumes of the pipeline are to be included.

We will deny rehearing. Prior to Order No. 568 the small producer regulations did not permit a producer to qualify as a small producer if it was affiliated with a natural gas pipeline company. The rationale for this policy was set forth in Order No. 308 [2] wherein the Commission first adopted the small producer regulations. There the Commission stated:

> El Paso has suggested that pipeline companies be excluded from the definition of "affiliated producers" under the common control test. We do not adopt this suggestion and make clear, to the contrary, that a company which is affiliated with a pipeline company is not eligible for the "small producer" classification, even though its jurisdictional sales be small. The rationale underlying the special relief afforded small producers applies only to fully-independent entities and not to companies which have the advantage of a pipeline affiliation.

In Order No. 568 the Commission relaxed this blanket pipeline affiliation prohibition and provided that a producer which was affiliated with a pipeline company other than a Class A pipeline could qualify for small producer status. The Commission also provided, however, that such a producer, in computing its total jurisdictional sales volume, would have to include the jurisdictional sales of its pipeline affiliate [3] as its own in the same fashion producer is required to include not only its own jurisdictional sales, but also the jurisdictional sales of the producer with which it is affiliated.[4] In this way the Commission sought to ascertain more accurately whether, in terms of jurisdictional sales, a small producer applicant was in fact "small." In our view, the approach adopted in Order No. 568 is reasonable and we will adhere to it.[5]

TXO also seeks rehearing of the Commission's decision to limit a small producer to the applicable large producer rate ceiling for sales from reserves developed by it while in large producer status. TXO states that the result of the new restriction is to limit severely the volumes which the small producer can sell at small producer rates. TXO also asserts that many producers which now qualify as small producers were regulated as large producers prior to the issuance of Order No. 428 [6] and are not now precluded from receiving small producer rate treatment for sales from reserves developed while they were so regulated.

One of the reasons that the Commission instituted the instant rulemaking proceeding was to amend the small producer regulations insofar as they apply to a situation such as that described by TXO.[7] In *Suburban Propane Gas Corporation*, Docket No. CS75-396, issued May 27, 1976, the Commission permitted sales from reserves developed by a large producer which then became a small producer to receive small producer rate treatment. The Commission there recognized, however, that while this interpretation of the regulations was dictated by the plain language of the regulations, such interpretation was not consistent with the purpose of the small producer program.[8] It was the Commission's view then, and it is our view now, that where the costs and risks associated with the development of gas reserves are borne by a large producer, those reserves

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[1] The term "Commission," when used in the context of action taken prior to October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission.

[2] 34 FPC 1202, 1203 (1965).

[3] As to a non-jurisdictional pipeline, the jurisdictional volumes would be those sold under the emergency provisions of the Commission's regulations.

[4] Direct sales volumes of a pipeline are not to be included since direct sales are not jurisdictional.

[5] Where the possibility of a double counting of volumes arises, the small producer applicant may request a waiver of the regulations.

[6] 45 FPC 454 (1971).

[7] Notice of Proposed Rulemaking, issued May 25, 1976, at 2.

[8] Section 157.40(c) of the Commission's regulations in effect at that time provided that small producers were limited to large producer rates for jurisdictional sales where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer. Since Suburban had not purchased reserves from a large producer, the Commission permitted it to collect small producer rates for the reserves developed by it while in large producer status.

should not be accorded small producer rate treatment.[9]

TXO's claim of discrimination against those former large producers which attain small producer status subsequent to July 13, 1977, is not persuasive. The Commission in Order No. 568 concluded that large producers which become small producers on or after July 14, 1977, should not be permitted small producer treatment for those reserves developed by them while they were large producers, thus eliminating for future small producers the ruling in *Suburban Propane*. The Commission has not imposed this rule on those who acquired small producer status prior to the issuance of Order No. 568, and it is not required to do so in order to apply the rule prospectively to those who become small producers after issuance of Order No. 568.[10]

II

American Liberty in its petition requests that the Commission confirm that sales from processing plants and gathering facilities made by small producers qualify as small producer sales. It asserts that any change in the regulations brought about by Order No. 568 which excludes such sales from small producer treatment was not discussed or justified by the Commission in its notice of rulemaking and thus does not comply with the Administrative Procedure Act.[11] American Liberty further asserts that any such change was required to be explained by the Commission.

Order No. 568 effected no modifications in the small producer regulations with respect to sales made by small producers from processing plants or gathering facilities. Under the regulations a small producer plant operator or gatherer who purchases gas from a small producer is entitled to collect small producer rates for its resales of the gas. Where the small producer plant operator or gatherer purchases gas from a large producer, however, it is limited to large producer rates for its resales.[12]

III

Order No. 568 left the proceedings in this docket open as to proposed revisions of Form Nos. 314–A, Application for Small Producer Certificate, and 314–B, Annual Statement for Independent Producer Holding Small Producer Certificate. Passage of the Natural Gas Policy Act of 1978 has reduced substantially the number of small producer certificate applications. Accordingly, we believe that the proposed revisions of the small producer certificate application form are no longer necessary. We will, however, incorporate Form 314–A into the Commission's regulations (§ 250.10) in the same manner as other prescribed producer application forms.

Elimination of Form 314–B is being proposed in another docket. All matters relating to the revision of Form 314–B will be considered in that docket.

The Commission orders:

(A) TXO's application for rehearing is denied.

(B) American Liberty's application for rehearing and/or clarification is granted only to the extent provided hereinabove. In all other respects the application is denied.

(C) Section 250.10 of Part 250, Subchapter G of Chapter I, Title 18 of the Code of Federal Regulations, is amended to incorporate Attachment A hereto. Because the amendment does not change any substantive rule, and only places in the regulations a copy of the application form small producers have been required to file, good cause exists to make it effective immediately.

By the Commission.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6450–85–M

[9] In addition, acceptance of TXO's argument would encourage large producers whose annual sales are just above the 10,000,000 Mcf level to limit production or sell some producing properties so as to reduce sales to just under that level and thereby receive small producer rates for all of their sales. We do not believe this result to be in the public interest.

[10] We also note that most current small producers were "small" during the time prior to Order No. 428 when they were being regulated as large producers. In this context, therefore, it was reasonable for the Commission in Order No. 428 to permit small producers to receive small producer treatment for sales from reserves developed while they were regulated as large producers.

[11] 5 U.S.C. 551, *et seq.*

[12] *See Neleh Gas & Oil Corporation, et al.*, Docket No. CS75–383, issued April 12, 1977.

Docket No. RM76-15

Section 250.10 is amended by inserting after the parenthetical Attachment A to read as follows:

Attachment A - Pg. 1 of 2.

§ 250.10

APPLICATION FOR SMALL PRODUCER EXEMPTION

(See § 157.40(b)(4))

NOTE: Independent Producers of natural gas whose total jurisdictional sales on a nationwide basis for the preceding calendar year, combined with those of "affiliated producers," were not in excess of 10,000,000 Mcf may file the information called for in this form for a Small Producer Exemption to sell gas (in four copies). Include volume of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within Section 157.40 has an interest in such sales. Do not include sales made pursuant to percentage sales contracts. If insufficient space is given for a complete answer, continue the answer on the reverse side or on a separate sheet, noting the relevant number.

1. NAME OF APPLICANT

2. STATE OF ORGANIZATION

3. LOCATION OF PRINCIPAL PLACE OF BUSINESS

4. TYPE OF ORGANIZATION (Corporation, partnership, joint venture, etc)

5. PERSON RESPONSIBLE FOR APPLICATION

NAME AND TITLE

MAILING ADDRESS

6. TOTAL JURISDICTIONAL SALES VOLUMES AT _____ PSIA FOR CALENDAR YEAR PRECEDING APPLICATION. (If more than one applicant is to be covered by this exemption, give the total jurisdictional sales volumes of each applicant separately.)

7. LIST ALL CERTIFICATES PRESENTLY HELD BY DOCKET NUMBER AND LIST ALL CONTRACTS ON FILE WITH THE COMMISSION AS RATE SCHEDULES BY RATE SCHEDULE NAME AND NUMBER. INCLUDE IN SUCH LISTING APPLICANTS' INTERESTS IN GAS SALES COVERED BY OTHER PRODUCERS' CERTIFICATES AND RATE SCHEDULES. LIST ALL INTEREST OWNERS AND THE AMOUNT OF THEIR INTEREST FOR EACH SALE TO BE COVERED BY THIS EXEMPTION. (See reverse side for reporting)

8. LIST ALL OWNERS OF MORE THAN 10 PERCENT INTEREST IN APPLICANT: (A) INDIVIDUAL NAME; (B) PERCENT OF OWNERSHIP

9. LIST ALL INTEREST OWNED BY THE INDIVIDUALLY NAMED OWNERS IN OTHER NATURAL GAS COMPANIES: (A) INDIVIDUAL NAME; (B) COMPANY NAMES; (C) PERCENT OF APPLICANT OWNERSHIP.

10. LIST FOR EACH OWNER THE POSITIONS HELD BY THESE INDIVIDUAL OWNERS IN APPLICANT COMPANY OR ANY OTHER NATURAL GAS COMPANY.

11. IS APPLICANT OR ANY INDIVIDUAL OWNER LISTED, AFFILIATED WITH ANY PURCHASER OF JURISDICTIONAL GAS FROM APPLICANT? (If so list name of buyer and seller for each sale and nature of affiliation.)

SIGNATURE	TITLE	DATE

Docket No. RM76-15

Attachment A - Pg. 2 of 2.

SALES UNDER RATE SCHEDULE OF APPLICANT

APPLICANT	DOCKET NUMBER	RATE SCHEDULE NUMBER	INTEREST OWNERSHIP UNDER RATE SCHEDULE	
			NAME	PERCENT INTEREST

APPLICANTS SALES UNDER RATE SCHEDULE OF OTHERS

OTHER SELLER	DOCKET NUMBER	RATE SCHEDULE NUMBER	APPLICANTS PERCENT INTEREST IN RATE SCHEDULE

NOTE: Place an asterick (*) after each co-owners name whose interest is not to be covered by the Small Producer Exemption applied for.

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[FR Doc. 81-7350 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-C

18 CFR Part 260

[Docket No. RM80-56]

Order Denying Applications for Rehearing of Final Rule To Revise Form No. 2

Issued: March 3, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: By this draft order, the Federal Energy Regulatory Commission (Commission) denies the applications for rehearing of Commission Order No. 121, Revision of Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B), issued January 9, 1981 (Docket No. RM80-56, 46 FR 6885, January 22, 1981).

The applications, filed by the Citizen/Labor Energy Coalition, the Public Interest Campaign, Public Action, and the Bennett Agency, challenged, in very general terms, the wisdom of the Commission's decision to reduce the reporting requirements in Form No. 2. They alleged, among other things, that the negative effects to the public resulting from the deletion of information would outweigh benefits to the reporting companies which no longer would be required to report that information.

These rehearing requests are denied by this draft order because significant savings, which cannot be dismissed in general arguments, will be experienced by most reporting companies as a result of the deletions in Form No. 2; the Commission should not usurp the role of Energy Information Administration to collect general energy information, especially since the information deleted from Form No. 2 is not used by the Commission to discharge its regulatory responsibilities; and finally, the public may still obtain information which has been deleted from Form No. 2 through discovery procedures in connection with natural gas ratemaking and licensing proceedings before the Commission.

FOR FURTHER INFORMATION CONTACT: Kathy Ciaglo, (202) 357-8526.

Final Rule Revising Form No. 2; Annual Report for Natural Gas Companies (Class A and Class B)

A. Background

On January 9, 1981, the Federal Energy Regulatory Commission (Commission) issued a final rule to revise FERC Form No. 2, the major annual reporting form filed by interstate natural gas pipelines (Order No. 121, 46 FR 6885, January 22, 1981).

In brief, Order No. 121 significantly eased the reporting burdens imposed on the pipelines by the previous version of Form No. 2 by eliminating a number of superfluous or duplicative reporting requirements, and by revising, clarifying, and reducing the scope of other reporting requirements set by the form. This Order and the rulemaking proceeding that preceded it, are part of the Commission's continuing program of reviewing all of its reporting requirements. In this specific proceeding the Commission sought to complete a fresh, overall review of reporting requirements that have been gradually increased and expanded over a period of many years; to verify whether, in light of recent significant changes in the statutory and regulatory requirements imposed upon the pipeline industry, each data item required to be reported is, in fact, needed by the Commission; and to halt the further collection of any data that is not needed by the Commission to carry out its decisionmaking and regulatory duties. Such a reduction in reporting burdens not only benefits the reporting pipelines by reducing their regulatory costs, but also benefits their customers who ultimately pay those costs.

B. Rehearing Petitions

Petitions for rehearing of Order No. 121 were timely filed by the Citizen/Labor Energy Coalition, the Public Interest Campaign, Public Action, and the Bennett Agency.

None of these petitions challenge any specific deletions of particular reporting requirements that were made by the final rule.

Instead, the petitions generally challenge the wisdom of the Commission's decision to curb the Form No. 2 reporting requirements "in a period of rising gas prices;" assert that the Commission is obligated, as a "regulatory watchdog," to closely monitor the gas industry in general and make available to the general public "reliable and comprehensive information on the workings of the energy industry;" contend that this rule's reduction of reporting requirements will "further contribute to the decline in American confidence in American industry and government;" state that the final rule is a "dangerous precedent" that will make energy companies less accountable to the public; warn that the rule will "put subtle pressure on the [State] PUC's to reduce their [own] reporting requirements; and finally, assert that the cost reductions for reporting pipelines made possible by the rule are, in any event, "minimal" or "negligible."

Hence, the petitioners conclude, the significant adverse effects upon the public caused by the loss of information outweigh the minimal gains afforded to the reporting pipelines by virtue of the now-deleted reporting requirements. Accordingly, they urge the Commission to modify the final rule to require the pipelines to retain the higher level of data in their Form No. 2 reports.

C. Conclusion

After full consideration of these objections, the Commission believes that rehearing must be denied in all respects, for the following reasons:

First, the Commission does not believe that its proper role is to serve merely as a collector and disseminator of general energy information for the public. Indeed, under the Department of Energy Organization Act (DOE Act) (42 U.S.C. 7101-7352), that general information-collecting role is assigned to another agency, the Energy Information Administration, which is specifically:

> Responsible for carrying out a central, comprehensive and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs." (Section 205(a)(2) of the DOE Act.)

The Commission believes that it should only collect data that will enable it to effectively carry out the specific regulatory duties which it is charged to administer. If information is not used for these valid Commission purposes, then it should not be collected by the Commission. That was the rationale for the Commission's decision to delete some of the reporting requirements previously set out in Form No. 2, and the Commission hereby reaffirms its adherence to that standard.

Second, the Commission does not agree that the benefits to reporting pipelines resulting from the deletions at issue here are "negligible" or "minimal," as one comment so characterized the cost-benefits flowing from the deletions. In the Commission's view, the reductions in reporting requirements are indeed significant and will inevitably yield a savings for the reporting companies. The exact amount of which cannot be precisely determined; but the extent of savings should not be a deciding factor here, for again, as a matter of policy, this Commission should

not require any reports that are, in fact, not used by the Commission to discharge its regulatory duties.

Finally, we do not believe that the deletions in Form No. 2 will in any way "deprive the public of the opportunity to participate in democratic decisionmaking" as one petition contended. We note, for example, that Form No. 2 still requires annual reports on hundreds of different items; that many other separate reporting and filing requirements applicable to different sectors of the natural gas industry remain in effect and are not altered by this rule. Data requests and other discovery procedures remain available to participants in natural gas ratemaking and licensing proceedings before the Commission and can be used to obtain any necessary data that are not set out in Form No. 2. In view of these factors, we think the petitioners' generalized concerns do not warrant modification or rehearing.

The Commission Orders: The applications for rehearing filed by the Citizen/Labor Energy Coalition, the Public Interest Campaign, Public Action, and the Bennett Agency are hereby denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7351 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

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18 CFR Part 282

[Docket No. RM80-62]

Section 206(d) Exemption for Mechanical Cogeneration Facilities From Incremental Pricing Provisions of Natural Gas Policy Act of 1978; Order Granting Waiver of Certain Exemption Affidavit Filing Requirements

Issued: March 2, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Waiver of Certain Exemption Affidavit Filing Requirements.

SUMMARY: Part 282 of the Commission's regulations (18 CFR Part 282) governs the incremental pricing program established by Title II of the Natural Gas Policy Act of 1978. Specifically, § 282.204(d)(7) provides that if an end-user of natural gas files the requisite affidavit with the Commission his facility may be exempted from incremental pricing as of the first full month *following* the date the affidavit is filed. This Order grants a waiver of § 282.204(d)(7) for end-users claiming exemptions as mechanical cogeneration facilities.

This waiver was found appropriate by the Commission in order to permit affected end-users to gain an immediate benefit from a rule (45 FR 71787, October 30, 1980) permitting mechanical cogeneration exemptions from incremental pricing, which rule became effective March 1, 1981.

EFFECTIVE DATE: March 2, 1981.

Under the Order, if an affidavit is filed by March 25, 1981, the facility may gain an exemption as of March 1, 1981 (instead of the month following the filing).

FOR FURTHER INFORMATION CONTACT: Carol Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8511.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) hereby waives certain filing requirements set forth in Part 282 of its regulations (18 CFR Part 282) in order to permit qualified facilities to gain a mechanical cogeneration exemption from incremental pricing as of March 1, 1981.

Background

On October 23, 1980, the Commission issued a final rule (45 FR 71787, October 30, 1980) in the instant docket under Title II of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301-3432) (NGPA) providing an exemption from incremental pricing surcharges for natural gas used in mechanical cogeneration facilities. The rule was transmitted to Congress for review, as required by section 206(d) of the NGPA. During the period for Congressional review set forth in section 507(b) of the NGPA, neither House disapproved the submittal. The exemptive rule thus became effective on the day following expiration of the review period, March 1, 1981.

In order for an individual facility to obtain the above-described exemption, its owner or operator is required to file an exemption affidavit with the Commission and to send a copy of such affidavit to the facility's natural gas supplier. The date upon which such exemption affidavits take effect is governed by the general rule set forth in § 282.204(d)(7) of the Commission's regulations, which states:

> If the owner or operator of an industrial boiler fuel facility files an exemption affidavit with the Commission in order to obtain an exemption under this part, and sends a copy to the facility's natural gas supplier, the facility shall be exempt from incremental pricing, in accordance with this part, as of the first full month following the date the affidavit is filed.

Accordingly, in order for a mechanical cogeneration facility to be exempted from incremental pricing surcharges for the month of March 1981, an affidavit to that effect would have to have been filed with the Commission and sent to the supplier before March 1, 1981. However, it would have been impossible for the owner or operator of such a facility to have met this deadline, since the exemption itself did not go into effect until March 1, 1981, and exemption affidavits were not available from the Commission until that date. Accordingly, under § 282.204(d)(7), affidavits filed March 1, 1981, or thereafter in that month would not take effect until April 1, 1981.

Discussion and Findings

The Commission believes that § 282.204(d)(7) should be waived in order that the mechanical cogeneration exemption may be made available to qualified end-users as of March 1, 1981, the date the rule became effective. The Commission notes that this exemption was promulgated in October of 1980 and that Congress took no steps to disapprove it during the 30-day review period prescribed by the statute. The review period extended until February 28, 1981, only because of Congressional recesses which occurred after the rule was submitted to the Congress. Now that the review period has expired, the Commission finds that qualified facilities should be permitted to take advantage of the exemption immediately.

Accordingly, § 282.204(d)(7) is being waived to provide that if a mechanical cogeneration exemption affidavit is filed with the Commission by March 25, 1981, with a copy sent to the natural gas supplier, the subject facility shall be exempt from surcharges (or partially exempt as appropriate) as of March 1, 1981.[1]

Since supplier billings for the month of March 1981, will take place on or after April 1, 1981, the Commission finds that this waiver will not cause any undue hardship to affected natural gas suppliers.

The Commission Orders:

Section 282.204(d)(7) of the Commission's regulations is waived to the following extent:

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[1] A supplier who receives a copy of an exemption affidavit is under no obligation to verify that such affidavit was actually filed with the Commission by a certain date. Such responsibility rests with the person filing the affidavit.

If the owner or operator of an industrial boiler fuel facility files an affidavit with the Commission by March 25, 1981, in order to obtain an exemption from incremental pricing as a mechanical cogeneration facility, and sends a copy to the facility's natural gas supplier by that date, the facility shall be exempt from incremental pricing surcharges, in accordance with Part 282, as of March 1, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7532 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 430, 436, and 440

[Docket No. 80N-0294]

Antibiotic Drugs for Human Use; Cyclacillin

Correction

In FR Doc. 81-1060 appearing on page 2979 in the issue of Tuesday, January 13, 1981, make the following corrections:

(1) In the heading of the document, change the designation **"21 CFR Parts 430, 436 and 444"** to read **"21 CFR Parts 430, 436 and 440."**

(2) In the third column of page 2979, in § 430.5(a)(67) and (b)(67), the terms "cyclacillin working standard" and "cyclacillin master standard" were reversed. For the convenience of the reader the paragraphs are reprinted below:

§ 430.5 Definitions of master and working standards.

(a) * * *

(67) *Cyclacillin.* The term "cyclacillin master standard" means a specific lot of cyclacillin that is designated by the Commissioner as the standard of comparison in determining the potency of the cyclacillin working standard.

(b) * * *

(67) *Cyclacillin.* The term "cyclacillin working standard" means a specific lot of homogeneous preparation of cyclacillin.

(3) On page 2979, in the table in § 436.33(b), the heading under "Test dose" now reading "Concentration in milligrams units or of activity per milliliter" should have read "Concentration in units or milligrams of activity per milliliter".

(4) On page 2980, in the table under § 436.105(a), "Media to be used (as listed by medium number in § 438.102(b))" should have read "Media to be used (as listed by medium number in § 436.102(b))".

(5) In the same section, the table under paragraph (b) contained errors and is reprinted as follows:

(b) * * *

Antibiotic	Working standard stock solutions					Standard response line concentrations	
	Drying conditions (method number as listed in § 436.200)	Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
*	*	*	*	*	*	*	*
Cyclacillin	Not dried		Distilled water	1 mg	1 day	3	0.64, 0.80, 1.0, 1.25, 1.56 µg. (Prepare the standard response line simultaneously with the sample solution.)
*	*	*	*	*	*	*	*

* * * * *

(6) On page 2981, in the third column, under § 440.17(a)(1), ". . . dimeth–7 . . ." should have read ". . . dimethyl–7 . . .".

(7) In § 440.117a (b)(4), in the line that is second from the bottom of the first column on page 2985, ". . . Allow the same solution . . ." should have read ". . . Allow the sample solution . . .".

(8) In § 440.117b(b)(1), in the line that is 19th from the top of the first column on page 2986, change ". . . iolometric . . ." to read ". . . iodometric . . .".

BILLING CODE 1505-01-M

21 CFR Part 442

[Docket No. 80N-0305]

Cepha Antibiotic Drugs; Cefadroxil Capsules

Correction

In FR Doc. 81-1062 appearing on page 2991 in the issue of Tuesday, January 13, 1981, make the following corrections:

(1) On page 2992 in the fifth line of the second column, the date now given as "March 13, 1981" should have read "March 16, 1981".

(2) In the third complete paragraph in the same column, ". . . between 9 a.m. and 4 p.m., Monday and Friday" should have read ". . . between 9 a.m. and 4 p.m., Monday through Friday".

BILLING CODE: 1505-01-M

21 CFR Part 442

[Docket No. 80N-0371]

Cepha Antibiotic Drugs; Cefadroxil Monohydrate Tablets

Correction

In FR Doc. 81-1064 appearing on page 2992 in the issue of Tuesday, January 13, 1981, make the following corrections:

(1) In the third column of page 2992, four lines from the bottom of the page, the section heading now designated **§ 442.106 Cefadroxil monohydrate tablets** should have been designated **§ 442.106b Cefadroxil monohydrate tablets.**

(2) In the third column of page 2993, the date now given as March 13, 1961 should have been March 16, 1981.

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1240

[No. 37523]

Reduction of Accounting and Reporting Requirements; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule on reduction of accounting and reporting requirements that appeared on page 9115 in the **Federal Register** of Wednesday, January 28, 1981 (46 FR 9114). The action is necessary to correct

an inadvertent omission from Appendix A of the final rule.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

Accordingly, the Interstate Commerce Commission is correcting 49 CFR Part 1240 as follows:

PART 1240—CLASSIFICATION OF CARRIERS

Subpart E—§ 1240.6 [Removed]

1. Remove 49 CFR Part 1240, Subpart E—*Freight Forwarders.*

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7523 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1243

[Docket No. 37514]

Revision to Class I Railroad Quarterly Report Form CBS and Elimination of Forms OS-A, OS-B, and OS-C

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is eliminating three quarterly reports of operating statistics currently filed by Class I railroad companies; Form OS-A, Train and Yard Service; Form OS-B, Revenue Traffic; and, Form OS-C, Motive Power and Car Equipment. This data is no longer required on a quarterly basis. The data which is needed will be filed on an annual basis in Annual Report Form R-1. This data is necessary for rail costing purposes. Data on revenue tons and revenue ton-miles will be reported on a revised format in quarterly report Form CBS, Quarterly Condensed Balance Sheet.

DATES: Effective for the reporting year beginning January 1, 1981.

ADDRESSES: Send comments with 10 copies, if possible, to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., 202-275-7448.

SUPPLEMENTARY INFORMATION: The Commission has reviewed its information needs and believes Form OS-A, Train and Yard Service, Form OS-B, Revenue Traffic and Form OS-C, Motive Power and Car Equipment, can be eliminated. The information in Forms OS-A and OS-C, which is currently used on an annual basis, can be transferred to Annual Report Form R-1 for 1981. Form OS-B can be eliminated entirely under our proposed arrangement.

Form CBS, Quarterly Condensed Balance Sheet, is revised to a balance sheet format similar to Annual Report Form R-1. Operating statistics on revenue tons and revenue ton-miles from OS-B will be included in revised Form CBS.

The specific revisions are summarized as follows:

1. Lines 1 and 2 from OS-B, which already appear on OS-A, will be eliminated. OS-B line 3 which already appears on Form RE&I (Quarterly Report of Revenue, Expenses and Income) and lines 4 through 18 which deal with passenger statistics will be eliminated since they are no longer needed.

2. The entire Form OS-A along with lines 27, 29, and 36 from Form OS-C will be transferred to Form R-1, and the remaining information will be eliminated because it is no longer needed.

3. Operating statistics on revenue tons and revenue ton-miles would be included on lines 30 and 31 in revised Form CBS. (See Appendix A.)

This reporting requirement shall apply to Class I railroad companies beginning January 1, 1981.

This action represents another step in the Commission's efforts to minimize reporting burden on carriers. The remaining operating statistics are vital for rail costing purposes. This information is an integral part of Rail Form H cost data which is used to develop car-hire rates which the railroads pay each other for use of their cars. This data will also be an important element in future rail costing methodologies which the Commission is continuing to study to comply with Section 11142 of the Interstate Commerce Act.

The Commission finds that this revision does not require a rulemaking proceeding under Section 553 of the Administrative Procedure Act (5 U.S.C. 553). The rule involved is procedural in nature and revisions will actually lessen the reporting requirements for all Class I railroad companies. However, in keeping with our belief that any rule can benefit from public scrutiny, we are requesting the public study the rule and report any suggested changes. If the Commission concludes after reviewing the comments that it is necessary to make changes in the final rule; a further notice will be published in the **Federal Register** identifying the changes made.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources or small businesses.

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553. This rule shall apply to the reporting of data for the reporting year beginning January 1, 1981, provided that the Comptroller General of the United States finds that it complies with the Federal Report Act.

Decided: February 25, 1981.

§ 1243.3 [Removed]

Accordingly, we remove 49 CFR 1243.3, Operating statistics.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam. Commissioner Trantum absent and not participating.

Agatha L. Mergenovich,

Secretary.

BILLING CODE 7035-01-M

APPENDIX A (page 1)

FOR ICC USE ONLY	FORM	QUARTER 1st 2nd 3rd 4th	YEAR	INTERSTATE COMMERCE COMMISSION
	CBS	[ ] [ ] [ ] [ ]	19	QUARTERLY CONDENSED BALANCE SHEET RAILROADS

FULL NAME AND ADDRESS OF REPORTING RAILROAD *(If a system report, names of all operating roads included should be shown under (REMARKS))*

Approved by GAO
B-180230 (R0403
Expires 83-12-31

DESCRIPTIONS (a)	CODE NO.	BALANCE AT END OF QUARTER THIS YEAR (b)	BALANCE AT END OF QUARTER LAST YEAR (c)
ASSETS			
Cash (Account 701)	1		
Temporary cash investments and Special Deposits (Accounts 702 and 703)	2		
Accounts Receivable (Accounts 704-709.5)	3		
Prepayments and working funds (Accounts 710, 711 and 714)	4		
Materials and supplies (Account 712)	5		
Other current assets (Account 713)	6		
Total Current Assets	7		
Special funds and other investments and advances (Accts. 715-717 & 722-729	8		
Investments and advances; affiliated companies (Accounts 721, 721.9)	9		
Transportation property - net (Accounts 731-736)	10		
Property used in other than carrier operations (Accounts 737 and 738)	11		
Other assets and deferred debits (Accounts 739, 741, 743 and 744)	12		
Total Assets	13		
LIABILITIES			
Current liabilities (Accounts 751-761.5, 762, 763, and 764)	14		
Long term debt due after one year (Accounts 765-770.2)	15		
Deferred revenues - Transfers from governmental authorities (Account 783)	16		
Accumulated deferred income tax credits (Account 786)	17		
Other liabilities and deferred credits (Accts. 771, 772, 774, 775, 781, 782 and 784)	18		
Total Liabilities	19		
SHAREHOLDERS EQUITY			
Capital stock (Accounts 791-793)	20		
Additional capital (Accounts 794 and 795)	21		
Retained earnings (Accounts 797, 798, and 798.1)	22		
Less: Treasury stock (Account 798.5)	23		
Equity in undistributed earnings (losses) of affiliated companies	24		
Total Shareholders Equity	25		
Total Liabilities and Shareholders Equity	26		

GROSS EXPENDITURES FOR ADDITIONS AND BETTERMENTS *(Accounts 781 and 782)*	FIGURES FOR THE QUARTER THIS YEAR (a)	FIGURES FOR THE QUARTER LAST YEAR (b)		CUMULATIVE FIGURES THIS YEAR (c)	CUMULATIVE FIGURES LAST YEAR (d)
Road			27		
Equipment			28		
Total			29		

		FIGURES FOR QUARTER	CUMULATIVE FIGURES
No. of Revenue Tons Carried	30		
No. of Revenue Tons Carried One Mile (thousands)	31		

APPENDIX A (page 2)

INSTRUCTIONS

1. Under order of the Commission, Class I railroads, excluding switching and terminal companies, are required to file quarterly reports of balance sheet items, Form CBS, in duplicate, in the Bureau of Accounts, Interstate Commerce Commission, Washington, D.C. 20423, within 30 days after the close of each quarter. Reports should be prepared on a calendar quarter basis beginning with the first day of January, April, July and October.
2. The items reported on Form CBS should be taken from and agree with the accounts kept in conformity with current Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission. Report undistributed earnings from certain investments in account 721, in accordance with Docket No. 35949, The Equity Method of Accounting for Certain Long-Term Investments in Common Stocks. The account numbers refer to the accounts in the Uniform System of Accounts. Reverse items should be shown in parentheses. Dollar amounts should be shown in thousands.
3. Unusual transactions or items which reflect an important change in the financial condition of the carrier should be identified and explained in a footnote under "Remarks."
4. The certification must be completed by an officer of the carrier.

REMARKS

I, THE UNDERSIGNED, _____ of _____ state
(Name and Title of officer in charge of accounts) *(Full name of reporting company)*

that this report was prepared by me or under my supervision; that I have carefully examined it; and on the basis of my knowledge, belief, and verification (where necessary) declare it to be a full, true and correct statement of the balance sheet accounts named, and that the various items here reported were determined in accordance with effective rules promulgated by the Interstate Commerce Commission.

Signature _____

Telephone Number _____
(Area Code) *(Number)*

Date _____ 19____

[FR Doc. 81-7343 Filed 3-9-81; 8:45 am]
BILLING CODE 7035-01-C

Proposed Rules

Federal Register
Vol. 46, No. 46
Tuesday, March 10, 1981

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 28

Personnel Appeals Board; Procedures

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add Subparts E and F to Part 28 of title 4 CFR, to establish a labor-management relations program for the employees of the General Accounting Office. The establishment of this program is felt to be necessary in order for the Board to fulfill its duties under section 4 of the General Accounting Office Personnel Act of 1980, 94 Stat. 29. However, certain issues have been raised concerning the Board's authority in this area. Consequently, we are requesting comments on these proposed regulations including the authority of this Board to issue them.

DATES: Comments received by April 10, 1981 will be considered.

ADDRESS: Send comments to: Personnel Appeals Board, General Accounting Office, Room 4057, 441 G Street, NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Carl D. Moore, General Counsel, Personnel Appeals Board at telephone number (202) 275–6137.

SUPPLEMENTARY INFORMATION: On February 15, 1980, Congress passed the General Accounting Office personnel Act of 1980 (Pub. L. 96–191). The Act establishes an independent personnel system for employees of the General Accounting Office (GAO). The statute creates the GAO Personnel Appeals Board (Board) as an independent adjudicatory agency within the GAO to perform at GAO the same functions that are performed by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, the Special Counsel of the Merit Systems Protection Board, and the Federal Labor Relations Authority in the executive branch.

We have published elsewhere today in the **Federal Register**, procedures (and proposed rules) for the Board to implement section 4 of the Act. However, Subparts E and F of Part 28 are being published here only as proposed rules since questions have been raised concerning the authority of the Board to issue regulations on the subject of labor-management relations and representation.

Subparts E and F deal with representation issues and other labor-management matters such as unfair labor practices, national consultation rights, negotiability disputes, negotiation impasses, standards of conduct for labor organizations, and review of arbitration awards. Prior to the publication of these rules, the Board held a series of meetings with representatives of management and employee groups at GAO. Comments were received at that time suggesting that Subparts E and F exceeded the Board's statutory authority. In order not to impede the regulatory process, the Board chose to issue most of its rules as interim rules and for public comment with the exception of Subparts E and F. The Board now invites comment on these Subparts, which are published as proposed rules.

In order to focus the comments, it may be helpful to summarize the arguments developed this far regarding Subparts E and F. On the one hand, the legislative history makes it clear that Congress intended for the Board to assume an independent adjudicatory role similar to that of the EEOC, the MSPB, and the FLRA. Furthermore, the GAO Personnel Act clearly states that the labor relations program at GAO is to be "consistent with chapter 71 of title 5, United States Code." 32 U.S.C. 52–2(e). Accordingly, chapter 71 charges the FLRA with establishing regulations for the conduct of the labor-management relations program in the executive branch. 5 U.S.C 7105.

Therefore, it can be argued that, in order to be consistent with chapter 71, it is necessary that the Board, rather than GAO management "publish criteria and resolve issues relating to the granting of national consultation rights, . . . prescribe criteria and resolve issues relating to compelling need for agency rules", and otherwise "provide leadership in establishing policies and guidance relating to" labor relations matters in GAO. 5 U.S.C. 7105(a) (1) and (2).

On the other hand, it can be argued that the Board has no general regulatory authority in the development of the GAO labor relations program. The GAO Personnel Act states:

> The Board may consider, decide, and order corrective or disciplinary action (as appropriate) in cases arising from * * *
>
> (6) Any labor practice prohibited under the labor-management system established under section 3(e) and any other matter appealable to the Board under that system; . . . .

31 U.S.C. 52–3(h). Section 3 of the Act states that the "Comptroller General shall . . . establish by regulation a personnel system for the General Accounting Office" and that, among other things:

> The personnel system shall provide for procedures to ensure that each employee of the General Accounting Office has the right, freely and without fear of reprisal, to form, join, and assist an employee organization, or to refrain from such activity, and shall provide for a labor-management relations program, consistent with Chapter 71 of Title 5, United States Code.

31 U.S.C. 52–2(e).

Therefore, it can be argued that the Board's authority in labor relations is limited to "cases arising from" the "labor-management relations program" established by the Comptroller General as a part of the GAO personnel system.

The Board looks forward to any statutory analysis or review of the legislative history that will assist the Board in defining its proper role in the area. Therefore, it is proposed that 4 CFR, Chapter I, Part 28, be amended by adding Subparts E and F as follows:

PART 28—GENERAL ACCOUNTING OFFICE, PERSONNEL APPEALS BOARD; PROCEDURES

* * * * *

Subpart E—Special Procedures; Representation Hearings

Sec.

28.61 Purpose and scope.
28.63 Definitions.
28.65 Who may file petitions.
28.67 Contents of representation petitions.
28.69 Pre-investigation proceedings.
28.71 Processing of petitions.
28.73 Conduct of elections.

Subpart F—Special Procedures; Unfair Labor Practices

28.81 Authority of the Board.

Sec.
28.83 Unfair labor practices—Board procedures.
28.85 Board authority beyond unfair labor practices.
28.87 National consultation rights.
28.91 Negotiation impasses.
28.93 Standards of conduct for labor organizations.
28.95 Review of arbitration awards.

Authority: Sec. 4, General Accounting Office Personnel Act of 1980, Pub. L. 96-191, 94 Stat. 29 (31 U.S.C. 52-3).

Subpart E—Special Procedures—Representation Hearings

§ 28.61 Purpose and scope.

The procedures in this Subpart relate to the Board's duty under section 4(h) (4) and (5) of the Act to determine appropriate units of GAO employees for collective bargaining, to conduct elections in order to determine whether the employees in any such units wish to select a labor organization to represent them in collective bargaining, and, thereafter, to certify labor organizations so selected as the designated exclusive bargaining representative. They are referred to in these regulations as "representation proceedings".

§ 28.63 Definitions.

In subparts E and F—

(a) "Employee" means an individual employed by GAO, but not a supervisor or a management official.

(b) "Supervisor" means an individual employed by the GAO who has the authority, in the interest of GAO, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or who has the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(c) "Management Official" means an individual employed by the GAO in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

(d) "Confidential Employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(e) "Professional Employee" means an employee who has completed courses of specialized intellectual instruction and study and who is performing related work or an employee engaged in the performance of work:

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by specialized intellectual instruction and study;

(2) Requiring the consistent exercise of discretion and judgment in its performance;

(3) Which is predominantly intellectual and varied in character; and

(4) Which is of such character that the result accomplished cannot be standardized in relation to a given period of time.

§ 28.65 Who may file petitions.

(a) Representation petitions may be filed by:

(1) A labor organization which wishes to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization which desires to replace another currently having that status;

(2) An employee or a group of employees (or an individual on his/her/their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit;

(3) The GAO if it has a good faith reason to doubt the continued desire of a group of its employees to be represented by a labor organization which is currently the exclusive representative of the employees in an appropriate unit;

(4) The GAO or a labor organization currently recognized as an exclusive representative, desiring the Board to clarify an earlier unit determination or certification;

(5) A labor organization which does not have exclusive bargaining rights, but which desires to become eligible for a legal dues allotment system in accordance with 5 U.S.C. 7115(c).

(6) The GAO, a labor organization, or both, desiring to consolidate existing units recognized as exclusive bargaining representatives of those units.

(b) Notwithstanding the provisions of (a) of this section, no petition may be filed which seeks representation rights for employees in a unit where an existing collective bargaining contract is in effect, or where an election has been held within the preceding 12 months.

§ 28.67 Contents of representation petitions.

(a) The contents of representation petitions filed under § 28.65(a)(1) of this part shall consist of:

(1) A detailed identification of the unit of employees to which the petition applies, and geographical location within the GAO, the classifications of employees to be included and excluded, and the number of employees involved.

(2) Names, addresses and officers of any other labor organizations known by the petitioner to be interested in representing employees covered by the petition, including a labor organization which is party to a current collective bargaining agreement covering any employees in the unit;

(3) Name, address, affiliation, if any, and telephone number of the petitioning organization;

(4) A copy of the consititution and bylaws of the organization, together with a statement that these documents as well as a roster for the organization's officers and representatives and a statement of the objectives have also been supplied to the GAO and to the Assistant Secretary of Labor for Labor-Management Relations;

(5) A declaration by the signer of the pettion, under penalties of the Criminal Code (18 U.S.C. § 1101), that the petition's contents are true and correct, to the best of his/her knowledge and belief;

(6) The signature of the representative of the petitioner, including title and telephone number; and

(7) Membership cards, dues records, or signed statements by employees indicating their desire to be represented by the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit wish to be represented by the petitioner.

(b) The contents of petitions filed under § 28.29(a)(2) shall conform to those provided for in paragraph (a) of this section, except that the information required by paragraph (a)(4) and (a)(7) need not be supplied. Additionally, a petition under § 28.29(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit no longer wish to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.29(a)(3) shall conform to those provided in petitions under paragraph (a) of this section, except that the information required by paragraph (a) (4) and (7) need not be supplied, but shall include a detailed statement giving the objective considerations which support the GAO's good faith reason for doubting the labor organization's continued status as the exclusive representative.

(d) The contents of petitions filed under § 28.29(a)(4) shall include the information required under paragraph (a) of this section, with the exception of the information required by paragraph (a) (4) and (7). Also, instead of the information required in paragraph (a)(1)

of this section, the petition shall identify the existing unit and the date the organization was recognized by the GAO or certified as the exclusive representative, and shall explain the changes desired in the unit and the reasons therefor.

(e) Petitions under § 28.29(a) (5) and (6) shall be filed on forms to be supplied by the Board, upon request.

§ 28.69 Pre-investigation proceedings.

(a) Upon the filing of a valid petition, the General Counsel may request GAO to notify employees as to the existence of the petition by posting a notice for at least 10 days in locations appropriately selected to reach all employees in the unit covered by the petition. The notice shall include a request that the Board's General Counsel be notified of the existence of any other interested parties.

(b) GAO shall supply the General Counsel with any information in its possession concerning other potentially interested labor organizations, copies of relevant correspondence, and copies of existing or recently expired agreements covering any employees in the unit. The GAO shall also provide a list of employees it believes should be included in the unit together with their classifications and the names and classifications of those employees it proposed to exclude from the unit.

(c) All interested parties shall meet as soon as possible after the expiration of the ten-day posting period and shall attempt to resolve any issues, including those relating to the appropriate unit and to whether an election should be held.

(d) A labor organization may become an intervenor in any representation proceeding by satisfying the General Counsel within the ten-day posting period that it represents at least ten percent of the employees in the proposed unit.

§ 28.71 Processing of petitions.

(a) Upon the expiration of the ten-day posting period, and after the General Counsel considers an appropriate period has elapsed for consultation among the parties to resolve or identify issues, the General Counsel shall prepare a report to the Board which may recommend:

(1) approval of any agreement entered into by the parties during their consultations including an agreement on the appropriate units, on the withdrawal of the petition, or on a joint request to conduct an election to determine which labor organization, if any, the employees select to be their exclusive bargaining representative;

(2) dismissal of the petition as being without merit; or

(3) issuance of a notice of hearing for the purpose of disposing of the remaining issues raised in the petition.

(b) The General Counsel's report shall be supplied to all interested parties, and, unless all parties agree to a shorter period, they shall have 15 days during which to file any response with the Board.

(c) The Board, as expeditiously as feasible after the expiration of the period specified in paragraph (b) of this section but no later than 30 days thereafter, shall either approve the report and order appropriate steps to carry out its recommendations, or remand it to the General Counsel with further instructions.

(d) Where a hearing is ordered, a Hearing Officer shall be designated by the Board, and the hearing shall be conducted in accordance with the procedure described at § 28.21.

(e) After receiving the recommended Decision and Order from the Hearing Officer, and after following the procedures at § 28.25, the Board shall issue a Decision and Order determining the appropriate unit, directing an election, dismissing the petition or making some other appropriate disposition of the matter.

(f) Final Decisions and Orders issued by the Board based on hearings held in accordance with subparagraph (d) of this section shall not be considered final decisions subject to appeal before the Circuit Courts of Appeal.

§ 28.73 Conduct of elections.

(a) The Board may itself supervise any election it orders to be conducted, or may delegate this function to any qualified independent organization; where the Board deems it appropriate for such purposes, the services of members of the Board's staff or temporary employees hired for this purpose may be utilized.

(b) The GAO shall cooperate with the Board in all reasonable ways in the conduct of the election, including:

(1) Posting notices as requested by the Board;

(2) Avoiding the appearance of supporting any alternative made available to participants in the election; *and*

(3) Facilitating voting procedures by providing space and time during normal working hours to all qualified voters.

(c) The Board shall, through its agents chosen to conduct the election:

(1) Provide the opportunity for all qualified voters to indicate their choices in secrecy;

(2) Offer qualified voters the opportunity to vote for any labor organization on the ballot, or to reject all labor organizations;

(3) Permit all parties to observe all aspects of the election procedure other than any which would interfere with the secrecy of the ballot;

(4) Provide for all parties to challenge the eligibility of any voters, and to impound the ballots of such voters, subject to later determination of eligibility should the number of challenges potentially affect the results;

(5) Certify to all parties the results of the election.

(d) Upon receiving a report of the results of the election, the Board shall:

(1) If necessary rule on the challenges and adjust the results accordingly;

(2) Formally announce the results and, where appropriate, designate a labor organization as the exclusive collective bargaining agent, or withdraw such a designation;

(3) Where none of the choices offered the voters has gained a majority of the votes cast, order a runoff election between the two choices receiving the largest number of votes in the original election, unless, because of a tie vote or for some other reason, the result is inconclusive; and,

(4) Where the result is inconclusive, conduct no more than one additional election on that petition to clarify the result.

Subpart F—Special Procedures—Unfair Labor Practices

§ 28.81 Authority of the Board.

(a) The procedures in this subpart relate, in part, to the Board's functions "to consider, decide, and order corrective or disciplinary action (as appropriate) in cases arising from * * * any labor practice prohibited under the labor management system established * * *" by the GAO. (*Act*, Sec. 4(h)(6)).

(b) The system so established is required "to ensure that each employee of the GAO has the right, freely and without penalty or reprisal, to form, join and assist an employee organization, or to refrain from such activity, and shall provide for a labor-management relations program, consistent with Chapter 71 of Title 5, U.S. Code." (*Act*, Sec. 3(3)).

§ 28.83 Unfair labor practices—Board procedures.

An allegation that unfair labor practices within the definition of the Act have been committed shall be subject to the procedures appearing in Subpart B for the filing of petitions, response by the GAO, investigation by the General

Counsel and the Board's disposition, except as follows:

(a) As set forth at 5 U.S.C. 7118(a)(4), no complaint will generally be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the petition with the General Counsel; and

(b) In an effort to promote cooperative labor-management relations, the General Counsel shall encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, to resolve such matters prior to the filing of a petition with the General Counsel and prior to the issuance of a complaint by the General Counsel.

§ 28.85 Board authority beyond unfair labor practices.

In addition to the unfair labor practice aspects of Sec. 4(h)(6) of the Act, referred to at § 28.81 that sub-section of the Act also refers to cases arising from "any other matter appealable to the Board under that system." The Board, therefore, concludes that the requirement to provide a program "consistent with Chapter 71 of Title 5 of the U.S. Code" means that the Board should decide, among others, matters relating to national consultation rights (5 U.S.C. 7113), representation rights and duties (5 U.S.C. 7114), duty to bargain in good faith (5 U.S.C. 7117), and negotiation impasses (5 U.S.C. 7123). In addition, consistent with the provisions of 5 U.S.C. § 7105(a)(1), the Board "shall provide leadership in establishing policies and guidance" on matters concerning the labor-management relations program of the GAO.

§ 28.87 National consultation rights.

The GAO shall grant national consultation rights, as described below, to any labor organization which holds exclusive representation rights for 10 percent or more of GAO employees. The Board, upon receiving a petition requesting such rights, as supported by evidence supplied by the labor organization, and after obtaining the views of the GAO, shall determine whether such consultation rights are warranted, and shall issue a Decision as to its findings. Any organization afforded consultation rights shall be furnished reasonable advance notice of proposed substantive changes in conditions of employment, and shall be given a reasonable period during which to present its views on the proposed changes before they are made effective. Subsequently, the GAO shall provide the labor organization with a written statement of its reasons for making any changes which are contrary to the views of the labor organization. However, nothing in this section shall be construed to interfere with the normal processes of collective bargaining.

§ 28.89 Negotiability issues—compelling need.

Where the GAO and an exclusive bargaining representative disagree on whether a matter is subject to negotiation as part of the requirement to bargain in good faith, the matter shall be appealable to the Board as an unfair labor practice under section 28.35. Wherever feasible, negotiability petitions shall be treated on an expedited basis.

§ 28.91 Negotiation impasses.

(a) Where an impasse is reached in negotiations between the GAO and an exclusive bargaining representative, and mediation efforts by an impartial individual or group brought in by the parties have been exhausted, either or both of the parties may appeal to the Board for assistance in resolving the impasse. Such an appeal shall:

(1) Identify the GAO administrative unit and the labor organization involved;

(2) Describe the matters at issue;

(3) Summarize the positions of both parties on those issues; and

(4) Describe the negotiation steps that were followed, including the extent to which voluntary mediation efforts were utilized.

(b) Upon consideration of the appeal for assistance, the Board shall choose an appropriate method for resolving the impasse, as it ses fit in accordance with the law.

(c) Final Board action on impasse appeals shall be transmitted to the parties and shall be considered accepted within 30 days of receipt, unless an appeal is taken to the United States Courts of Appeal under 4(e) of the Act.

§ 28.93 Standards of Conduct for Labor Organizations.

(a) The GAO shall only accord recognition to labor organizations that are free from corrupt influences and from influences opposed to basic democratic principles. An organization is not required to prove it is free from such influence if it is subject to governing requirements calling for the maintenance of:

(1) Democratic procedures;

(2) Freedom from totalitarian influence;

(3) Independence on the part of its agents and officers from any business or financial interests which represent conflicts of interest or potential conflicts of interest; and;

(4) Fiscal integrity, including provision for the dissemination of regular financial reports to its members.

(b) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, (hereinafter referred to as "the Assistant Secretary"), provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(c) A labor organization which has or seeks recognition under these Rules, shall adhere to principles enunciated in the Regulations issued by the Assistant Secretary regarding standards of conduct for labor organizations in the public sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(d) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, or by any employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(e) In the case of any labor organization which by omission or commissoin has willfully and intentionally called or participated in a strike, work stoppage or slowdown, or picketed in manner which interferred with the operations of a government agency, or has condoned such activity, the Board shall, upon an appropriate finding it has made of such a violation—

(1) revoke the recognition status of the labor organization; or

(2) take any other approriate disciplinary action.

(f) The Assistant Secretary may petition the Board to enforce any order he/she may issue in a case arising under this section. The Assistant Secretary shall transfer to the Board the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(g) An opposition to Board enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Board, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

(h) A decision and order of the Assistant Secretary shall be enforced unless it is arbitrary and capricious or based upon manifest disregard of the law.

(i) The Board shall issue its decision on the case enforcing, enforcing as modified, refusing to enforce, or remanding the decision and order of the Assistant Secretary.

§ 28.95 Review of Arbitration Awards.

(a) Either party to an arbitration proceeding conducted in accordance with the GAO's labor-management grievance procedures may file an exception to the arbitrator's award within 30 days of its receipt, and shall serve such to all other parties.

(b) An opposition to the exception may be filed with the Board, and shall be served on all other parties, within 30 days after receipt of the exception.

(c) An exception shall be carefully documented as to the reasons therefor.

(d) The Board's decision regarding an exception shall be based on:

(1) a finding that the award is contrary to any law, rule or regulation; or

(2) other grounds similar to those applied by federal courts in private sector labor-management relations.

(e) If no exception to an arbitrator's award is filed within 30 days after it is issued, the award shall be final and binding.

Edward C. Gallas,

Chairman.

[FR Doc. 81-7407 Filed 3-9-81; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Referendum Order

AGENCY: Agricultural Marketing Service.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among growers and handlers of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland to determine whether they favor continuance of the marketing order.

DATES: Referendum period March 22 through March 31, 1981.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 80 handlers. This action is taken under Marketing Order 930 (7 CFR Part 930) regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Section 930.73(d) of the marketing order specifies that a referendum shall be conducted during the month of March of every fifth year after the effective date of the order to ascertain whether growers and handlers favor continuance of the order. It is hereby directed that a referendum be conducted during the period March 22 through March 31, 1981, among growers and handlers who, during the period May 1, 1980 through December 31, 1980 (which period is hereby determined to be a representative period for purposes of this referendum), were engaged, in the States specified above, in the production or processing of cherries for market, to ascertain whether such growers and handlers favor the continuance of the marketing order.

Raymond C. Martin III and Ronald L. Cioffi, of the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct said referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended." (7 CFR Part 90.400 *et seq.*)

Harry C. Mussman,

Acting Assistant Secretary for Marketing and Transportation Services.

[FR Doc. 81-7427 Filed 3-9-81; 8:45 am]

BILLING CODE 3410-02-M

EXPORT-IMPORT BANK

12 CFR Part 400

Financial Disclosure Requirements for Bank Employees

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed regulations on financial disclosure requirements for bank employees.

SUMMARY: The Export-Import Bank of the United States is revising its regulations dealing with financial disclosure requirements to make such regulations consistent with the requirements of disclosure of personal financial interests established by Title II of the Ethics in Government Act of 1978, as amended, and regulations issued by the Office of Personnel Management 5 CFR Part 734.

DATE: Comments must be received on or before May 11, 1981.

ADDRESS: Office of the General Counsel Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, D.C. 20571.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel, (202) 566-8334 at the above address.

SUPPLEMENTARY INFORMATION: It is proposed to amend Chapter IV of Title 12 by (a) the deletion of Subpart C—Special Categories of Bank Employees and substituting therefor a new Subpart C—Executive Personnel Financial Disclosure Requirements. The new Subpart C covers the insertion in this Part for the first time of reporting requirements of presidential appointees and top-ranking personnel in the grade of GS-16 and above (and equivalent positions). As a result of the deletion of old Subpart C, it will become necessary to relocate some provisions formerly in that Subpart. This will be proposed in a future rulemaking document.

Title 12 of the Code of Federal Regulations is amended in Part 400 revising Subpart C as follows:

PART 400—STANDARDS OF CONDUCT

* * * * *

Subpart C—Executive Personnel Financial Disclosure Requirements for Bank Employees

Sec.
400.735–30 General policies.
400.735–31 Persons required to file—general requirements for filing.
400.735–32 Contents of reports—reports of incumbents.
400.735–33 Reports of other reporting individuals.
400.735–34 Special rules.
400.735–35 Special provisions.

Authority: Pub. L. 95–521, Title II of the Ethics in Government Act of 1978, 5 U.S.C. app.

Subpart C—Executive Personnel Financial Disclosure Requirements for Bank Employees

§ 400.735–30 General policies.

(a) *Authority.* Title II of the Ethics in Government Act of 1978, (the "Act") (Pub. L. 95–521, as amended), requires certain high level federal employees to disclose personal financial interests and a description of other employment relationships in order to avoid potential conflicts of interest, and the appearance of such conflicts, which may arise as they carry out the duties of their positions. The Act has directed the Office of Government Ethics ("OGE") to provide for the systematic review of the financial holdings of both current and prospective officers and employees. The Office of Personnel Management ("OPM"), on the recommendation of the Director of OGE, has promulgated regulations establishing the procedures for the filing, review and public availability of the disclosure forms. (5 CFR Part 734)

(b) *Purpose.* The purpose of these regulations is to provide guidelines for those Bank employees who are required to submit financial disclosure forms under the Act and the OPM regulations to which reference should be made for detailed statements of the law, definitions, exemptions, limitations and illustrative examples. (5 CFR § 734.103)

(c) *General policies.* (1) Under Title II of the Act, Directors of the Bank and top-ranking Bank personnel in the grade of GS–16 and above under 5 U.S.C. 5332 (and equivalent positions) are required to complete financial disclosure forms, disclosing any other employment relationships, any income received (other than from Bank employment), assets and liabilities. These reports, however, are not net worth statements, as only those assets held as investments and certain other items must be reported—not items for personal use, such as a residence, a personal automobile or jewelry not held for sale.

(2) Although the reports can be made public, subject to compliance with the appropriate procedures set out in the accompanying regulations, they cannot be used for any commercial purpose, for establishing credit rating or, directly or indirectly, in the solicitation of money for any political, charitable or other purpose. In the event that the reports are used for one of these prohibited purposes, or the Bank employee making the report fails to file or falsifies a report, the Attorney General may institute a civil action against such individual.

(3) The accompanying regulations set out in abbreviated detail those items of income, gifts, liabilities and properties of the Bank employee and certain members of his family which must be disclosed. In addition, employment relationships (other than that with the Bank) must also be reported.

§ 400.735–31 Persons required to file—general requirements for filing.

Each Director of the Bank and each Bank employee whose position is classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332, and any other employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification and certain others unless excluded pursuant to 5 CFR 734.203 (hereinafter referred to as a "reporting individual") shall file a report in accordance with the rules set forth below.

(a) *Incumbents.* A reporting individual who, during any calendar year, performs the duties of his or her office for more than sixty days shall file a report on or before May 15 of the succeeding year.

(b) *New entrants.* Within thirty days of assuming a position or office at the Bank, a reporting individual shall file a report, unless such individual—

(1) Has left another position within the thirty days prior to the assumption of the Bank position in which a report required by 5 CFR 734.201 has previously been filed, or

(2) Has already filed such a report as a nominee for the Bank position.

(c) *Termination of employment.* On or before the thirtieth day after termination of his or her Bank employment, a reporting individual shall file a report for the period from the end of the calendar year with respect to which a report was last filed pursuant to paragraph (a) of this section to the date on which the individual left such office or position. If the individual sssumes employment within thirty days of leaving the Bank in another position or office in which a report is required to be filed pursuant to Title II of the Act, he or she need not file a report under this paragraph.

(d) *Extensions.* The General Counsel may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. OGE may grant an additional extension of up to forty-five days if it makes a determination, based upon the reporting individual's specific reasons which have been forwarded to OGE by the General Counsel along with his or her own comments on the request, that there is good cause shown for an extension.

(e) *Employment of sixty days or less.* Any reporting individual who, as determined by the General Counsel, is not reasonably expected to perform the duties of his or her office for more than sixty days in a calendar year need not file a report.

(f) *Exception.* Notwithstanding the provisions of paragraph (e) of this section, if the reporting individual does perform the duties of his or her office or position for more than sixty days in a calendar year, and (1) if such individual is a new entrant or a nominee, he or she shall file a report within fifteen calendar days after the sixty-first day unless the individual has filed a request for a waiver which is subsequently granted or (2) if such individual is terminating employment, he or she shall file a report required by paragraph (c) of this section.

(g) *Special waiver.* In unusual circumstances, the Director of OGE may grant a request for a waiver of any reporting requirement otherwise applicable under this section for a reporting individual who is reasonably expected to perform, or has performed, the duties of his or her office for less than 130 days in a calendar year. Such a determination will be made after OGE has received advice from the Bank and shall be in accordance with the guidelines established in 5 CFR 734.205.

§ 400.735–32 Contents of reports—reports of incumbents.

Each report shall include a full and complete statement, prescribed on the forms and in accordance with the instructions of OGE. Although Subpart C of 5 CFR Part 734 provides a more complete statement of the contents of such report, the following is a summary of the principal items to be covered:

(a) *Income.* (1) *In general.* The source and amount or value of: (i) Income, including type of income, other than that referred to in paragraph (a)(2) of this section and other than that from current employment by the Bank, and (ii) any honoraria, including the date, received during the preceding calendar year from any source, which total $100 or more in value;

(2) *Certain income.* The source and type of income which consists of dividends, rents, interest, and capital

gains from any source received during the preceding calendar year, which exceeds $100 in amount or value; such income shall be categorized as to amount in accordance with the table set forth in 5 CFR 734.301(a)(2).

(b) *Purchases, sales and exchanges of certain property.* A brief description (including the date) of any purchase, sale or exchange of property during the preceding calendar year, in any case in which the fair market value of such property exceeds $1,000 (1) of real property, other than a personal residence, and (2) of stocks, bonds, commodities futures and other forms of securities, which shall be categorized as to each transaction in accordance with 5 CFR 734.304. Notwithstanding the preceding sentence, any transaction solely by and between the reporting individual, the spouse and dependent children need not be reported.

(c) *Gifts and reimbursements.* (1) *In general.* The identity of the source, a brief description and the value of all gifts (other than gifts described in paragraph (c)(2) of this section), received during the preceding calendar year from any source other than a relative of the reporting individual, which total $100 or more in value.

(2) *Certain gifts.* The identity of the source, a brief description, and the value of any gifts of transportation, lodging, food or entertainment received during the preceding calendar year from any source other than a relative of the reporting individual, which total $250 or more in value. Notwithstanding the preceding sentence, any food, lodging or entertainment received as the "personal hospitality of an individual," as defined in 5 CFR 734.105(i) need not be reported.

(3) *Reimbursements.* The identity of the source, a brief description, and the value of any reimbursements not otherwise reportable under the provisions of this subpart received during the preceding calendar year from any source which total $250 or more in value.

(4) *Valuation of gifts and reimbursements.* The value of a gift or reimbursement is its fair market value. (For valuation of items not readily available in the market, see 5 CFR 734.301(c)(4).)

(5) *De Minimis exception.* Any gift with a fair market value of $35 or less need not be aggregated for purposes of this paragraph.

(d) *Interests in property.* (1) *In general.* A brief description of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value in excess of $1,000 as of the close of the preceding calendar year. Each item of real and personal property shall be listed separately and shall be categorized as to its fair market value in accordance with 5 CFR 734.304. The reporting individual should also consult 5 CFR 734.303 as to the detailed rules for determining the value of interest in property.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (d)(1) of this section, the following need not be reported:

(i) Any personal liability owed to the reporting individual by a relative,

(ii) Personal savings accounts in a single financial institution or holdings in a single market mutual fund, where the reporting individual, spouse, and dependent children have deposits or holdings aggregating $5,000 or less in that institution or fund, and

(iii) A personal residence.

(e) *Liabilities.* (1) *In general.* A brief description of the maximum liabilities owed to any creditor, other than a relative, which exceeded $10,000 at any time during the preceding calendar year; such amounts shall be categorized in accordance with 5 CFR 734.304.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (e)(1) of this section, the reporting individual need not report:

(i) Any mortgage secured by a personal residence,

(ii) Any loan secured by a personal motor vehicle, household furniture or appliances, which loan does not exceed the purchase price of the item which secures it, or

(iii) Any revolving charge account with an outstanding liability which does not exceed $10,000 as of the close of such preceding calendar year.

(f) *Positions held.* (1) *In general.* Identification of all positions held on or before the date of filing during the current calendar year as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (f)(1) of this section, the following need not be reported:

(i) Positions held without compensation in any religious, social, fraternal or political entity, and

(ii) Positions solely of an honorary nature.

(3) *Initial Reports; Special Rules.* A reporting individual who has not filed a report pursuant to § 400.735–31(a) during the preceding calendar year shall report in addition:

(i) For purposes of paragraph (f)(1) of this section, all such positions held during the preceding two calendar years, and

(ii) The identity and a brief description of the nature of the duties performed or services rendered with respect to each source of compensation which exceeded $5,000 in either of such preceding two calendar years.

Notwithstanding the provisions of paragraph (f)(3)(ii) of this section, the reporting individual is not required to include in such report any information which is considered confidential as a result of a privileged relationship, established by law, between such individual and any person, or with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(g) *Certain agreements and arrangements.* Identification of the parties to and a brief description of the terms of any agreement or arrangement, including the date, in existence at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing, with respect to—

(1) Future employment;

(2) A leave of absence during the term of Bank employment;

(3) Continuation of payments by a former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

§ 400.735–33 Reports of other reporting individuals.

(a) *New entrants.* In addition to information required of incumbents by § 400.735–32 (except for paragraphs (b) and (c)), each report of a new entrant shall include:

(1) Income received during a period which begins on January 1 of the preceding calendar year and ends on the date on which such report is filed;

(2) Interests in property held during a period which begins on January 1 of the preceding calendar year and ends less than thirty-one days before the date on which such report is filed; and

(3) Liabilities owed during a period which begins on January 1 of the preceding calendar year and ends less than thirty-one days before the date on which such report is filed.

(b) *Spouses and dependent children.* Each report required by the provisions of §§ 400.735–31, 32 and 33 shall include—

(1) *Income.* For purposes of § 400.735–32(a),

(i) With respect to a spouse, only the sources of items of outside earned income (as defined in § 400.735.3(b)) which exceed $1,000 and, in the case of such items derived from a spouse's self-employment in a business or profession, only the nature of such business or profession, and

(ii) With respect to interests in property of a spouse or dependent child, only income derived from such interests which are reported or reportable under § 400.735–32(d).

(2) *Purchases, sales and exchanges of certain property.* Any purchase, sale or exchange of an interest in property specified in § 400.735–32(b) of a spouse or dependent child which is reportable under § 400.735–32(d);

(3) *Gifts and reimbursements.* For purposes of § 400.735–32(c), the identity of the source and a brief description of gifts and reimbursements received by such spouse or dependent child by reason of such spouse's or dependent child's relationship to the reporting individual;

(4) *Interests in property and liabilities.* For purposes of § 400.735–32 (c) and (d), information with respect to any interests in property or liabilities specified in those paragraphs of a spouse or dependent child, other than with respect to items—

(i) Which the reporting individual certifies both that they represent the spouse's or dependent child's sole financial interest or responsibility, and that the reporting individual has no specific knowledge of such items,

(ii) Which are not in any way, past or present, derived from or related to the income, assets or activities of the reporting individual, and

(iii) From which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

§ 400.735–34 Special rules.

(a) *Termination reports.* In any case in which information is required by § 499.735–31 to be reported for the preceding calendar year with respect to any item, transaction or occurrence, the reporting individual shall also include all such information for a period which begins on January 1 of the current calendar year and ends on the date on which that report is filed.

(b) *Trusts.* Each report required by the provisions of §§ 400.735–32 and 33 shall include the information otherwise required by such provisions, with respect to the holdings of, and the income from, any trust or other financial arrangements.

(1) From which income is received by, or

(2) With respect to which a beneficial interest in principal or income is held by the reporting individual, spouse or any dependent child. For proper treatment of a non-vested beneficial trust, the reporting individual should consult the General Counsel of the Bank. (See 5 CFR Part 734(D) for a detailed discussion on the reporting requirements relating to trusts.)

(c) *Gifts received when not in government employment.* Any information with respect to gifts and reimbursements which are received during a period in which such reporting individual was not an officer or employee of the Federal Government need not be reported.

(d) *Special rule in the case of certain gifts.* For special rules relating to the waiver of public reporting for certain gifts see 5 CFR § 734.303(g).

(e) *Campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report.

(f) *Divorce and separation.* A reporting individual need not file any information with respect to:

(1) A spouse living separate and apart with the intention of terminating the marriage or providing for permanent separation,

(2) A former spouse or a spouse from whom such individual is permanently separated, or

(3) Any income or obligations arising from the dissolution of the marriage or the permanent separation from the spouse.

§ 400.735–35 Special provisions.

(a) *Filing of reports.* A reporting individual shall file the report with the General Counsel of the Bank, who shall note on the report or supplemental report the date it is received. The General Counsel shall submit the report of each Director, as well as his or her own report, to the Director of OGE after he or she has reviewed it (except that the President of the Bank shall review the report of the General Counsel).

(b) *Custody of and public access to reports.* The Bank shall, within fifteen days after any report is received by the General Counsel, make each report filed with it under this part available to the public by permitting inspection of such report by, or furnishing a copy of such report to, any person who makes a written application stating (1) the person's name, occupation and address, (2) the name and address of any other person or organization on whose behalf the inspection or copy is requested, and (3) that such person is aware of the prohibitions on obtaining or using the report for (i) any unlawful purpose, (ii) any commercial purpose, other than by news and communications media for dissemination to the general public, (iii) determining or establishing the individual's credit rating, or (iv) use, directly or indirectly, in the solicitation of money for any political, charitable or other purpose. The Bank may require a reasonable fee to be paid which is necessary to recover the direct cost of reproduction or mailing of such report, or may waive or reduce the fee if the Bank determines that such waiver or reduction is in the public interest.

All reports shall be retained by the Bank for six years, during which time they shall be made available to the public. After the six year period the report shall be destroyed, unless needed in an ongoing investigation.

(c) *Review of reports.* The General Counsel shall review each report within 60 days after the date of filing (or earlier if required by the expedited procedure of 5 CFR § 734.604(c)) in order to determine that the individual is in compliance with applicable laws and regulations and that the interests or positions disclosed on the form do not violate any applicable statute or regulation. Such review shall be conducted pursuant to 5 CFR § 734.604.

(d) *Failure to file or falsifying reports.* The President of the Bank shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully falsified or willfully failed to file information required to be reported, and may take any appropriate personnel or other action in accordance with applicable law or regulation against such individual.

(e) *Outside earned income.* (1) *Limitation.* Any reporting individual who is serving as a Director of the Bank may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 percent of such compensation.

(2) *Defined.* For purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services provided for the Bank in the reporting individual's official capacity. Income received by an inactive partner or income from royalties for a book published during a

prior calendar year or from passive investments shall not be deemed outside earned income for purposes of this section.

(3) *Other Employment Limitations.* The provisions of this paragraph shall not preclude the application of limitations on outside employment otherwise imposed by the Bank under other regulations.

Warren W. Glick,

General Counsel.

February 26, 1981.

[FR Doc. 81-7386 Filed 3-9-81; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-155-78]

Income From Trade Shows; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of income from qualified trade shows sponsored by certain exempt organizations.

DATES: The public hearing will be held on April 22, 1981, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by April 8, 1981.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-155-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 513(d) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, December 9, 1980 (45 FR 81066).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by April 8, 1981. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue.

George H. Jelly,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 81-7399 Filed 3-9-81; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[EE-176-78]

State and Local Government Deferred Compensation Plans; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to deferred compensation plans maintained by State and local governments and rural electric cooperatives.

DATES: The public hearing will be held on May 5, 1981, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by April 21, 1981.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-176-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 457 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, December 24, 1980 (45 FR 85077).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by April 21, 1981. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue.

George H. Jelly,

Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 81-7400 Filed 3-9-81; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 26

[LR-205-76]

Definitions and Special Rules Relating to Generation-Skipping Transfers; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the new tax on certain generation-skipping transfers.

DATES: The public hearing will be held on May 20, 1981, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by May 6, 1981.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-205-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 2611 thru 2613 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, January 2, 1981 (46 FR 120).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by May 6, 1981. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Acting Commissioner of Internal Revenue.

David E. Dickinson,

Acting Director, Legislation and Regulations Division.

[FR Doc. 81-7390 Filed 3-9-81; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL 1773-6]

Motor Vehicle Pollution Control; Waiver of Oxides of Nitrogen Emission Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Opportunity for Public Hearing to Consider Applications for Waivers.

SUMMARY: General Motors Corp. (GM) has submitted an application to EPA requesting a waiver of the 1982 through 1984 model year NO_x emission standard for certain of its diesel light-duty vehicles pursuant to section 303(b)(6)(B) of the Clean Air Act (Act).

This notice announces that EPA has tentatively scheduled a public hearing for March 25, 1981, to consider GM's application for waiver of the oxides of nitrogen (NO_x) emission standard applicable to diesel-powered light-duty vehicles for the 1982 model year only. EPA will consider GM's waiver requests for the 1983 and 1984 model years in future proceedings to be announced in the **Federal Register.**

Any party desiring to present oral testimony for the record at a public hearing, instead of or in addition to written comments, must notify EPA by March 12, 1981. If no party informs EPA that it wishes to testify, EPA will consider the waiver request based on written submissions to the record.

DATES: EPA has tentatively scheduled a public hearing for March 25, 1981, beginning at 9:00 a.m., if any party notifies EPA by March 12, 1981, that it wishes to present oral testimony regarding GM's waiver request. Any party also may submit written comments regarding the waiver request to the same address by April 3, 1981. All public portions of waiver applications and other relevant information will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at U.S. Environmental Protection Agency, Central Docket Section (A-120), Gallery I, Waterside Mall, 401 M Street, S.W., Washington, D.C. (Docket Number EN-81-4).

ADDRESSES: EPA will hold the public hearing announced in this notice at: EPA Conference Room 2126, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. Parties wishing to present oral testimony at the public hearing should notify in writing the Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Schwartz, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 472-7421.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202(b)(6)(B) of the Clean Air Act, as amended, 42 U.S.C. 7521(b)(6)(B)(1977), allows any manufacturer to petition the Administrator of EPA for waiver of the 1981-1984 model year NO_x standard of 1.0 gpm. The Administrator, after notice and opportunity for public hearing, may waive the standard for any class or category of light-duty vehicles manufactured during the four model year period, beginning in model year 1981, up to a maximum level of 1.5 gpm, if the manufacturer can show that the waiver is necessary to permit diesel engine technology to be used on the subject vehicles. The waiver may be granted if the Administrator determines:

(i) That the waiver will not endanger public health;

(ii) That the waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act, and

(iii) That the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act at the expiration of the waiver.

Guidelines for diesel NO_x waiver applications were published in the **Federal Register** at 43 FR 30341, July 14, 1978, in order to apprise manufacturers

of the information deemed necessary to demonstrate that a waiver should be granted.

II. Waiver Application

On February 6, 1981, GM submitted an application to EPA for waiver of the 1982 through 1984 NO_x emission standard for its 4.3 liter diesel passenger cars.

EPA will hold a public hearing to consider GM's application for the 1982 model year only, if any party notifies EPA on or before March 12, 1981, that it wishes to present oral testimony. EPA will consider GM's waiver requests for the 1983 and 1984 model years in future proceedings that will be announced in the **Federal Register**.

EPA has tentatively scheduled the hearing for March 25, 1981, beginning at 10:30 a.m., at EPA Conference Room 2126, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. If no party notifies EPA that it wishes to appear, EPA will publish a cancellation notice in the **Federal Register**.

In order to grant a waiver, the Administrator must determine that the applicant has provided information sufficient to satisfy each of the waiver criteria set out above. The Administrator is not required to make his determination solely on the record of the hearing, and may consider any additional information as well. Whether or not EPA holds a public hearing, EPA will enter any written comments it receives before April 3, 1981, into the record for this waiver request for the Administrator's consideration in making his waiver determination. All information considered by the Administrator for this waiver decision will be included in public docket EN–81–4.

III. Hearing Procedures

If the tentatively scheduled hearing takes place, it will provide an opportunity for interested persons to state their views or arguments, or to provide pertinent information concerning the waiver request at issue. Any party desiring to make an oral statement at the hearing should file a notice of such intention and 10 copies of the proposed testimony and other relevant material with the Director of EPA's Manufacturers Operations Division at the address listed above no later than March 12, 1981. If feasible, these parties also should submit at least 25 copies of their statements or material for the hearing record for general circulation to the Presiding Officer at the time of the hearing. In addition, any person may submit written questions at any time during the hearing, which the hearing panel may propound to witnesses to the extent practicable. Relevant statements and information not specifically required by the hearing panel may be filed in the public docket until April 3, 1981, to ensure their consideration as part of the waiver decision.

If the hearing is held, the Presiding Officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, directing participants to submit corroborative material in writing and, to the extent possible, notifying participants of the time at which they may appear.

Presentations by the participants at the hearing, if any, and interested parties who make written submissions should address the considerations set forth in detail by the guidelines for submission of waiver requests published in the **Federal Register**, 43 FR 30341, July 14, 1978. Participants should also be prepared to address the following issues:

1. Whether a waiver is necessary to permit the use of diesel engine technology in the class or category of vehicles or engines for which an applicant requests a waiver;

2. Whether the waiver would endanger the public health;

3. Whether the waiver would result in significant fuel savings at least equal to the fuel economy standard applicable under the Energy Policy and Conservation Act (EPCA);

4. Whether the technology utilized in the class or category for which a waiver is sought: (a) has a potential for long-term air quality benefit, and (b) has the potential to meet or exceed the average fuel economy standard applicable under EPCA at the expiration of the waiver, and;

5. The level of NO_x emissions, not to exceed 1.5 gpm, which an applicant's diesel vehicle class or category could meet in each of the model years for which an applicant requests a wavier.

Whether or not EPA holds a hearing the record will remain open until April 3, 1981, for the submission of written information for consideration by the Administrator in formulating his waiver decision. If EPA does hold the hearing, the agency will make a verbatim record of the proceeding. Interested persons may obtain a copy of the transcript at their own expense from the reporter during the hearing. The Administrator will base his determination with regard to GM's waiver request on the record of the public hearing, if any, and on any other relevant written submissions. This information will be available for public inspection at the EPA Central Docket Section in docket number EN–81–4. Interested parties may obtain copies of documents in the public docket as provided in 40 CFR Part 2.

Dated: March 5, 1981.

Jeffrey G. Miller,

Acting Assistant Administrator for Enforcement.

[FR Doc. 81–7605 Filed 3–9–81; 8:45 am]

BILLING CODE 6560–33–M

Notices

Federal Register
Vol. 46, No. 46
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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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Implementation of the Equal Access to Justice Act

AGENCY: Office of the Chairman, Administrative Conference of the United States.

ACTION: Requests for comments on draft model rules.

SUMMARY: The Chairman, Administrative Conference of the United States, requests comment on draft model regulations for the implementation of the Equal Access to Justice Act. [Pub. L. 96–481, 94 Stat. 2325.] The act provides for the award of attorneys fees and other expenses to parties who prevail over the Federal government in certain administrative proceedings. It requires the agencies conducting these proceeding to adopt regulations establishing procedures for making awards, after consultation with the Chairman of the Administrative Conference of the United States. The model regulations are intended to serve as a guideline for agencies in developing their own regulations. These draft model regulations have been developed with the assistance of an interagency task force composed of volunteers from numerous Federal departments and agencies.

DATES: Comments must be received on or before April 24, 1981.

ADDRESSES: Interested persons are invited to submit written comments to the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037. The comments received will be available for public inspection at the same address from 9 a.m. to 5:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Stephen L. Babcock, Executive Director, or Mary Candace Fowler, attorney, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington D.C. 20037; (202) 254–7020.

SUPPLEMENTARY INFORMATION: On October 21, 1980, the President signed the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat. 2325, authorizing the award of attorneys fees and other expenses to certain parties who prevail against the United States in administrative and judicial proceedings. Under the Act, eligible parties are entitled to an award fees and expenses unless the United States can demonstrate that its position in the litigation was substantially justified, or other circumstances make an award unjust. The Act applies to civil court actions (other than tort actions) brought by or against the United States and to "adversary adjudications" conducted by Federal agencies, defined as administrative adjudications under section 554 of the Administrative Procedure Act, 5 U.S.C. 554, in which the position of the United States is represented by counsel or otherwise. For categories of parties are eligible for fee awards: (1) individuals whose net worth is no more that $1 million; (2) businesses (including sole owners of unincorporated businesses), associations and organizations with a net worth of no more than $5 million and no more than 500 employees; (3) organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with no more than 500 employees, regardless of net worth, and (4) agricultural cooperative associations as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with no more than 500 employees, regardless of net worth.

The act assigns to agencies the responsibility to make fee awards in their own covered proceedings. Under section 203 of the Act (which is codified in 5 U.S.C. 504), each agency is to establish uniform rules for the submission and consideration of applications for awards, after consultation with the Chairman of the Administrative Conference of the United States. We interpret this provision to mean that each agency must give the Chairman a reasonble opportunity to review and suggest changes to its regulations before they are adopted.

We have decided to prepare model regulations in order to facilitate this process. We believe sound, workable guidelines will simplify the agencies' task and, while not binding on agencies, will encourage the uniformity of procedures, to the extent practicable, contemplated by Congress. The model regulations will also facilitate consultation between agencies and the Chairman of the Administrative Conference, which will focus on agencies' proposed departures from the model rules, and the reasons for them.

The Act is scheduled to become effective on October 1, 1981. The Administrative Conference plans to issue final model regulations in May, 1981, to provide agencies with adequate time to adopt their own regulations before the effective date. To meet this schedule, we have set a 45-day deadline for comments on the draft model rules.

Realistically, agency regulations for processing applications for awards cannot be identical. Each agency's rules will have to correspond to its existing organization and procedures. The awards process may also be affected by the types of covered proceedings handled by an agency and their complexity. The model regulations should both provide a common basic approach to the process of awarding fees and, to the extent possible, incorporate alternative procedures that reflect the differences among agencies.

We invite commenters to help us achieve these goals by evaluating the draft model rules in the context of particular agencies' activities and procedures. We also encourage Federal agencies to solicit the views of their constituencies on the draft, so that we will have some indication of whether these procedures seem to potential applicants to be workable.

In general, as directed by the Act, the draft rules concern the procedures for making awards. They are not intended to establish substantive standards for determination, such as whether the government's position in a proceeding is substantially justified, except to the extent that such standards have been clearly suggested by Congress in the Act or in legislative history. The draft also includes provisions which define or explain the terms used in the statute. We invite comment on whether the draft rules go too far, or not far enough, in fleshing out the substantive provisions of the Act.

The draft model regulations include six subparts covering the following

subjects: (1) general provisions explaining the Act and its standards and eligibility requirements; (2) the fees and expenses allowable under the Act; (3) the contents of applications for awards; (4) procedures for considering application; (5) payment of awards, and (6) procedures for rulemaking to increase the ceiling on hourly rates for attorneys. A detailed explanation of the draft model follows.

The model contains a few terms that require a brief explanation. The Act assigns certain responsibilities for making fee determinations to the "adjudicative officer," defined in 5 U.S.C. 504(b)(1)(D) as "the deciding official, without regard to whether the official is designated as an administratve law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication." In the vast majority of cases, of course, this will be an administrative law judge, but it may not always be. We have used the statutory term throughout to refer to this official. In drafting model rules, we have also sought some way of distinguishing between the agency as a deciding or award-paying body and the agency as party to the proceeding. The draft rules generally use "counsel representing the agency" or "agency counsel" to indicate the agency as a party to the proceeding, "the agency" to indicate the agency in its other roles. The terms are used only for convenience, since the Act applies whether or not the person representing the agency in a proceeding is an attorney. In drafting their own rules, agencies could use terms that reflect their own practices, or the actual names of litigating units of the agency.

Subpart A—General Provisions

Subpart A contains general provisions explaining the Equal Access to Justice Act and its coverage and some miscellaneous provisions. Several of these are simple and require no extended explanation: § 0.101 states the purpose of the agency's rules; § 0.102 sets forth the effective date of the Act; § 0.107 would include whatever delegations of authority an agency finds necessary to implement the regulatiqns. Other provisions deal with the proceedings covered, eligibility, the standards for awards, and proceedings involving more than one agency.

Covered Proceedings: Section 0.103 identifies the types of proceedings subject to the Act. The section describes what is meant by an adversary adjudication and states that certain ratemaking and licensing proceedings are not covered by the Act. As adopted by a particular agency, the section would also include a list of the specific kinds of proceedings at that agency that are ordinarily covered.

The section reflects our belief that Congress intended the Act to have broad applicability in cases involving the legality of individual conduct rather tha prospective, legislative issues. Thus we have interpreted the exceptions to the Act narrowly. Reports from both houses of Congress on S. 265, a bill substantially identical to the Act as passed, state that the exception for licensing proceedings to suspend, annul, modify or condition a license (H. Rep. 96–1418, House Judiciary Committee Report on S. 265, September 26, 1980, at 15; S. Rep. 96–253, Senate Judiciary Committee Report on S. 265, July 20, 1979, at 17), and the proposed rule reflects this approach. Similarly, we have interpreted the ratemaking exception to the Act to include only prospective ratemaking and not proceedings to determine the legality of past rates or practices. Under paragraph (c) of the proposed section, prevailing parties on proceedings including both covered and excluded issues could still seek an award of the fees allocable to the covered issues. In some cases, of course, the issues will be difficult to separate. For example, determination of a future lawful rate and the legality of the present rate may be inextricably linked, or denial of a license renewal may be one of several possible sanctions for alleged illegal conduct. We invite comment on how these situations should be handled under the Act.

The Act applies to adversary adjudications "under section 554" of the Administrative Procedure Act. Paragraph (b) of § 0.103 would permit the award of fees and expenses when agencies voluntarily use the formal procedures of section 554 as well as when those procedures are required. We believe this approach will avoid extended debate about whether particular proceedings are "under" section 554. If the proceeding otherwise qualifies as an "adversary adjudication" and involves issues complex enough, or individual rights important enough, to justify the use of formal procedures, we think it is within the intendment of the Act. We encourage comment on this question, however.

Eligible parties: Section 0.104 deals with eligibility for awards under the Act. The section recites the categories of parties eligible for awards and the applicable limitations on net worth and number of employees. The Act states that eligibility should be determined as of the time the adversary adjudication was initiated, and the rules reflect a literal interpretation of this provision. In some cases, however, an eligible party may intervene in, or be joined in, a proceeding well after it begins. Should the Act be construed to require determination of a party's eligibility on the date that party begins participation in the proceeding?

We propose to define "employees" to include all persons regularly providing services for remuneration for the applicant as of the date the proceeding began. Should the definition make some special provisions for part-time employees or seasonal workers? Is there any other existing test of "employment"—such as one widely used by a Federal agency—that would be fair and simpler to use? Commenters who object to the definition proposed here should suggest suitable atlernatives.

The section also contains three provisions intended to prevent ineligible parties from obtaining fee awards indirectly. We believe that such provisions are consistent with the purpose of the Act, and that they may be especially important since the Act applies even if the party seeking an award has initiated the litigation. However, the Act contains no explicit authority for any of these limits. We invite comment on both the legality and the advisability of the provisions.

Paragraph (f) would make it clear that when an applicant has apparently disposed of assets or incurred financial obligations in order to meet the net worth limitations of the Act, the transfers of assets or the obligations will be disregarded in calculating the applicant's net worth. Transactions for less than reasonably equivalent value would be presumed to be for this purpose.

In paragraph (g), the draft rule deals with the problem of affiliates, such as wholly-owned subsidiaries or businesses under common control. Some or all of these affiliates might be eligible for awards if treated separately, but not if considered together. The draft provision requires aggregation of the net worth and number of employees of affiliated individuals or entities. Although the Act does not explicitly authorize this type of treatment for affiliated entities, permitting such entities to receive awards seem logically inconsistent with the eligibility provisions of the Act. We invite comment on whether this approach is permissible under the statute.

Assuming it is permissible, additional questions remain. The draft rule defines "affiliates" as individuals or entities connected to an applicant by a chain or

ownership or control of a majority interest. Many other definitions are possible, and commenters are invited to suggest alternatives. Instead of providing for aggregation of the net worth and employees of all affiliated entities, regardless of individual size, the rule could cover only entities affiliated with individuals or entities that are themselves ineligible. There may be circumstances in which entities may have interests different from those of their affiliates, and should be treated separately. Should the rules provide for this? Should special provisions by made for non-business organizations? We encourage comments and suggestions on all these issues.

Finally, paragraph (h) of § 0.104 provides that parties will not be eligible for awards when it appears they have participated in proceedings only on behalf of other persons or entities that are ineligible. The rule is designed to prevent ineligible parties planning litigation with the government from using other organizations, which are eligible, to conduct their litigation in order to qualify for fee awards. We note that it is not intended to exclude intervenors on behalf of the "public interest" from eligibility; the legislative history indicates that the Congress considered this question and specifically declined to do so. Rather, it is intended to reach the situation in which an ineligible entity solicits and finances participation by an eligible one. It is very difficult, however, to draw clear lines in this area. As an example, how should the rules treat a trade association whose members include both eligible and ineligible businesses? We invite comment on whether this type of rule should be included at all and, if so, how it can be drafted more precisely.

Standards for awards: Section 0.105 sets out the Act's standards for making fee awards. The applicant is ordinarily entitled to an award if the agency's position in the proceeding (or in a significant, separable issue) was not substantially justified, with the burden of proof being onthe agency to demonstrate the justification of its position. The draft rule's definition of "substantially justified" reflects the legislative history's explanation that the standard is "reasonableness in the law and fact." H. Rep. 96–1434, Conference Report on H.R. 5612, September 30, 1980, at 22. Because a position that is reasonable at one stage in a proceeding may become unreasonable at a later point—when, for example, new information comes to light—the rule refers to the agency's position at relevant times. Beyond this, we have not attempted to include in the rules substantive standards for determining when a position is substantially justified. These determinations will, we believe, depend a great deal on the particular substantive laws and litigating postures an agency ordinarily deals with. We welcome comment, however, on whether the grant of rulemaking authority now contained in the Act permits agencies to go further in developing standards, and on whether we should attempt to develop them.

Under paragraph (b) of § 0.105, awards could include fees and expenses incurred before the date a proceeding begins, if they are reasonably necessary to prepare for the proceeding. Paragraph (c) explains the Act's provision that awards may be reduced or denied if applicants unduly protract proceedings, or if special circumstances make an award unjust.

Awards against other agencies: There are certain situations in which an agency may be a party to proceedings before another agency. Sometimes this occurs because the deciding agency is institutionally separate from the agency that litigates cases before it. The Occupational Safety and Health Review Commission, for example, is an independent agency that hears cases brought by the Occupational Safety and Health Administration of the Department of Labor. Similarly, the National Transportation Safety Board hears cases in which the Federal Aviation Administration seeks revocation of airman certificates. In other situations, an agency such as the Department of Justice may voluntarily seek to intervene in a proceeding conducted by another agency, in which the deciding agency may also have a litigating unit involved. what happens if these "outside" agencies take unjustified positions that would ordinarly entitle the opposing party to an award?

Narrowly interpreted, the Act seems to contemplate that the deciding agency and the litigating agency will necessarily be the same. We believe, however, that the purpose of the Act would be ill served if these dual-agency situations, particularly those of the first type, were not covered. The burden on the private party will be no less because the litigating agency is one different from the deciding agency. In fact, if both the agency conducting the proceeding and an intervening agency take unjustified positions, the burden on the private party may increase significantly.

Logically, the deciding agency would have to make the award in this situation (since its adjudicative officer handled the underlying proceeding), but the litigating agency or agencies should be responsible for payment. This presents some difficult jurisdictional questions, however. Does the deciding agency's general authority to issue orders that bind all parties to the case, including a separate litigating agency, extend to an order that the litigating agency is liable for an award of fees? Can an agency limit participation in proceedings before it to agencies willing to honor any fee award made in the proceeding? The answer to this question may vary depending on whether an agency has an explicit statutory right to participate or intervene in another agency's proceedings.

The draft rules include a preliminary treatment of this problem. Section 0.106 would condition a litigating agency's right to participate in proceedings before the deciding agency on its willingness to accept the latter agency's determination as to awards. We believe the problem needs a fuller expoloration, however, and we encourage comments on whether the Act contemplates awards in these situations, whether deciding agencies have authority to make litigating agencies pay awards, and whether the draft rule is a reasonable approach to the problem.

Subpart B—Allowable Fees and Expenses

This subpart states generally the fees and expenses that may be awarded under the Act. § 0.201 covers the fees and expenses of attorneys, agents and expert witnesses. The provision restates the Act's direction that awards should be based on prevailing market rates for services, applying this principle even where the services are provided by employees of the party at a reduced rate. This approach is generally consistent with the legislative history of S. 265. *See* H. Rep 96–1418, House Judiciary Committee Report on S. 265, September 26, 1980, at 15. We note, however, that the salary and overhead arrangements of in-house attorneys employed by businesses are usually quite different from those of attorneys in private practice. Should awards for the services of these in-house attorneys be made at the prevailing rates for private attorney's services? Also, how should the rules deal with awards for the services of individuals, or non-attorney employees of businesses, who represent themselves, without legal assistance?

The provision also includes the Act's ceilings on fees: $75 per hour for attorneys or agents and, for expert witnesses, the agency's maximum rate for the payment of such experts. (Included in brackets is an hourly rate, $24.09, equivalent to the current

government-wide ceiling of $50,112.50 per year on employee salaries.)

The provision identified some factors to be used in determining the reasonableness of the fee request—the customary fee of the attorney or agent for similar services, the actual time spent on the case, and the time reasonably spent in light of the difficulty or complexity of the issues in the proceeding. These factors are based loosely on those used by courts in awarding attorneys fees. They differ from those standards (developed primarily in Civil Rights Act cases), however, in that greater emphasis is placed on the "regular rate" of the attorney, agent or expert witness, when that person is in the business of acting as an attorney, agent or expert witness. We propose to include them for general guidance to applicants and to adjudicative officers making awards; they are not intended to provide a hard formula for making determinations on the reasonableness of fees. We would like to know whether commenters believe this approach will be helpful, or whether the standards will raise more questions than they answer.

Section 0.201 provides that reasonable expenses of attorneys, agents and witnesses may be itemized separately from hourly charges, but does not identify the types of expenses covered. "Reasonable expenses" is intended to include the types of expenses customarily charged to clients, such as travel expenses or photocopying, but not items ordinarily included in hourly fees, such as secretarial services. It is intended, moreover, to include only the reasonable portion of such expenses, not items such as first class airfare or duplicating costs far above prevailing rates. Should the rules specifically list the type of expenses that may be included? Should they explicity cover fees and expenses of paralegals?

Section 0.202 covers awards for the cost of studies, reports and tests. The rule restates the Act's provision that awards may include the reasonable cost of these items when they are necessary for the preparation of the party's case. If the charge for an item exceeds a reasonable cost for the preparation of similar items, the applicant could recover the reasonable portion of the cost. Parties may sometimes enter evidence that is cumulative or studies that are far more elaborate than necessary to make their points. The phrase "reasonable cost" is also intended to be a safeguard against the possibility that agencies would have to pay for such unnecessary items.

What standards for awards should be applied when two or more parties are jointly represented by the same attorneys, but not all of the parties are eligible for an award of fees? Award could be based on the actual amount the eligible party has agreed to pay for the representation. Alternatively, an agency making an award could determine a reasonable fee for the entire representation, and then award some proportionate share based on the total number of parties jointly represented or on the proportion of the actual fees the eligible party has agreed to pay. Should the model rules specify one of these approaches, and if so, which one?

Subpart C—Form of Application

Subpart C identifies the information to be included in an application for an award of fees and expenses. The Act itself requires submission of "an application which shows that the party is a prevailing party and is eligible to recieve an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." 5 U.S.C. 504(a)(2). The Act also requires the applicant to allege that the position of the agency was not substantially justified.

The goal of the draft provision is to solicit sufficient information on these subjects for agency personnel to make an informed determination on the application without unduly burdening the applicant. The provisions divide the application into three parts: the basic application (§ 0.301), the statement of net worth (§ 0.302), and statements of fees and expenses (§ 0.303).

In the basic application, the applicant is to identify itself, the proceeding, and the issues on which it believes it has prevailed and as to which the agency's position was not substantially justified. The applicant then states its type (*e.g.*, individual, agricultural cooperative, etc.) and provides basic information on eligibility: the number of employees on the date the proceeding began, for applicants other than individuals; a description of affiliated individuals or entities, if any, for applicants other than individuals and sole owners of unincorporated businesses; and a statement that the applicant's net worth when the proceeding began did not exceed the ceiling for its type, for all applicants except tax exempt organizations and agricultural cooperatives. In lieu of the net worth declaration, a tax exempt organization would be required either to state that it was included in the current edition of IRS Bulletin 78 (which identifies most qualified tax exempt organizations) when the proceeding began, or, if the organization is a religious organization which is not required to seek IRS approval of its tax exempt status, to submit a description of the organization and an explanation of its belief that it is exempt. An agricultural cooperative would have to include a copy of its charter or articles of incorporation and bylaws to demonstrate its eligibility. The application is to be signed by the applicant or a responsible official of the applicant, who must state that it is true and complete and that he or she is aware that making a false statement in the application is a felony under 18 U.S.C. 1001.

The applicant would not be required to include documentary proof of its statements as to number of employees, affiliated corporations, or tax-exempt status. We believe the statement, subject to the penalties of 18 U.S.C. 1001, should be adequate in the first instance. An agency could request documentation if there were any reason to question the accuracy of the statements made. We invite comments on whether additional documentation should be required on these items in the initial application.

All applicants except tax exempt organizations and agricultural cooperatives would also have to file a statement of net worth under § 0.302. The statement would list the applicant's assets and liabilities, grouped as described in the rule. We solicit comments on whether the groups identified in the rule will provide sufficiently detailed information to permit an informed decision on eligibility, and also on whether they will be convenient and workable for applicants.

The legislative history of S. 265, which was substantially identical to the Act as passed, states that assets should be valued at their acquisition cost, rather than their fair market value. H. Rep. 96–1418, House Judiciary Committee Report on S. 265, September 26, 1980, at 15; S. Rep. 96–253, Senate Judiciary Committee Report on S. 265, July 20, 1979, at 17. We believe this reflects a Congressional intent to permit the lowest possible valuation of assets, which in most cases will be the acquisition cost. Sometimes, however, fair market value will be lower than acquisition cost. It seems unfair, for example, to require an applicant to value common stock at acquisition cost if the value of the stock has dropped considerably since purchase. The draft rule thus would permit valuation of assets at the lower of acquisition cost or fair market value. On the other hand, a system in which only acquisition cost is

used will be easier to administer, since fair market value may often be difficult to prove. We invite comments on whether the draft rule's approach is fair, whether it is workable, and whether it accurately reflects the intent of Congress.

For the convenience of applicants who may have prepared a financial statement for another purpose (such as to obtain a bank loan or to file with an income tax return) near the time the proceeding started, the rule would permit the filing of net worth information in any other form that is sufficient to make an eligibility determination. The applicant would have to include a statement describing any adjustments necessary for the material to reflect net worth on the date the proceeding began. The optional form is designed primarily for applicants whose net worth is well below the ceiling. For these applicants a precise figure is obviously irrelevent, and, consequently, there is need for less detail on this point. This provision is, in effect, a form of "tiering" of the kind encouraged by the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601-612.

Finally, the net worth statement is to include either a description of any transfers of assets or obligations incurred within the three months before the beginning of the proceeding that reduced the applicant's net worth below the applicable net worth ceiling, or a statement that none occurred. One possible disadvantage of this provision as drafted is that it will be difficult to enforce. If an applicant, whether deliberately or because of an error made in good faith, incorrectly reports that no such transactions occurred, the agency will have no readily available information with which to evaluate this assertion. A broader provision, requiring the reporting of all transfers made or obligations incurred, all those that reduce net worth, or all those involving assets or obligations above a certain value, would afford information with which the agency, rather than the applicant, could determine whether these transactions brought the applicant within the eligibility limit, and whether they were undertaken with that purpose. On the other hand, a broader provision would be more burdensome on applicants, and would unnecessarily inconvenience those applicants who were clearly eligible at all times during the three-month period and who nevertheless would be required to report their transfers. Which approach is preferable? If the reporting requirement should be broader, how broad should it be? Also, is the three-month period a reasonable one?

The applicant could request confidential treatment for its statement of net worth by submitting it in a sealed envelope. Under the rule, a statement so submitted would not be disclosed to the public except to enforce 18 U.S.C. 1001 (if the applicant is prosecuted for making a false official statement) or as required by law. In practical terms, "as required by law" means an agency would not disclose the information unless it received a request under the Feedom of Information Act, 5 U.S.C. 552, and then determined that the material could not be withheld under the exemptions to that Act. (In this case, the one most likely to apply would be Exemption 4, 5 U.S.C. 552(b)(4), which protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential.") We have included this provision because we believe applicants should not have to forfeit their privacy to any greater extent than is legally required in order to receive an award. It is unclear, however, whether these statements can usually be withheld under the Freedom of Information Act, and we solicit comment on this issue.

The third section in the subpart explains what must be included in statements of fees and expenses. The provision would require a separate itemized statement of work performed, and fees and expenses claimed, for each attorney (or firm), witness, or agent for whose services an award is requested, verified by the person (or representative of the firm) who performed the services. The application would not have to include documentation of expenses incurred, but records of those expenses would have to be kept in accordance with the Internal Revenue Service's requirements for documentation of business expenses, so that the expenses could be verified on request by the agency. We invite comment on whether the section is specific enough to elicit the information neccessary to determine the reasonableness of a request for a free award.

Subpart D—Procedures for Considering Fee Applications

Proposed subpart D contains the procedures that would govern the consideration of applications for awards. We believe these procedures should achieve two objectives. First, they should be easy to integrate with agencies' existing procedures. Inevitably, the model rules will not conform exactly to existing agency procedures, which vary enormously. They may also duplicate provisions in an agency's general procedural regulations. In some places the draft rules make explicit cross-references to material presumably included in an agency's existing regulations; in others, they do not, although they could. Ultimately, each agency will probably adopt rules that vary from the model rules in order to conform with existing practice; many may be able to shorten this section significantly by reference to existing procedures. We encourage commenters to consider subpart D in this light, offering suggestions as to where the rules should defer to existing practice and where, on the contrary, separate uniform standards for this Act are more appropriate.

The proceedings on the fee application should also be as brief and simple as possible. Each party must have a full and fair opportunity to challenge the other party's assertions and to present opposing evidence. But the applicant must be allowed to receive any award to which it is entitled within a reasonable period of time. Procedures should not permit the agency to frustrate the purpose of the Act by pursuing unreasonable or unnecessary objections to a legitimate application. Nor should unfounded challenges to an agency's showing of substantial justification be permitted to drive up the costs of administering the Act. It should be kept in mind that the time spent by the applicant's counsel in successfully prosecuting an application will also be compensable; thus an additional incentive for establishing procedures that are as simple as possible exists here. We invite comments on whether proposed subpart D adequately balances these interests.

The proposed rules in subpart D provide for two responsive pleadings: counsel representing the agency from which an award is sought may answer the application, and the applicant may reply to the answer. The application and responsive pleadings are to be filed and served under the agency's usual rules. The rules would encourage decision on a written record whenever possible. Responsive pleadings that rely on facts not in the record would have to be accompanied by affidavits or by requests for further proceedings to develop the necessary evidence. On request or on his or her own inititative, the adjudicative officer could order such proceedings, including informal conferences, oral argument, additional written submissions, or evidentiary hearings, when necessary to provide an adequate record for decision.

The draft rules direct the adjudicative officer to issue a decision on the fee

application as soon as possible after the conclusion of the proceedings conducted, including written findings in accordance with the mandate of the Act. When applicable, the decision is also to include an allocation of responsibility for payment of an award among agencies participating in the proceeding. This situation may arise when both a litigating unit of an agency conducting a proceeding and an intervening agency have taken unjustified positions. The rules do not include specific standards for such allocation, since we believe the adjudicative officer should make this determination based on the history of the particular proceeding. Should the rules more closely limit the adjudicative officer's discretion in this area? The model rules provide for discretionary agency review of the award determination. They also include a cross-reference to the Act's provision for judicial review.

The draft rules contain various deadlines for the filing of pleadings. The time allowed in many cases is somewhat short; even with these deadlines, however, a deserving applicant might have to wait a long time before obtaining an award. The 30-day deadline for filing an application is set by the statute, and the draft rules reflect our belief that the agencies cannot legally extend this deadline. We intend, however, that the other deadlines could be extended as necessary according to agencies' normal procedures. In this context, do the time limits provided seem reasonable? Should the model rules encourage agencies to use their own standard time limits for responsive pleadings instead?

The rules also direct adjudicative officers to hold necessary proceedings and issue decisions on applications for awards as promptly as possible. We considered setting a time limit, such as 30 days after filing of the last document or conclusion of the hearing, for issuance of the adjudicative officer's award determination, but concluded that such a limit might not adequately provide for situations in which an officer's current case load is very heavy or the issues presented in proceedings on the award are especially difficult. Should there be a specific deadline for decisions?

The rules would strongly encourage settlement on awards. They provide that counsel representing the agency may defer filing an answer objecting or consenting to an award for 30 days if he or she has agreed with the applicant to negotiate a settlement. This provision is not intended to limit settlement negotiations to 30 days, but only to provide that amount of time for informal discussions before the agency must take a formal position on the merits of the application.

The rules also state (in § 0.406) that awards may be settled either in connection with a settlement of the underlying issues in the proceeding or separately. Simultaneous settelment of the merits of a proceeding and of related attorneys' fee claims may potentially create a conflict of interest between parties and their attorneys. We believe, however, that when an award of fees is a likely possibility in a proceeding, attorneys fees will inevitably be a consideration in settlement negotiations. Permitting a settlement of both aspects of the proceeding at once will be more direct and efficient than requiring a two-part settlement. We invite comments on the advisability of this approach.

The rule provides that proposed settlements involving awards would be handled acording to an agency's standard settlement procedures. We believe that this approach will be more efficient and sensible than setting up a special settlement procedure for awards of fees. Since, however, some agencies' existing settlement procedures do not involved adjudicative officers, there is a potential conflict between this approach and the Act's direction that the adjudicative officer determine whether the position of the agency was substantially justified. We believe this conflict is more apparent than real, since in a settlement situation counsel for the agency has effectively agreed not to contest the allegation that its position lacked substantial justification. We invite comments, however, on whether this interpretation of the Act is correct, as well as on whether, as a matter of policy, the model rules should establish a separate procedure under which proposed settlements involving fee awards are always submitted to the adjudicative officer for review. If the rules do establish a separate settlement procedure, should they limit the power of the adjudicative officer, or of the agency, to disapprove a proposed settlement agreed to by counsel for the litigating arm of the agency?

A few features of subpart D require more explanation. § 0.402 of the draft specifies when applications can be filed. The Act requires the submission of applications within 30 days of a final disposition in the adversary adjudication. The section attempts to explain when such a final disposition may occur, as well as when an applicant may have prevailed before that time (when the agency has taken final action on a significant, separable issue in the proceeding). The legislative history reveals Congress' intent to define "prevailing" broadly, as it has been in case law under existing statutes:

> In cases that are litigated to conclusion, a party may be deemed "prevailing" for purposes of a fee award in a civil action prior to the losing party having exhausted its final appeal. An award may thus be appropriate where the party has prevailed on an interim order which was central to the case, *Parker v. Mathews*, 411 F. Supp. 1059, 1064 (D.D.C. 1976), or where an interlocutory appeal is "sufficiently significant and discrete to be treated as a separate unit", *Van Hoomissen v. Xerox Corp.*, 503 F.2d 1131, 1133 (9th Cir. 1974). H. Rep. 96–1434, Conference Report on H.R. 5612, September 30, 1980, at 21–22.

To guide our efforts to apply these standards in an administrative context, we invite comment on whether a party to an administrative proceeding can prevail on an issue before final disposition of that issue, and on what clear guidelines can be developed to explain when this occurs. This question should be considered in light of another provision of the Act, section 504(c)(1), which states that if a court reviews the agency's decision in the adversary adjudication, only the court can make a fee award.

Under § 0.405, parties to proceedings other than the applicant and the agency could file comments on an application or on the agency's answer. In multiparty proceedings, other parties may feel they have some stake in whether the applicant receives an award. Additionally, their views on the reasonableness of the request or on the justification of the agency's position as a party to the proceeding may be helpful. On the other hand, these parties do not have a direct financial interest in the award determination, and they should not be permitted to prolong award proceedings simply to inconvenience an applicant who may be a competitor or have interests generally adverse to theirs. Unless the adjudicative officer believes that the public interest requires additional exploration of matters in the comments, these parties would not be permitted to participate further in award proceedings. Is this a reasonable, fair way of handling third-party participation? Should other parties be allowed to participate at all?

Under § 0.409, either the agency unit that is a party to the proceeding or the applicant may seek review of the adjudicative officer's determination on the application. The agency would have discretion to deny review; it could also decide to review the decision on its own initiative. The rule provides that the agency would apply its ordinary

standard of review, except that the adjudicative officer's determination on three questions—whether the agency's position was substantially justified, whether the applicant unduly prolonged the proceeding, and whether special circumstances make an award unjust—would be reversible only for abuse of discretion. The Act explicitly assigns determination of these three issues to the adjudicative officer rather than the agency, without stating whether the agency can review the determination. For a decision by an adjudicative officer to be completely unreviewable by the agency, however, would be inconsistent with traditional agency practice. The draft model rule is intended to achieve the Congressional intent in a way that takes into account the usual decision-making process of agencies. We invite comment on how well it succeeds.

Subpart E—Payment

This subpart of the draft explains how an applicant who has received a favorable determination on an application may obtain payment. To avoid any appearance of footdragging or unnecessary delay by the agency, it would commit the agency to pay within 60 days after the applicant shows it is entitled to payment. The rule also states that an agency will not pay an award if any party has sought court review of the agency's action on the award or in the underlying proceeding. This appears to be required by the Act (5 U.S.C. 504(c)(1)), which provides that if a court reviews the agency's decision in the underlying proceeding, *only* the court may make an award. Note that this statutory provision seems to withhold from the agency the ability to make any payment to an applicant if any party to the proceeding asks for judicial review of the underlying decision, even if the applicant has not initiated the appeal. Can the statute be construed in any way, consistent with its terms, that will avoid this result?

Should the model rules also provide for interim fee payments to parties who are so short of funds that they may be unable to complete a proceeding at the agency level without an award? Such a rule would promote the purpose of the Act in hardship cases; however, it may well be beyond the scope of the authority granted agencies by the statute. An interim payment program could also prove very challenging to administer. If interim fee payments should be allowed, what standard of need should be applied? How strong a showing should the applicant have to make that it is likely to prevail and that the agency's position is likely to be found not substantially justified? What, it any, security should the recipient of an interim payment have to provide to guarantee repayment in case the recipient is later found not to be entitled to the award?

Subpart F—Rulemaking on Maximum Rates for Attorneys' Fees

The Act provides that agencies may, by rule, provide for payment of attorneys at rates higher than $75 per hour, if necessary because of inflation or because of factors such as the limited number of qualified attorneys available. The subpart includes basic provisions restating the statutory provision and describing the process for filing a petition for rulemaking. The subpart does not cover the interrelationship between such a rulemaking proceeding and any adversary adjudications occurring contemporaneously. Should higher rates adopted in a rulemaking be applied to all awards made after adoption of the rule, or only to awards for services provided after adoption of the rule? Should the model rules cover this issue at all?

These draft model regulations have been developed with the assistance of an interagency task force composed of volunteers from a number of Federal departments and agencies. The views and suggestions of task force members have been extremely helpful to the Office of the Chairman, and we gratefully acknowledge them. The text of the draft model regulations follows.

PART 0—MODEL RULES FOR IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

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Authority: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 [5 U.S.C. 504(c)(1)]; 5 U.S.C. 575(c)(2).

Subpart A—General Provisions

§ 0.101 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 and 504 note, provides for awarding attorney fees and other adjudication expenses to eligible idividuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this agency. Parties may be able to receive awards when they prevail over the agency, unless the agency's position in the proceeding was substantially justified. These rules define eligible parties and identify the kinds of proceedings covered. They also explain how to apply for awards, and the procedures and standards that this agency will use to make them.

§ 0.102 When the Act applies.

The Act applies to any adversary adjudication pending before the agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

§ 0.103 Proceednqs covered.

(a) The Act applies to adversary adjudications conducted by this agency. An adversary adjudication is an adjudication under 5 U.S.C. 554 in which the position of this or any other agency, or any component of an agency, is represented by an attorney or other representative who enters an appearance and participates in the proceeding. The Act specifically excludes proceedings for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, but proceedings to determine the reasonableness of past rates or terms and conditions of service and proceedings to modify or revoke licenses are included if they are "adversary adjudications." For this

agency, cases ordinarily covered are: [Here list].

(b) If this agency orders a particular matter to be determined as an adversary adjudication under the procedures set out in 5 U.S.C. 554, the Act will apply, and this agency will so state in its order designating the matter for hearing.

(c) If a proceeding includes both issues covered by the Act and issues specifically excluded, such as a case involving the modification of a license as well as the renewal of a license, any awards made will include only fees and expenses related to covered issues.

§ 0.104 Eligibility of applicants.

(a) In order to be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). For the purpose of determining eligibility, the "party" shall be the person or entity identified in the order or notice initiating the proceeding or permitting intervention in it. All conditions of eligibility set out in this subpart and in subpart C must be satisfied.

(b) The types of eligible applicants are as follows:

(1) Individuals with a net worth of not more than $1 million;

(2) Sole owners of unincorporated businesses if the owner has a net worth of $5 million or less and not more than 500 employees;

(3) Charitable or other organizations exempted from taxation by section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) having not more than 500 employees;

(4) Cooperative associations as defined in secion 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) having not more than 500 employees, and

(5) All other partnerships, corporations, associations or public or private organizations having $5 million or less net worth and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) Whether an applicant who owns an unicorporated business will be considered as an "individual" or a "sole owner of an unincorporated business" will be determined by whether the applicant's participation in the proceeding is related primarily to individual interests or to business interests.

(e) The employees of an applicant include all those persons regularly providing services for remuneration for the applicant on the date on which the proceeding was initiated, whether or not at work on that date.

(f) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonable equivalent value will be presumed to have been made for this purpose.

(g) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. "Affiliates" are other individuals, corporations or other entities directly or indirectly connected to the applicant by a chain of ownership or control of a majority of the voting shares or other interest.

(h) An applicant is not eligible if it appears from the facts and circumstances that it has partcipated in the proceeding only on behalf of other persons or entities that are ineligible.

§ 0.105 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses unless the position of an agecy during the proceeding, or with respect to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit, was substantially justified. To avoid an award, the agency must carry the burden of proof that its position at relevant times was reasonable in fact and law.

(b) Awards for fees and expenses incurred before the date on which a proceeding was initiated are allowable only if the applicant can demonstrate that they were reasonably incurred in preparation for the proceeding.

(c) Awards will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if other special circumstances make an award unjust.

§ 0.106 Awards against other agencies.

No other agency may intervene or otherwise participate as a party in proceedings of this agency covered by this part unless it has agreed that it will pay any fee awards for which this agency determines it is liable under these rules, subject to judicial review.

§ 0.107 Delegations of authority.

[This section is necessary only if a department or agency now delegates authority to take final agency action, in adjudications to which this Act will apply, to subsidiary officers or bodies.] The [Department Review Board] is hereby delegated the authority to take final action on matters pertaining to the Equal Access to Justice Act 5 U.S.C. 504, in actions arising under [List acts or types of cases.] The [Agency, Secretary] may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials or bodies.

Subpart B—Allowable Fees and Expenses

§ 0.201 Attorney, agent and expert witness fees.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses. Awards will be calculated on this basis even if the services were provided by an employee of the applicant or were made available free or at a reduced rate.

(b) Under the Act, an award for the fees of an attorney or agent may not exceed $75.00 per hour, regardless of the actual rates charged by the attorney or agent. An award for the fees of an expert witness may not exceed the highest rate at which this agency pays expert witnesses, which is [$24.09 per hour], regardless of the actual rates charged by the witness. These limits apply only to fees; an award may include the reasonable expenses of the attorney, agent, or witness as a separate item.

(c) In determining the reasonableness of the fees sought for attorneys, agents or expert witnesses, the adjudicative officer shall consider factors bearing on the request, such as:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for like services;

(2) The prevailing rate for similar services in the community in which the attorney, agency or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant, and

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding.

§ 0.202 Studies, analyses, engineering reports, tests and projects.

The reasonable cost (or the reasonable portion of the cost) of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that:

(a) The charge for the service does not exceed the prevailing rate payable for similar services, and

(b) The study or other matter was necessary to the preparation of the party's case.

Subpart C—Form of Application

§ 0.301 Contents of basic application.

(a) Applications shall be in writing and shall contain (1) the name of the applicant and the identification of the proceeding, (2) a declaration that the applicant believes that it has prevailed, and an identification of each issue as to which the position of an agency or agencies in the proceeding was not substantially justified, (3) a statement of the applicant's type (in terms of the types of applicants described § 0.104), (4) for each applicant other than an individual as defined in § 0.104, a statement of the number of its employees on the date on which the proceeding was initiated, (5) for each applicant other than an individual or a sole owner of an unincorporated business, a description of any affiliated individuals or entities, as the term "affiliated" is defined in § 0.104, or a statement that none exist, (6) where applicable, a statement that the applicant has a net worth not more than the ceiling established for its type, as of the date on which the proceeding was initiated, and (7) any other matter that the applicant believes appropriate.

(b) Applications filed by a tax exempt organization described in § 0.104 shall also contain either (1) a statement that the applicant was listed, on the date of the initiation of the proceeding, in the then-current edition of IRS Bulletin 78, "Organizations qualified under section 170(c) of the Internal Revenue Code of 1954," or (2) if the applicant is a tax exempt religious organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a brief description of the organization and a statement of the basis for its belief that it is exempt. Qualified tax exempt organizations are not required to file a statement of net worth.

(c) Applications filed by a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) shall also include a copy of the cooperative's charter or articles of incorporation and of its bylaws. Qualified cooperatives are not required to file a statement of net worth.

(d) All applications shall be signed by the applicant, or a responsible and knowledgeable official of an applicant that is not an individual. The individual signing the aplication shall state that the application and the statement of net worth (if any) are true and complete to the best of his or her information and belief, and that he or she understands that the application and statement are official statements subject to section 1001 of the United States Criminal Code (18 U.S.C. 1001), which provides that making a false official statement is a felony punishable by fine and imprisonment. The individual signing the application shall also provide the address and telephone number at which he or she can be contacted to verify or explain any information in the application.

§ 0.302 Statements of net worth.

(a) A statement of net worth must be filed by all applicants except qualified tax exempt organizations and cooperatives.

(b) If the applicant wishes its statement of net worth to be kept confidential, it should submit its statement with its application in a sealed envelope marked with the applicant's name and labeled "Confidential Statement of Net Worth". If a statement of net worth is so labeled it will not be disclosed to the public except as may be required by law, or or the purpose of enforcing 18 U.S.C. 1001, and after 10 days notice to the applicant.

(c) The statement must be filed and served with the application. It need not be served on parties to the proceeding other than the counsel for the agency over which the applicant asserts that it has prevailed.

(d) The statement may be in either standard or optional form.

(1) The standard form statement will include a listing of all the assets and liabilities of the applicant and any affiliates (as defined in § 0.104(g)) as of the date the proceeding was initiated.

(i) Assets must be grouped in the following categories, and the value must be given for each category: cash on hand and in banks; time deposits; bonds, stocks and other securities; debts owed to the applicant (including accounts receivable); merchandise inventory; furniture and fixtures; machinery and equipment; vehicles, aircraft and vessels; real property; intangibles, and all other assets. Individuals and sole proprietors of unincorporated businesses must also list a value for all personal property, including household effects. Each asset may be valued at the lower of either acquisition cost or fair market value as of the date on which the proceeding was initiated.

(ii) Liabilities will be grouped in the following categories: installment debt; accounts payable; unpaid principal of notes and bonds; mortgage and other secured debt; accrued and unpaid taxes, and all other liabilities. Stockholders equity, partnership capital and the like are not liabilities for the purpose of the statement.

(iii) The applicant's and any affiliates' net worth (total assets less total liabilities) shall be stated.

(2) An optional form statement may be in any form convenient to the applicant that provides full disclosure and is sufficient to determine whether the applicant qualifies under the standards set out in this part. For example, if the applicant prepared a financial statement to obtain a bank loan at approximately the same time that the proceeding was initiated, the applicant may submit a copy of that statement, accompanied by a description of any additions or adjustments needed to disclose the applicant's net worth, as defined here, at the time the proceeding was initiated. Or, if the applicant is a business corporation or partnership, it may wish to submit copies of Schedule L to its Federal income tax returns filed at the beginning of the year in which the proceding was initiated and at the beginning of the next year. Again, the applicant must accompany the copies with a statement describing any additions or adjustments necessary to determine whether the applicant was qualified, under the standards set forth in this part, on the date on which the proceeding was initiated. The agency or adjudicative officer has discretion to require an applicant to file a standard form statement if the optional form is not believed to provide sufficient disclosure.

(3) all statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the three month period prior to the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were none, the applicant shall so state.

§ 0.303 Statements of fees and expenses.

(a) All applications shall be accompanied by an itemized statement or statements of the fees and expenses of attorneys, expert witnesses, and agents, incurred in connection with the proceeding, for which an award is sought.

(b) A separate itemized statement, showing the hours spent in working in connection with the proceeding by each individual and a description of what was accomplished, the rate at which fees were computed, the total claimed, and the total amount agreed to be paid by the applicant, must be submitted for each person, firm or other entity for which the applicant seeks an award.

(c) The rules governing the allowance of fees and expenses, set forth in subpart B of this part, shall be followed. Expenses must be verifiable in accordance with the standards published by the Internal Revenue Service for the documentation of business expenses.

(d) Each separate statement must be verified by the person, firm or other entity performing services for which an award is sought, in accordance with the requirements set forth in paragraph (d) of § 0.301.

Subpart D—Procedures for Considering Applications

§ 0.401 Filing and service of documents.

All applications for an award of fees, answers, replies, comments, and other pleadings and documents related to applications shall be filed in the same manner as other pleadings in the proceeding and served on all parties to the proceeding [cross-reference to agency's general rule on filing and service of documents in hearing proceedings], except as provided in § 0.302(c) for Confidential Statements of Net Worth.

§ 0.402 When applications can be filed.

(a) The Act provides that an application for an award may not be made later than thirty days after final agency action on the proceeding. This agency does not have the power to allow exceptions for later filings, and thus the applicant must file and serve the application no later than 30 days after the later of (1) the date on which this agency declines to review an initial decision or other proposed disposition of the proceeding by an adjudicative officer, or (2) the date on which the agency issues an order disposing of petitions to reconsider the agency's final action, or (3) if no petitions for reconsideration were filed, the date on which they were due.

(b) An application may be made at any time, before the last filing date as determined under paragraph (a) of this section, that the applicant believes that it has prevailed. An applicant has prevailed when the agency has taken favorable action of one of the types specified in subparagraphs (1) through (3) of paragraph (a) of this section with respect either to the entire proceeding or to an ancillary or subsidiary issue in the proceeding that is sufficiently significant and discrete to merit treatment as a separate unit.

§ 0.403 Answers to applications.

(a) *General.* Within 15 days after service of the application, counsel representing the agency against which an award is sought shall file an answer of one of the types described in paragraphs (b) through (d) of this section. Unless counsel requests and is granted an extension of time for filing, failure to file an answer within the 15-day period will be treated as a consent to the award requested.

(b) *Consent.* If the agency counsel does not object to the award requested, he or she shall file an answer consenting to the award.

(c) *Negotiation.* If the agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file an answer stating their intent to negotiate a settlement. Within 30 days thereafter the agency counsel shall file an answer consenting or objecting to an award, or a proposed settlement on the application.

(d) *Objection.* If the agency counsel objects to the award requested, he or she shall file an answer objecting, which shall explain in detail the agency counsel's position and identify the facts relied on in support. If the objection is based on any alleged facts not already in the record of the proceeding, the agency counsel shall include with the objection either supporting affidavits or a request for further proceedings under § 0.407.

§ 0.404 Replies.

Within 15 days after service of an objection, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under section § 0.407.

§ 0.405 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application or an answer within 15 days after service of the application or answer. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires additional exploration of matters raised in the comments.

§ 0.406 Settlements.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the issues in the underlying proceeding, or after the underlying proceeding has been concluded, according to [cross-reference to agency's general rule on settlements]. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 0.407 Further proceedings.

(a) *General.* Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, including an informal conference, oral argument, additional written submissions or an evidentiary hearing, as provided in this section. Further proceedings should not be considered routine and, where necessary, will be conducted as promptly as possible.

(b) *Informal conferences; oral argument.* The adjudicative officer may schedule an informal conference to discuss an application or an oral argument on any issues related to the application whenever he or she believes the conference or argument may be helpful in resolving or in encouraging settlement of the issues.

(c) *Written submissions.* The adjudicative officer may order an applicant, agency counsel, or a party filing comments under § 0.405 to make additional written evidentiary submissions whenever he or she believes they are necessary to provide a record adequate to decide the issues related to the application. A request that the adjudicative officer order written submissions shall specifically identify the information sought and shall explain why the information is necessary to decide the issues.

(d) *Hearings.* The adjudicative officer shall hold an oral evidentiary hearing only on disputed issues of material fact that cannot be adequately resolved through written submisssions. A request for hearing shall specifically identify the disputed issues and the evidence to be presented at the hearing and shall explain why an oral evidentiary hearing is necessary to resolve the issues. The procedures for the hearing are those that apply to the underlying proceeding.

§ 0.408 Decisions.

The adjudicative officer shall issue a decision on the application as promptly as possible after the filing of the last document or the conclusion of the hearing. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, but shall not disclose the net worth of the applicant. The decision on the reasonableness of the

amount requested shall include an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings or whether other special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 0.409 Finality; agency review.

(a) *Finality of adjudicative officer's decision.* Unless the applicant or agency counsel seeks review under paragraph (b) of this section or the agency issues an order taking review of the decision on its own initiative, the adjudicative officer's decision on the application shall become a final decision of the agency 30 days after it is issued.

(b) *Agency review.* Either the applicant or the agency counsel may seek review of the adjudicative officer's decision on the fee application by filing and serving [exceptions or a petition for review] within [20] days after issuance of the decision. The agency may also decide to review an adjudicative officer's decision on its own initiative. Whether to review a decision is a matter within the discretion of the agency. Procedures on review will be those described in [cross-reference to agency's regular review procedures]. The standard of review will be that ordinarily applied to [recommended or] initial decisions, except that an adjudicative officer's determination on the justification of the agency's position as a party, on whether the applicant unduly prolonged the proceeding and on whether other special circumstances make an award unjust will be reversible only for abuse of discretion. The agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 0.410 Judicial review.

Judicial review of final agency decisions on awards may be obtained as provided in 5 U.S.C. 504 (c)(2).

Subpart E—Payment

§ 0.501 Payment of awards.

An applicant seeking payment of an award shall submit to the [Comptroller or othr paying official of the paying agency a copy of the agency's final award along with a statement that it will not seek review (or further review) of the agency decision, or on the award, in the United States courts. [Include here address for submissions at specific agency.] The agency will pay the applicant the amount awarded within 60 days after receiving the applicant's submission, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart F—Rulemaking on Maximum Rates for Attorneys Fees

§ 0.601 General.

If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the agency may adopt regulations providing that attorneys fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The agency will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

§ 0.602 Petitions for rulemaking.

Any person may file with the agency a petition for rulemaking to increase the maximum rate for attorneys fees. The petition [should be filed in accordance with agency's rule on petitions for rulemaking] [should be filed with the (appropriate office) of the agency, where it will be given a docket number and placed in a public file]. The petition should identify the rate the petitioner believes the agency should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The agency will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

(Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 [5 U.S.C. 504(c)(1)]; 5 U.S.C. 575(c)(2))

Dated: March 4, 1981.

Reuben B. Robertson,

Chairman.

[FR Doc. 81-7415 Filed 3-9-81; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Bucknell University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertainint ot this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Docket No. 80-00380. Applicant: Bucknell University, Lewisburg, PA 17837. Article: Microthermometry Apparatus. Manufacturer: Chaixmeca Ltd., France. Intended use of article: See notice on page 68984 in the **Federal Register** of October 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a temperature range of −180° Centigrade (°C) to +600°C. The National Bureau of Standards advises in its memorandum dated December 12, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-7390 Filed 3-9-81; 8:45 am]

BILLING CODE 3510-25-M

University of Colorado; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 3:30 a.m. and 5:00 p.m. in Room 3109 of the Department fo Commerce Building, 14th and Constitution Avenue NW, Washington, D.C. 20230.

Docket No. 80–00316. Applicant: University of Colorado, Health Sciences Center, 4200 E. 9th Avenue, Denver, CO 80262. Article: Mass Spectrometer, Model MM 7070H and Accessories. Manufacturer: VG Micromass, United Kingdom. Intended use of article: See Notice on page 45936 in the **Federal Register** of July 8, 1980.

Comments: No comments have been recieved with respect to this application.

Decision: Application approved. No domestic manufacturer was both able and willing to manufacture an instrument or apparatus of equivalent scientific value to the foreign article for such purposes as the foreign article is intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.11(c) of the regulations, at the time the foreign article was ordered (April 17, 1980).

Reasons: A letter dated March 19, 1980 listing the applicant's requirements and requesting that Nuclide Corporation (Nuclide) respond with a quotation was forwarded to this manufacturer. Nuclide did not respond to this Request for Quotation (RFQ).

Mass spectrometers fall in a category of instruments that are produced on order. Section 301.11(b) of the Department's regulations provides that in determining whether a produced on order instrument is "manufactured in the United States" the Department shall determine whether a U.S. manufacturer is able and willing to produce the instrument and have it available without unreasonable delay, taking into account "the normal commercial practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category."

On December 2, 1980 the Department wrote Nuclide about its failure to respond to the applicant's RFQ and requested a reply by December 19, 1980. To date, Nuclide has not answered.

The Department interprets Nuclide's failure to respond to the applicant's RFQ or the Department's letter as evidence that this firm (which might be capable of meeting the applicant's needs) was unwilling to do so.

Accordingly, the Department of Commerce finds that with respect to this importation no domestic manufacturer was both "able and willing" to manufacture a domestic instrument of equivalent scientific value to the foreign article for such purposes as the foreign article is intended to be used at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-7291 Filed 3-9-81; 8:45 am]

BILLING CODE 3510-25-M

Veterans Administration Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 80–00369. Applicant: Veterans Administration Medical Center, 4100 W. Third Street, Building 115–151B, Dayton, Ohio 45428. Article: Monochromatic Spectro Irradiator, Model CRM–FA. Manufacturer: Japan Spectroscopic Co. Ltd., Japan. Intended use of article: See Notice on page 66830 in the **Federal Register** of October 8, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a high level of radiant energy (20 milliwatts/square centimeter) in its 350–450 nanometer range. The Department of Health and Human Services advises in its memorandum dated December 11, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

Frank W. Creel.

Acting Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc. 81-7292 Filed 3-9-81; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Nuclear Magnetic Resonance Spectrometers

The following is a consolidated decision on applications for duty-free entry of nuclear magnetic resonance spectrometers pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW, Washington, D.C. 20230.

Docket No. 80–00052. Applicant: University of Arkansas, Department of Chemistry, Fayetteville, AR 72701. Article: NMR Spectrometer, Model FX–90Q and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: See Notice on page 75439 in the **Federal Register** of December 20, 1979. Advice submitted by: National Bureau of Standards: January 13, 1981. Article ordered: June 19, 1979.

Docket No. 80–00065. Applicant: University of Iowa, Department of Chemistry, Iowa City, Iowa 52242. Article: NMR Spectrometer, JNM/FX–90Q and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: See Notice on page 2677 in the **Federal Register** of January 14, 1980. Advice submitted by: National Bureau of Standards: January 13, 1981. Article ordered: July 2, 1979.

Comments: No comments have been received with respect to either of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for the purposes for which the articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article provides the capability for measuring T_{1-rho}, the spin-lattice relaxation time in the rotating frame. The most closely comparable domestic instrument is the Model XL–200 manufactured by Varian Associates. The currently available XL–200 measures T_{1-rho}. However, at the time each foreign article was ordered, the Model XL–200 did not measure T_{1-rho}. The National Bureau of Standards advises in its respectively cited memoranda that the feature described above is pertinent to the purposes for which each of the foreign articles to which these applications relate is intended to be used. NBS also advises that it knows of no domestic instrument which provided the pertinent feature at the time each article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time the articles were ordered.

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 81–7393 Filed 3–9–81; 8:45 am]
BILLING CODE 3510–25–M

National Technical Information Service

U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Chief, Intellectual Prop. Division, OTJAG, Department of the Army, Room 2D 444, Pentagon, Washington, DC 20310

Patent Application 6–158,008: The Log-Log Scale Lens; filed June 9, 1980
Patent Application 6–162,333: High Power Laser Irradiance Display Material; filed June 23, 1980
Patent Application 6–165,924: Uranium-Excimer Nuclear Reactor Laser; filed July 3, 1980
Patent Application 6–166,720: Crane Assembly; filed July 7, 1980
Patent Application 6–166,872: Pulsed Laser Beam Intensity Monitor; filed July 7, 1980
Patent Application 6–170,330: High Energy Laser Target Board; filed July 21, 1980
Patent Application 6–170,387: Variable Pressure Fuel Injection System; filed July 21, 1980
Patent Application 6–171,872: Energy Management Damper; filed July 24, 1980
Patent Application 6–172,803: Improved Hollow Beam Electron Source; filed July 28, 1980
Patent Application 6–177,032: Means and Method for Testing Laser Range Finders; filed August 11, 1980
Patent Application 6–179,309: High Power Attenuator and Termination; filed August 18, 1980
Patent Application 6–181,038: Instant Start Thyratron; filed August 25, 1980
Patent Application 6–182,917: PUV/NUV Processing Circuit; filed September 2, 1980
Patent Application 6–183,606: Focus Meter; filed September 2, 1980
Patent Application 6–183,656: Method of Coating Silicon Nitride Bodies; filed September 2, 1980
Patent Application 6–184,867: Temperature Responsive Control Circuit; filed September 8, 1980

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administration Service Division, Federal Building, Science and Education Administration, Hyattsville, MD 20782

Patent Application 6–180,542: Improving the Removal of Lint from Cottonseed; filed August 25, 1980
Patent Application 6–180,546: Solubilization of Lignocellulosic Materials; filed August 25, 1980
Patent 4,225,512: Ternary Salts of Tris(Aminomethyl)Phosphines and their oxides prepared by the hydrolysis of 1,3,5-Triaza-7-Phosphaadamantane and its oxide; filed July 28, 1979, patented September 30, 1980; not available NTIS
Patent 4,231,747: Shrinkproofing Wool with Copper Salts of Carboxylic Acids; filed July 16, 1979, patented November 1980; not available NTIS

U.S. Department of Commerce, National Technical, Information Service, Office of Government Inventions and Patents Springfield, Va. 22161

Patent 4, 233, 107: Ultra-Black Coating Due to Surface Morphology; field April 20, 1979, patented November 11, 1980; not available NTIS

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent Application 6–080,726: Conversion of Aklaal Metal Sulfate to the Carbonate; filed October 1, 1979.
Patent 4,211,889: Theromoelectric Module; filed September 16, 1968, patened July 8, 1980; not available NTIS

U.S. Department of Health and Human Services, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md 2025

Patent Application 6–025,157: Improved Multi-Step Process for the Production of Methanesulfon-m-anisidide, 4-(9-acnidinylamino)-; filed March 29, 1979
Patent Application 6–110,045: Method for Treating Intraocular Malignancies; filed January 7, 1980
Patent Application 6–110,293: Ethiodized Oil Emulsion for Intravenous Hepatography; filed January 8, 1980
Patent Application 6–115,411: Facile Synthesis of Codeine Precursors from Thebaine; filed January 25, 1980
Patent Application 6–115,900: Seven-Membered Ring Compounds as Inhibitors of Cytidine Deaminase; filed December 19, 1979
Patent Application 6–133,788: Improved Synthesis of 2,4-Diamino-6 Hydroxymethlpteridine; filed March 25, 1980
Patent Application 6–143,129: Separation of Triphenylphosphine Oxide from Methotrexate Ester and Purification of Said Ester; filed April 23, 1980
Patent Application 6–150,320: Inactivation on Non-A, Non-B Hecatitis Agent; filed May 16, 1980
Patent Application 6–170,570: Water Soluble Forms of Retinoids; filed July 21, 1980
Patent Application 6–172,086: alpha-Mehylnorethirdrare Enanthate and Its Use in Long Term Suppression of Fertility in Female Mammals; filed July 24, 1980
Patent Application 6–175,594: Improved Method for the Use of Orally Administered 13-Cis-Retinoic Acid in the Treatment of Acne; filed August 5, 1980
Patent Application 6–181,465: Nondenaturing Zwitterionic Detergents for Membrane Biochemistry; filed August 26, 1980
Patent Application 6–190,064: N–Acetyl-Cysteine Protects Against Cardiac Damage from Subsequently-Administered Cardio-

Toxic Anthracycline in Cancer Therapy; filed 23, September 1980

Patent 4,228,950: Horizontal Flow-Through Coil Planet Centrifuge; filed December 4, 1978; patented October 21, 1980; not available NTIS

Patent 4,232,154: Carbocyclic Analogs of Cytosine Nucleosides Exhibiting Antiviral and Antineoplasticactivity; filed July 17, 1979, patented November 4, 1980, not available NTIS

U.S. Department of the Navy, Director, Navy Patent Program/Patent Counsel for the Navy, Office of Naval Research, Code 302, Arlington, VA 22217

Patent Application 6-155,281: Manchester Code Decoding Apparatus; filed July 2, 1980

Patent Application 6-157,910: An Improved Performance Rotating Heat Pipe; filed June 5, 1980

Patent Application 6-171,860: Coaxial Termination for Cable In-Line Electronic Applications; filed July 24, 1980

Patent Application 6-177,707: Interleaved Sweep Radar Display for Improved Target Detection; filed August 13, 1980

Patent Application 6-181,292: Method of Making GeTe Infrared Detector; filed August 25, 1980

Patent Application 6-181,926: Fragment-Tolerant Transmission Line; filed August 27, 1980

Patent Application 6-188,419: Solid State Power Transformer; filed September 16, 1980

Patent Application 6-189,245: Survey Spar System for Precision Offshore Seafloor Surveys; filed September 22, 1980

Patent Application 6-189,497: Method of Providing Phase Biasing in a Continuous Single-Mode Fiber Ring Interferometer; filed September 22, 1980

Patent Application 6-190,298: Optical Fiber Waveguide for Measuring Magnetic Fields; filed September 24, 1980

Patent Application 6-191,563: Fused Single-Mode Fiber Bidirectional Coupler; filed September 29, 1980

Patent Application 6-192,962: Dispersion Compensated Acoustic Surface Waveguides Using Diffused Substrates; filed October 2, 1980

Patent Application 6-193,864: Flexible Semiconductive Polymers; filed October 3, 1980

Patent Application 6-194,166: A Two-Stage Spatial Frequency Filter; filed October 6, 1980

Patent Application 4,223,241: Electrostatic Charge Generator; filed August 28, 1978; patented September 16, 1980; not availatle NTIS

Patent 4,223,661: Portable Diver Heat Generating System; filed August 13, 1979; patented September 23, 1980; not available NTIS

Patent 4,225,520: Room Temperature Two Color Infrared Detector; filed July 13, 1979; patented September 23, 1980; not available NTIS

Patent 4,224,626: Ellipticized Lens Providing Balanced Astignatism; filed October 10, 1978; patented September 23, 1980; not available NTIS

Patent 4,227,948: Growth Technique for Preparing Graded Gap Semiconductors and Devices; filed December 27, 1977; patented October 14, 1980; not available NTIS

Tennessee Valley Authority, Division of Law, Muscle Shoals, AL 35660

Patent 4,213,924: Granulation and Coating by Improved Method of Heat Removal; filed June 19, 1978, patented July 22, 1980; not available NTIS

[FR Doc. 81-7513 3-9-81; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Mapping, Charting and Geodesy; Advisory Committee Meeting

The Defense Science Board Task Force on Mapping, Charting and Geodesy (MC&G) will meet in close session on 30-31 March 1981 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At its meeting on 30-31 March 1981 the Defense Science Board Task Force on MC&G will review the Defense Department's plans and programs concerning generation, derivation, collection and transmission of MC&G data which is critical to the guidance of cruise missiles and other future weapons systems.

In accordance with 5 U.S.C. App. 1§ 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

March 4, 1981.

[FR Doc. 81-7413 Filed 3-9-81; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on Review of M-X Environmental Impact Statement; Advisory Committee Meeting

The Defense Science Board Task Force on the Review of the M-X Environmental Impact Statement will meet in open session on 30-31 March 1981 in the 400 Army Navy Drive Building, Arlington, Virginia. Each session will start at 8:30 a.m.

The mission of the Defense Science Board is to advise the Secretary of Defense and Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The objective of this specific Task Force is to make an independent review of the adequacy of the M-X Environmental Impact Statement (EIS) as prepared by the Air Force. Each member of the Task Force has previously reviewed the draft EIS and the planned agenda for this meeting includes discussions of each individual's analysis and of the form and content of the Task Force report. Areas requiring additional research and/or analysis will be identified.

The Air Force will be conducting open hearings on the draft M-X EIS. The purpose of those hearings, in contrast to this meeting, will be to obtain active public participation.

Because of the desire to accommodate as many people as reasonably possible, it is requested that persons interested in attending the DSB Task Force meeting notify the office of Colonel W. R. McDonald, USAF, (202) 695-9292, in the Pentagon, Washington, D.C. as soon as possible.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

March 4, 1981.

FR Doc. 81-7414 Filed 3-9-81; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(a)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272), notice is hereby provided that a meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on March 24 and 25, 1981, at the offices of the IEA, 2 Rue Andre Pascal, Paris 16, France, beginning at 2:30 p.m. on March 24. The purpose of this meeting is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held at Paris on those dates. The agenda for the meeting is as follows:

1. Adoption of draft agenda—IEA/SEQ/A/81/3
2. Summary Record of the 35th Meeting—IEA/SEQ/M/81/1 and Corrigendum I Summary Record of the 36th Meeting—IEA/SEQ/M/81/2
3. Emergency Management Manual Amendments:

- Start date of the sharing after a trigger—IEA/SEQ/81/17
- Retroactive oil reallocation—IEA/SEQ/80/84 1st Revision
- Trade discrepancies—IEA/SEQ/80/82 1st Revision

4. AST–3 Follow-Up:
   A. Draft of Appraisal Report on AST–3 for the Governing Board—IEA/SEQ/81/ * * *
   B. Report of NESO Debriefing Meeting—IEA/SEQ/81/ * * *
   C. New ISAG, ISAG Training and ISOM Manual update—IEA/SEQ/81/ * * *
5. Demand Restraint and Fair Sharing Reviews:
   A. Review of Australia—IEA/SEQ/81/ * * *
   B. Review of Denmark—IEA/SEQ/81/ * * *
   C. Fair Sharing Preparations—IEA/SEQ/80/81 * * *
   D. Cross Border Traffic—Oral Report by the Secretariat and EEC.
6. Legal Basis:
   A. Position after the 15th March—Oral Report by the Secretariat, U.S. Government and the IAB.
   B. Plan-of-Action/U.S. and EEC—Oral Report by U.S. Government and EEC.
   C. DSC Progress Report—Oral Statement by Legal Adviser.
7. Extension of Emergency System:
   A. Synthetic fuels—IEA/SEQ/80/69
   B. Inclusion of Naphtha in Emergency Reserve Obligation—IEA/SEQ/81/16
8. Data System:
   A. Oil Market surveillance system to replace Q A/B in non-crisis periods—IEA/SEQ/81/ * * *
   B. Progress report of the expert group on the energy data systems—IEA/SEQ/81/ * * *
   C. Feb/March Q A/B submission trade discrepancies—IEA/SEQ/81/ * * *
   D. Insufficient data base for Emergency Sharing System—IEA/SEQ/81/14 1st Revision
   E. Countries' options to calculate stocks under IEA obligation—IEA/SEQ/81/22
   F. Quarterly oil forecast—IEA/SEQ/81/22 * * *
9. Destination restrictions and their influence on the sharing system—IEA/SEQ/81/ * * *
10. Stocks-at-sea for forward months and non-reporting companies/analysis of 1Q81 experience—IEA/SEQ/81/ * * *
11. Any other business.
12. Future meeting dates.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., March 4, 1981.

Craig S. Bamberger,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 81-7522 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-01-M

Management and Administration; Review of Advisory Committees

The Department of Energy (DOE) is conducting a comprehensive review of its advisory committees in accordance with Office of Management and Budget Circular No. A–63, Transmittal Memorandum N. 5. Public comment is invited.

All agencies have been directed to conduct this review for each committee which was in existence on December 31, 1980, to determine (a) whether such committee is carrying out its purpose; (b) whether consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised; (c) whether it should be merged with other advisory committees; or (d) whether it should be abolished.

DOE is now in the process of conducting this review for the following advisory committees:

Advisory Committee on Atmospheric Carbon Dioxide
Consumer Affairs Advisory Committee
DOE/NSF Nuclear Science Advisory Committee
Dose Assessment Advisory Group
Energy Research Advisory Board
Environmental Advisory Committee
Federal Photovoltaic Utilization Program Advisory Committee
Food Industry Advisory Committee
Fossil Energy Advisory Committee
High Energy Physics Advisory Panel
National Energy Extension Service Advisory Board
National Petroleum Council
Solar Photovoltaic Energy Advisory Committee of the Energy Research Advisory Board
State Planning Council on Radioactive Waste Management

The following committees were terminated on the dates indicated below and therefore are not included in this review:

Local Government Energy Policy Advisory Committee—February 15, 1981
Fuel Oil Marketing Advisory Committee—February 28, 1981
Gasoline Marketing Advisory Committee—February 28, 1981

We are required to complete our review and submit our determination to the Committee Management Secretariat, General Services Administration, not later than April 15, 1981. Therefore, any public comments and recommendations should be provided to DOE not later than March 26, 1981. Interested persons should direct their comments to Georgia Hildreth, Advisory Committee Management Office, CA–201, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued at Washington, D.C. on March 4, 1981.

Georgia Hildreth,

Deputy Advisory Committee Management Officer.

[FR Doc. 81-7520 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP77–258]

Columbia Gas Transmission Corp.; Motion To Vacate Order

March 4, 1981

Take notice that on February 10, 1981, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP77–258 a motion pursuant to § 1.12 of the Commission's Rules of Practice and Procedure (18 CFR 1.12) to vacate the order issued May 3, 1977, in said docket which authorized the transportation of natural gas for Fruehauf Corporation (Fruehauf), all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

Columbia states that by order issued May 3, 1977, it was authorized to transport up to 200 Mcf of natural gas per day for Fruehauf for ultimate delivery to its Uniontown, Pennyslvania, plant pursuant to a January 27, 1977, gas transportation agreement between Columbia and Fruehauf. It is stated that no gas was ever transported pursuant to the authorization because the Uniontown plant was never subject to curtailment by its retail supplier of natural gas. Columbia states that by an August 7, 1979, letter it has advised Fruehauf that that gas transportation agreement which was the basis for the transportation service was terminated as permitted under the terms of that agreement. Columbia, accordingly, requests the Commission to vacate the May 3, 1977, order.

Any person desiring to be heard or to make any protest with reference to said motion should on or before March 30, 1981, 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. 81-7487 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP77-486]

Columbia Gas Transmission Corp.; Motion To Vacate Order

March 4, 1981.

Take notice that on February 10, 1981, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, Filed in Docket No. CP77-486 a motion pursuant to § 1.12 of the Commission's Rules of Practice and Procedure (18 CFR 1.12) to vacate the order issued December 21, 1977, in said docket which authorized the transportation of natural gas for Ball Corporation (Ball), all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

Columbia states that by order issued December 21, 1977, it was authorized to transport up to 160 Mcf of natural gas per day for use in Ball's Muncie, Indiana, plant pursuant to a May 19, 1977, gas transportation agreement between Columbia and Ball. It is stated that the order authorized a two-year transportation service but that no gas was ever transported under the arrangement. Columbia also states that the related gas sales agreement between Ball, Montara Petroleum Company and Mutual Oil & Gas Company has already been terminated. Applicant asserts that by a January 14, 1980, letter it has advised Ball that the gas transportation agreement which was the basis for the transportation authorized herein was terminated. Columbia, accordingly, requests the Commission to vacate the December 21, 1977, order.

Any person desiring to be heard or to make any protest with reference to said motion should on or before March 30, 1981, 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. 81-7488 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-59]

Columbia Gas Transmission Corp.; Motion To Vacate Order

March 4, 1981.

Take notice that on February 10, 1981, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP78-59 a motion pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure (18 CFR 1.12) to vacate the order issued August 9, 1978, in said docket which authorized the transportation of natural gas for Fruehauf Corporation (Fruehauf) all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

Columbia states that by order issued August 9, 1978, it was authorized to transport up to 400 Mcf of natural gas per day for Fruehauf for ultimate delivery to Fruehauf's Memphis, Tennessee, plant pursuant to an October 6, 1977, gas transportation agreement between Columbia and Fruehauf. It is stated that no gas was ever transported pursuant to the authorization because the retail company supplying Fruehauf's Memphis plant apparently never invoked curtailment. Columbia stated that by a September 23, 1980, letter it has advised Fruehauf that the gas transportation agreement which was the basis for the transportation service was terminated as permitted under the terms of that agreement. Columbia, accordingly, requests the Commission to vacate the August 9, 1978, order.

Any person desiring to be heard or to make any protest with reference to said motion should on or before March 30, 1981, 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. 81-7489 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No 3644 etc.]

Continental Hydro Corp. et al; Application for Preliminary Permit

March 3, 1981.

Take notice that Continental Hydro Corporation (CHC), Dam Nine Development Ltd (DND), and Enagenics, filed, respectively, on November 3, 1980, November 5, 1980, and January 12, 1981, competing applications for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project Nos. 3644, 3678, and 3963 to be known as Kentucky River Lock and Dam No. 9 located in Jessamine and Madison Counties, Kentucky. The applications are on file with the Commission and are available for public inspection. Correspondence with CHC should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Correspondence with DND should be directed to: Mr. Kenneth Lever, Partner, Dam Nine Development Ltd, 6566 France Avenue South, Minneapolis, Minnesota 55435. Correspondence with Enagenics should be directed to: Mr. Thomas H. Clark, Jr., President, Enagenics, 1727 Q Street, N.W., Washington, D.C. 20009. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Descriptions.—The proposed projects would utilize an existing dam owned by the U.S. Corps of Engineers. Applicants' facilities would be located mostly on U.S. lands.

Project No. 3644 would consist of: (1) A proposed powerhouse constructed on top of the dam at the east abutment, and containing generating units having a total installed capacity of 7.9 MW; (2) proposed transmission lines; and (3) appurtenant facilities. The estimated average annual energy output would be 27,900 MWh.

Project No. 3678 would consist of: (1) A proposed powerhouse constructed on top of the existing auxiliary dam adjacent to the navigation lock, and containing generating units having a total installed capacity of 3.8 MW; (2) proposed 69 kV transmission lines; and (3) appurtenant facilities. The estimated

average annual energy output would be 16,600 MWh.

Project No. 3963 would consist of: (1) A proposed powerhouse, located at the east end of the existing dam, with generating units having a total installed capacity of 21.5 MW, (2) proposed 69 kV transmission lines; and (3) appurtenant facilities. The estimated average annual energy output would be 37,100 MWh.

Purpose of Projects—Energy produced by CHC, Project No. 3644, DND, Project No. 3678, and Enagenics, Project No. 3963 would be sold to Kentucky Utilities Company.

Proposed Scope and Cost of Studies under Permit—Each Applicant seeks issuance of a preliminary permit for a period of 36 months. During that time they would determine the economic feasibility of the project, apply for DOE funding, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for FERC license. CHC estimates the cost of the studies for the project to be approximately $65,000. DND estimates the cost of the studies to be approximately $100,000, and Enagenics estimates the cost of the studies to be approximately $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before May 4, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than July 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in §1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 4, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project Nos. 3644, 3678, and 3963. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7498 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-29-000]

Gulf States Utilities Co.; Application

March 4, 1981

Take notice that on February 25, 1981, Gulf States Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to Section 204 of the Federal Power Act to issue 750,000 additional shares of Common Stock, without par value, pursuant to a Employee Stock Ownership Plan.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 25, 1981, 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). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7499 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3850-000]

Jorges Sanchez; Application for Preliminary Permit

March 3, 1981.

Take notice that Jorges Sanchez (Applicant) filed on December 9, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3850 to be known as Structure 65–C located at the South Florida Water Management District Structure 65-C on Kissimme Canal 38 in Okeechobee County, Okeechobee, Florida. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Jorges Sanchez, 239 Southland Road, Palm Beach, Florida 33480. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize South Florida Water Management District Structure 65-C used for irrigation, flood control and navigational purposes. Project 3850 would consist of: (1) an existing reinforced concrete rigid lock, which measure 30 feet x 90 feet, with a normal lift of 7.2 feet and a sill depth of 6 feet;

(2) a proposed powerhouse to be located on the southern bank of the canal, with an estimated installed capacity of 3.2 MW; (3) a proposed penstock approximately 30 to 40 feet in length; (4) proposed transmission lines to be interconnected with facilities owned by the Florida Power and Light Company; (5) an existing impoundment area, Canal 38, which has a normal pool elevation of 34.0 feet and a drainage area of 2,742 square miles at the site; and (6) appurtenant facilities. The proposed project is not located on Federal lands. The Applicant estimates that the average annual energy output would be approximately 8,000,000 kWh.

Purpose of Project—The Applicant intends to sell the generated output of energy to the Florida Power and Light Company, public institutions or industrial users.

Proposed Scope and Cost of Studies Under Permit—The Applicant seeks issuance of preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economic feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $52,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before May 4, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than July 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d)(1980).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding.

To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 4, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3850. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7500 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3804-000 and Project No. 4003-000]

Mitchell Energy Company, Inc. and Enagenics; Application for Preliminary Permit

March 3, 1981.

Take notice that Mitchell Energy Company, Inc. and Enagencies (Applicants) filed on December 1, 1980 and January 13, 1981, respectively, applications for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. proposed Projects Nos. 3804 and 4003, respectivley, both to be known as the Caesar Creek Dam Project located on Caesar Creek in Warren County, Ohio. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicants should be directed to: Mitchell L. Dong, President, Mitchell Energy Company, Inc., 173 Commonwealth Avenue, Boston, Massachusetts 02110, and Thomas H. Clarke, Jr., President, Enagencies, 1727 Q Street, N. W., Washington, D.C. 20009. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed projects would utilize a U. S. Army Corps of Engineers dam. Project No. 3804 would consist of: (1) a proposed powerhouse located just below the existing structure, and having an estimated installed generating capacity of 6 MW; (2) proposed transmission lines; and (3) appurtenant facilities.

Project No. 4003 would consist of: (1) a proposed powerhouse located southwest of the dam and having an estimated installed generating capacity of 4.8 MW; (2) proposed transmission lines, approximately three miles long; and (3) appurtenant facilities.

The projects would both be located on Federal lands.

Mitchell Energy Company and Enagenics estimate that the average annual energy generation will be 15.0 GWh and 9.3 Gwh, respectively.

Purpose of Project—Mitchell Energy Company plans to sell the generated output of energy to Ohio Edison Company or another utility. Enagenics

proposes to sell the generated output to Dayton Power and Light Company.

Proposed Scope and Cost of Studies Under Permit—The Applicants seek issuance of a mutually exclusive preliminary permit for a period of 36 months. During that period the Applicants intend to conduct engineering, environmental, and legal examinations. The cost of the proposed studies are estimated to be $50,000 (Mitchell Energy), or $40,000 (Enagenics).

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the commission, on or before May 1, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 30, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 1, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in respones to this notice of applications for preliminary permit for Projects Nos. 3804 and 4003. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N. W., Washington, D. C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7501 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4089-000]

Mason County Public Utility District No. 3; Application for Preliminary Permit

March 3, 1981.

Take notice that Mason County Public Utility District No. 3 (Applicant) filed on January 27, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 4089 to be known as the Vance Creek Hydroelectric Project located on the Vance Creek in Mason County, near Shelton, Washington. The Application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Dennis E. Rohr, General Manager, Mason County, PUD No. 3, P.O. Box 490, Shelton, Washington 98584, and Mr. Benjamin N. Settle, P.O.. Box 308, Shelton, Washington 98584, with copies to CH2M Hill, Attention: Mr. Abbas Orumchian, 1500 114th Avenue SE, Bellevue, Washington 98004. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) a new concrete, thin-arch dam, 25 feet high by 45 feet long creating a pondage with negligible storage capacity; (2) a 3000-foot long, 60-inch diameter pipe; (3) a surge tank; (4) a 100-foot long, 60-inch diameter steel penstock leading to; (5) a powerhouse to operate under a head of 100 feet and to contain one turbine-generating unit with a rated capacity of 1,300 kW; (6) a tailrace channel and; (7) a new 1.6-mile long, 12.5-kV transmission line to connect to an existing Applicant transmission line.

The Applicant estimates that the average annual energy output would be 4.5 million kWh.

Purpose of Project—The power output would be used to meet the Applicant's load growth and to offset power purchases now being made by the Applicant to supply its customers.

Proposed Scope and Cost of Studies under Permit—The Applicant has conducted some reconnaissance studies of the site. The Applicant now seeks issuance of a preliminary permit for a period of 36 months, during which time it would prepare a definitive project report that would include engineering, economic, and environmental data. The cost of these activities, the preparation of an environmental report, obtaining agreements with various Federal, State, and local agencies, and preparation of an FERC license application is estimated by the Applicant to be about $63,000. The Applicant has filed a detailed work plan for new dam construction. No test pits, borings, or other foundation exploration would be required during the permit period. No studies would be undertaken that would adversely affect the environment.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and

environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confirmed to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before May 4, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than July 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rule of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments fild, but a person who merly files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 4, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4089. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this Notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7502 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-32]

Pacific Gas Transmission Co.; Rate Change

March 2, 1981.

Take notice that on January 19, 1981, Pacific Gas Transmission Company tendered for filing a "Notice of Rate Change to Reflect Increase in the Price of Canadian Gas in Cost of Service Charges and Request for Expedited Consideration."

PGT states that its filing is made in compliance with the Federal Power Commission's orders in Docket No. RP73-111 which require PGT to make filings pursuant to Section 4 of the Natural Gas Act before there is reflected in PGT's cost of service charges any increase in the cost of gas imposed or required by Canadian authorities.

PGT indicates that its filing will effect increases in rates charged under its PL-1 Rate Schedule which is applicable to sales of gas made by PGT to its one customer for sale, Pacific Gas and Electric Company.

The filed changes in rates will reflect in PGT's cost of service charges certain increases mandated by Canadian authorities in the price of gas imported from Canada, commencing April 1, 1981. PGT presently obtains more than 99% of its entire supply of gas from Canada at a border price which is the Canadian dollar equivalent of $4.47 (U.S.) per Mcf of 1000 Btu gas. PGT recites that on January 15, 1981, it was notified by its Canadian supplier that existing National Energy Board (NEB) export licenses would be amended, effective April 1, 1981, to increase the border export price to the Canadian dollar equivalent of $4.94 (U.S.) per Mcf of 1000 Btu gas payable in Canadian dollars in accordance with a monetary exchange formula specified by the NEB. On the basis of the volumes and Btu content expected to be purchased in the year commencing April 1, 1981, PGT estimates that the effect of the April 1, 1981 increase would be approximately $143,750,000 (U.S.) on an annualized basis.

PGT advises that copies of its filing have been mailed to its customers and to interested state commissions. PGT requests that expedited consideration be given to the instant filing and that the filing be allowed to become effective on April 1, 1981, without suspension.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.18 and 1.10). All such petitions or protests should be filed on or before March 18, 1981. 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. 81-7503 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-20-002 (PGA81-1, IPR81-1, DCA81-1 and LFUT81-1)]

Transcontinental Gas Pipeline Corp.; Erratum Notice

March 2, 1981.

Due to an inadvertent clerical error, the following language which appears at the end of Ordering Paragraph (H) on page 6 of the Commission's February 28, 1981 order issued in these dockets should be deleted:

"However, the Commission denies New York's and North Carolina's request for an investigatory hearing."

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7504 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2545 (Phase II)]

Washington Water Power Co.; Extension of Time

March 2, 1981.

On February 24, 1981, Washington Water Power Company (WWPC) filed a request for an extension of time to file briefs opposing exceptions to the Initial Decision issued December 9, 1980, in the above-docketed proceeding. The motion states that additional time is required because of the lengthy nature of the brief on exceptions filed by the Coeur d'Alene Tribe of Indians and because of mailing delays typically occurring between Spokane and Washington, D.C. affecting receipt of both the receipt of the Secretary of Interior's brief and the filing of WWPC's brief.

Upon consideration, notice is hereby given that an extension of time for the filing of briefs opposing exceptions is granted to and including April 10, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7505 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4063-000]

Yolo County Flood Control and Water Conservation District; Application for Preliminary Permit

March 3, 1981.

Take notice that Yolo County Flood Control and Water Conservation District (Applicant) filed on January 27, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 4063 to be known as Clear Lake Hydroelectric Project located on Cache Creek in Lake County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. William L. McAnlis, Manager, Yolo County Flood Control and Water Conservation District, P.O. Box 767, Woodland, California 95695. Any person who wishes to file a response to this notice read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (a) the existing Clear Lake Dam—a concrete structure 38 feet in height and 260 feet in length; (b) the existing Clear Lake with gross storage capacity of 313,000 acre-feet at elevation 1326 feet (m.s.l.); (c) either (1) a powerhouse at the foot of the dam, containing two generating units with a total rated capacity of 2,000 kW; or (2) a powerhouse 6000 feet downstream of the dam containing two generating units with a total rated capacity of 5,800 kW; and (d) appurtenant facilities.

The Applicant estimates that the average annual energy output would be either 7.5 or 22 million kWh.

Purpose of Project—Project energy would be sold to a private utility.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 24-month permit to prepare project report including preliminary designs, results of environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $101,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before April 13, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 12, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 13, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4063. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7506 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3886-000]

Consolidated Hydroelectric, Inc.; Application for Preliminary Permit

Take notice that Consolidated Hydroelectric, Inc. (Applicant) filed on December 18, 1980, an application for

preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3886 to be known as the Canyon Lake Hydroelectric Project located on the Guadalupe River in Comal County, Texas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Gerald W. Haddock, Consolidated Hydroelectric, Inc., 4543 Post Oak Place, Suite 208, Houston, Texas 77027. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing Corps of Engineers' Canyon Lake Dam, intake and spillway, and would consist of a powerhouse containing four generating units with a total rated capacity of 6,600 kW, a tailrace, a 1 mile long transmission line, and appurtenant facilities. The Applicant estimates that the average annual energy output would be 18, 631 MWh.

Purpose of Project—The energy generated by the proposed project would be sold to Pedernales Co-op, Inc.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Mitchell Energy Company, Inc.'s Project No. 3635 filed on October 31, 1980 under 18 CFR 4.33 (1980). Anyone desiring to file a competing application must submit to the Commission, on or before April 27, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than June 26, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 27, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3886. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7487 Filed 3-6-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3810-000]

Enagenics; Application for Preliminary Permit

March 3, 1981.

Take notice that Enagenics (Applicant) submitted on December 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3810 to be known as Spring Valley Canal Station 581 Hydroelectric Project located on the Spring Valley Canal in Fairfield, Teton County, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas H. Clarke, Jr., President, Enagenics, 1727 Q Street NW., Washington, D.C. 20009. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the existing U.S. Department of the Interior's (Water and Power Resources Service) Spring Valley Canal. Project No. 3810 would consist of: (1) a proposed one-unit powerplant located at Sta. 591 + 50; (2) a proposed gate intake structure with trashrocks and a radialgate check structure located between Sta. 580 + 25 and Sta. 580 + 50; (3) a proposed 102 inch diameter surface penstock extending 1,170 in length to connect intake to the powerhouse; (4) a proposed tailrace connected to the stilling basin; (5) transmission lines having operating voltage of 69 kV interconnected 5.5 miles from the site; (6) a switchyard located at the powerplant; and (7) appurtenant facilities. Applicant estimates the capacity of installed

generating unit to be 3.9 MW. The project is located on Federal lands.

The Applicant estimates that the average annual energy output would be 18.3×10^6 kWh.

Purpose of Project—Energy produced at the site would be sold to the Montana Power Company or other public users.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36 month permit to develop a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State, and local agencies is estimated to be 40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—This application was filed as a competing application to Greenfields Irrigation District's Sun River Electric Cooperative, Inc., Project No. 3554 on Lower Turnbull Project Station 581+00 on the Spring Valley Canal under 18 CFR 4.33 (1980), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before March 27, 1981.

Filing and Service of Responsive Documents.—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3810. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 208 RB Building, Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7499 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2943-001]

City of Columbus, Ohio; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

March 5, 1981.

Take notice that on January 15, 1981, the City of Columbus, Ohio (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) [Public Law 96-294, 94 Stat. 611]) (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed O'Shaughnessy Dam small hydroelectric project (FERC Project No. 2943) would be located at the city's existing O'Shaughnessy Dam on the Scioto River, in Delaware County, Ohio.

Correspondence with the Applicant should be directed to: Mr. Robert C. Parkinson, Director, City of Columbus, Department of Public Service, 90 West Broad Street, Columbus, Ohio 43215.

Project Description—The proposed project would consist of: (1) the existing O'Shaughnessy Dam, a compacted earth-fill dam with an 879-foot-long uncontrolled concrete gravity spillway section topped by flashboard 2.9 feet in height; (2) an existing reservoir with a gross storage capacity of 16,900 acre-feet; (3) a new single-room powerhouse, with 2 generating units having a total rated capacity of approximately 5,000 kW; (4) a new penstock approximately 270 feet long connecting the proposed powerhouse with the existing bulkheaded power gate chamber and vaulted conduit in the dam; (5) a new discharge conduit, 60 feet long; (6) a new 34 kV underground transmission line, 2000 feet long; and (7) appurtenant facilities.

Purpose of the Project—Project energy would be utilized by the City of Columbus for municipal purposes.

Agency Comment—The U.S. Fish and Wildlife Service and the Ohio Department of Natural Resources are requested, for the purposes set forth in Section 408 of the Act, to submit appropriate terms and conditions to protect any fish and wildlife resources. Other any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide *Competing Applications*—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before April 15, 1981 either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than June 15, 1981. Applications for a preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 15, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 2943. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7473 Filed 3-9-81; 8:45 am]

BILLING CODE 6550-85-M

[Docket No. CP81-187-000]

Consolidated Gas Supply Corp.; Application

March 4, 1981.

Take notice that on February 10, 1981, Consolidated Gas Supply Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-187-000 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon a storage service presently rendered by Applicant for its affiliate, The Peoples Natural Gas Company (Peoples) and for a certificate of public convenience and necessity authorizing a related change in service under Applicant's currently effective full requirements service agreement with Peoples, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the storage service which it renders for Peoples in accordance with the terms of Applicant's Rate Schedule SSO.

Applicant further proposes to modify its existing full requirements service agreement with Peoples dated November 8, 1976, so as to eliminate the language obligating Applicant to sell Peoples its full requirements under Applicant's Rate Schedule RQ in excess of volumes of gas available to Peoples from gas stored for Peoples' account at the effective date of the agreement and to revise Peoples' minimum billing quantities under Applicant's Rate Schedule RQ.

Applicant states that the proposed abandonment is sought as part of a rate settlement agreement now pending approval by the Commission and reserves the right to withdraw the instant application in the event that the rate settlement agreement is not approved in accordance with its terms.

Applicant asserts that the proposed abandonment of the SSO storage service would not affect Peoples' peak day, winter or annual gas supplies.

Applicant further requests that the aforementioned authorization be made effective as of April 1, 1981, the beginning of the annual storage injection season.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1981, 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 157.70). 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 or its designee 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. 81-7484 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3883-000]

Continental Hydro Corp., Application for Preliminary Permit

March 4, 1981.

Take notice that Continental Hydro Corporation (Applicant) submitted on December 17, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3883 to be known as Lake Sherburne Dam located at the Water and Power Resources Service Lake Sherburne Dam, part of the Milk River project, on Swiftcurrent Creek in Glacier County, Babb, Montana. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize the Water and Power Resources Service Lake Sherburne Dam. Project No. 3883 would consist of : (a) a proposed powerhouse

to be located on the southeastern bank of the stilling basin; (2) a modification of the headworks to accommodate the power project; (3) a proposed penstock estimated to be 340 feet long running from the headworks through an existing conduit; (4) proposed transmission lines; and (5) appurtenant facilities. The applicant estimates that the installed generating capacity would be 1.4 MW. The proposed project is located on Federal lands. The Applicant estimates that the average annual energy output would be 4,680,000 kWh.

Purpose of Project—The applicant intends to sell the generated output of energy to the Water and Power Resources Service, an industrial user or public institution.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the engineering, environmental, and economc feasibility of the project. In addition, historic and recreational aspects of the project would be determined, along with consultation with Federal, State, and local agencies for information, comments and recommendations relevant to the project. The Applicant estimates that the cost of the studies would be $40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before May 8, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than July 7, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before May 8, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3883. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7465 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4001-000]

Enagenics; Application for Preliminary Permit

March 4, 1981.

Take notice that Enagenics (Applicant) filed on January 13, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 4001 to be known as Palo Verde Diversion Dam Project located on Colorado River in Riverside County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Thomas H. Clarke, Enagenics, 1727 Q Street NW., Washington, D.C. 20009. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would utilize an existing government dam owned by the United States Water and Power Resources Services and would consist of a powerplant with a total installed capacity of 11.5 MW.

The Applicant estimates that the average annual energy output would be 63.7 GWh.

Purpose of Project—Applicant intends to market the power generated by the project to the Western Area Power Administration, nearby public institutions, or other local industrial users.

Proposed Scope and Cost of Studies under Permit—The proposed studies would include economic analysis, preliminary engineering, and environmental impact assessment. Based on the results of the studies, Applicant would decide whether to proceed with more detailed studies and preparation of application for license to construct and operate project. Applicant estimates cost of studies would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of

application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Mitchell Energy Company, Inc.'s Project No. 3699 filed on November 7, 1980, under 18 CFR (1980), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comment does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before *April 13, 1981.*

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION","PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 4001. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7406 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2375]

International Paper Co.; Extension of Time

March 4, 1981.

On February 18, 1981, International Paper Company filed a request for an extension of time to file a feasibility study as required by Article 32 of the Order Amending License issued September 4, 1980, by the Director, Office of Electric Power Regulation, in the above-docketed proceeding. On October 14, 1980, an errata notice was issued in this proceeding which shortened the established date for complying with Article 32 of the Order Amending License.

In their motion for an extension of time, the company requests that the date for complying with Article 32 be extended for six months, as originally set forth in the September 4, 1980 order. In support of this request, the motion states that the company requires additional time to receive and evaluate recommendations of technical consultants and to incorporate this data into its feasibility study.

Upon consideration, notice is hereby given that an extension of time for complying with Article 32 of the Order Amending License be granted to and including September 4, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7474 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-793-001, ER80-793-000, and ER80-259]

Kansas Gas & Electric Co.; Order Accepting for Filing and Suspending Rate Schedule Change, Consolidating Dockets, Waiving Notice Requirements, and Establishing Procedures

Issued: March 4, 1981.

On September 22, 1980, in Docket No. ER80-793-000, Kansas Gas and Electric Company (KG&E) filed an unexecuted service agreement which provided for a rate increase to the City of Burlington, Kansas (Burlington). The filing superseded an expiring contract between these parties, and incorporated rates for service to Burlington identical to those proposed by KG&E for other of its customers and subject to investigation in Docket No. ER80-259.

By order dated November 28, 1980, the Commission, *inter alia*, suspended the filing in Docket No. ER80-793-000 with the pending proceeding previously suspended and set for hearing in Docket No. ER80-259.

Subsequently, on January 8, 1981, KG&E filed a proposed revision to paragraph 3.8 of the superseding Burlington rate schedule in Docket No. ER80-793-000 for one day to become effective on December 2, 1980, subject to refund pending a hearing. The Commission also consolidated Docket No. ER80-793-001, which would amend the existing reserve capacity requirement provision.[1] The reason for this latest filing, according to KG&E, is that paragraph 3.8, as previously filed, was not totally clear in conveying the intent of the paragraph. Therefore, the subsequent filing has been submitted to amend and more accurately reflect the understanding of the parties with respect to the reserve capacity requirement.

The original filing by KG&E for Burlington on September 22, 1981, would require the city to maintain an amount of capacity equal to the city's annual peak load plus reserve capacity of at least 25 percent of such peak load.[2] The currently proposed reserve capacity provision would require Burlington to maintain capacity equal to its annual peak load (including firm sales at wholesale) minus firm purchases from KG&E or firm sales at wholesale) minus

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[1] Designated as: *Kansas Gas & Electric Company*, Supplement No. 5 to Rate Schedule FERC No. 144.

[2] This provision is identical to the reserve capacity provisions contained in Burlington's expired fixed rate contract as well as capacity reserve provisions contained in eight of the ten contracts which KG&E has on file for partial requirements service to municipal customers.

firm purchases from KG&E or other suppliers, plus a reserve capacity of 25 percent of such amount.

Notice of the instant filing was issued on January 16, 1981, with responses due on or before February 9, 1981. On February 11, 1981, a Notice of Opposition was filed by certain Kansas cities (Cities).[3] Having been granted intervenor status in both Docket Nos. ER80–259 and ER80–793–000, the Cities express their belief that they are also intervenors in the instant docket.[4] The Cities reaffirm their continuing opposition to KG&E's proposed contract. In addition, the Cities complain that KG&E's various filings and amendments create a "moving target" which they find difficult to analyze. They assert that the instant filing, which purports simply to clarify the contract language, in fact changes Burlington's projected purchases of firm and supplemental power by $239,699 and $162,233, respectively. Cities complain that these changes are not reflected in any other company analysis and are not coordinated with KG&E's other projections.

Discussion

Our analysis indicates that KG&E's revision to paragraph 3.8 of the Burlington rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the revision for filing and suspend its operation as directed below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspension periods may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. We note that the instant submittal represents a modification in the nature of a correction to the rate schedule which, by order of November 28, 1980, was suspended for one day and permitted to become effective subject to refund on December 2, 1981. While we are unable to conclude that the revision is itself just and reasonable, it does appear that the amended provision will result in decreased revenues from Burlington as compared to the original submittal.[6] Moreover, while the intervening Cities continue to challenge various aspects of KG&E's proposed rate schedules, they have not requested a maximum suspension of the instant submittal. As a result, we believe that a one day suspension will provide adequate protection to Burlington pending the outcome of a hearing.

In light of the fact that DG&E's revision is designed to clarify the intent of its earlier submittal, and considering the consequent reduction in anticipated charges to Burlington, we find that good cause exists to permit an effective date in December of 1980, to coincide with the effective date of the prior filing. Accordingly, we shall accept the submittal in Docket No. ER80–793–001 for filing as of December 1, 1980, and we shall suspend the revised rate schedule provision for one day to become effective, subject to refund, on December 2, 1980.

Included as an issue in the consolidated proceeding in Docket Nos. ER80–793–000 and ER80–259 was the reserve capacity requirement contained in paragraph 3.8 of KG&E's proposed service agreement. Because the currently proposed change would supersede paragraph 3.8, common questions of law and fact are presented and we believe it appropriate to consolidate these proceedings for purposes of hearing and decision.

We note that KG&E has indentical reserve capacity requirement provisions in its rate schedules applicable to other partial requirements customers. The scope of the consolidated hearing ordered in this proceeding shall include an inquiry into whether the provision has been properly applied with respect to the remaining customers.

The Commission orders

(A) Waiver of the notice requirements is hereby granted.

(B) KG&E's rate schedule change filed on January 8, 1981, is hereby accepted for filing and suspended for one day to become effective on December 2, 1980, subject to refund pending hearing and decision.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of the revised rate schedule provision filed by KG&E in Docket No. ER80–793–001.

(D) Docket No. ER80–793–001 is hereby consolidated with the consolidated proceeding in Docket Nos. ER80–259 and ER80–793–000, for purposes of hearing and decision.

(E) The administrative law judge previously designated to preside in the consolidated proceeding in Docket Nos. ER80–259 and ER80–793000, shall determine the appropriate procedures necessary to accommodate consolidation of Docket No. ER80–793–001 with the existing proceeding.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81–7475 Filed 3–9–81; 8:45 am]

BILLING CODE 6450–85–M

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[3] The Cities are Arcadia, Arma, Augusta, Blue Mound, Bronson, Burlington, Chanute, Coffeyville, Elsmore, Erie, Fredonia, Girard, Haven, Iola, LaHarpe, Moran, Mr. Hope, Mulberry, Mulvane, Neodesha, Oxford, Savonburg, Wellington, and Winfield, Kansas.

[4] We note that the cities are correct in this assumption. Having been granted intervenor status in Docket No. ER80–793–000, they need not renew their request to intervene in Docket No. ER80–793–001, an ancillary proceeding.

[5] *E.g., Boston Edison Co.*, Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80–506, *et al.*, (August 29, 1980) (one-day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80–488 (August 22, 1980) (one-day suspension).

[6] Billing data submitted by KG&E indicate that this decrease in revenues will be on the order of $77,466 (8.6%) for the twelve-month period ending November 30, 1981. The revenue decrease reflects the fact that a lower billing demand is applicable to Burlington than was originally calculated and firm power energy rates are only applicable up to a maximum annual load factor of 80% with the remaining energy sales billed under a supplemental (economy) energy rate.

[Project No. 3797–000]

City of La Habra, California; Application for Exemption for Small Conduit Hydroelectric Facility

March 4, 1981.

Take notice that on November 25, 1980, the City of La Habra, California (Applicant) filed an application under Section 30 of the Federal Power Act (Act) (16 U.S.C. 823(a)) for exemption of a proposed hydroelectric project from requirements of Part I of the Act. The proposed Lambert Road Hydroelectric Unit (FERC Project No. 3797) would be located at Applicant's connection to the Metropolitan Water District's line at

Lambert Road. The connection is the main water supply for domestic purposes to the City of La Habra. Correspondence with the Applicant should be directed to: Mr. Lee Risner, City Manager, P.O. Box 337, Civic Center, La Habra, California 90631.

Purpose of Project—Project energy would be sold to Southern California Edison Company.

Project Description—The proposed project would consist of a single generating unit rated at 87 kW located in an underground concrete vault. The Applicant estimates that the average annual energy output would be 565 MWh.

Agency Comments—The U.S. Fish and Wildlife Service and the California Department of Fish and Game are requested, pursuant to Section 30 of the Act, to submit appropriate terms and conditions to protect any fish and wildlife resources. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. (A copy of the application may be obtained directly from the Applicant.) No other formal requests for comment, will be made.

Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR §§ 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 30, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc 81-7403 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ST79-28-001]

Louisiana Gas Intrastate, Inc. of Shreveport; Extension of Sale

March 4, 1981.

Take notice that on February 5, 1981, Louisiana Gas Intrastate, Inc. of Shreveport (Petitioner), 890 Dresser Tower, 601 Jefferson Street, Houston, Texas 77002, filed in Docket ST79-28-001 a notice of the proposed extension pursuant to Section 311(b) of the Natural Gas Policy Act of 1978 (NGPA) of the sale of natural gas to United Gas Pipe Line Company (United), all as more fully set forth in the notice which is on file with the Commission and open to public inspection.

Petitioner states that it has entered into a gas purchase agreement with United dated April 18, 1979, under which it sells natural gas to United. It is submitted that the initial two year term of the contract commenced on May 11, 1979, and will expire on May 11, 1981. Petitioner further states that the contract has been extended for an additional two-year term by a letter agreement dated January 7, 1981.

Petitioner estimates that the daily quantities of natural gas to be delivered to United under the contract would be 5 billion Btu per day with an estimated total quantity of 3.65 trillion Btu to be delivered during the extended two-year term. It is further asserted that Petitioner's deliveries to United may vary considerably from month to month.

Petitioner states that the rate to be charged is (a) Petitioner's weighted average acquisition cost of gas as determined in accordance with § 284.143 of the Regulations plus (b) adjustment to Petitioner's weighted average acquisition cost determined in accordance with § 284.144(a)(2) and (b) of the Regulations plus (c) $0.20 per million Btu as compensation for expenses incurred by Petitioner and associated with the gathering, treatment, processing, transportation and delivery of gas under the contract including a reasonable profit on such services.

Any person desiring to be heard or to make any protest with reference to said notice should on or before March 30, 1981, 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. 81-7407 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-197-000]

Michigan Wisconsin Pipe Line Co.; Application

March 4, 1981.

Take notice that on February 19, 1981, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP81-197-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a change in service provided for Fountaintown Gas Company, Inc. (Fountaintown) from Applicant's Rate Schedule SGS-1 to Applicant's Rate Schedule CD-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by order issued November 1, 1979, in Docket No. CP79-289 it was authorized to provide Fountaintown with 5,916 Mcf of natural gas per day and an entitlement of 1,045,000 Mcf of natural gas per year. Applicant states that Fountaintown has informed Applicant that it desires to change its presently effective service agreement under Rate Schedule SGS-1 to a service agreement under Rate Schedule CD-1 with its entitlements stated thermally. Accordingly, Applicant requests authorization to sell gas to Fountaintown under Rate Schedule CD-1 commencing April 1, 1981.

Applicant states that the requested change would not result in any increase in peak day or annual entitlement nor adversely affect Applicant's ability to meet the requirements of its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1981, 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 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 or its designee 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 81-7468 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2713-001]

Niagara Mohawk Power Corp.; Application for Major License

March 5, 1981.

Take notice that the Niagara Mohawk Power Corporation (Applicant) filed on December 1, 1980, an application for a major license pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r) for continued operation of the constructed Oswegatchie River Project, FERC No. 2713, located on the East Branch of the Oswegatchie River and the Oswegatchie River, a tributary of the St. Lawrence River, in the Towns of Oswegatchie, Edwards, Fine, and Clifton, and the Village of Heuvelton, St. Lawrence County, New York. Correspondence concerning the application should be directed to: John H. Terry, Esquire, Senior Vice President, General Counsel and Secretary, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

Project Description—The existing Oswegatchie Project consists of six Developments:

A. The Eel Weir Development at river-mile 5.1 comprising: (1) an 894-foot long and 23-foot high concrete Ambursen-type dam having crest elevation 272.0 m.s.l.; (2) a reservoir having a surface area of 96 acres and a usable storage capacity of 136 acre-feet at normal pool elevation 272.0 m.s.l.; (3) an integral concrete powerhouse at the right (east) bank including intake head gates, stop logs, and trash racks and containing three generating units having a total rated capacity of 2,700-kW; and (4) appurtenant facilities.

B. The Heuvelton Development at river-mile 12.0 comprising: (1) a 213-foot long and 8-foot high concrete gravity-type dam with concrete containing walls at both ends and having crest elevation 276.5 m.s.l., and surmounted by five 10.5×28-foot Taintor gates and one 28-foot wide by of stoplogs, each separated by 4-foot wide and 27-foot long and 20-foot high concrete piers; (2) a reservoir having a surface area of 239 acres and a usable storage capacity of 405 acre-feet at normal pool elevation 286.7 m.s.l.; (3) an integral masonry powerhouse at the left (south) bank including a concrete intake structure and steel trash racks and containing two generating units having a total rated capacity of 1040-kW and (4) appurtenant facilities.

C. The Oswegatchie Development at river-mile 86.6 comprising: (1) a 70-foot long and 12-foot high concrete overflow dam with a 20-foot long and 5-foot high concrete wall at the right (east) end and having a spillway crest elevation of 758.6 m.s.l.; (2) a reservoir having a surface area of 6 acres and usable storage capacity of 23 acre-feet at normal pool elevation 758.6 m.s.l.; (3) a 116-foot long and 12-foot high concrete headgate and steel trash rack structure along the left (west) bank; (4) a forebay about 80 feet in length; (5) a 17-foot wide, 20-foot high and about 60-foot long steel and wood flume containing a turbine; (6) a concrete and wood powerhouse containing a generator with a rated capacity of 560-kW; (7) a 90-foot long tailrace; (8) a 1,250-foot long 2.4kV transmission line; and (9) appurtenant facilities.

D. The South Edwards Development at river-mile 87.1 comprising: (1) a 200-foot long and 51-foot high concrete gravity-type dam having a spillway section with crest elevation 843.2 m.s.l. about 88 feet long surmounted by 2-foot flashboards and having an intake section with steel trash racks and timber sliding gates; (2) two concrete dikes one 240-foot long the other, 510-foot long, both 5-foot high surmounted by 10-inch flashboards along the left (south) reservoir bank; (3) a reservoir having a surface area of 81 acres and a usable storage capacity of 851 acre-feet at normal pool elevation 843.2 m.s.l.; (4) a 10-foot diameter 1,142-foot long fiberglass pipeline; (5) a surge tank; (6) a concrete powerhouse containing three generating units having total rated capacity of 2,680-kW; (7) a short tailrace; (8) a substation; (9) a 2,259-foot long 34.5-kV transmission line; and (10) appurtenant facilities.

E. The Flat Rock Development at river-mile 95.5 comprising: (1) a 568-foot long and 79-foot high concrete gravity-type dam with a 120-foot long concrete core earth embankment at the right (east) end and having spillway section with crest elevation 1080.0 m.s.l. 229 feet long and an intake section with trash racks, stoplogs, and roller gates; (2) a reservoir having a surface area of 228 acres and a usable storage capacity of 3,382 acre-feet at normal pool elevation 1080.0 m.s.l.; (3) an integral brick and concrete powerhouse at the left (east) bank containing two generating units having a total capacity of 6,000-kW; and (4) appurtenant facilities.

F. The Browns Falls Development at river-mile 96.9 comprising: (1) an 870-foot long and 67-foot high concrete gravity-type dam having a spillway section with crest elevation 1347.0 m.s.l. about 192 feet long surmounted by 2-foot flashboards and having an intake section with steel trash racks and headgates; (2) a reservoir having a surface area of 171 acres and a usable storage capacity of 2,215 acre-feet at normal pool elevation 1349.0 m.s.l.; (3) a 12-foot diameter 3,600-foot long welded steel pipeline connected to an 11-foot diameter 2,388-foot long riveted steel pipeline; (4) a surge tank; (5) two 8-foot diameter 142-foot long steel penstocks; (6) a brick and concrete powerhouse along the left (south) river bank containing two generating units having a total rated capacity of 15,000-kW; (7) a tailrace; (8) a 110-foot long 115-kV transmission line; and (9) appurtenant facilities.

The total installed capacity of the Oswegatchie Project is 27,980-kW. The six developments were constructed between 1912 and 1928 and have been operated continually in essentially the same manner. Applicant proposes the development of two small day-use recreational areas. No other construction or change in project operation is proposed.

Purpose of Project—All power generating by the project is and will continue to be incorporated into the Applicant's transmission distribution network for use within its service area.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before May 7, 1981, either the competing application itself or a notice of intent to

file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than September 4, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before May 7, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7478 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-177-000]

Shenandoah Gas Co.; Application

March 4, 1981.

Take notice that on February 4, 1981, Shenandoah Gas Company (Applicant), P.O. Box 2400, Winchester, Virginia 22601, filed in Docket No. CP81-177-000 an application for pursuant to Section 7(f) of the Natural Gas Act for a determination that its distribution system located in the Shenandoah Valley of Virginia and West Virginia is a service area within which Applicant may enlarge or extend its facilities for the purpose of supplying increased market demands in such area without further Commission authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is engaged in the distribution and retail sale of natural gas in the Northern Shenandoah Valley in West Virginia and Virginia and proposes the following service area for determination: Shenandoah, Warren, Frederick and Clarke Counties and the cities and communities of Winchester, Front Royal, Strasburg, Middletown, Stephens City and New Market, Virginia; Berkeley County, a very small portion of Jefferson County abutting Berkeley County and the City of Martinsburg, West Virginia.

Applicant further states that there are three minor exclusions to the proposed geographic area. These include (1) the Stonewall District in Shenandoah County, Virginia, a 50-foot strip of land approximately 4.5 miles in length from the vicinity of Coffmantown easterly to the vicinity of Willow Grove generally paralleling Virginia Highway Routes 680 and 605. It is asserted that Washington Gas Light Company (Washington Gas) is authorized to furnish gas service in this area. (2) The area in Shenandoah County, Virginia, adjacent to Columbia Gas Transmission Corporation's transmission pipelines and two small areas in the vicinity of Strasburg, Virginia. It is asserted that Columbia Gas of Virginia, Inc. (Columbia Virginia) is authorized to provide gas service in this area.

Applicant states that all gas which it receives within or at the boundary of its service area is distributed and consumed within its service area, that it makes no sales for resale and that no retail natural gas service is rendered within the service area by companies other than Applicant except that Washington Gas serves the area covered by Exclusion 1 above and Columbia Virginia serves the area covered by Exclusion 2 above.

Applicant further states that its rates, service and facilities are subject to regulation within its service area by the Virginia State Corporation Commission and the West Virginia Public Service Commission and that Applicant is currently attaching customers as authorized by said Commissions.

Applicant submits that the Commission should determine the requested service area since it (a) would not involve a questionable abdication of the Commission's jurisdiction, (b) would allow Applicant without further Commission approval to enlarge or expand its facilities, (c) would minimize the cost of regulation and (d) would not interfere with the Virginia and West Virginia Commission's exercise of their jurisdictional responsibilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1981, 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.

Take further notice that, pursuant to the authority contained in and subject to 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 or its designee 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 the requested determination should be made. 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. 81-7471 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2849-001]

South Columbia Basin Irrigation District, et al.; Application for License for Major Project; Existing Dam

March 4, 1981.

Take notice that on December 23, 1980, the South Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and Quincy-Columbia Basin Irrigation District (Applicant) filed a joint application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for a major license for the unconstructed Main Canal Headworks Power Plan (FERC Project No. 2849). The project would be located near Coulee City in Grant County, Washington. Correspondence with the Applicant should be directed to: Mr. Russell Smith, Secretary-Manager, South Columbia

Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301.

The proposed Main Canal Headworks Power Plant Project would consist of: (1) an underwater diversion channel; (2) an intake structure located adjacent to the existing Main Canal Headworks intake structure at the Water and Power Resources Service's Dry Falls Dam; (3) a 26-foot diameter power tunnel, excavated in bedrock, passing underneath Dry Falls Dam; (4) a powerhouse, located immediately downstream of the toe of the dam, containing two 9-MW generating units; (5) a tailrace channel returning flows to the Main Canal; (6) a 4.16/115-kV substation adjacent to the powerhouse; and (7) 600 feet of 115-kV transmission line.

The proposed project would have a total rated capacity of 18 MW and an average annual generation of 75.96 GWh at an estimated 1982 cost of $31,822,000. Power would be marketed to the cities of Seattle and Tacoma.

All project facilities would be constructed on U.S. owned lands administered by the Water and Power Resources Service of the Department of the Interior.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before April 13, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application not later than August 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10. for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 13, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7469 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP70-7-017 (Phase II)]

Southern Natural Gas Co.; Petition To Amend

March 4, 1981.

Take notice that on February 10, 1981, Southern Natural Gas Company (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7-017 (Phase II) a petition to amend the order issued October 29, 1969,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize a change in the applicable rate schedule under which Petitioner renders natural gas to the City of Jasper, Alabama (Jasper), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued October 29, 1969, it was authorized to sell and deliver a maximum of 5,000 Mcf of natural gas per day to Jasper. Petitioner further states that it currently renders natural gas to Jasper under its Rate Schedule OCD-2 ;as provided for by a service agreement between Petitioner and Jasper.

Petitioner submits that Jasper has requested that Petitioner amend their service agreement to change the applicable Rate Schedule from OCD-2 to G-2. It is asserted that the modification requested herein would not change the amount of natural gas which Petitioner would be required to deliver to Jasper but would result in a reduction in Jasper's purchased gas cost.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 30, 1981, 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.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7470 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-181-000]

United Gas Pipe Line Co., Florida Gas Transmission Co.; Application

March 4, 1981.

Take notice that on February 6, 1981, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Florida Gas Transmission Company (Florida Gas), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP81-181-000 a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a letter agreement dated October 29, 1980, United and Florida Gas agreed to exchange up to 10,000 Mcf of natural gas per day for a fifteen-year period and from year to year thereafter, it is stated. The service commenced on November 21, 1980, pursuant to Part 284 of the Commission's Regulations under the Natural Gas Policy Act of 1978, it is stated.

United states that it would receive the gas for the account of Florida Gas' at an existing interconnection from the Lake Broussard Field and United's 6-inch South Creole main line in Cameron Parish, Louisiana. United, it is asserted, would redeliver gas for Florida Gas' account at the existing interconnection between the pipeline facilities of United and Florida Gas at Arnaudville, St. Landry Parish, Louisiana.

Florida Gas states that it would receive the gas for the account of United at a mutually agreeable interconnection in Arnaudville, St. Landry Parish, Louisiana, for redelivery to an existing interconnection between the parties in Montpelier, St. Helena Parish, Louisiana, it is stated.

It is stated that facilities necessary for delivery of gas to United on the 6-inch South Creole Field main line were installed pursuant to United's budget-type authorization as United also purchases gas from Lake Broussard Field. It is stated that all other gas deliveries would be made through existing facilities.

It is stated that this is a gas-for-gas exchange with no monetary compensation to be paid by either party.

Any person desiring to be heard to make any protest with reference to said application should on or before March 30, 1981, 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 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 or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7472 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-121-000]

Virginia Electric and Power Co.; Order Denying Rehearing

Issued: March 4, 1981.

On February 5, 1981, ElectriCities of North Carolina (ElectriCities), an organization of municipal wholesale customers of Virginia Electric and Power Company (VEPCO), submitted an application for rehearing of the Commission's order of January 13, 1981, in this docket. That order accepted for filing and suspended for one day rates filed by VEPCO for service to its municipal and cooperative customers on November 14, 1980.

The application of ElectriCities seeks rehearing as to the length of the suspension period ordered by the Commission for the newly-filed VEPCO rates. In particular, ElectriCities contends that the Commission should have ordered the rates to be suspended for five months. ElectricCities further contends that the Commission improperly failed to consider ElectricCities' allegation that a price squeeze would likely result if less than a five month suspension was ordered for the rates. ElectricCities also contends that the Commission erred in failing to order a five month suspension because the Commission did not find that VEPCO was experiencing a clear financial emergency.

ElectriCities contends that the Commission has not given a reason why its price squeeze allegations do not warrant a longer suspension period. As noted in our order of January 13, 1981, the Commission's analysis of VEPCO's submittal indicated that the rates proposed by VEPCO may not yield excess revenues. Considering all of the substantive challenges to the rate filing advanced by the intervenors, including the initial allegation of price squeeze, we concluded that it would be unfair to defer collection by VEPCO of rates which may not be excessive.

The issue of price squeeze frequently is raised in initial protests in the most general of terms. Often the matter is never pursued through hearing. Moreover, a determination as to whether a price squeeze in fact exists requires comparison of the relevant retail rate with the wholesale rate which would be considered just and reasonable in the absence of a price squeeze. In addition, we must consider the respective costs of serving the different customer classes. We believe that, except in extraordinary circumstances, it would be unfair to a utility to determine on the basis of preliminary pleadings that an otherwise appropriate suspension period should be modified solely on the basis of unproved price squeeze allegations.

ElectriCities further contends that the Commission's order in *Alabama Power Company*, Docket No. ER81-95-000, issued January 2, 1981, means that a finding of "clear financial emergency" must be made in order to justify a suspension period of less than five months. This interpretation misconstrues the intent of the Commission's *Alabama Power Company* order. That order concerned a situation in which the applicant had raised the issue of financial distress in responding to a protest to its rate filing. The Commission was discussing the question of independent grounds for a shorter suspension period.

Nothing in the *Alabama Power Company* order modified the Commission's practice of imposing a shorter suspension period in a case where the Commission's preliminary analysis shows that the proposed rates may not produce excessive revenues. *See, e.g., Cleveland Electric Illuminating Company*, Docket No. ER80-488, order issued August 22, 1980. VEPCO's proposed rates fell into this category, and it was for this reason that the Commission determined to suspend the rates for one day.

The Commission orders:

(A) The application for rehearing of ElectriCities is hereby denied.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7477 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-785 and ER81-5-000]

Appalachian Power Co.; Order Accepting for Filing and Suspending in Part Revised Interconnection Agreement, Granting Waiver in Part, Initiating Hearing and Consolidating Proceedings

Issued March 4, 1981.

On September 22, and October 6, 1980, American Electric Power Corporation (AEP) on behalf of Appalachian Power Company (APCO), filed in Docket Nos. ER80-785 and ER81-5-000, respectively, modifications to an interconnection agreement with Carolina Power and Light Company (CP&L) revising emergency, short-term and limited-term power service schedules. CP&L filed a certificate of concurrence with respect to each of the two filings.[1] By letter dated November 5, 1980, the Director of the Office of Electric Power Regulation determined that the submittals in these dockets were deficient and requested additional information regarding certain rates proposed by CP&L. On December 1, 1980, and January 5, 1981, CP&L filed responses to the November 5, 1980 requests.

In Docket No. ER80-785, the parties propose to increase demand charges for

[1] See Attachment A for rate schedule designations.

short-term and limited-term power to $0.85 kw/week and $4.50/kw/month, respectively. AEP and CP&L also propose to increase related third party short-term and limited-term transmission charges to $0.24/kw/week and $1.00/kw/month, respectively.

In Docket No. ER81–5–000, the parties propose an adder of 1 mil/kWh in addition to the short-term and limited-term third party transmission charges proposed in Docket No. ER80–785. They also propose to revise their emergency service schedules. For self-generated energy, the proposed schedules provide for a charge of the greater of 110% of out-of-pocket costs or 30 mills/kWh. For third party emergency energy, the proposed schedules contain a demand charge of 2 mills/kWh, and an energy charge of cost (including losses) plus 1 mill/kWh.

No comments, protests, or petitions to intervene have been filed in response to public notice of these submittals.[2]

Discussion

As to the proposed demand charges for short-term and limited-term services, the Commission notes that in Docket No. ER80–195, on behalf of APCO, AEP filed charges identical to those now proposed for the same services. Those rates were accepted for filing by letter order issued in that docket on May 29, 1980. The Commission finds that these charges now proposed by APCO are just and reasonable. We further find that these same charges as proposed by CP&L are cost justified.

The Commission also finds that the charges proposed by APCO and CP&L for related short-term and limited-term third party transmission charges are cost justified.

With respect to self-generated emergency energy, our analysis indicates that the charges proposed by APCO and CP&L are cost justified. As to the proposed charges for third party emergency energy, the Commission notes that APCO filed identical charges for third party emergency energy in Docket Nos. ER80–592, *et al.* Consistent with the Commission's order issued in that docket on October 3, 1980, our analysis indicates that these charges proposed by APCO may be unjust and unreasonable. We further find that the charge for third party emergency service proposed by CP&L may produce excessive revenues.

Conclusion

The Commission's analysis indicates that CP&L's and APCO's third party charges for emergency service, as proposed in Docket No. ER81–5–000, may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, the Commission will accept these rates for filing and suspend them as ordered below.

In a number of suspension orders,[3] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. We have consistently imposed a nominal suspension for interchange arrangements of the type involved in these dockets, recognizing that such arrangements provide for the mutual availability of necessary services. A one day suspension and the imposition of a refund obligation should protect the affected ratepayers pending the outcome of these proceedings. We shall therefore accept the revised rates for filing, and we shall suspend the rates identified above for one day to become effective on March 8, 1981, subject to refund.

As noted, the rates under investigation in Docket Nos. ER80–592, *et al.* share issues of fact and law with the rates herein suspended. We shall therefore consolidate these proceedings for purposes of hearing and decision.

The Commission's analysis also indicates that (1) APCO's and CP&L's demand charges for short-term and limited-term services and related third party transmission charges, all as proposed in Docket No. ER80–785; and (2) APCO's and CP&L's charges for short-term and limited-term third party transmission services, and their charges for self-generated emergency energy, all as proposed in Docket No. ER81–5–000, are just and reasonable. The Commission will therefore accept these portions of the two filings and, except as modified below, authorize them to become effective on March 7, 1981, 60 days after completion of the filings, without suspension.

In its September 16, 1980 filing in Docket No. ER80–785, AEP also requested that the Commission waive the notice requirements to allow the charges it proposed in that docket to become effective retroactively on July 25, 1980. In support of its request, AEP stated that it was necessary for APCO to commence delivery of short-term power to CP&L on July 26, 1980, as CP&L has immediate need for such power and that, therefore, supply of this power was in the public interest. As noted, we have determined that all charges proposed in that docket are just and reasonable. In light of these considerations, the Commission believes that the requested waiver should be granted.

The Commission Orders:

(A) The request for waiver of the notice requirements is granted with respect to APCO's and CP&L's demand charges for short-term and limited-term services and their charges for related third party transmission service, all as proposed in Docket No. ER80–785.

(B) The charges proposed by APCO and CP&L in Docket No. ER80–785 are hereby accepted for filing to become effective as of July 25, 1980, without suspension.

(C) APCO's and CP&L's third party charges for emergency service, as proposed in Docket No. ER81–5–000, are hereby accepted for filing and suspended for one day to become effective, subject to refund, on March 8, 1981.

(D) APCO's and CP&L's charges for short-term and limited-term third party transmission services, and their charges for self-generated emergency energy, all as proposed in Docket No. ER81–5–000, are hereby accepted for filing to become effective on March 7, 1981, without suspension.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by subsection 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter 1 (1980)], a public hearing shall be held concerning the justness and reasonableness of the charges referenced in ordering paragraph (C) above.

[2] Public notice of the filing in Docket No. ER80–785 was issued on October 1, 1980, with responses due on or before October 20, 1980. Notice of the filing in Docket No., ER81–5–000 was issued on October 14, 1980, with responses due by November 3, 1980.

[3] *E.g., Boston Edison Company*, Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Company*, Docket Nos. ER80–506, *et al.* (August 29, 1980) (one day suspension) *Cleveland Electric Illuminating Company*, Docket No. ER80–488 (August 22, 1980) (one day suspension).

(F) Docket No. ER81-5-000 is hereby consolidated with Docket Nos. ER80-592, *et al.*, for purposes of hearing and decision.

(G) The administrative law judge previously designated to preside in the consolidated proceeding in Docket Nos. ER80-592, *et al.*, shall determine the appropriate procedures necessary to accommodate consolidation of Docket No. ER81-5-000 with existing proceeding.

(H) Docket No. ER80-785 is hereby terminated.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

American Electric Power Service Corp.

Docked Nos. ER81-5-000 and ER80-785

Filed: January 5, 1981.

Dated: (1) July 25, 1980, (2) through (4) August 1, 1980, (5) and (6) August 10, 1980, (7) through (9) undated.

Effective: (A) Modification No. 4—July 25, 1980, as requested. (B) Section 2.12 of CP&L's and APCO's Service Schedules E—March 8, 1981, subject to refund. (C) Modification Nos. 5 and 6 and the balance of service schedules D, F and E—March 7, 1981 (60 days after filing).

Appalachian Power Co.

Designation and Description

(1) Supplement No. 3 to Supplement No. 8 to Rate Schedule FPC No. 24—Modification No. 4

(2) Supplement No. 4 to Supplement No. 8 to Rate Schedule FPC No. 24 (Supersedes Supplements Nos. 1, 2 and 3 to Supplement No. 8 to Rate Schedule FPC No. 24)—Modification No. 5

(3) Supplement No. 1 to Supplement No. 4 to Supplement No. 8 to Rate Schedule FPC No. 24—Service Schedule D

(4) Supplement No. 2 to Supplement No. 4 to Supplement No. 8 to Rate Schedule FPC No. 24—Service Schedule F

(5) Supplement No. 10 to Rate Schedule FPC No. 24 (Supersedes Supplement No. 5 to Rate Schedule FPC No. 24)—Modification No. 6

(6) Supplement No. 1 to Supplement No. 10 to Rate Schedule FPC No. 24—Service Schedule E

Carolina Power & Light

(7) Supplement No. 1 to Supplement No. 3 to Rate Schedule FPC No. 44 (Concurs in (1) above)—C/C

(8) Supplement No. 2 to Supplement No. 3 to Rate Schedule FPC No. 44 (Supersedes Supplement No. 1 to Supplement No. 3 to Rate Schedule FPC No. 44 and concurs in (2) through (4) above—C/C

(9) Supplement No. 4 to Rate Schedule FPC No. 44 (Concurs in (5) and (6) above)—C/C

[FR Doc. 81-7478 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. IS80-76 and IS80-47, et al.]

Buckeye Pipe Line Co.; Order Supplementing Prior Order So As To Permit the Recoupment (Subject to Refund) of Revenues Lost by Reason of Oil Pipeline Rate Suspensions That the Commission Has Found To Have Been Overlong [1]

Issued March 4, 1981.

Sufficient reason therefor to it appearing, the Commission hereby supplements its order herein of December 24, 1980,[2] by:

(A) Ordering that the suspension period in these dockets shall be deemed to have terminated on September 14, 1980;

(B) Authorizing the Buckeye Pipe Line Company to:

(i) Recoup *nunc pro tunc* and subject to refund the revenues that it would have collected from September 15, 1980 to December 23, 1980, had he duration of the instant suspensions been fixed at one day to begin with;

(ii) Impose any and all surcharges needed to recover the sums referred to in the preceding subparagraph;[3] and

(iii) File a tariff supplement providing that the aforementioned amounts will be billed to the shippers involved, with the proviso that those shippers may elect to pay the amount due under that tariff supplement and under this supplemental order:

(a) In a lump sum all at once; or

(b) In four (4) equal monthly installments; or

(c) Through a 5% increment to the bills that the particular shipper would otherwise have had to pay—provided, however, that any unpaid balance must be discharged in full on or before December 31, 1981;

(C) Instructing the Commission's Oil Pipeline Board to review Buckeye's aforementioned tariff supplement with dispatch and in the event said supplement is found to be in order and unobjectionable to advise Buckeye as promptly as possible that the supplement has been accepted for filing; and

(D) Further authorizing the Buckeye Pipe Line Company to put the aforementioned tariff supplement into effect as soon as the Company has been notified of its acceptance for filing.

The Secretary shall cause this supplemental order to be published in the **Federal Register.**

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[1] When this case was last here, it presented basic questions of oil pipeline rate suspension policy. We dealt with them in our order of December 24, 1980. Those interested in the background of the matter should consult that document.

[2] The re-examination that led in due course to this supplemental order was made as a result of the Buckeye Pipe Line Company's application for a rehearing of the prior order. That application was made pursuant to 49 C.F.R. § 1100.97.

[3] Compare *Texaco, Inc.* 41 F.P.C. 833 (1969); *Valley Gas Transmission, Inc.*, Docket No. RP80-98 (order issued August 22, 1980). See *Tennessee Valley Municipal Gas Association* v. *Federal Power Commission*, 470 F. 2d 446, 453 (D.C. Cir. 1972): "What the Commission *must* [emphasis added] do on remand . . . is to compensate for its erroneous dismissal."; *Boston Edison Co.* v. *Federal Power Commission*, 557 F. 2d 845, 849 (D.C. Cir. 1977), *cert. denied sub nom. Town of Norwood, Massachusetts* v. *Boston Edison Co.*, 434 U.S. 956 (1977) (Commission directed to give retroactive effect to an erroneously rejected rate increase filing); *Indiana & Michigan Electric Company* v. *Federal Power Commission*, 502 F.2d 336, 343-348 (D.C. Cir. 1974) and the numerous authorities there cited. See also *Maine Public Service Co.*, Docket No. E-8264 (order issued November 9, 1977); *Boston, Edison Co.*, Docket No. ER77-558 (order issued September 15, 1977); *Tennessee Natural Gas Lines, Inc.*, Docket Nos. RP71-11, *et al.* (order issued April 23, 1979); *United Gas Pipe Line Company*, Docket Nos. RP-75-30, *et al.* (order issued May 24, 1979); *Cities Service Gas Company*, Docket No. RP79-4 (order issued January 22, 1979); *Public Service Company of Indiana*, Docket No. ER78-513 (order issued January 8, 1979); Area Rate Proceedings, et al. (Southern Louisiana Area), Docket Nos. AR61-2, *et al.* (orders issued June 27, 1978 and July 31, 1978); *Jersey Central Power & Light Company*, Docket No. ER76-813 (order issued January 20, 1978). *Cf.* Section 74 of the American Law Institute's Restatement of Restitution (1937).

Also in point is our order of September 8, 1977, in *Central Power & Light Company*, Docket No. ER77-514. See the last sentence on page 4 of the mimeographed release. See also ordering paragraph (E) on page 6 of the mimeographed release. An effort to obtain judicial review of that order failed. *Central Power & Light Company* v. *Federal Energy Regulatory Commission*, No. 77-1843 (D.C. Cir.) (petition for review dismissed in an unreported order of November 30, 1977, by Bazelon, C.J. and Leventhal, J.). We read footnote 1 to that unreported order as a judicial affirmance of the course that we have consistently followed in situations of this sort and to which we once again adhere. That this footnote was written by two distinguished jurists, both of them very much at home in the law and lore of rate regulation, enhances its authority.

True it is that Rule 8(f) of the Rules of the Court of Appeals of the District of Columbia Circuit forbids the citation of unreported dispositions. Hence *Central Power & Light* may be of questionable status as a precedent in the court that decided it. But that is by no means axiomatic. See Reynolds and Richman, *The Non-Precedential Precedent—Limited Pubication and No-Citation Rules in the United States Courts of Appeals*, 78 Colum. L. Rev. 1167, 1197 (1978): "If Karl Llewellyn was right in his suggestion that following precedent is a basic human urge [footnote citation to Llewellyn, *Case Law*, in 3 Encyclopedia of the Social Sciences 249 (1930)], then it is natural that the court will attempt to follow its earlier decisions—at the very least, for the sake of consistency and collegial harmony." And even if *Central Power & Light* is of no precedential weight in the Court of Appeals, humbler tribunals such as this Commission may (and perhaps must) look to that case as a guide to the state of the law. See *Mohr* v. *Jordan*, 370 F. Supp. 1149 (D. Md. 1974); *Durkin* v. *Davis*, 390 F. Supp. 249 254 (E.D. Va. 1975), *rev'd on other grounds*, 538 F.2d 1037 (4th Cir. 1976).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7479 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI81-217-000]

Robert Cargill; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

March 4, 1981.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

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

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before March 11, 1981, 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.

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 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 or the authorization for the proposed abandonment 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 to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per 1,000 ft.[3]	Pressure base
CI81-217-000 (G-1377) B Feb. 23, 1981.	Robert Cargill, P.O. Box 992, Longview, Texas 75601.	Arkansas Louisiana Gas Company, Willow Springs, Gregg County, Texas.	(1)	
CI81-216 (CI61-276) B Feb. 18, 1991.	CRA, Inc., P.O. Box 7305, Kansas City, Missouri 64116.	Lone Star Gas Company, South Alma Field, Stephens County, Oklahoma.	(2)	

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[2] The Pettit Formation has been depleted such that its wellhead pressure is insufficient to allow gas from the formation to be placed into the same line carrying Travis Peak and Bodenheim production.

[3] No sales made under this certificate. Lease ownership has been transferred.

[FR Doc. 81-7482 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3247]

Henwood Associates, Inc.; Application for Exemption for Small Hydroelectric Power Project Under 5 mW Capacity

March 4, 1981.

Take notice that on November 7, 1980, Henwood Associates, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) [Pub. L. 96-294, 94 Stat. 611] (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed Graeagle Hydroelectric Project (FERC Project No. 3247) would be located on Gray Eagle Creek, near the town of Graeagle, in Plumas County, California. Correspondence with the Applicant should be directed to: Dr. Kenneth Henwood, Henwood Associates, Inc., P.O. Box 7, Smartville, California 95977. Any person who wishes to file a response to this notice should be read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

Project Description—The proposed project would consist of: (1) a 4-foot high rock-filled, timber-crib diversion dam; (2) a 3,800-foot long, 20-inch diameter pipeline; (3) a 1,470-foot long, 20-inch diameter steel penstock; (4) a wood powerhouse containing one generating unit rated at 300 kW; and (5) a 3,800-foot long 7.2-kV transmission line. The project would be operated on a run of the river basis. Natural flows to the creek are augmented during low flow conditions by Graeagle Water Company releases from Long Lake for irrigation and domestic uses. The average annual energy generation is estimated to be 2.8 million kWh.

Purpose of Project—The power and energy generated by the project would be used as marginal power within the California power grid.

Estimated Cost—The cost of the project is estimated by the Applicant to be $200,000.

Agency Comments—The U.S. Fish and Wildlife Service and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to submit appropriate terms and conditions to protect any fish and wildlife resources. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days of the date of issuance of this notice, it will be presumed to have no comments.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before April 13, 1981, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than August 11, 1981. Applications for a preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 13, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "PROTESTS" or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for exemption for Project No. 3247. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7480 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. E-9329 (Limited Issue), ER76-792, and ER76-716]

Indiana and Michigan Electric Co.; Filing

March 4, 1981.

The filing company submits the following:

Take notice that on February 17, 1981, Indiana and Michigan Electric Company submitted for filing a revised compliance filing.

A copy of this filing has been sent to the parties to this proceeding.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before March 25, 1981. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7491 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-274, etc.]

Mountain Fuel Supply Co., et al.; Order Consolidating Proceedings, Granting Petitions To Intervene and Providing for Oral Presentation

Issued: March 3, 1981.

In the matter of Mountain Fuel Supply Co. and Mountain Fuel Resources, Inc., Docket No. CP80-274; Mountain Fuel Supply Co. and Wexpro Co., Docket No. CP80-275; Celsius Energy Co., Docket No. CI80-233; and Mountain Fuel Supply Co., Docket No. CP76-397.

Applications

On March 7, 1980, Mountain Fuel Supply Co. (Mountain Fuel) and Mountain Fuel Resources, Inc. (Resources), a wholly owned subsidiary of Mountain Fuel, filed a joint application in Docket No. CP80-274 requesting authority under Sections 7(b) and 7(c) of the Natural Gas Act for Mountain Fuel to abandon to Resources and Resources to acquire certain transmission and storage facilities, gas purchase agreements and sales and service obligations. Specifically, Mountain Fuel proposes to abandon all interstate transmission facilities east of its Sunset, Porter Lane and Sunnyside metering and regulating stations, all Hinshaw transmission facilities east of its Payson Canyon metering and regulating station, all non-jurisdictional transmission lines within Utah (other than Mountain Fuel's Line No. 48), and all gas purchase agreements and all agreements covering Mountain Fuel's interstate transportation for others. Resources proposes to acquire the transferred facilities and properities for at least depreciated book value in exchange for issuance of Resources' stock and assumption of certain Mountain Fuel debt in such proportions that Mountain Fuel's and Resources' stock maintain approximately a 75:25 debt-equity ratio. Mountain Fuel also seeks abandonment authority to permit certain jurisdictional facilities west of the metering stations to become non-jurisdictional.

Mountain Fuel is currently a vertically integrated company engaged in the exploration, development, production, transmission and distribution of natural gas. As a result of these proposed transfers, Mountain Fuel would become a local distribution company serving Wyoming and Utah and would maintain a limited production program within Utah. Resources would provide interstate transportation services for Mountain Fuel and others and would sell natural gas to Mountain Fuel under a proposed new CD rate schedule. Although Resources proposes no changes from Mountain Fuel's currently effective transportation rates, orders or stipulations in several Mountain Fuel proceedings provide for the development of a new systemwide transportation rate, whether in this proceeding or in a separate proceeding under Section 4 (e) of the Natural Gas Act.[1]

In its application in Docket No. CP76-397, filed June 17, 1976, Mountain Fuel requests a disclaimer of jurisdiction over and authority to abandon its jurisdictional facilities west of its Sunset, Porter Lane and Sunnyside metering stations. In Docket Nos. G-313

[1] See, *e.g.*, Order in Docket No. CP79-19 (Oct. 28, 1980); also the proposed stipulation in Docket Nos. CP79-80, *et al.*

and G-957,[2] the Commission [3] certificated certain Mountain Fuel facilities west of these three metering stations and east of Mountain Fuel's alleged historical city gate. Mountain Fuel alleges that its distribution service has increased, thereby requiring it to install additional facilities and taps. Mountain Fuel alleges these additional facilities and taps, while west of its historical city-gate, actually function as distribution facilities and should not be deemed jurisdictional.[4] In Docket No. CP76-397 Mountain Fuel seeks to clarify the non-jurisdictionality of these facilities through establishing what it contends are more realistic city-gate locations.

On January 16, 1980, Mountain Fuel requested the Commission to defer processing its application in Docket No. CP76-397 for 90 days, during which time Mountain Fuel filed its application in Docket No. CP80-274. The application in Docket No. CP80-274 does not supersede the application in Docket No. CP76-397. These applications are apparently filed in the alternative. If the application in Docket No. CP80-274 were granted, however, Mountain Fuel would retain facilities between the metering stations and the historical city-gate as non-jurisdictional distribution facilities.

Mountain Fuel has historically held its undeveloped leaseholds in a utility account and included in rate base the costs of acquiring and maintaining these interests. It expensed exploration and development expenditures associated with these leaseholds against its cost of service. It classified its producing properties as oil or gas based upon the relative value of the initial oil and gas product from the property. Properties which by value produced primarily oil were classified as oil wells, transferred to Mountain Fuel's non-utility division accounts and removed from rate base. Properties classified as gas properties were transferred to a second Mountain Fuel utility account.

Between 1972 and 1977, Mountain Fuel's non-utility account funded increasing percentages of Mountain Fuel's pre-classification exploration and development expenses until in 1976 Mountain Fuel's utility and non-utility divisions each contributed 50 percent of these expenses. The Utah Division of Public Utilities (Division), part of the staff of the Public Service Commission of Utah (PSCU), urged the PSCU to require Mountain Fuel to credit oil revenues against its gas cost of service. The Division reasoned that Utah gas ratepayers had funded lease acquisition, exploration and development to the extent these expenditures were accounted for in rate base. It contended that the customers had borne certain exploration risks and were entitled to resulting benefits.

In light of its uncertainty as to whether the PSCU would require crediting of oil revenues, Mountain Fuel formed Wexpro Co., a wholly-owned subsidiary, in 1976, to which it transferred its non-utility oil accounts effective January 1, 1977. Thereafter, Mountain Fuel and Wexpro each acquired additional undeveloped leasehold acreage. Mountain Fuel and Wexpro entered a Joint Exploration Agreement (JEA) under which each contributed half the cost of annual exploration expenses. Mountain Fuel capitalized acquisition and maintenance costs attributable to undeveloped leaseholds. It classified its productive properties as oil or gas properties based on the relative values of the oil and gas initially produced from the acreage. Mountain Fuel transferred its oil properties from its capital account to Wexpro and Wexpro reimbursed Mountain Fuel for Mountain Fuel's 50 percent share of expenses. Mountain Fuel transferred its gas properties to a second Mountain Fuel utility account, reimbursing Wexpro for its 50 percent share of expenses. Dry hole expenses were borne equally.

The PSCU approved the JEA,[5] and the Division and the Utah Committee of Consumer Services (Committee), a committee under the Utah Department of Business Regulation, appealed to the Utah Supreme Court.[6] The Court reversed the PSCU, remanded the proceedings, and directed the PSCU to determine which of the oil properties transferred to Wexpro were utility assets.[7]

Mountain Fuel alleges that given the uncertainty surrounding oil revenue treatment, it cannot continue to finance a viable exploration and production program, particularly with regard to its undeveloped leasehold acreage. Mountain Fuel and Wexpro have discontinued their joint exploration program. Mountain Fuel has continued a limited exploration program on those leases on which drilling has been required to avoid drainage or loss of lease, or to respond to partner or USGS demand. Mountain Fuel and its affiliates propose the reorganization of production facilities in Docket Nos. CP80-275 and CI80-233 in order to limit the scope of the Wexpro remand proceedings to Mountain Fuel's Utah holdings.

In Docket No. CP80-275, on March 7, 1980, Mountain Fuel and Wexpro filed a joint application under Sections 7(b) and 8 of the NGA for authority to sell, assign and convey certain leasehold properties and production, processing, and appurtenant facilities to Celsius Energy Co., a wholly-owned subsidiary of Resources. Mountain Fuel and Wexpro propose to transfer to Celsius, Mountain Fuel's gas properties outside Utah, including properties dedicated to sales for resale in interstate commerce, Mountain Fuel's undeveloped leasehold acreage both within and outside Utah, those of Wexpro's oil properties outside Utah previously owned by Mountain Fuel, and appurtenant facilities. Mountain Fuel proposes to retain most of its gas properties located within Utah.

Mountain Fuel also proposes to transfer its F-1 and F-2 rate schedules to Celsius. Currently under these jurisdictional tariffs Mountain Fuel sells gas to Resources in Colorado for resale to Mountain Fuel in Utah for transmission through Mountain Fuel's Hinshaw facilities.

In its application in Docket No. CI80-233, filed March 7, 1980, Celsius seeks authority to acquire the abandoned properties. Celsius proposes to acquire the properties and facilities at depreciated book value in in exchange for issuing its common stock to Resources and assuming certain Resources debt. Again, stock would be issued and debt assumed in such proportions that Celsius and Resources would obtain a 75:25 debt to equity ratio. Mountain Fuel would also redeem a portion of Wexpro's stock.

Celsius also proposes to afford Resources a right of first refusal to purchase gas for the account of Mountain Fuel in a sale for resale in interstate commerce. Mountain Fuel claims this sale would constitute a first

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[2] Order, Docket No. G-313 (May 7, 1943) ("grandfather" certificate); Order, Docket No. G-957, 7 FPC 414 (1948).

[3] The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[4] The Commission has previously challenged Mountain Fuel's failure to obtain certificates of public convenience and necesity for these additional facilities and taps. Pursuant to an agreement between Mountain Fuel and staff, the Commission determined that Mountain Fuel shall file applications in two other dockets. *See* Appendix of Order Granting Rehearing, Dockets Nos. CP75-131, CP76-129 and CP76-94 (Nov. 14, 1977). The first of these is Docket No. CP76-397.

[5] *In re Petition of the Division of Public Utilities, Report and Order on Rehearing*, Case No. 76-057-14 (April 11, 1978.) (PSC Wexpro Order).

[6] *Committee of Consumer Services* v. *Public Service Commission*, 595 P. 2d 871 (Utah, 1979). (Wexpro Decision.)

[7] The remanded proceedings are still pending before the PSCU.

sale within the meaning of the Natural Gas Policy Act of 1978 (NGPA).[5]

Motion To Dismiss

On December 22, 1980, the Division and Committee filed a motion to dismiss the applications in Docket Nos. CP80–274, CP80–275 and CI80–233. The Division and Committee invoked the Commission's discretion to refuse to assert jurisdiction. They alleged the Commission's decision whether or not to assert jurisdiction in these proceedings depends upon the existence or lack of a "regulatory gap," that is, whether the Commission's failure to assert jurisdiction would leave certain transactions or activities unregulated by either state or federal authority. The motion alleges the Commission has no good reason for asserting jurisdiction, as the issues before it concern local matters which have been the subject of extensive litigation before the PSCU. The PSCU, by separate pleading, supports the Division's and Committee's motion to dismiss.

On February 13, 1981, the Division and Committee supplemented their motion to dismiss, arguing that the Commission has no jurisdiction to regulate Mountain Fuel's ability to transfer its nonfederally certificated producing and exploratory properties included in rate base. They contend the Commission lacks jurisdiction on two grounds. First, they allege the Commission lacks jurisdiction over the transfer of undeveloped leaseholds. They allege that the transfer of the leases is not equivalent to a sale of gas. They conclude that absent a sale in interstate commerce of natural gas for resale, the Commission lacks jurisdiction over the transfer of production properties. Second, the Committee and Division allege the PSCU has acted within its mandate under Utah law in a manner not preempted by federal law. On January 9, 1981, Mountain Fuel, Resources, Wexpro and Celsius filed an answer to the motion to dismiss, contending that summary dismissal is improper and that a hearing is necessary. The applicants also claim that the PSCU's jurisdiction may properly extend only to the intrastate aspects of Mountain Fuel's operations, to wit, only leases within Utah, and that to the extent conflicts arise between Utah and federal jurisdiction, federal authority is primary and preemptive.

Interventions and Opposition to Interventions

The application in Docket No. CP80–274 was noticed on March 19, 1980, with petitions to intervene due by April 10, 1980. The applications in Docket Nos. CP80–275 and CI80–233 were noticed on March 26, 1980, and November 28, 1980, with petitions to intervene due by April 16, 1980 and December 22, 1980. Timely petitions to intervene were filed by Colorado Interstate Gas Company (CIG) in Docket No. CP80–274 and by Northwest Pipeline Corporation (Northwest) in Docket Nos. CP80–274, CP80–275 and CI80–233. Neither CIG or Northwest take a position in these matters.

The Division and Committee filed a joint protest and petition to intervene in Docket Nos. CP80–275 and CI80–233. They contend that Mountain Fuel and its affiliates propose the reorganization, specifically the spin-off of producing properties and acreage to Celsius, for the sole purpose of limiting the scope of the *Wexpro* decision. They allege that the Utah rate customers have supported Mountain Fuel's exploration program through rate base treatment of property and the expensing of exploration and development costs. Arguing that gain must follow risk, the Division and Committee contend that Utah's customers are entitled to crediting of oil production revenues against gas cost-of-service prices. They finally allege that the proposed reorganization would result in substantially higher rates for Utah customers. The Division and Committee then request that the applications in Docket Nos. CP80–274, CP80–275 and CI80–233 be consolidated and set for hearing, and they petition for leave to intervene. (As discussed *supra*, the Division and Committee have also filed a motion to dismiss the several applications filed by Mountain Fuel, *et al.*)

Mountain Fuel challenges the Division's and Committee's protest and intervention, alleging that the protest is *ultra vires*. Moreover, Mountain Fuel contends that its capital investors, not the Utah ratepayers, have borne the risks of Mountain Fuel's and Wexpro's exploration program. Mountain Fuel then requests the Commission to deny the Division's and Committee's joint protest and petition to intervene.

On April 12, 1980, the Wyoming Public Service Commission (PSCW) filed a Notice of Intervention in Docket Nos. CP80–274, CP80–275, and CI80–233. It fully supports the Division's and Committee's right to intervene in these proceedings, including the request for a full hearing and consolidation of dockets. A motion to dismiss the pending applications was filed by the PSCU on February 17, 1981.

On May 7, 1980, the Division and Committee replied to Mountain Fuel's answer to their petition to intervene. The Division alleged that it is not limited to participation in cases before the PSCU and has, in fact, intervened and fully participated in other cases before this Commission. Nevertheless, we have been cited no Utah statute or regulation which sets forth a relevant mandate, such as that the Division is charged with representing the public interest in utility matters in fora outside Utah. We, therefore, hold in abeyance the Division's petition to intervene and direct the Division to substantiate further its claim that it has authority to represent the public interest of Utah in matters before this Commission. Until such authority is found lacking, however, it is appropriate to permit the Division to participate in the oral presentation provided for hereinafter.

As to the Committee, Mountain Fuel agrees that it is charged with representing small business and residential consumers in utility rate matters, but alleges this authority extends only to administrative or judicial law in Utah. Utah laws seems to provide otherwise. While the Committee may be limited in bringing its own actions, U.C.A. Sec. 54–10–4, the Attorney General's representative assigned to the Committee is charged with representing the Committee at all hearings or other proceedings affecting services, rates or charges in Utah and is authorized to prosecute all actions which the Committee deems necessary. U.C.A. Sec. 65–10–78. We do not presume to interpret Utah law. Nor do we determine that the Committee's actions in this proceeding are not *ultra vires*. We do not believe such determinations are necessary. We merely find that the Committee has presented a colorable claim of authority to represent before us the interests it claims to represent. Upon that finding, we conclude that the Committee's intervention may be in the public interest and should be permitted.

McCulloch Interstate Gas Corporation (McCulloch) filed a petition to intervene

[5] On October 31, 1980, Mountain Fuel, Wexpro and Celsius filed a Supplement to Joint Application in Docket Nos. CP80–275 and CI80–233 in which Mountain Fuel proposed to transfer several undeveloped leaseholds to Celsius and Celsius proposed to sell any natural gas produced therefrom to Resources at NGPA prices, for resale on a right of first refusal basis to Mountain Fuel. These arrangements were allegedly necessary to prevent drainage, loss of lease, and other economic penalties resulting from Mountain Fuel's reduction of its production activities in light of *Committee of Consumer Services* v. *Public Service Commission of Utah*, 595 P.2d 871 (Utah 1979). Applicants requested "such temporary authority as [the Commission] may deem necessary" and indicated the transfer of leaseholds and price charged by Celsius would be subject to reconveyance or refund under any subsequent and non-appealable Commission order. This request for authorization is still pending before the Commission.

out-of-time in Docket Nos. CP80–275 and CI80–233. McCulloch states it is a direct competitor and indirect customer of Mountain Fuel. It alleges, moreover, that due to the division of its own interstate and intrastate activities among itself and its affiliates, it may be directly affected by any determination in these proceedings concerning the interrelationship between federal and state regulatory schemes. McCulloch states that due to the complexity of the issues involved in any potential restructuring of its own operations, it was unable earlier to ascertain the likely impact of any determinations in these proceedings on its own operations. Finally, McCulloch alleges that Mountain Fuel's strong protest against the intervention of the Division and Committee furthered its resolve to participate in these proceedings.

Mountain Fuel replies that McCulloch's untimely intervention should be denied for lack of sufficient interest or good cause. Mountain Fuel alleges McCulloch's interests as an indirect purchaser and competitor will not be affected. However, in light of Mountain Fuel's claim that it cannot maintain a viable, competitive production program under the *status quo*, McCulloch's interests as a competitive producer may very well be affected. Further, Mountain Fuel states that McCulloch's argument of ". . . regulatory precedent is nonsensical given the prior precedents that exist for similar restructuring." Again, we believe these proceedings may directly affect McCulloch's potential restructuring of its own operations, particularly with respect to resolution of the jurisdictional issues raised in this proceeding. We, therefore, find that McCulloch has alleged both sufficient interest to intervene and good cause for its tardy filing.

The PSCU also filed a late Notice of Intervention in Docket Nos. CP80–274, CP80–275, and CI80–233. The PSCU states it regulates the rates and service provided the public by utilities operating within its jurisdiction and claims to have jurisdiction over a substantial portion of the properties, facilities, and service obligations which applicants propose to transfer.

Mountain Fuel, Resources, Wexpro and Celsius filed an answer to the PSCU's notice of intervention on February 13, 1981. The applicants claim the PSCU indicated no explanation of or good cause for late intervention. Further, the applicants contend that if the Commission accepts the PSCU's late intervention, the interventions of the Division and Committee should be denied. Finally, the applicants argue that the issues presented before us are different from those before the PSCU and that the PSCU's prior actions cannot divest this Commission of whatever jurisdiction it may have. We find that good cause exists to honor the late notice of intervention of the Utah PSCU. Moreover, the stated interests of the PSCU, the Division and the Committee, both as expressed in their filings and as provided by Utah law, appear distinct.

The pleadings show this proceeding to be particularly complex. It involves multiple factual situations and strong differences of opinion on legal and jurisdictional issues. The pleadings filed with the Commission thus far do not explain, as clearly as the Commission requires, the underlying factual circumstances or views and supporting legal analyses as to the relevant jurisdiction of this Commission in these circumstances.

The contemplated presentation is not an oral argument within the technical meaning of our rules nor is it to be an evidentiary hearing. It is, instead, an exercise of the Commission's discretion to allow parties to present their views directly to the Commission and to explain to the Commission matters contained within their filings. This is more in the nature of an apparance of the parties at a Commission meeting to make oral presentations and to respond to such clarifying questions as the Commission might ask.

In particular, we would ask the applicants to describe precisely what they believe to be this Commission's jurisdiction with respect to the proposed corporate reorganization, *viz.* (1) what facilities, services, and leaseholds require our abandonment authorization, and on what theories; and (2) what certificate authorization would we then need to issue? To this end, we would expect the applicants first to describe factually the different types or classes of facilities, services, and leaseholds that are involved and, in this sense, establish the factual bases that may require different jurisdictional determinations. Thereafter, the state parties could clarify the actual circumstances, to the extent they believe that is necessary, and then describe their jurisdictional views and analyses.

While we do not intend to limit the presentations of the parties or to suggest in any way the views of the Commission in this matter, we set out the following issues as examples of the type of matters that may be presented by the applications before us:

(1) Whether in light of Section 7 of the Natural Gas Act or Section 2(18) of the Natural Gas Policy Act, notwithstanding the absence of any sale for resale, Mountain Fuel's or Wexpro's developed leaseholds outside Utah have been committeed or dedicated to interstate commerce by virtue of a service obligation which arose once gas from those leases was transported pursuant to Mountain Fuel's Section 7 transportation certificate, for sale in Utah;

(2) Whether in light of FERC Order Nos. 58, 98 and 102, and in particular the preamble to Order No. 98, the transfer of Mountain Fuel's or Wexpro's developed and undeveloped leaseholds have become subject to our abandonment jurisdiction to the extent lease acquisition and maintenance costs and exploration and development expenses have been included in Mountain Fuel's retail rates as set by the Utah and Wyoming PSC's;

(3) Assuming that the transfer of any of Mountain Fuel's or Wexpro's leaseholds are subject to the Commission's Natural Gas Act abandonment jurisdiction, does any section of the NGPA remove this transfer from the Commission's jurisidiction.

(4) Whether the Utah PSC may properly exercise jurisdiction over the transfer of developed or undeveloped leaseholds outside Utah for which the costs of acquiring, exploring or developing have been included in the cost-based retail rates of Mountain Fuel, and whether, for lack of such authority, a "regulatory gap" might exist;

(5) Whether the Commission has jurisdiction over any of the production-related facilities (*e.g.* processing plants, separators, etc.) proposed to be transferred;

(6) Which of the transmission facilities which Mountain Fuel proposes to transfer to Resources are subject to Commission jurisdiction?

These, and other similar issues deemed relevant by the parties, go primarily to the threshhold question of the nature and extent of this Commission's involvement in the proposed reorganization. In addition, we would request that the parties discuss the difference in effects on ratepayers between state and federal regulation assuming alternately that the proposed reorganization ultimately is disapproved or, on the other hand, approved. In this regard, assuming reorganization, could this Commission impose cost-of-service treatment similar to that imposed by the state? In responding to this question, the parties should discuss not only Order No. 98, for example, but also those Commission cases dealing with the treatment of acquisition, exploration

and development costs under and the allocation of revenues from a joint oil/gas production program.

So that the oral presentation might be facilitated, we would urge the applicants and the state entities to limit the number of spokespersons to one for each group, if possible and appropriate. We would think the other intervenors would not need to make presentations, but they are not precluded from doing so. Finally, the applicants and the state entities are encouraged to coordinate the manner and order of their presentations. All parties intending to participate in the oral presentation shall notify the Secretary by close of business on Thursday, March 12, 1981, of such intent and any agreement among the parties as to their presentations. While we do not believe it appropriate to impose time limits in this instance, we would hope the oral presentation would take no longer than a total of two hours.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the applications for certificate of public convenience and necessity, abandonment authority and accounting authority in Docket Nos. CP80–274, CP80–275, CI80–233 and CP76–397 be consolidated and that these matters be set for oral presentation, as hereinbefore discussed.

(2) Participation in this proceeding by CIG, Northwest and the Committee may be in the public interest.

(3) Good cause exists to permit the late intervention by McCulloch, and its participation in this proceeding may be in the public interest.

(4) Good cause exists for accepting the late notice of intervention submitted by PSCU.

The Commission orders:

(A) Docket Nos. CP80–274, CP80–275, CI80–233 and CP76–397 and hereby consolidated.

(B) An oral presentation, as discussed above, shall be held in these consolidated proceedings at 10:00 a.m. on Tuesday, March 17, 1981, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C.

(C) CIG, Northwest, the Committee and McCulloch are permitted to intervene in this consolidated proceeding subject to the Commission's Rules and Regulations; *provided, however,* that participation of said intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their petitions to intervene; and, *provided, further,* that the admission of said intervenors shall not be construed by the Commission that they might be aggrieved by any other entered in this consolidated proceeding.

(D) The late notice of intervention submitted by PSCU is accepted for filing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7491 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-198-000]

National Fuel Gas Supply Corp.; Application

March 4, 1981.

Take notice that on February 19, 1981, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP81–198–000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) for a certificate of public convenience and necessity for blanket authorization to transport natural gas for other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests blanket authorization to provide short-term transportation service to other interstate pipeline companies. It states that it would comply with § 284.221(d) of the Commission's Regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1981, 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 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 or its designee 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. 81-7492 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-195-000]

Natural Gas Pipeline Company of America; Application

March 4, 1981.

Take notice that on February 17, 1981, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81–195–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Michigan Wisconsin Pipe Line Company (Mich Wis), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into a gas transportation agreement with Mich Wis dated February 6, 1981, under which Applicant would transport up to 3,900 Mcf of natural gas per day for Mich Wis. Mich Wis would make delivery to Applicant through joint facilities being constructed by Mich Wis, Applicant and others to the U–T Offshore System (UTOS) 42-inch pipeline in West Cameron Block 116, offshore Louisiana, it is stated. Applicant would subsequently redeliver equivalent volumes of natural gas to Mich Wis at the existing interconnection between the offshore facilities of Mich Wis, UTOS and the High Island Offshore System in West Cameron Block 167, offshore Louisiana, it is asserted.

It is further stated that the equivalent volumes redelivered to Mich Wis would contain thermally equivalent heating value to the volume of gas delivered by Mich Wis at West Cameron Block 116 after reducing deliveries to account for

processing, loss and unaccounted for gas, gas used for fuel and operation, and variation due to the transportation of liquids.

Applicant asserts that Mich Wis' monthly demand charge would be equal to one-half of the current effective transportation rate being paid by Applicant to UTOS for each Mcf of the contract transportation quantity in effect.

It is further submitted that the transportation agreement is for a term of ten years from the date of initial delivery.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 30, 1981, 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 jurisiction 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 or its designee 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. 81-7493 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-46-000]

Navajo Refining Co.; Filing of Petition

March 4, 1981.

Take notice that Navajo Refining Company on February 26, 1981, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before March 30, 1981, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before March 30, 1981, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7494 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-299-000]

Public Service Company of Oklahoma; Filing

March 4, 1981.

The filing Company submits the following:

Take notice that on February 26, 1981, the Public Service Company of Oklahoma (PSO) tendered for filing its request for a change in the rates of the Markham Ferry Coordination Agreement identified as Rate Schedule FERC No. 208 for calendar year 1981.

The filing contends that the agreement provides for annual review of the capacity and energy rates charged by the parties to reflect changes in production and investment costs. The filing revises the capacity and energy charge rates to reflect those costs as of December 31, 1980.

PSO requests that the Commission waive its rules on notice requirements in order that the proposed rate schedule can become effective on January 1, 1981.

According to PSO the Oklahoma Corporation Commission and the Authority have been served a copy of the filing.

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 March 23, 1981. 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. 81-7495 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-16]

Seagull Interstate Corp.; Amendment To Application

March 4, 1981

Take notice that on June 16, 1980, Seagull Interstate Corporation (Applicant), 1800 Capital National Bank Building, 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP80-16 an amendment to its application filed in said docket on October 9, 1979, pursuant to Section 7(c) of the National Gas Act so as to provide for a mechanism by which the Commission may establish a permanent just and reasonable rate for the transportation service to be performed pursuant to the blanket authorization sought in the aforementioned application, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In its application, Applicant requested blanket authorization pursuant to

Section 7(c) of the Natural Gas Act to construct and operate facilities for the transportation of natural gas in interstate commerce.

Applicant proposed to incorporate into its application the procedure with respect to rates expressed by the Commission in Section 284.123 of its Regulations which relates to transportation under Section 311 of the Natural Gas Policy Act of 1978 as a substitute for the mechanism originally proposed by Applicant.

Applicant states that under such amended proposal, upon commencement of the transportation service Applicant would file with the Commission the proposed interim rate with all information necessary to show the interim rate is just and reasonable. This interim rate would be deemed just and reasonable unless within 150 days after filing this rate and the supporting date the Commission either extends the time for action or institutes a proceeding for the determination of a just and reasonable rate, it is submitted.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 30, 1981, 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. 81-7406 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3842-000]

South Columbia Basin Irrigation District, et al.; Application for License

March 4, 1981.

Take notice that on December 1, 1980, the South Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and Quincy-Columbia Basin Irrigation District (Applicant) filed a joint application [pursuant to the Federal Power Act (Act), 16 U.S.C. 791(a)–825(r)] for a major license for the unconstructed E.B.C. 4.6 Power Plant (FERC Project No. 3842). The project would be located at mile 4.6 of the Water and Power Resources Service's Eltopia Branch Canal in Franklin County, Washington. Applicant has also requested exemption (under Section 30 of the Act and 4.90–4.94 of the Commission's regulations) from portions of Sections 4, 6 through 10, 13 through 15, 17, 20, 22, and 26 of Part I of the FPA. Correspondence with the Applicant should be directed to: Mr. Russell Smith, Secretary—Manager, South Columbia Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301.

The proposed project would consist of: (1) a diversion canal; (2) an intake structure; (3) a 5-foot diameter, 1,300-foot long buried concrete penstock; (4) a powerhouse containing a single generating unit with a capacity of 2.2 MW; (5) a tailrace canal; and (6) electrical transmission equipment.

The proposed project would have an average annual generation of 8.5 GWh at an estimated 1980 cost of $3,000,000. Power would be marketed to the cities of Seattle and Tacoma.

All project facilities would be constructed on privately owned lands upon which the Water and Power Resources Service of the Department of the Interior holds an easement for irrigation facilities.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before April 13, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than August 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before April 13, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7403 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3843-000]

South Columbia Basin Irrigation District, et al.; Application for License

March 4, 1981

Take notice that on December 1, 1980, the South Columbia Basin Irrigation District, East Columbia Basin Irrigation District, and Quincy-Columbia Basin Irrigation District (Applicant) filed a joint application [pursuant to the Federal Power Act (Act), 16 U.S.C. 791(a)–825(r)] for a major license for the unconstructed P.E.C. 66.0 Power Plant (FERC Project No. 3843). The project would be located at mile 66.0 of the Water and Power Resources Service's Potholes East Canal in Franklin County, Washington. Applicant has also requested exemption (under Section 30 of the Act and §§ 4.90–4.94 of the Commission's Regulations) from portions of Sections 4, 6 through 10, 13 through 15, 17, 20, 22, and 26 of Part I of the FPA. Correspondence with the Applicant should be directed to: Mr. Russell Smith, Secretary-Manager, South Columbia Basin Irrigation District, P.O. Box 1006, Pasco, Washington 99301.

The proposed project would consist of: (1) a diversion canal; (2) an intake structure; (3) a 4-foot diameter, 2,700-foot long, buried concrete penstock; (4) a powerhouse containing a single generating unit with a capacity of 2.3 MW; (5) a tailrace canal; and (6) electrical transmission equipment.

The proposed project would have an average annual generation of 11.8 GWh at an estimated 1980 cost of $3,000,000. Power would be marketed to the cities of Seattle and Tacoma.

All project facilities would be constructed on privately owned lands upon which the Water and Power Resources Service of the Department of the Interior holds an easement for irrigation facilities.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before April 13, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than August 11, 1981. A notice of intent must

conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before April 13, 1981.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7484 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3984-000]

Spaulding Fibre Company, Inc.; Application for Exemption

March 5, 1981.

Take notice that on January 9, 1981, the Spaulding Fibre Company, Inc. (Applicant) filed an application, under Section 408 of the Energy Security Act of 1980 (Act) [Pub. L. 96-294, 94 Stat. 611] (16 U.S.C. 2705, and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The South Milton small hydroelectric project is located on the Salmon Falls River in Strafford County, New Hampshire and York County, Maine. Correspondence with the Applicant should be directed to Attorney Howard M. Moffett, Orr and Reno, 95 North Main Street, Concord, New Hampshire 03301.

Project Description—The proposed project would consist of the following existing works: (1) a 15-foot high rock crib and timber dam, with a 140-foot wide spillway topped with 5-foot flashboards; (2) a 3.3-acre impoundment; (3) a 3800-foot long penstock, separating at its lower end into three channels leading to three mill generator rooms; (4) a 250-kW turbine and generator set and a 450-kW turbine and generator set; and (5) appurtenant works.

The Applicant proposes to install an additional 300-kW of new generating capacity in the currently unused third generator room.

Purpose of Project—Project energy would be used by the Applicant for industrial purposes or sold to a local public utility.

Agency Comments—The U.S. Fish and Wildlife Service, the New Hampshire Department of Fish and Game and the Maine Department of Inland Fisheries and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to submit appropriate terms and conditions to protect any fish and wildlife resources. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to the Water Power Development Corporation's application, Project No. 3222, submitted on June 20, 1980, under 18 CFR 4.33 (1980), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comment does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 17, 1981.

Filing an Service of Responsible Documents—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3984. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7485 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

[Project 2869-001]

Village of Potsdam, New York; Application for Exemption

March 5, 1981.

Take notice that the Village of Potsdam, New York (Applicant) filed with the Federal Energy Regulatory Commission on December 22, 1980, an application for exemption for its Potsdam Project No. 2869 from all of Part I of the Federal Power Act pursuant to 18 CFR Part 4 SUBPART K (1980) implementing in part Section 408 of the Energy Security Act of 1980.[1] The proposed project would be located on the Raquette River in the Village of Potsdam, St. Lawrence County, New York. Correspondence with the Applicant should be directed to: Ruth F. Garner, Mayor, Village of Potsdam, Potsdam Civic Center, Potsdam, New York 13676.

Project Description—The proposed run-of-the-river project would consist of existing Village-owned project works including: (1) two dams separated by Fall Island: (a) the 310-foot long gravity-type West Dam comprising a 130-foot long and 6-foot high timber-crib plank-faced spillway section with crest elevation 404.8 m.s.l., a 14-foot high concrete section on the left (west) side with crest elevation about 408 m.s.l., and a 10-foot high concrete section on the right (east) side with crest elevation

[1] Pub. L. 96-294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705 and 2708).

about 410 m.s.l.; (b) the 165-foot long and 7-foot high concrete and masonry gravity-type East Dam with a spillway crest elevation 405.1 m.s.l.; (2) a reservoir having a surface area of about 300 acres and a gross storage capacity of about 750 acre-feet at normal pool elevation 405.3 m.s.l.; (3) a brick and concrete powerhouse at the right (east) river bank including intake trash racks and head gates and containing an inoperative generating unit rated at 150-kW; (4) a short tailrace; and (5) appurtenant facilities.

Applicant proposes to: (1) replace the existing generating unit with a new unit rated at 400-kW; (2) install a new generating unit rated at 400-kW in the existing unused powerhouse bay; (3) install a monorail crane in the powerhouse; (4) modify the tailrace; (5) construct a retaining wall upstream from the powerhouse along the right bank; (6) rehabilitate both dams; and (7) make other miscellaneous repairs and improvements.

Applicant estimates that the average annual energy output would be 5,920,000 kWh.

Purpose of the Project—Project energy would be used by the Village in Village-owned facilities.

Purpose of Exemption—an exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for exemption. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of an exemption and consistent with the purpose of an exemption as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before April 16, 1981.

Filing and Service of Responsive Documents—Any comments, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "PROTEST", OR "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for exemption for Project No. 2869. Any comments, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-7486 3-9-81; 8:45 am]

BILLING CODE 6450-85-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed

On December 15, 1980, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before March 30, 1981. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 3, 1981.

Sycamore Shell, Danville, California, BRO-1385, motor gasoline

On December 15, 1980, A.J. Ataie d/b/a Sycamore Shell, 1 Boone Court, Danville, California 94526 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on July 30, 1980. In the PRO the Western District found that during December 15, 1979 to June 13, 1980, the firm committed pricing violations of $13,135.43 in connection with the sale of motor gasoline in the State of California.

[FR Doc. 81-7521 Filed 3-9-81; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 1771-6]

Assessments of Human Exposure to Atmospheric Concentrations of Selected Chemicals; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and request for public comment.

SUMMARY: EPA announces the availability of two reports on population exposure to selected chemicals of concern that are emitted into the atmosphere. The first report includes a description of the methodology for performing population exposure assessments and applies that methodology to 29 chemicals or groups of chemicals listed below. The second report contains population exposure assessments for four additional chemicals. EPA is seeking public comment on the adequacy of the methodology and the accuracy of the assessments.

DATES: Comments on the above reports should be postmarked no later than May 11, 1981.

ADDRESSES:

Availability of documents: Copies of the reports containing the methodology and the exposure assessments for the chemicals listed below may be obtained from the U.S Environmental Protection Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number 919-541-2777 (FTS 629-2777).

Please request the Systems Applications, Inc. report or the SRI International report when ordering.

Comments: Comments should be sent in duplicate to Mr. Michael Dusetzina, Strategies and Air Standards Division, (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number 919–541–5201 (FTS 629–5201).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Dusetzina, (919) 541–5201 (FTS 629–5201).

SUPPLEMENTARY INFORMATION: EPA has identified a number of substances which may be airborne carcinogens. As part of the assessment of these substances, EPA contracted with Systems Applications, Inc. (SAI) and SRI International to perform for selected chemicals a preliminary population exposure analysis relying upon readily available information on the production, uses, properties, air concentrations, and other indices useful in assessing the potential for public exposure. The first report, prepared by SAI, consists of two volumes containing the methodology and exposure assessments for the following chemicals or groups of chemicals:

Acetaldehyde
Acrolein
Allyl chloride
Benzyl chloride
Beryllium
Carbon tetrachloride
Chlorobenzenes
Chloroform
Chloroprene
Cresols (ortho, meta and para)
Dimethylnitrosamine
Dioxin (2,3,7,8-TCDD)
Epichlorohydrin
Ethylene oxide
Formaldehyde
Hexachlorocyclopentadiene
Manganese
Methylene chloride
Methyl chloroform (1,1,1-Trichloroethane)
Nitrosomorpholine
Nickel
Nitrobenzene
PCB
Phenol
Phosgene
Propylene oxide
Toluene
Trichloroethylene
Xylenes (ortho, meta and para)

The second report contains the following SRI International exposure assessments:

Assessment of Human Exposures to Atmospheric Acrylonitrile
Atomspheric Ethylene Dibromide: A Source Specific Assessment
Assessment of Human Exposures to Atmospheric Ethylene Dichloride
Assessment of Human Exposures to Atmospheric Perchloroethylene.

The exposure assessments identify types and locations of sources of air pollution; estimate emissions, ambient concentrations, and surrounding populations; and provide rough estimates of the number of people exposed to various concentrations on a nationwide basis. These exposure assessments may be used in conjunction with assessments of the health effects of the pollutant (which will be performed in those cases where the exposure assessment indicates a potentially significant public exposure) to determine the need or regulation under the Clean Air Act (e.g., whether the pollutant should be listed as a hazardous pollutant under Section 112 of the Act). Since these exposure estimates are order-of-magnitude assessments of the national level, more detailed exposure assessments will generally be carried out in determining the need for, and degree of control appropriate for, individual source categories. Although the purpose of the preliminary assessment does not warrant the large expenditures of time and money needed to provide definitive information, EPA desires to use the most accurate information readily available. Of particular interest are the accuracies of the identification of the types and locations of sources and the emissions of pollutants from the identified sources. The methodology used for estimating the extent of public exposure represents the degree of expense and complexity considered appropriate for a rough approximation of national-level exposure.

EPA is through this notice soliciting comments from all concerned public parties on the methodology used and the accuracy of the exposure assessments in light of the original design and intended use of the documents. Some or all of these assessments have been made available previously, e.g., for the meeting of the Subcommittee on Airborne Carcinogens of the Science Advisory Board, September 4–5, 1980, and for various interested industry organizations. Those that have previously commented on these exposure assessments need not resubmit those comments. In making any decisions on the basis of these exposure assessments EPA will consider all comments received previously or as a result of this notice.

Dated: March 3, 1981.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 81-7426 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-26-M

[OPP-50526; PH-FRL 1771-8]

Abbott Laboratories; Extension of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued extensions of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Room 412E, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7066).

SUPPLEMENTARY INFORMATION: EPA has extended the following experimental use permits:

275–EUP–13. Abbott Laboratories, North Chicago, IL 60064. This experimental use permit allows the use of the mixture of 8 pounds (4 pounds each) of the plant growth regulators gibberellic acid and 6-benzyladenine on apples to evaluate improvement of typiness or shape of fruit. A total of 224 acres are involved. The program is authorized only in the States of California, Idaho, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Utah, Vermont, Washington, and Wisconsin. The program is effective from March 19, 1981 to March 19, 1982. Permanent tolerances for residues of the active ingredients in or on apples have been established (40 CFR 180.224 and 180.376).

275–EUP–16. Abbott Laboratories, North Chicago, IL 60064. This experimental use permit allows the use of the mixture of 8 pounds (4 pounds each) of the plant growth regulators gibberellic acid and 6-benzyladenine in a tank mixture on apples to evaluate improvement of typiness or shape of fruit. A total of 224 acres are involved. The program is authorized only in the States of California, Idaho, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Utah, Vermont, Washington, and Wisconsin. The program is effective from March 18, 1981 to March 18, 1982. A permanent tolerance for residues of the active ingredient in or on apples has been

established (40 CFR 180.224 and 180.376).

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquiries concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visitng the EPA Headquarters office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (21 U.S.C. 136))

Dated: February 27, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-7411 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180564; PH-FRL 1772-6]

California; Issuance of Specific Exemption for Botran and Orthophenylphenol on Kiwi Fruit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") for the use of a Botran and orthophenylphenol combination post-harvest treatment on a maximum of 16 million pounds of kiwi fruit to control *Alternaria alternata* and *Botrytis cinerea*. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on March 31, 1981.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 502C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: The post-harvest diseases attacking kiwi fruit during storage are Alternaria surface mold and Botrytis rot. The Applicant claims that there are no registered pesticides for control of Alternaria or Botrytis on kiwi fruit. Cultural controls do not exist that can control this problem economically, according to the Applicant. Data submitted for an experimental use permit for KIWI LUSTR 277, the proposed pesticide product, indicate it is effective against these pests. This product contains the active ingredient (a.i.) 2,6-dichloro-4-nitroaniline and o-phenylphenol. The Applicant claims a loss of $3.25 million could occur without the use of KIWI LUSTR 277.

EPA has determined that residues from the proposed use are not expected to exceed 20 parts per million of each of the active ingredients in or on kiwi fruit. These levels have been judged adequate to protect the public health. While there are data gaps with respect to both of the active ingredients, the increase in exposure to the public from use under the exemption are expected to be nominal.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted permission to use the pesticide noted above until March 31, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product KIWI LUSTR 277 Concentrate, manufactured by the Pennwalt Corp., may be used.

2. One post-harvest application may be made using 1 gallon of spray mixture per 5,000 pounds of kiwi fruit. The spray mixture will be prepared using 1 gallon of KIWI LUSTR 277 Concentrate per 9 gallons of soft water.

3. A maximum of 16 million pounds of kiwi fruit may be treated.

4. Applications must be made by or under the direct supervision of an applicator State-certified for this category of pest control.

5. This product is toxic to fish. It must not be discharged into lakes, streams, ponds, or public waters unless in accordance with an NPDES permit. The regional office of EPA will provide guidance.

6. Kiwi fruit treated in accordance with the above program is not expected to exceed residue levels of 20 ppm each of orthophenylphenol and 2,6-dichloro-4-nitroaniline. Kiwi fruit with residues not exceeding these levels may enter into interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

7. Labeling accepted on December 6, 1979, for experimental use permit number 4581-EUP-33 must be used for shipment of this product.

8. All applicable precautions and restrictions on the labeling used in conjunction with experimental use permit 4581-EUP-33 should be adhered to.

9. The EPA shall be immediately informed of any adverse effects resulting from the use of KIWI LUSTR 277 Concentrate in connection with this exemption.

10. A full report summarizing the results of this program must be submitted to the EPA by the Applicant by August 1, 1981.

11. All unopened containers of KIWI LUSTR Concentrate must be returned to the manufacturer. Pesticide, spray mixture, or rinse water that cannot be used, should be disposed of in a landfill approved for pesticides. The EPA regional office will supply information concerning the location of approved landfill sites.

12. A residue analysis must be made to determine residue levels of both of the active ingredients present in the rind and those levels present in the pulp. Analysis should be performed promptly following treatment of kiwi fruit. This analysis must be submitted as soon as it becomes available.

(Sec. 18 as amended 92 Stat. 819 (7 U.S.C. 136))

Dated: February 27, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-7405 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180556; PH-FRL 1772-7]

Florida; Issuance of Specific Exemption for Permethrin on Celery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use permethrin for control of the vegetable leafminer on 11,000 acres of celery in four counties in Florida. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on June 30, 1981.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 502C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: Leafminers have periodically plagued Florida celery since the late 1940's. Leafminer damage to the celery results in reduced quality and leaf death; ultimately, the plant branches die. This damage necessitates stripping, trimming,

and culling which drastically reduce yield and quality. According to the Applicant, complete fields may be lost or marketed only as a salvage operation. The Applicant claims that permethrin plays an important role in the Integrated Pest Management program (IPM) that is being developed in Florida to control leafminers.

The following insecticides are registered for leafminer control: Cygon, Dibrom, Diazinon, Orthene, and Vydate. According to the Applicant, the registered alternatives are ineffective to the extent necessary to control the insect due to the leafminer's developed resistance to these pesticides. The Applicant estimates that without the use of an effective pesticide, losses of millions of dollars could be incurred by the Florida celery industry.

The Applicant proposed to use permethrin, manufactured by ICI Americas, Inc. as Ambush, and by FMC Corp. as Pounce, at a rate of 0.05 to 0.20 pound active ingredient (a.i.) per acre. Applications will be made by State-certified commercial applicators or persons under their direct supervision, using ground or air equipment in the following areas: Orange, Palm Beach, Sarasota, and Seminole Counties.

Residues of permethrin in or on celery are not expected to exceed 5 parts per million (ppm), residues of the metabolite DCVA are not expected to exceed 4 ppm, and residues of the metabolite 3-PBA are not expected to exceed 1.2 ppm as a result of this program. These residue levels have been judged by EPA to be adequate to protect the public health.

Environmental problems associated with permethrin's extreme toxicity to aquatic organisms should be reduced by the restrictions imposed by EPA. These restrictions should also minimize danger to two endangered species, the Everglade Kite and Southern Bald Eagle, both of which feed on aquatic organisms. The proposed use is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that the proposed use is an important component of Florida's Integrated Pest Management program, and that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above to the extent and in the manner set fourth in the application until June 30, 1981. The specific exemption is also subject to the following conditions:

1. Use of the products Ambush 2E (EPA Reg. No. 10182-18) and Pounce 3.2 EC (EPA Reg. No. 2791-3014), is authorized.

2. Total acreage treated may not exceed 11,000 acres in the counties named above.

3. Permethrin will be applied at a rate of 0.05 to 0.20 pound a.i. per acre per application. A maximum of 3 pounds a.i. per acre may be applied.

4. A maximum of 21 applications may be made. Applications may be made at 5- to 14-day intervals. There is no preharvest interval.

5. A 60-day crop rotation restriction is imposed.

6. A maximum of 33,000 pounds a.i. may be applied.

7. Applications of permethrin may be made by ground or air equipment.

8. Permethrin spray mixture volumes of 40 to 50 gallons of water per acre will be made by ground application, and a minimum of 5 gallons of water per acre will be made by aerial application.

9. All applications will be made by State-certified applicators or persons under their direct supervision.

10. Permethrin is highly toxic to bees exposed to direct treatment or to residues on crops or weeds. It must not be applied, or allowed to drift to weeds or crops in bloom where bees are actively foraging. Protective information may be obtained from the Florida Cooperative Agricultural Extension Service.

11. Permethrin should not be applied any closer to fish-bearing waters than indicated in the chart below:

Permethrin Application Rate

[Buffer zone—feet]

Height and method	Pounds per acre		
	(0.5)	(0.1)	(0.2)
2 feet/ground spray:			
Freshwater	25	50	80
Saltwater	130	200	350
8 feet/aerial spray:			
Freshwater	100	200	350
Saltwater	1,847	2,770	3,950

The Applicant is warned that applications closer than those allowed in the above chart may result in fish and/or aquatic invertebrate kills.

12. Precautions must be taken to avoid or minimize spray drift to nontarget areas. It is recommended that pesticide applications be made when wind speeds are between 2 and 5 miles per hour. No pesticide applications are to be made when wind speeds exceed 10 miles per hour.

13. Permethrin is extremely toxic to fish and aquatic invertebrates. It must not be applied directly to any body of water, and drift reduction precautions must be observed. It may not be applied where exessive runoff is likely to occur. Care must be taken to prevent contamination of water by the cleaning of equipment or disposing of waste or excess pesticides.

14. Two endangered species, the Florida Everglade Kite and the Southern Bald Eagle, are endemic to regions in the treatment area. Application of the pesticide according to the above instructions and restrictions is expected to minimize the risk to these animals. Permethrin should not be applied in areas where spray drift could possibly impact aquatic ecosystems containing federally designated endangered or threatened species. Liasion should be established between the Applicant and the Florida Fresh Water Fish and Game Commission in order to protect fish and wildlife.

15. Celery treated according to the above provisions is not expected to have residues in excess of 5.0 ppm permethrin, 4.0 ppm of the metabolite DCVA, and 1.2 ppm of the metabolite 3-PBA. Celery with residues not exceeding these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

16. All applicable directions, restrictions, and precautions on the product label must be followed.

17. The EPA shall be informed immediately of any adverse effects resulting from this use of permethrin.

18. The Applicant shall be responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by September 1, 1981.

(Sec. 18 as amended 92 Stat. 819 (7 U.S.C. 136))

Dated: February 26, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-7404 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[PP 8G2080/T287; PH-FRL 1772-2]

Glyphosate; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Temporary tolerances have been renewed for the combined residues of the herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethylphosphonic acid in or on forage legumes at 0.4 part per million (ppm) and the liver and kidney

of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm.

DATE: These temporary tolerances expire January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 412E, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7066).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of December 20, 1978 (43 FR 59431) that Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036, had submitted a pesticide petition (PP 8G2080) to the EPA. The petition proposed the establishment of temporary tolerances for the combined residues of the herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethylphosphonic acid in or on forage legumes at 0.4 ppm and the liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm.

Monssanto Co. has requested a renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the experimental use permit (524-EUP-46) which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

The Scientific data reported and other relevant material have been evaluated and it has been determined that the temporary tolerances will protect the public health. Therefore, the temporary tolerances are being renewed on the condition that the pesticide be used in accordance with the experimental use permit with the following provisions:

1. The amount of the pesticide to be used will not exceed the amount authorized in the experimental use permit.

2. Monsanto Co. will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The Company will also keep records of production, distribution, and performance, and on request make these records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire January 29, 1982. Residues remaining in or on the raw agricultural commodities after the expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances.

These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: February 27, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-7409 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50527; PH-FRL 1772-3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 412E, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7066).

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

524-EUP-55. Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036. This experimental use permit allows the use of a total of 8,000 pounds of the herbicides glyphosate and alachlor on corn and soybeans to evaluate control of weeds. A total of 2,000 acres are involved. The program is authorized only in the States of Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, Wisconsin, and Virginia. This experimental use permit is effective from January 22, 1981 to January 22, 1983. Permanent tolerances for residues of the active ingredients in or on corn and soybeans have been established (40 CFR 180.249 and 180.364).

400-EUP-60. Uniroyal Chemical, Div. of Uniroyal Inc., 74 Amity Road, Bethany, CT 06525. This experimental use permit allows the use of 296 pounds of the herbicide UBI-S734 on cotton, peanuts, potatoes, soybeans, sugar beets, and sunflowers to evaluate control of weeds. A total of 197 acres are involved. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from February 1, 1981 to February 1, 1982. This permit is issued under the special condition that the crops are to be destroyed or used for research purposes only.

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquiries concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA Headquarters office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (21 U.S.C. 136))

Dated: February 27, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-7406 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50490A; PH-FRL 1772-1]

NOR-AM Agricultural Products, Inc.; Issuance of Experimental Use Permit; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends experimental use permit 2139-EUP-24, for use of the fungicide propyl [3-(dimethyl-amino)propyl] carbamate monohydrochloride by including additional States.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 418, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7060).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of July 23, 1980, (45 FR 49148) that Nor-Am Agricultural Products, Inc., Naperville, IL 60540, had

been issued an experimental use permit for use of the fungicide propyl [3-(dimethylamino) propyl] carbamate monohydrochloride on turf grass to evaluate control of pythium blight. A total of 96 acres are involved.

Nor-Am has submitted an amendment to the permit to include the States of Nebraska and New York. The experimental use permit is effective from June 6, 1980, to May 1, 1981.

Persons wishing to review the experimental use permit are referred to the product manager. Inquiries regarding this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended (7 U.S.C. 136))

Dated: February 27, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-7410 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[PPOG2326/T286; PH-FRC 1771-7]

Norflurazon; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A temporary tolerance has been established for residues of the herbicide norflurazon and its desmethyl metabolite in or on the raw agricultural commodity soybeans at 0.10 part per million (ppm).

DATE: This temporary tolerance expires on April 20, 1982.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, RM. 412D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7070).

SUPPLEMENTARY INFORMATION: Sandoz, Inc., Crop Protection, 480 Camino Del Rio South, Suite 204, San Diego, CA 92180, has submitted a pesticide petition (PP OG2326) to the EPA. The petition proposed the establishment of a temporary tolerance for residues of the herbicide norflurazon [4-chloro-5-(methylamino)-2-(alpha, alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone], and its desmethyl metabolite [4-chloro-5-amino-2-(alpha, alpha-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the raw agricultural commodity soybeans at 0.10 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the experimental use permit (11273-EUP-18) which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material have been evaluated and it has been determined that the temporary tolerance will protect the public health. Therefore, the temporary tolerance is established on the condition that the pesticide be used in accordance with the experimental use permit with the following provisions:

1. The amount of the pesticide to be used will not exceed the amount authorized in the experimental use permit.

2. Sandoz, Inc., will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make these records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires April 20, 1982. Residues remaining in or on the raw agricultural commodity after the expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j))

Dated: February 27, 1981.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 81-7412 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180490A; PH-FRL 1773-1]

Department of Agriculture; Issuance of Specific Exemption for Naled in California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, (hearafter referred to as the "Applicant") for use of naled to eradicate the oriental fruit fly in California. The Applicant initiated a crisis exemption for this use of naled on July 1, 1980, in San Diego County and on August 4, 1980, in Orange County and so notified the Administrator. Notification of the crisis exemptions was published in the Federal Register of September 30, 1980 (45 FR 64706). The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on October 8, 1981.

FOR FURTHER INFORMATION CONTACT: Jack E Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 502C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7123).

SUPPLEMENTARY INFORMATION: The oriental fruit fly is a serious pest of fruits and vegetables in Hawaii and the Orient. This pest has been eradicated in California on several occasions. The source of the present infestations found in San Diego and Orange Counties may be Hawaii, which is currently infested. In order to deal more effectively with the eradication of this pest, the Applicant has requested that the specific exemption allow treatment anywhere within California that an oriental fruit fly is captured. Serious economic losses could occur if this pest becomes established, according to the Applicant. The Applicant claims that there is no pesticide currently registered or available for use against the oriental fruit fly in California. Based on past experience with naled, it is expected that the naled bait will be successful in eradicating this fly from California.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted permission to use the pesticide noted above until October 8, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Lure baits consisting of 10 percent naled, 67 percent methyl eugenol, and 23 percent Min-U-Gel 400 may be used.

2. Placement of lure baits to trunks of trees, telephone poles, and other inanimate objects will be made using hand equipment.

3. All lure baits will be placed out of the normal reach of children and pets.

4. Applications will be made by or under the supervision of trained

pesticide applicators of the Applicant's Plant Protection Quarantine Programs, Animal and Plant Health Inspection Service, or the California Department of Food and Agriculture, Division of Plant Industry.

5. Treatments may be made to a 9 square mile area around each fly find. A maximum of 600 spots (stations) may be treated per square mile.

6. Treatments may be made on a biweekly basis for a period of time sufficient to cover three generations of the oriental fruit fly.

7. No treatment may be made to food or feed items.

8. Prior to initiation of this treatment program, notification should be made through public media as to the time and area to be treated. Individual property owners should also be contacted and advised of the treatment and appropriate precautions.

9. The EPA shall be immediately informed of any adverse effects resulting from use of naled in connection with this program.

10. The Applicant is responsible for ensuring that these conditions are met and must submit a report summarizing the results of this program by February 15, 1982.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: March 2, 1981.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 81-7403 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51230; TSH-FRL 1772-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of four PMN's and provides a summary of each.

DATES: Written comments by:
PMN 81-42—March 31, 1981.
PMN 81-46, 81-47, 81-48—April 3, 1981.

ADDRESSES: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St. SW., Washington, D.C. 20460, (202-426-2610).

FOR FURTHER INFORMATION CONTACT:
For PMN Number 81-42, Notice Manager Kirk Maconaughey, Telephone (202-426-3936), Room No. E-210
For PMN Nos. 81-46, 81-47, 81-48, Notice Manager Janet Thompson, Telephone (202-755-1188), Room No. E-519A
Mail address of notice managers: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50444—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and rorms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "DATES", submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may

submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51230]" and the specific PMN number. Comments received may be seen in Rm. E-106 at the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: March 3, 1981.

Edward A. Klein,

Director, Chemical Control Division.

PMN 81-42

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. April 30, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: (Substitutedphenoxy) alkanoic acid, alkyl ester.

Use. Site-limited chemical intermediate. The final chemical will be a minor constitutent of a consumer article.

Import/Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	100	200
2d year	200	400
3d year	400	800

Physical/Chemical Properties.

Solubility:

Water—<0.1%.

Dimethyl sulfoxide—>1.0%.

Actone—>0.1%.

Corn oil—<0.1%.

Octanol—<0.1%.

Melting point—58°C.

Toxicity Data

Acute oral LD_{50} (mice and rats)—>3,000 mg/kg.

Acute dermal LD_{50}—>1,000 mg/kg.

Skin irritation—Slight.

Skin absorption—No evidence.

Repeated 10-day skin application—Slight exacerbation.

Skin sensitization potential—Moderate.

Eye irritation—Slight.

Ames *Salmonella* assay—Negative.

Repeated 2-week feeding study 0.1% and 1.0% in diet (rats)—Normal weight gain in both groups; hematology, clinical chemistry, and pathology normal in both groups; slight increase in liver weights in high-dose group.

Environmental Test

Chemical oxygen demand—1.88 g/g.

Secondary waste treatment compatibility study—A solution of 5,000 ppm nominal concentration did not affect microbial carbon metabolism.

Acute effects on fathead minnows, daphnids, *Helisoma* snails, and sideswimmers—A saturated solution, at a nominal concentration of 100 ppm, had no effects on the four species.

Exposure

Activity	Exposure route(s)	Maximum number exposed	Maximum duration		Concentrations	
			Hour/day	Day/year	Average unit	Peak mg/m³
Manufacture	Skin inhalation	2	1	5	0-1	1-10
Use	Skin inhalation	2	0.25	2	0-1	1-10

The manufacturer states that exposure may occur during the following transfer procedures: the damp chemical to the drying equipment, the dry chemical to storage, and the chemical to the reactor.

Environmental Release/Disposal. The manufacturer states that there will be negligible release of the new substance into the air and none released into land and water. Solid and liquid wastes are incinerated. Flue gases pass through a high energy scrubber system; scrubber and ash quench waters are discharged to a wastewater treatment system.

PMN-81-46

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. May 3, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Neutralized polymer of a modified epoxy resin.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in an open use that will release more than 50 but less than 5,000 kg per year into the environment with potential skin, eye, and inhalation contact for both chemical and non-chemical industry employees.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	75,000	175,000
2d year	375,000	875,000
3d year	750,000	1,750,000

Physical/Chemical Properties

Milliequivalents acid—.510 MEQ acid/gm non-volatile

Milliequivalents base—1.22 MEQ base/ gm non-volatile

% Total solids by weight—39.8%.

Flash point—149°F.

Density—8.86 lbs/gal.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that at three manufacturing sites 131 workers may be exposed to the new substance through skin and eye contact for 6-8 hr/da, 18 to 55 da/yr, during sampling, quality control sampling, and filling of shipping containers. At a processing site, 17 workers have potential skin and eye exposure for 6 hr/da, 150 da/yr, during filling of the mixing vessel, extracting samples for quality control, cleaning of equipment, and filling operations.

At the site of a typical user, 12 workers have potential eye and skin exposure for 8 hr/da, 250 da/yr.

Environmental Release/Disposal. The manufacturer states that at both manufacturing and processing sites, less than 80 kg/yr of the new substance will be released into the air and water and from 130-1,300 kg/yr to land. Particulate emissions are contained by a baghouse, solvents and reactor vapors are cleaned by scrubbers, and sludge is incinerated, landfilled, or sold as fuel.

At the site of a typical user, less than 20 kg/yr of the new substance will be released into the air and water and from 1,000 to 10,000 kg/yr to the land.

PMN-81-47

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. May 3, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organizational description provided:

Manufacturing site—Middle Atlantic U.S.

Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: Neutralized polymer from modified epoxy resin.

Use. Claimed confidential business information. Generic use information provided: The submitter states that the PMN substance will be used in an open use that will release more than 5,000 but less than 50,000 kg per year into the environment with potential skin and eye exposure to both chemical and non-chemical industry employees.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	225,000	525,000
2d year	1,125,000	2,625,000
3d year	2,250,000	5,250,000

Physical/Chemical Properties

Total solids by weight]—39.2%.
Density determination—8.83 lb/gal.
Flash point—191°F.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that at 2 manufacturing sites, 84 workers have potential skin and eye exposure to the new substance for 6 hr/da, 8 to 250 da/yr. At the manufacturer's processing sites, 17 workers have potential skin and eye exposure 6 hr/da, 250 da/yr. At a typical user's site not controlled by the manufacturer, a maximum of 12 workers may be exposed through the skin and eyes, 8 hr/da, 250 da/yr. Exposure at these sites could occur during filling of mixing vessels, extracting samples for quality control, and filling of shipping containers.

Environmental Release/Disposal. The manufacturer states that at the manufacturing and processing sites, 60 kg/yr of the new substance would be released into the air and water and from less than 20 to 1,000 kg/yr to the land. Sludges are landfilled or sold as fuel.

PMN-81-48

The following information is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. May 3, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organization description provided:
Manufacturing site—Middle Atlantic U.S.
Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Substituted polyamine.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the PMN substance will be used in a contained use that will release more than 50 but less than 5,000 kg per year into the environment with potential skin and eye exposure to chemical employees. There is no potential non-chemical industry employee contact or consumer contact.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	11,250	26,250
2d year	56,250	131,250
3d year	112,500	262,500

Physical/Chemical Properties

MEQ amine—9.2
% total solids—70.0
Flash point—85°.
Density—7.249 lbs/gal.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that at 2 manufacturing sites 81 workers have potential skin and eye exposure to the new substance for 6 hr/da, 4 to 28 da/yr, during sampling, quality control, and filling storage containers. At 3 processing sites, 131 workers have potential skin and eye exposure for 6 hr/da, 4 to 55 da/yr.

Environmental Release/Disposal. The manufacturer states that at the manufacturing and processing sites, less than 100 kg/yr of the new substance will be released into the air and water and from 230 to 2,300 kg/yr to land. Sludge and other organic wastes are either landfilled or sold as fuel.

[FR Doc. 81-7401 Filed 3-9-81; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51218; TSH-FRL 1753-6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 81-5089 appearing at page 12314 in the issue of Friday, February 13, 1981; on page 12315, second column, under *PMN 81-8*, paragraph designated *Exposure*, second line, "two" should read "one".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-9]

AM Broadcast Application Accepted for Filing and Notification of Cutoff Date

Released: March 6, 1981.

Cutoff Date: April 13, 1981.

Notice is hereby given that the following application has been accepted for filing. Because it is in conflict with one previously accepted for filing and listed as subject to cutoff dates for conflicting applications, no application which would be in conflict with this application will be accepted for filing.

Petitions to deny this application must be on file with the Commission not later than the close of business on April 13, 1981.

Minor amendments to this application, and to the one it is in conflict with, may be filed as a matter of right not later than the close of business on April 13, 1981.

BP-810209AJ—New, Winston, Oregon. Gospel Hymn Time, Inc., Req: 700 kHz, 500 W, 25 kW-LS, U

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc 81-7421 Filed 3-9-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket 81-118; File No. BP-21,112; BC Docket 81-119; File No. BP-781201AE]

B.L.P., Inc. and Joe F. Bryant, M.D. d.b.a. Bryant Radio Co.; Construction Permit Applications

In re Applications of B.L.P., Inc., Fairview, Tennessee, Req: 850 kHz, 500 W, Day [BC Docket 81-118, File No. BP-21,112] and Joe F. Bryant M.D. d.b.a. Bryant Radio Co., Charlotte, Tennessee, Req: 850 kHz, 500 W, Day [BC Docket 81-119, File No. BP-781201AE]. For Construction Permit; Hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: February 25, 1981.

Released: March 6, 1981.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned mutually exclusive applications of B.L.P., Inc. (BLP) and Joe F. Bryant d.b.a. Bryant Radio Co. (Bryant) for a construction permit for a new AM broadcast station; (b) BLP's petition to deny Bryant's application; and (c) related pleadings.

2. BLP's self-styled petition to deny Bryant's application is based on the following allegations: (a) Bryant's application failed to show the area and population that would receive interference from stations KFUO, Clayton, Missouri, and WYDE,

Birmingham, Alabama; [1] (b) Bryant's proposal would cause prohibited interference to a hypothetical super-power operation of WHAS, Louisville, Kentucky, in violation of former Section 73.3569(b)(2)(ii) of the Rules; and (c) Bryant improperly incorporated engineering data from BLP's application to demonstrate that his proposal would not cause prohibited interference to WHAS. In its reply pleading, BLP additionally objects to two Bryant technical amendments as untimely under former Section 1.522(a)(2) of the Commission's Rules.

3. Under Section 1.522(a)(2) of the Rules, Bryant could amend his application as a matter of right until the date specified in the Commission's public notice announcing the acceptance for filing of Bryant's (not BLP's) application. Since Bryant's application had not yet been accepted when the disputed amendments were filed, the amendments could not have been untimely. One of the amendments satisfactorily responded to one of BLP's objections by supplying the missing information relating to interference received from KFUO and WYDE. Further, subsequent to the pleadings in this case, the Commission deleted Section 73.3569 of its Rules. *Clear Channel Broadcasting in the AM Broadcast Band*, 78 FCC 2d 1345 (1980), *reconsid. denied*, FCC 80-725 (see News Release December 4, 1980, Report No. 16079, Mimeo No. 04581). The question of possible overlap to the super-power service contours of WHAS is thus moot, as are BLP's two arguments relating to it. Since petitioner's arguments are all found to be without merit, the petition is dismissed.

4. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications and to file with the Commission a statement of publication. We have no evidence that Bryant published the required notice. To remedy this deficiency, Bryant will be required to demonstrate his compliance by filing a statement of publication with the presiding Administrative Law Judge.

5. The two proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

6. Both applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

7. Accordingly, It is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each proposal and the availability of other primary aural service to such areas and populations.

2. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

3. To determine, in the event it be concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the petition to deny that B.L.P., Inc. filed against the application of Bryant Radio Co. is dismissed.

9. It is further ordered, That Bryant publish local notice of his application (if he has not already done so) and file a statement of publication with the presiding Administrative Law Judge within 40 days after this Order is published in the **Federal Register**.

10. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the applicants herein shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

11. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, the applicants herein shall give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

By: **Larry D. Eads,**

Acting Chief, Broadcast Facilities Division.

[FR Doc. 81-7419 Filed 3-9-81; 8:45 am]

BILLING CODE 6712-01-M

[1] Bryant's proposal complies with Section 73.37(b) of the Commission's Rules because even though it would receive interference from KFUO and WYDE within its normally protected 0.5 mV/m contour, it would not receive interference within its 1mV/m contour and the proposed station would be the first in Charlotte, a community wholly outside an urbanized area.

Commission Establishes Pleading Cycle on SNET Motion for Declaratory Ruling

February 27, 1981.

By Motion for Declaratory Ruling filed February 20, 1981, Southern New England Telephone Company (SNET) has sought relief from the structural separation requirements imposed upon affiliates of the American Telephone and Telegraph Company (AT&T) by the Final Decision and Reconsideration Order in the Second Computer Inquiry, Docket 20828.[1] In the alternative SNET has requested an extension of the time by which it must comply with these requirements.

The Commission will adopt the following pleading cycle for the SNET motion. Interested parties may file comments on the motion on or before March 30, 1981. Replies may be submitted on or before April 14, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-7423 Filed 3-9-81; 8:45 am]

BILLING CODE 6212-01-M

Commission Establishes Pleading Cycle on CBI Motion for Declaratory Ruling

February 27, 1981.

By Motion for Declaratory Ruling filed February 11, 1981, Cincinnati Bell Inc. (CBI) has sought relief from the structural separation requirements imposed upon affiliates of the American Telephone and Telegraph Company (AT&T) by the Final Decision and Reconsideration Order in the Second

[1] In the *Final Decision in Docket 20828* (the Second Computer Inquiry), 77 FCC 2d 384 (1980), the Commission determined that after March 1, 1982, all carriers under the direct or indirect control of AT&T could provide enhanced services and customer premises equipment (CPE) only through separate subsidiaries. On reconsideration, the Commission affirmed this decision. *See* Memorandum Opinion and Order in Docket 20828, FCC 80-628, released December 30, 1980 (Reconsideration Order).

Computer Inquiry, Docket 20828.* In the alternative CBI has requested an extension of the time by which it must comply with these requirements.

The Commission will adopt the following pleading cycle for the CBI motion. Interested parties may file comments on the motion on or before March 30, 1981. Replies may be submitted on or before April 14, 1981.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-7424 Filed 3-9-81; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 81-113; PR Docket No. 81-114]

Steven Spicer; Licensee Revocation and Renewal Application

In the Matter of Revocation of License of Steven Spicer, 250 72nd Street, Niagara Falls, New York, License for Radio Station KAUH-7065 in the Citizens Band Radio Service [PR Docket NO. 81-113] and Designation of Renewal Application of Steven Spicer, 250 72nd Street, Niagara Falls, New York [PR Docket NO. 81-114], For Amateur Radio Station WB2QHC and Amateur Advance Class Operator License; Order to show Cause and Designation order designating applications for consolidated Hearing on stated issues.

Adopted: February 27, 1981.

Released: March 5, 1981.

The Chief, Private Radio Bureau, has under consideration the license of Steven Spicer, for Citizens Band (CB) radio station KAUH-7065, issued May 24, 1977, for a five year term. Also under consideration is Spicer's renewal application for Amateur radio station license WB20HC and Amateur Advanced Operator license, issued September 23, 1975, for a five year term. Spicer's Amateur station and operator licenses expired September 23, 1980. On October 25, 1980, Spicer filed a renewal application for his Amateur licenses.[1]

1. Information before the Commission indicates that on December 5 and 24, 1979, and January 16, 1980, Steven Spicer made radio transmissions containing threats to injure another person, Edward W. Jackson.

2. Further information before the Commission indicates that on December 19, 1979, Spicer made radio transmission containing obscene and profane language.

3. As a result of these transmissions, Spicer pled guilty to violating 47 CFR Sections 97.116 and 97.119, in violation of Title 47 U.S.C. 502 in the United States District Court for the Western District of New York, on June 27, 1980. Factual matters in that proceeding will not be relitigated in this proceeding, under the doctrine of collateral estoppel.

4. Section 312(a)(2) of the Communications Act of 1934, as amended, provides that radio station licenses may be revoked because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application. Section 312(a)(4) of the Act provides that a radio station license may be revoked for wilful or repeated violation of the Act or Commission Rule. Accordingly, it is ordered, That Spicer show cause why the license for the captioned radio station should not be revoked.

5. It is further ordered, that if Spicer wants a hearing on this matter, he must file a written request for a hearing within thirty (30) days.[2] If a hearing is requested, the time, place, and Presiding Judge will be specified by subsequent order.

6. It is further ordered, that if Spicer declines his right to a hearing, this proceeding will be certified to the Commission for Administrative disposition pursuant to Section 1.92(c) of the Rules.

7. It is further ordered, that the matters in this proceeding will be resolved upon the following issues:

(a) To determine the effect of the June 27, 1980, criminal conviction of Spicer on his qualifications to be a Commission licensee.

(b) To determine whether Steven Spicer possesses the requisite qualifications to remain a Commission licensee.

(c) To determine, based upon the evidence adduced in issues (a) and (b), whether the license for CB station KAUH-7065 should be revoked.

8. The conduct described in this Order, to which Spicer pled guilty on June 27, 1980, raises a substantial and material question of fact as to whether Spicer possesses the requisite qualifications to become a licensee in the Amateur Radio Service. Spicer's conduct precludes that Commission from determining that a grant of Spicer's Amateur application would serve the public interest, convenience, and necessity. Section 309(e) of the Communications Act requires the Commission to designate an application for hearing where it cannot find that grant of the application would serve the public interest, convenience, and necessity.

9. Accordingly, it is further ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, and Section 1.973(b) and 0.331 of the Commission's Rules, that Spicer's application for Amateur station license WB2QHC and Advanced Class Operator licensee is designated for hearing, at a time and place to be specified by subsequent Order upon the following issue:

(d) Whether, in light of the evidence adduced under Issues (a) and (b) above, the public interest, convenience and necessity would be served by a grant of the Amateur radio station and Advanced Class operator license application of Steven Spicer.

10. It is further ordered, That to obtain a hearing on his application, Spicer, in person or by his attorney, shall within thrity days of the mailing of this Order,[3] file with the Commission in triplicate, a written notice of appearance stating an intent to appear on a date fixed for hearing to present evidence on the issues specified in the foregoing paragraph. Failure to file a written appearance within thirty days will result in the dismissal of the application with prejudice.

11. It is further ordered, pursuant to the provisions of Section 1.227 of the Commission's Rules, that the proceedings on the above-stated issues regarding the Order to Show Cause and the Designation Order are consolidated for hearing.

12. It is further ordered, That the burden of proceeding with the introduction of evidence and the burden of proof for revocation of the Citizens Band radio station license is on the Bureau, pursuant to Section 312(d) of the Communications Act of 1934, as amended; and the burden of introduction of evidence and the burden of proof for grant of the application is on the applicant, pursuant to Section 309(e) of the Communications Act.

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*In the *Final Decision in Docket 20828* (the Second Computer Inquiry), 77 FCC 2d 384 (1980), the Commission determined that after March 1, 1982, all carriers under the direct or indirect control of AT&T could provide enhanced services and customer premises equipment (CPE) only through separate subsidiaries. On reconsideration, the Commission affirmed this decision. *See* Memorandum Opinion and Order in Docket 20828, FCC 80-628, released December 30, 1980 (Reconsideration Order).

[1] Pursuant to Section 97.47(b) of the Commission Amateur Rules, Spicer has no continuing operating privileges since his application was filed after expiration of his Amateur licenses.

[2] The enclosed form should be used to either request or decline hearing. It should be mailed to the Federal Communications Commission, Washington, D.C. 20554.

[3] The 20 day response time specified by Section 1.221(c) is waived.

13. It is further ordered, That a copy of this Order shall be sent by Certified Mail—Return Receipt Requested and by Regular Mail to Steven Spicer at his address of record as shown in the caption.

Chief, Private Radio Bureau.

By: **Raymond A. Kowalski,**

Chief, Compliance Division.

[FR Doc. 81-7422 Filed 3-9-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-111, File No. BPCT-791016KE; BC Docket No. 81-112, File No. BPCT-800124KF]

Waterman Broadcasting Corp. of Texas (WBBH-TV) and Gainesville Television, Inc. (WCJB(TV)); Applications

In re Applications of Waterman Broadcasting Corportion of Texas (WBBH-TV), Fort Myers, Florida, [BC Docket No. 81-111; File No. BPCT-791016KE] and Gainesville Television, Inc. (WCJB(TV)), Gainesville, Florida [BC Docket No. 81-112; File No. BPCT-800124KF]. For Construction Permits for Changes in Television Facilities; *Hearing designation order* designating applications for consolidated hearings on stated issues.

Adopted: February 25, 1981.

Released: March 5, 1981.

By the Commission: Chairman Ferris not participating; Commissioner Quello dissenting and issuing a statement in which Commissioner Fogarty joins.

1. The Commission has under consideration: (a) the above-captioned applications of Waterman Broadcasting Corporation of Texas (Waterman or WBBH-TV) for a minor change in the facilities of WBBH-TV, Channel 20, Fort Myers, Florida, and Gainesville Television, Inc. (GTI or WCJB(TV)) for a major change in the facilities of WCJB(TV), Channel 20, Gainesville, Florida; (b) an informal objection filed January 7, 1980, by GTI against Waterman's application; (c) a July 21, 1980, joint request of the applicants for simultaneous and expeditious grant of both applications; and (d) related pleadings.

2. At their present sites, WBBH-TV in Fort Myers and WCJB(TV) in Gainesville comply with all spacing requirements. On October 16, 1979, Broadcasting-Telecasting Services, Inc. (Waterman's predecessor) applied for a construction permit to move the transmitter site of WBBH-TV and to increase its antenna height and maximum visual effective radiated power. Waterman's proposed site would be short-spaced to the existing site of co-channel WCJB(TV), Gainesville, Florida, and, accordingly, Waterman requests waiver of the Commission's spacing requirements (47 CFR § 73.610(d)).[1] On January 24, 1980, GTI applied for a construction permit to move its transmitter site to a point 190.7 miles from Waterman's proposed site, so that the two sites would be 14.3 miles short of the required 205 mile separation between co-channel UHF stations in Zone III. Because the two proposed sites are short-spaced to each other, the applications are mutually exclusive.

3. The applicants, in their joint request for grant of both applications, contend that although their proposed sites are short-spaced to one another, there would be no objectionable mutual interference.[2] The Commission's spacing requirements are intended to allow for the efficient processing of applications. The Table of Assignments was designed to allow applicants to comply with these requirements and to permit the orderly processing of applications to occur without the Commission having to do extensive engineering studies for each application. The Television and FM Tables of Assignments have succeeded in simplifying and accelerating the processing procedures as compared to AM radio, where spacing requirements and a Table of Assignments do not exist. It would not be in the public interest to entertain requests for waiver similar to the one requested here on the processing line. To do so would be to negate the advantages of the allocation tables and spacing requirements. The time consumed in analyzing such requests would delay the processing and grant of other applications that do comply with our Rules. Consequently, we are unable to find that grant of both applications would serve the public interest, and a hearing is, therefore, required. An issue will be specified to determine whether circumstances exist which would warrant waiver of § 73.610(b)(1) of the Rules and grant of both applications. Among the circumstances to be considered are whether there would be significant co-channel interference and, if so, the extent thereof; whether other sites are available which would meet all separation requirements and achieve the applicants' purposes; gains and losses in service; other television service available in the gain and loss areas; the need for the move, etc.

4. If it is found that both applications can be granted, the hearing will proceed no further. If, however, it is found that only one of the applications can be granted, it will first be determined whether circumstances exist which would warrant waiver of Section 73.610(b)(1) of the Rules with regard to the short-spacing between Waterman's proposed site and GTI's existing site. If it is found that sufficient circumstances for waiver do not exist, GTI's application will be granted and Waterman's application denied. If, however, it is found that sufficient circumstances for waiver do exist, the proposals will be considered on a comparative basis. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues set out below.

5. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the extent of the short-spacing between the applicants' proposed sites and the degree of interference that would be caused, if any.

2. In the event that it is determined that interference would be caused, to determine whether circumstances exist which would warrant waiver of § 73.610 of the Rules and grant of both applications.

3. In the event that it is determined that grant of both applications would be inconsistent with the public interest, to determine whether circumstances exist which would warrant waiver of § 73.610 of the Rules as to the short-spacing between Waterman's proposed site and GTI's existing site.

4. In the event that it is determined in Issue 3, above, that the waiver is warranted, to determine, on a comparative basis, which of the applications would better serve the public interest, convenience and necessity.

5. To determine, on the basis of the evidence adduced above, which of the applications should be granted.

6. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney within 20 days of the mailing of

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[1] The required mileage separation between co-channel stations WBBH-TV and WCJB(TV) is 205 miles. Waterman's proposed site would be 2.4 miles short-spaced to GTI's existing site.

[2] The applicants contend that they would cause no more interference from their proposed sites operating at their proposed power than they would cause operating from their present sites at maximum power.

this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.[3]

William J. Tricarico,

Secretary.

Dissenting Statement of FCC Commissionier James H. Quello in which Commissioner Joseph R. Fogarty joins.

In re: Applications of Waterman Broadcasting Corporation of Texas (WBBH–TV, Fort Myers, Florida) and Gainesville Television, Inc. (WCJB (TV), Gainesville, Florida) for changes in facilities.

WBBH–TV has applied for a construction permit to move its transmitter to a site where it would be 2.4 miles short-spaced to co-channel WCJB (TV). Subsequently, WCJB (TV) applied to move its transmitter to a location where it would be 14.3 miles short-spaced with WBBH–TV's proposed site. The applications are thus mutually exclusive. The applicants have submitted a joint request for simultaneous grant of both applications contending that there would be no significant mutual interference.

This is an unusual case. I believe that it is so unusual as to qualify for "purple cow" status; that is, it is doubtful that the Commission will be faced with a flood of such applications. In this instance, both applicants are seeking a mutually beneficial result which does no violence ot the main purpose of the Table of Assignments which was, and is, to equitably distribute television service throughout the nation. Were the applicants seeking such an accommodation between themselves at the expense of the public that would be, of course, a cause of great concern. That, however, is not the case. Should these joint proposals be granted, an estimated 120,000 viewers would gain new service while only some 1,600 would lose a part of their existing service.

The majority has rejected these applications because of its concern that a precedent would be established which would erode the Table of Assignments. Again, I believe that this case is virtually unique. In the vast majority of situations, one party wants to move or upgrade while the other party prefers to *status quo*. In the instant case, however, *both* parties seek an opportunity to improve their service and the public only stands to gain.

I strongly suspect that the hearing which is being forced upon these applicants will result in a grant of both applications. The sheer weight of common sense, it seems to me, will ultimately prevail. In the meantime, the burden of the full panoply of a hearing will fall upon the parties and the government alike with all of the requisite delay and expense such a process entails. The hearing process, of course, is a valuable and necessary tool in many instances for reaching just and equitable decisions. In this case, I believe that it is being misused to serve the interests of administrative convenience at the expense of the public interest.

Therefore, I dissent.

[FR Doc 81-7420 Filed 3-9-81; 8:45 am]

BILLING CODE 6712-01-M

[3] See attached dissenting statement of Commissioner James H. Quello in which Commissioner Joseph R. Fogarty joins.

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Sta. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 30, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: 5200–38.

Filing Party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 5200–38 amends the basic agreement of the Pacific Coast European Conference to provide for a right of independent action by Area Groups.

Agreement No. 9902–13.

Filing Party: Edward Schmeltzer, Schmeltzer, Aptaker & Sheppard, P.C., 1800 Massachusetts Avenue NW., Washington, D.C. 20036.

Summary: Agreement No. 9902–13 amends the Euro-Pacific Joint Service between Hapag—Lloyd Aktiengesellschaft, Compagnie Generale Maritime and Intercontinental Transport (ICT) B. V. The purpose of the amendment is to enable Euro-Pacific Joint Service to offer intermodal service to and from inland points in the United Kingdom, Scandinavia and Continental Europe.

Agreement No. 10411.

Filing Party: John D. Straton, Jr., Director, Rates and Conferences, Moore McCormack Lines, Incorporated, 2 Broadway, New York, New York 10004.

Summary: Agreement No. 10411 is a proposed discussion agreement among Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar S. A., and Moore McCormack Lines, Incorporated, in the trade between the U.S. Atlantic Coast and ports of Brazil. The parties propose to discuss vessel scheduling and coordination, perform joint studies of vessel deployment, and exchange such data as is necessary. The agreement is scheduled to terminate on December 31, 1981.

Dated: March 5, 1981.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 81-7508 Filed 3-9-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-21]

Bekaert Steel Wire Corp. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Bekaert Steel Wire Corporation against Sea-Land Service, Inc. was served March 3, 1981. Complaint alleges that respondent has improperly applied its tariff in assessing charges for ocean transportation.

This proceeding has been assigned to Chief Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 81-7512 Filed 3-9-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continued to engage in an earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than April 1, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

Citicorp, New York, New York (consumer and commercial finance, insurance and industrial loan company activities; Utah): to engage through a de novo office of its indirect subsidiary, Citicorp Person-to-Person Financial Center of Utah, to be located in Orem, Utah, in the following activities: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health or decreasing or level (in the case of single payment loans) term life insurance by licensed agents or brokers, as required; the sale of credit related property and casualty insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center of Utah, and to the extent permissible under applicable state insurance laws and regulations; the operating as an industrial loan company and the issuing of thrift certificates and thrift passbook certificates; and the sale at retail of money orders, travelers checks, U.S. savings bonds and consumer-oriented financial management courses; and the servicing, for any person, of loans and other extensions of credit. The service area of the *de novo* office would be comprised of the entire state of Utah. Citicorp also wishes to expand the previously approved service area of an existing office of Citicorp Person-to-Person Financial Center at the same location in Orem, Utah to include the entire state of Utah. The previously approved activities of the office include all the aforementioned activities except the operating as an industrial loan company and the issuing of thrift certificates and thrift passbook certificates and the servicing, for any person, of loans and other extensions of credit. Credit related life, accident, and health insurance may be written by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center of Utah and Citicorp Person-to-Person Financial Center.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, March 2, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7514 Filed 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commended *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than April 3, 1981.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. CITICORP, New York, New York, (insurance activities; Virginia): to engage, through its subsidiary, Citicorp Person-to-Person Financial Center, Inc., in the sale of credit related single interest insurance protecting real and personal property subject to a security agreement with Citicorp Person-to-Person Financial Center, Inc., to the

extent permissible under applicable state insurance laws and regulations. This activity would be conducted from the subsidiary's office in Vienna, Virginia, serving all of Virginia.

2. This notice corrects a previous **Federal Register** document (FR Doc. 81-6618) published at page 14820 of the issue for Monday, March 2, 1981. This notice is for the expansion of activities at an existing office.

Horizon Bancorp, Morristown, New Jersey (mortgage and financing activities; United States, Western Europe and South America): already engages through its subsidiary, Horizon Creditcorp, in making acquiring for its own account or for the account of others, loans and other extensions of credit (including issuing letters of credit and accepting drafts), such as would be made, for example, by a mortgage and finance company. This application is to expand its activities to include servicing loans and other extensions of credit for the account of others. Typically, the persons for whom such loans would be serviced would be other financial institutions. These activities would be conducted from an office in Morristown, New Jersey, serving the United States, Western Europe and South America. Comments on this application must be received by March 25, 1981.

B. *Federal Reserve Bank of Cleveland* (Harry W. Hunning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

Pittsburgh National Corporation, Pittsburgh, Pennsylvania (mortgage banking activities; Georgia, South Carolina): to engage through its subsidiary, The Kissell Company, in mortgage banking activities including making or acquiring and servicing for its own account and or the accounts of others, loans and other extensions of credit. These activities would be conducted from an office in Savannah, Georgia, serving the following Georgia counties: Chatham, Effingham, Bryan, Liberty, McIntosh, Long, and Evans; and the following South Carolina counties; Jasper, Hampton and Beauford.

C. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

Utica Bankshares Corporation, Tulsa, Oklahoma (lending activities; Oklahoma and contiguous states): to engage directly in making or acquiring commercial and industrial, agricultural, real estate, natural resources, and consumer short term (one year or less) loans and other extensions of credit (including issuing letters of credit and accepting drafts) for its own account and the account of its subsidiaries. These activities would be conducted from the Applicant's offices in Tulsa, Oklahoma, serving Oklahoma, Arkansas, Texas, New Mexico, Colorado, Kansas, and Missouri.

D. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. Security Pacific Corporation, Los Angeles, California, Colorado, Georgia, Hawaii, Kentucky, Maryland, Nevada, Utah): to engage through its subsidiary, Security Pacific Mortgage Corporation, in acting as broker or agent for the sale of credit-related life, accident and health insurance. These activities would be conducted from offices of Security Pacific Mortgage Company in Phoenix and Tucson, Arizona; Carson, Downey, Riverside, Sacramento, San Diego, San Jose, Tustin, Van Nuys, and West Covina, California; Arvada, Aurora, Colorado Springs, Englewood, Evergreen, Fort Collins, Grand Junction, Greeley and Lakewood, Colorado; Atlanta and Columbus, Georgia; Honolulu, Hawaii; Louisville, Kentucky; Glen Burnie, Maryland; Las Vegas and Reno, Nevada; and Murray, Utah; serving those states. Comments on this application must be received by March 22, 1981.

2. Security Pacific Corporation, Los Angeles, California (financing and insurance activities; Pennsylvania): to engage through its subsidiary, Security Pacific Consumer Discount Company, in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be make by a factoring company or a consumer finance company and acting as broker or agent for the sale of credit life, health and accident insurance. These activities would be conducted from an office of the subsidiary located in Pottsville, Pennsylvania, serving the State of Pennsylvania, and would constitute a relocation of an existing office of the subsidiary located in Tamaqua, Pennsylvania.

E. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, March 4, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7515 Filed 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancshares of Wyoming, Inc.; Acquisition of Bank

Commerce Bancshares of Wyoming, Inc., Sheridan, Wyoming, 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 100 percent (less directors' qualifying shares) of the voting shares of Security Bank of Gillette, Gillette, Wyoming. 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 Reserve Bank to be received not later than April 3, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 4, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7516 Filed 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

East Texas Bancshares, Inc.; Acquisition of Bank; Correction

This notice corrects a previous **Federal Register** document (FR Doc. 81-6211) published at page 13814 of the issue for Tuesday, February 24, 1981. The applicants location, listed in the first sentence, is corrected so that the sentence reads as follows:

East Texas Bancshares, Inc., Tyler, Texas, 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 90 per cent or more of the voting shares of Peoples National Bank of Sulphur Springs, Sulphur Springs, Texas. 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 Dallas. 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 March 20, 1981. Any comment on an application that requests a hearing must include a

statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 4, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7517 Filed 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

First Banks, Inc.; Formation of Bank Holding Company

First Banks, Inc., Carnesville, Georgia, 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 100 per cent of the voting shares of First Bank and Trust, Carnesville, Georgia, and at least 50 per cent of the voting shares of The Bank of Toccoa, Toccoa, Georgia. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 3, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 4, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7518 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

Southeastern Banking Corp.; Formation of Bank Holding Company

Southeastern Banking Corporation, Folkston, Georgia, 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 100 percent of the voting shares of the proposed successor by merger to The Citizens Bank, Folkston, Georgia. 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 Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than April 3, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, March 4, 1981.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 81-7519 Filed 3-9-81; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 81G-0048]

GB Fermentation Industries, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that GB Fermentation Industries, Inc., has filed a petition (GRASP 1G0271) proposing affirmation that high fructose corn syrup, prepared from corn syrup glucose by the action of an immobilized glucose isomerase enzyme preparation for use as a sweetening agent in foods, and the immobilized enzyme prepartion, consisting of gelatin, glucose isomerase derived from *Actinoplanes missouriensis* and glutaraldehyde, are generally recognized as safe (GRAS).

DATE: Comments by May 11, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donna A. Dennis, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 1G0271) has been filed by GB Fermentation Industries, Inc., One North Broadway, Des Plaines, IL 60016, proposing affirmation that high fructose corn syrup, prepared from corn syrup glucose by the action of an immobilized glucose isomerase enzyme prepartion, for use as a sweetening agent in foods, and the immobilized enzyme preparation, consisting of gelatin, glucose isomerase derived from *Actinoplanes missouriensis*, and glutaraldehyde, are GRAS.

The petition has been placed on display at the Dockets Management Branch (HFA-305), Food and Drug Administration.

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

Interested persons may, on or before May 11, 1981, review the petition and/or file comments (four copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 25, 1981

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-7441 Filed 3-9-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Development and Production Plan; Conoco, Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a Development and Production Plan describing the activities it proposes to

conduct on Lease OCS–G 2820, Block 36, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: March 2, 1981.

Lowell G. Hammons,

Conservation Manager, Gulf of Mexico ODS Region.

[FR Doc. 81-7507 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-31-M

Southern Appalachian Coal Region—Alabama Subregion; Request for Public Comments on Maximum Economic Recovery and Fair Market Value; Correction

Correction

In FR Doc. 81–6541 appearing at page 14830 in the issue for Monday, March 2, 1981, make the following correction:

On page 14831, in **Table I**, in the listing for "Jess Creek", in the "Probable type of mine" column, "Surface" should have read "Underground".

BILLING CODE 1505-01-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before February 27, 1981. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 25, 1981.

Carol Shull,

Acting Chief, Registration Branch.

CALIFORNIA

Orange County

San Clemente, *San Clemente Beach Club*, Avenida Boca De La Playa.

San Diego County

Dan Diego, *Pythias Lodge Building*, 211 E St. and 870 3rd Ave.

INDIANA

Dearborn County

Lawrenceburg, *Dearborn County Courthouse*, High and Mary Sts.

LOUISIANA

St. Martin Parish

St. Martinville, *St. Martin Parish Courthouse*, S. Main St.

St. Mary Parish

Morgan City, *Morgan City City Hall and Courthouse*, Everett and 1st Sts.

Ouachita Parish

Monroe, *Ouachita Parish High School*, 500 S. Grand St.

MICHIGAN

Houghton County

Hancock, *Hancock Town Hall and Fire Hall*, 399 Quincy St.

South Range, *South Range Community Building*, Trimountain Ave.

NEW YORK

Onondaga County

Syracuse, *Central Technical High School*, 700–745 S. Warren St.

[FR Doc. 81-7110 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-03-M

Bureau of Land Management

Designation of Certain Public Lands in the Bannock-Oneida Resource Area as an Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Burley District Office, Idaho.

ACTION: Designation of certain public lands in the Bannock-Oneida Resource Area as an area of critical environmental concern (ACEC).

SUMMARY: Pursuant to the Authorities in the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1701 and 1712) and the Authorization from the Director received January 1979, I hereby designate the following described public lands as an ACEC under the name Bowen Canyon Bald Eagle Sanctuary:

Boise Meridian

	Acres
T.9 S., R.31 E.:	
Section 1: NE¼, SW¼SW¼, SE¼	361.03
Section 2: SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼	240.00
Section 11: W½NE¼	80.00
Section 12: E½NE¼, NW¼NE¼, W½SW¼, E½SE¼	280.00
Section 13: E½NE¼, SW¼NE¼, NW¼, SW¼SE¼	600.00
T.9 S., R.32 E.:	
Section 6: W½	242.17
Section 7: W½	250.72
Section 18: W½	254.16
Total	2,308.08

A copy of the ACEC Plan Element is available at the Burley BLM District Office, Route 3, Box 1, Burley, Idaho 83318.

Effective Date: February 19, 1981.

Nick James Cozakos,

District Manager.

[FR Doc. 81-7377 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Colorado River Management Plan; Grand Canyon National Park, Arizona; Amendment

Based on Public Law 96–514, Department of the Interior and Related Agencies Appropriations for Fiscal Year 1981, the National Park Service will be moving immediately to revise the approved Colorado River Management Plan for Grand Canyon National Park. This action will be done in two phases.

Phase One will be to rescind the stated objective of elimination of moterized watercraft between Lees Ferry and Separation Canyon for the 1981 season. Also as directed by Congress, the National Park Service will not require any reduction in commercial motorized watercraft use below the 1978 authorized use level. The number of visitor use days for commercial operators during the preferred use season will be permitted to increase from 89,000 to 105,500. This is in accord with the approved plan but the preferred use season has been reduced from six to five months. The number of launches for commercial watercraft for 1981 will not be less than the number of launches in 1978.

Maximum user days for noncommercial trips will be permitted to

reach 43,920 days during the five month preferred use season. This use level will achieve the plan objective of a higher ratio of noncommercial to commercial trips.

Phase Two will be to immediately begin the revision of the 1979 approved Colorado River Management Plan. The revision of this river management plan will proceed with public involvement and under the procedures of the National Environmental Policy Act.

Since Phase Two will be completed too late in 1981 to be implemented for the 1982 rafting season, the National Park Service proposes to continue the Phase One 1981 actions through the 1982 operating season. The draft revised plan will be released during the summer of 1981. The final revised plan will be completed by November 1981.

The impact of the level of commercial use being called for in Phase One has been fully analyzed under the no-action alternative in the draft and final environmental impact statements on the Colorado River Management Plan (DES 77–37 and FES 79–30, respectively). Therefore, no further environmental documentation is required at this time.

This does not imply that the National Park Service has adopted the no-action alternative and rejected the entire plan. At the time of approval of the existing plan it was recognized that periodic modifications could be necessary. Therefore flexibility was integrated into that plan. Although phasing out of motorized craft was an important consideration in the plan and has been set aside, other elements of the plan can and will be implemented. The existing plan will still meet 11 out of the 14 management objectives for the Colorado River corridor (see page 11 of the Colorado River Management Plan).

Several sections of the plan are hereby accordingly modified until a revised plan is approved.

(1) Total elimination of motors is no longer an element of this plan. References to elimination of motors contained in Sections I.C.—Legislative and Planning Influences, Section IIIA.—Management Objectives and Section III.C.2—Philosophy are no longer valid.

Discussions of phasing out of motorized craft over the long-term are also eliminated. Specifically, Table 1 and the discussions under Section IV.A.—Phase-out of motorcraft are eliminated.

(2) There will be no reduction in launches for commercial motorized craft. References in Section IV.8.—Annual use, to specific use levels and definition of the summer and winter use seasons should be disregarded.

Dated: February 19, 1981.

Russell E. Dickenson,

Director, National Park Service.

Dated: March 4, 1981.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 81-7416 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-70-M

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Statute 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 8:30 a.m. (EST), on Thursday, March 26, 1981, at Happy Days Center located on State Route 303 (Streetsboro Road), 1 mile west of State Route 8, near Peninsula, Ohio. Parking is on the north side of Route 303, and a pedestrian tunnel leads to the building on the south side of the highway.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff-4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matter to be discussed at this meeting include:

1. Discussion of the proposal to acquire the undeveloped portion of Greenwood Village.
2. Update on Park operations.

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone (216) 650–4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: March 4, 1981.

Robert C. Milne,

Acting Chief, Office of Cooperative Activities, National Park Service.

[FR Doc. 81-7417 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director of the Rocky Mountain Region, National Park Service, proposes to negotiate a concession contract with Mr. Rex Ross Walker d.b.a. Hi Country Stables, authorizing him to continue to provide saddle livery facilities and services for the public at Rocky Mountain National Park for a period of five (5) years from January 1, 1981, through December 31, 1985.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed at the following location: National Park Service, Rocky Mountain Region, Concessions Management Division, 655 Parfet Street, Denver, Colorado 80225.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1980, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision in effect, grants Hi Country Stables, as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of Hi Country Stables is substantially equal to others received. In the event a responsive proposal superior to that of Hi Country Stables (as determined by the Secretary) is

submitted, Hi Country Stables, will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with Hi Country Stables. The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be post marked or hand delivered on or before May 11, 1981.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado 80225, for information as to the requirements of the proposed contract.

Dated: March 3, 1981.

Lorraine Mintzmyer

Regional Director, Rocky Mountain Region.

[FR Doc. 81-7443 Filed 3-9-81; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29547]

Burlington Northern, Inc.—Abandonment of a 3.33-Mile Segment Near Lake Kapowsin in Pierce County, WA—Exemption Under 49 U.S.C. 10505

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment by Burlington Northern, Inc. (BN) of a 3.33 mile line segment near Lake Kapowsin in Pierce County, WA, from the requirement of prior approval under 49 U.S.C. 10903.

DATES: This Exemption will be effective 30 days after the date of this publication in the **Federal Register**. Petitions for reconsideration of this action must be filed within 20 days after this publication.

ADDRESSES: Send pleadings to: (1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., Washington, D.C. 20423; and

(2) Petitioner's representatives: Douglas J. Babb, Thomas A. Ehlinger, 176 East Fifth Street, St. Paul, MN 55101. Pleadings should refer to Finance Docket No. 29547.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Exemption Request

BN has filed a petition to exempt the abandonment of a 3.33-mile line segment near Lake Kapowsin, WA (between milepost 6.70 and 10.03) from the requirements of 49 U.S.C. 10903. Alternatively, BN requests an exemption from the system diagram publishing requirements of 49 U.S.C. 10904 only, to permit the immediate initiation of abandonment proceedings. The segment is located at the end of a branch line running from Ortung to Lake Kapowsin, WA.

On March 3, 1979, a bridge spanning the Puyallup River near milepost 8.3 collapsed and was damaged beyond reasonable repair. BN estimates that it will cost approximately $1,976,125 to replace the bridge in addition to general maintenance costs. While the branch is still serviceable to the bridge, the collapse has caused service on the branch to be discontinued.

Prior to the collapse, the only shipper using the branch line was St. Regis Paper Company (St. Regis) at Lake Kapowsin. This shipper moved approximately 4,645 carloads over the line to Tacoma annually. This traffic moved entirely over the BN. Following the bridge collapse, St. Regis has used motor carrier services to transport its product. St. Regis has found that motor carrier transportation is more cost efficient, flexible, and responsive to its marketing and mill usage requirements. St. Regis has filed a statement in support of the exemption petition.

The trackage between milepost 6.70 and milepost 10.03 is located on a permanent easement held by BN. Upon abandonment, BN will relieve its easement and St. Regis will convert a portion of the BN roadbed to a truck road. Additionally, St. Regis will replace the Puyallup River bridge with a truck bridge. St. Regis has obtained the necessary and appropriate permits from state and local authorities for this construction. Since these permits allow a very limited construction period (June 15 through September 15), St. Regis need to make necessary preparations for construction within this period.

The Statute

Rail abandonments require the approval and authorization of this Commission under 49 U.S.C. 10903-10906. To obtain Commission approval an application must be filed in compliance with *Abandonment of Railroad Lines and Discontinuance of Service*, 49 CFR Part 1121 (1978).

Under 49 U.S.C. 10505, as modified by section 213 of the Staggers Rail Act of 1980 (Pub. L. 96-448, 94 Stat. 1895, October 14, 1980), the Commission is authorized to exempt a transaction when we find that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101a; and (2) either the transaction is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BN argues that this proposal is one that does not require regulatory oversight and should be exempted. The Railway Labor Executives' Association (RLEA) has submitted a letter in opposition to the exemption petition. RLEA seeks the imposition of employee protective conditions.

Discussion and Conclusion

Our detailed scrutiny of the abandonment under existing procedures is not necessary to carry out the goals of the rail transportation policy of section 10101a. A grant of this exemption, on the other hand, would advance these transportation goals by eliminating unnecessary regulation. See for example, H.R. Rep. No. 96-1430, 96th Cong., 2nd Sess., 104-105 (1980) and 49 U.S.C. 10101a(2). The power to exempt from regulation enables the Commission and railroads to commit their limited resources in areas where they are most needed by enabling the Commission to effectively deregulate those areas which have no significant bearing on the overall regulatory scheme.

The proposed abandonment is the type of transaction which Congress intended us to exempt.

The contemplated abandonment is limited in scope and application of the statute is not necessary to protect shippers from an abuse of market power. The exemption will affect only a relatively short track segment which has not been used in rail operations since 1979. The sole shipper along the branch has found more satisfactory transportation services and fully supports the exemption. There is no indication that the community of Lake Kapowsin, other shippers or other carriers will be adversely affected by authorization of this petition.

Since we have decided to exempt the transaction from 49 U.S.C. 10903, it is unnecessary to consider applicant's alternate request. To this extent the petition is dismissed.

Public Use Condition and Offers of Financial Assistance. In abandonment proceedings filed pursuant to 49 U.S.C. 10903, the Commission is specifically required to consider two matters that have not been considered in this exemption proceeding. First, 49 U.S.C. 10906 requires us to determine if the property to be abandoned is suitable for other public uses. If the property is suitable, we impose certain conditions

to allow interested persons an opportunity to obtain the property. Similarly, 49 U.S.C. 10905, as modified by section 402 of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980), allows interested persons to make financial assistance offers to assure the continuation of operations over the line. Under the procedure provided by this section, financial offers may lead to continued subsidized operation of the line or sale of the line for continued operations by others.

Since the provisions of 49 U.S.C. 10905, and 10906 apply only to applications under section 10903, we are not required to allow offers of financial assistance or impose any public use conditions when an exemption is granted, because no application is filed. We note, however, that these matters may be raised in petitions for reopening of this proceeding.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C. Subtitle IV. (See 49 U.S.C. 10505(g)(2). Therefore, as a condition to this exemption, we will afford the same level of labor protection as is usually required in abandonment transactions. We have determined that the employee protective conditions developed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), satisfy the statutory requirements for protection of employees involved in an abandonment transaction.

Energy and Environmental Consideration. Our initial review of the proposal indicates that the abandonment will not significantly affect energy consumption or the quality of the human environment. However, in line with our recent decision in F.D. No. 29352, *Central of Georgia Railroad Company—Petition for Exemption from the Filing of an Abandonment Petition, 49 U.S.C. 10903–19096*, (not printed), decided December 9, 1980, we shall require BN to notify the following Washington State agencies of this proceeding and of their opportunity to file a petition to reopen this proceeding on environment grounds: Betty Rodrick, Department of Game, Non-Game Program, 600 N. Capital Way, Olympia, WA 98504; Dean Cole, Planning and Commission Affairs, 400 Capitol Center Building, Olympia, WA 98504; Peter R. Haskin, Environment Review Section, Office of Comprehensive Programs, State of Washington, Department of Ecology, Olympia, WA 98504; Dave McKim, Supervisor, Land Acquisition, Washington State Parks, 7150 Cleanwater Lane, Olympia, WA 98504; Mr. Charles Woelke, Assistant Director, Intergovernmental Operations, Washington Department of Fisheries, 115 General Administration Building, (AX–11), Olympia, WA 98504; John Conrad, Manager, State Rail Branch, Highway Administration Building, KF01 Olympia, WA 98504; Dwayne Wegner, Department of Ecology, PV–11, State of Washington, Olympia, WA 98504; Jean Welsh, Department State Historic Preservation, Office of Archaeology and Historic Preservation, 111 West 21st, Olympia, WA 98504; Mr. John Wirsing, Endangered Species, Coordinator, Washington Department of Natural Resources, Public Lands Building, State Capitol, Olympia, WA 98504; and Mr. E. Reade Brown, Chief, Wildlife Management Division, Washington Department of Game, 600 North Capitol Way, Olympia, WA 98504. BN must notify these agencies within 5 days of the publication of this decision in the **Federal Register.** Correspondence and/or memoranda of communications with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

The exemption granted here will become effective 30 days from the date this decision is published in the **Federal Register.** Any party may file a petition to reopen this proceeding for reconsideration in accordance with 49 CFR 1100.98(d). This petiton must be filed no later than 20 days following the date of publication. The filing of a petition will not automatically stay the effect of this action; we may, on our own motion or on peition, stay the effective date. A petition to stay must be filed no later than 10 days following the date of publication.

We find:

(1) The application of the requirements of 49 U.S.C. 10903 to the abandonment by Burlington Northern, Inc. of the described 3.33-mile segment of its line in Pierce County, WA, is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope and regulation is not necessary to protect shippers from the abuse of market power.

(3) This decision will not operate to relieve any rail carrier from an obligation either (a) to provide contractual terms for liability and claims which are consistent with 49 U.S.C. 11707, or (b) to protect the interests of its employees as required by 49 U.S.C. Subtitle IV.

(4) In light of the condition imposed in the first ordering paragraph below this decision will not significantly affect energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. 10505, we exempt from the requirements of 49 U.S.C. 10903 the abandonment by Burlington Northern, Inc. of the described line segment, subject to the conditions for the protection of employees embodied in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979), and subject to the further condition that it notify the State agencies named in the body of this decision within 5 days of the date of this publication in the **Federal Register.** Copies of correspondence and/or memoranda of communications with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

(2) The alternative proposal seeking exemption from the system diagram publishing requirements of 49 U.S.C. 10904 is dismissed.

(3) Notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, **Federal Register,** for publication.

(4) This exemption will continue in effect for one year from the effective date of this decision. BN must abandon the involved line segment during that time in order to take advantage of this exemption.

(5) This decision shall be effective 30 days following the date of its publication in the **Federal Register.**

(6) Petitions to stay the effective date of this decision must be filed no later than 10 days after the date of publication in the **Federal Register.**

(7) Petitions to reopen this proceeding for reconsideration of this decision must be filed no later than 20 days after the date of publication in the **Federal Register.**

Decided: March 3, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–7456 Filed 3–9–81; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29495]

Chesapeake & Ohio Railway Co.—Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 10903

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment

by the Chesapeake and Ohio Railway Company (C&O) of a segment of its line of railroad in Newport News, VA, from the requirement of prior Commission approval under 49 U.S.C. 10903.

DATE: This exemption is effective 30 days after the date of this publication in the **Federal Register**. Petitions for reconsideration of this action must be filed within 20 days after this publication.

ADDRESSES: Send pleadings to:
(1) Office of Proceedings, Section of Finance, Interstate Commerce Commission, Washington, D.C. 20423
and
(2) Petitioner's representatives:
Rene J. Gunning, Chessie System, Suite 2204, 100 North Charles Street, Baltimore, MD 21201
and
Peter J. Schudtz, Chessie System, Suite 840, Washington Bldg., 15th St. and New York Ave., N.W., Wahington, D.C. 20005.
Pleadings should refer to Finance Docket No. 29495.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275–7245.

SUPPLEMENTARY INFORMATION: On October 8, 1980, the C&O requested an exemption under 49 U.S.C. 10505 from the provisions of 49 U.S.C. 10903–10906 with respect to a proposed abandonment and sale of a segment of its line of railroad.

The Proposal

The line proposed to be abandoned is located in Newport News, VA, between Valuation Station 0+00 and Valuation Station 10+80, a distance of 1,080 feet. The line terminates on a wooden pier which once was used as a terminal in connection with C&O's passenger service between Newport News and Norfolk, VA. C&O discontinued all passenger service on the line in 1950 and no freight has moved over the line since 1973. The only current rail use of the line is by the National Railroad Passenger Corporation (Amtrak). Amtrak passenger trains originate and terminate on the line and are serviced there by C&O employees under a contract which also allows Amtrak to use part of C&O's former passenger station.

C&O has contracted to sell a portion of the line along with certain adjoining property to the Oyster Point Development Corporation (Oyster Point), a funding arm of the City of Newport News. After consummation of the sale, the property is to be consolidated with the facilities of an adjoining ship repair business. Oyster Point has agreed to build a new passenger station for Amtrak in the Huntington Park area of Newport News (about 3 miles west of the present station). The new facility, it is claimed, will be a substantial improvement over the present station. C&O would continue to service Amtrak passenger trains at a new location approximately 1,000 feet west of the existing service facilities. Amtrak operations and passenger service will continue at the existing station until the new facilities are completed. Except for $60,000 which Amtrak has agreed to contribute to the cost of the new station, the new facilities will be provided without additional cost to Amtrak. Amtrak does not object to the proposed abandonment and exemption request if satisfactory new facilities are provided prior to the termination of the existing ones.

C&O asserts that the abandonment would not result in any loss of service, while it would benefit C&O by making available to it either the proceeds from sale of the involved track or the track itself for use elsewhere on C&O's lines.

The Statute

Rail abandonments require Commission approval under 49 U.S.C. 10903. To seek Commission approval, an application must be filed in compliance with *Abandonment of Railroad Lines and Discontinuance of Service*, 49 CFR Part 1121 (1978) (abandonment regulations). Petitioner has requested an exemption from 49 U.S.C. 10903 so that it will not have to file a formal application under the abandonment regulations.

Under 49 U.S.C. 10505, as modified by section 213 of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980), the Commission is authorized to exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101a; and (2) either the transaction is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Discussion and Conclusions

Since the proposed abandonment will not result in any loss of current rail service or involve any substantial change in rail operations, it will have no impact on interstate commerce or any of the 15 objectives listed in the rail transportation policy of section 10101a. Our detailed scrutiny of this proposal under the criteria of 49 U.S.C. 10903 is not necessary to carry out the objectives of section 10101a. Indeed, our approval of the exemption will be consistent with at least one of those objectives; the second objective listed is to minimize the need for regulatory control and to require expeditious decisions when regulation is necessary.

Furthermore, in enacting the Staggers Act, Congress intended for us to eliminate unnecessary regulation. See, for example, H.R. Rep. No. 96–1430, 96th Cong., 2nd Sess., 104–105 (1980) and 49 U.S.C. 10101a(2). The power to exempt from regulation enables the Commission and railroads to commit their limited resources in areas where they are most needed by enabling the Commission effectively to deregulate those areas which have no significant bearing on the overall regulatory scheme. The proposed abandonment is the type of limited transaction which Congress intended us to exempt from our regulatory power.

The line to be abandoned is limited to only a small amount of track which C&O has not used for over 7 years. Although Amtrak currently uses the line in connection with its passenger service, this service will continue to be provided at a nearby location. The abandonment will not result in any loss of rail service or significantly changed rail operations, nor will it have any adverse effects on other carriers or any railroad employees. We conclude that the abandonment is of limited scope. Having so concluded, we need not consider whether regulation is needed to protect shippers from the abuse of market power. We note, however, that the proposal is not likely to have any significant or adverse effect on shippers, especially since the line has not been used for freight traffic since 1973.

Public Use Condition and Offers of Financial Assistance. In abandonment applications filed pursuant to 49 U.S.C. 10903, the Commission is required to consider two matters that have not been specifically considered in this exemption proceeding. First, 49 U.S.C. 10906 requires us to determine if the property to be abandoned is suitable for other public uses. If the property is suitable, we may impose certain conditions to allow interested persons an opportunity to obtain the property. Second, 49 U.S.C. 10905, as modified by section 402 of the Staggers Act, allows interested persons to make financial assistance offers to assure the continuation of operations over the line. Under the procedure provided by this section, financial offers may lead to continued subsidized operation of the line or sale of the line for continued operations by others.

Since the provisions of 49 U.S.C. 10905 and 10906 apply only to applications under section 10903, we are not required to allow offers of financial assistance or impose any public use conditions in exemption situations because no

application need be filed if the exemption is granted. We note, however, that these matters may be raised in petitions for reopening of this proceeding, as discussed below.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C., Subtitle IV. (See 49 U.S.C. 10505(g)(2).) The proposed abandonment is likely to have no employee impacts whatsoever. Nevertheless, in accordance with section 10505 (g) (2), we will afford the same level of labor protection as is usually required in abandonment transactions. We have determined that the employee protective conditions developed in *Oregon Short Line, R. Co.—Abandonment-Goshen,* 360 I.C.C. 91 (1979), satisfy the statutory requirements for protection of employees involved in an abandonment transaction. Therefore, the exemption will be granted subject to those protective provisions.

Energy and Environmental Considerations. Our initial review of the proposal indicates that the abandonment will not significantly affect energy consumption or the quality of the human environment. However, in line with our recent decision in Finance Docket No. 29352, *Central of Georgia Railroad Company—Petition for Exemption from the Filing of an Abandonment Petition, 49 U.S.C. 10903–10906* (not printed), decided December 9, 1980, C&O shall notify the following state agencies within 5 days of the publication of this decision in the **Federal Register:**

(1) Mr. William H. Higgins, Sr. Rail Transportation Engineer, Rail Transportation Division, Va. Dept. of Transportation, 1221 E. Broad Street, Richmond, VA 23219.
(2) Mr. Robert R. Blackmore, Director, Va. Commission on Outdoor Recreation, Eighth and Franklin Street, Richmond, VA 23219.
(3) Mr. Don West, Dept. of Highways and Transportation, 1401 E. Board Street, Richmond, VA 23219.
(4) William Roland, Director, Direct Research and Policy Division, Dept. of Planning and Budget, Ninth Street Office Building, Richmond, VA 23219.
(5) Dr. Junius R. Fishburne, Jr., Executive Director, Virginia Historic Landmarks Commission, 221 Governor Street, Richmond, VA 23219.
(6) Mr. R. H. Cross, Jr., Assistant Director, Commission of Game and Inland Fisheries, Post Office Box 11104 Richmond, VA 23230.
(7) Mr. William H. Matheny, Virginia Dept. of Agriculture, 203 N. Governor Street, Richmond, VA 23219.

The notification shall advise the agencies of their right to request reconsideration of this decision on environmental grounds. Copies of correspondence and memoranda of communications with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

We find:

(1) The application of the requirements of 49 U.S.C. 10903 to the abandonment of the described segment of railroad line of C&O in Newport News, VA, is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) This decision will not operate to (a) relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of 49 U.S.C. 11701, or (b) relieve a carrier of its obligation to protect the interests of its employees as required by 49 U.S.C., Subtitle IV.

(4) In light of the condition imposed in the first ordering paragraph below, this decision will not significantly affect energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. 10505, we exempt Chesapeake and Ohio Railway Company, from the requirement of 49 U.S.C. 10903 for the limited purpose of abandoning its segment of rail line extending from Valuation Station 0+00 to Valuation Station 10+80 in Newport News, VA, subject to the conditions for the protection of employees embodied in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979), and subject to the further condition that the state agencies named in the body of this decision be notified within 5 days of the date of publication in the **Federal Register.** Copies of correspondence and memoranda of communications with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

(2) Notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, **Federal Register,** for publication.

(3) This exemption will continue in effect for one year from the effective date of this decision. C&O must abandon the involved line segment during that time in order to take advantage of this exemption.

(4) This decision shall be effective 30 days following the date of its publication in the **Federal Register.**

(5) Petitions to stay the effective date of this decision must be filed no later than 10 days after the date of publication in the **Federal Register.**

(6) Petitions to reopen this proceeding for reconsideration of this decision must be filed no later than 20 days after the date of publication in the **Federal Register.**

Decided: February 26, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7459 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29527]

Consolidated Rail Corporation—Abandonment of a 595-foot Segment of the Newark and New York Branch Located in Newark, NJ—Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 10903.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the abandonment of a 595-foot segment of the Newark and New York Branch of Consolidated Rail Corporation (Conrail) from the requirement of prior Commission approval under 49 U.S.C. 10903.

DATES: Exemption effective 30 days after the date of this publication in the **Federal Register.** Petitions for reconsideration of this action must be filed within 20 days after this publication.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th St. and Constitution Ave., Washington, DC 20423.
and
(2) Petitioner's representative: Charles E. Mecham, 1138 Six Penn Center Plaza, Philadelphia, PA 19104.

Pleadings should refer to Finance Docket No. 29527.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275–7245.

SUPPLEMENTARY INFORMATION:

The Proposed Transaction

Conrail has filed a petition to exempt the abandonment of a 595-foot segment of its Newark and New York Branch

located in Newark, NJ from the requirements of 49 U.S.C. 10903.

Conrail currently conducts no rail operations over the track. There are no stations, public delivery track, or private rail sidings located on the segment. Present Conrail operations serving industries located on the branch to the east and west of the abandonment segment will continue. No other freight rail carrier operates lines within several miles of the involved track.

Following abandonment, Conrail plans to sell the right of way and additional property on either side of the right of way to private industry.

Conrail claims that abandoment will not affect any shippers or receivers of freight and will have no measurable effect its revenues and expenses. Moreover, Conrail predicts that there will be no impact upon rail employees or the environment and energy consumption. Other carriers and the public generally should not be effected.

The Statute

Rail abandonments require the approval and authorization of the Commission under 49 U.S.C. 10903. To obtain Commission approval, and application must be filed in compliance with *Abandonment of Railroad Lines and Discontinuance of Service*, 49 CFR Part 1121 (1978) (abandonment regulations). Conrail requests an exemption from 49 U.S.C. 10903 so that it will not have to file a formal application under the abandonment regulations.

Under 49 U.S.C. 10505, as modified by section 213 of the Staggers Rail Act of 1980 (Pub. L. 96–448, 94 Stat. 1895, October 14, 1980), the Commission is authorized to exempt a transaction when it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. 10101a; and (2) either the transaction is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Discussion and Conclusions

Our detailed scrutiny of this abandonment is not necessary to carry out the goals of the rail transportation policy of section 10101a. In enacting section 10505, and the recent amendments of the Staggers Act, Congress intended for us to eliminate unnecessary regulation. See, for example, H.R. Rep. No. 96–1430, 96th Cong., 2nd Sess., 104–105 (1980) and 49 U.S.C. 10101a(2). The power to exempt from regulation enables the Commission and railroads to commit their limited resources in areas where they are most needed by enabling the Commission to effectively deregulate those areas which have no significant bearing on the overall regulatory scheme. The proposed abandonment is the type of transaction which Congress intended us to exempt from our regulatory power.

The proposed abandonment is very limited in scope. It will effect only a relatively short track segment which is currently not used in any rail operations. Service to shippers will continue to be conducted in the same manner as in the past. Since no changes in operations are involved, shippers, employees and competitors should be unaffected.

Since the proposed transaction is of limited scope, it is not necessary to consider whether our regulation is needed to protect shippers from the abuse of market power.

Public Use Condition and Offers of Financial Assistance. In abandonment procedures filed pursuant to 49 U.S.C. 10903, the Commission is required to consider two matters that have not been specifically considered in this exemption proceeding. First, 49 U.S.C. 10906 requires us to determine if the property to be abandoned is suitable for other public uses. If the property is suitable, we impose certain conditions to alllow interested persons an opportunity to obtain the property. Second, 49 U.S.C. 10905, as modified by section 402 of the Staggers Rail Act of 1980, (Pub.L. 96–448, 94 Stat. 1895, October 14, 1980), allows interested persons to make financial assistance offers to assure the continutation of operations over the line. Under the procedure provided by this section, financial offers may lead to continued subsidized operation of the line or sale of the line for continued operations by others.

Since the provisions of 49 U.S.C 10905 and 10906 apply only to applications under section 10903, we are not required to allow offers of financial assistance or impose any public use conditions when an exemption is given, because no application need be filed. We note, however, that these matters may be raised in petitions for reopening of this proceeding.

Labor Protection. In granting an exemption under section 10505, we may not relieve a carrier of its obligation to protect the interests of employees as required by 49 U.S.C. Subtitle IV. (See 49 U.S.C. 10505(g)(2).)[1] Therefore, as a condition to this exemption, we will afford the same level of labor protection as is usually required in abandonment transactions. We have determined that the employee protective conditions developed in *Oregon Short Line, R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), satisfy the statutory requirements for protection of employees involved in an abandonment transaction.

Energy and Environmental Considerations. Our initial review of the proposal indicates that the abandonment will not significantly affect energy consumption or the quality of the human environment. However, in line with our recent decision in F.D. No. 29352, *Central of Georgia Railroad Company—Petition for Exemption from the Filing of an Abandonment Petition, 49 U.S.C. 10903–19096*, (not printed) decided December 9, 1980, we shall require Conrail to notify the following New Jersey agencies of this proceeding and their opportunity to file a petition to reopen this procceding on environmental grounds: Mr. Paul McLain, Deputy Director, Division of Fish an Game and Shellfisheries, Post Office Box 1809, Trenton, NJ 08625; Mr. George H. Pierson, New Jersey Bureau of Forest Managmeent, Department of Environmental Protection, CN–028, Trenton, NJ 08625; New Jersey Office of State Economic Planning, Office of Policy and Planning, 142 W State Street, Trenton, NJ 08625; Parks and Recreation, Department of Environmental Protection, Division of Parks and Forestry, Box 142D, Trenton, NJ; Division of Transportation, Systems Planning, New Jersey Department of Transportation, 1035 Farway Avenue, Trenton, NJ 08625; Division of Fish Game and Wildlife, Box 1809, Trenton, NJ; Betty Wilson, Deputy Commissioner, Department of Environmental Protection, P.O. Box 1390, Trenton, NJ 08625; and John Weingart, Bureau of Coastal Planning and Prtoection, P.O. Box 1889, Trenton, NJ 08625. Conrail must notify these agencies within 5 days of the publication of this decision in the **Federal Register**. Copies of correspondence and/or memoranda of communciations with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

The exemption granted here will become effective 30 days from the date this decision is published in the **Federal Register**. Any party may file a petition to reopen this proceeding for reconsideration in accordance with 49 CFR 1100.98(d). This petition must be filed no later than 20 days following the date of publication. The filing of a petition will not automatically stay the effect of this action; we may, on our own

[1] The Railway Labor Executives' Association filed a letter in opposition to this exemption on December 8, 1980. RLEA argues that any exemption must be conditioned to protect employees who may be affected by the proposal.

motion or on petition, stay the effective date. A petition to stay must be filed no later than 10 days following the date of publication.

We find:

(1) The application of the requirements of 49 U.S.C. 10903 to the abandonment by Consolidated Rail Corporation of the described 595-foot segment of its Newark and New York branch is not necessary to carry out the transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve any rail carrier from an obligation either (a) to provide contractual terms for liability and claims which are consistent with 49 U.S.C. 11707, or (b) to protect the interests of its employees as required by 49 U.S.C., Subtitle IV.

(4) In light of the condition imposed in the first ordering paragraph below, this decision will not significantly affect energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. 10505, we exempt from the requirements of 49 U.S.C. 10903, the abandonment by Consolidated Rail Corporation of the 595-foot segment of its Newark and New York branch, subject to the conditions for the protection of employees embodied in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979), and subject further to the condition that applicant notify the State agencies named in the body of this order within 5 days of the date of publication in the **Federal Register**. Copies of correspondence and/or memoranda of communications with these agencies should be submitted for the record and will serve as evidence of compliance with this condition.

(2) If Consolidated Rail Corporation abandons this line, it shall have 60 days after consummation of the transaction to submit three copies of a sworn statement showing all journal entries required to record the transaction.

(3) Notice of our action shall be given to the general public by delivery of the copy of this decision to the Director, **Federal Register**, for publication.

(4) This exemption will continue in effect for one year from the effective date of this decision. The abandonment of the line segment must occur during that time in order to take advantage of this exemption.

(5) This decision shall be effective 30 days following the date of its publication in the **Federal Register**.

(6) Petitions to stay the effective date of this decision must be filed no later than 10 days after the date of publication in the **Federal Register**.

(7) Petitions to reopen this proceeding for reconsideration of this decision must be filed no later than 20 days after the date of publication in the **Federal Register**.

Decided: March 3, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7457 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29444]

Delaware Otsego Corp., Control of New York, Susquehanna & Western Railway Corp.—Petition for Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 for the control by the Delaware Otsego Corporation (DO) of the New York, Susquehanna & Western Railway Corporation, a new corporation formed to acquire and operate the New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee).

DATES: This exemption will be effective 30 days from the date of this publication in the **Federal Register**. Petitions for reconsideration of this action must be filed within 30 days of this publication.

ADDRESSES: Send pleadings to: (1) Interstate Commerce Commission, Section of Finance, Room 5414, 12th and Constitution Ave., NW., Washington, DC 20423

and

(2) Petitioner's representative: William P. Quinn, Fell, Spalding, Goff & Rubin, 1800 Penn Mutual Tower, 510 Walnut St., Philadelphia, PA 19106.

Pleadings should refer to Finance Docket No. 29444.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275-7245.

SUPPLEMENTARY INFORMATION: On August 15, 1980, Delaware Otsego Corporation (DO), a noncarrier, filed a petition requesting an exemption under 49 U.S.C. 10505 of its proposed control of the New York, Susquehanna & Western Railway Corporation (NYS&W) from the provisions of 49 U.S.C. 11343. NYS&W is a New Jersy corporation formed to acquire and operate the lines of the New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee) (Susquehanna)

Section 10505 (as amended by Section 213 of the Staggers Rail Act of 1980, Pub. L. No. 96-448, October 14, 1980) allows the Commission to exempt a transaction if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a; and (2) either the transaction is limited in scope, or regulation is not needed to protect shippers from the abuse of market power.

Exemption Request

DO owns the outstanding capital stock of the following Class III rail carriers:

Cooperstown and Charlotte Valley Railway Corporation (C&CV)—a rail carrier operating 16 miles of line between Cooperstown, NY, and a connection with Delaware and Hudson Railway Company (D&H) at Cooperstown Junction, near Oneonta, NY. This line, the former Cooperstown Branch of D&H, is located entirely in Otsego County, NY.

Fonda, Johnstown & Gloversville Railroad Company, Inc. (F]&G)—a rail carrier operating 20 miles of line from a connection with the line of Consolidated Rail Corporation (Conrail) at Fonda, NY to the communities of Johnstown and Gloversville in Fulton and Montgomery Counties, NY. This line was operated as a short-line railroad before DO's acquisition.

Central New York Railroad Corporation (CNY)—the former Richfield Springs Branch of the Erie Lackawanna Railway (EL), extending 22 miles to Richfield Springs from a connection with Conrail at Richfield Junction in Herkimer County, NY.

Lackawaxen & Stourbridge Railroad Corporation (LABS)—a rail carrier operating 26 miles of line from a connection with Conrail at Lackawaxen to Honesdale, all in Wayne County, PA. This line was formerly the Honesdale Branch of EL.

DO plans to acquire all capital stock of NYS&W. In Finance Docket No. 29421, *The New York, Susquehanna and Western Railway Corporation—Purchase—New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee)*,[1] NYS&W

[1] This proceeding is embraced in Finance Docket No. 28098 (Sub-No. 1), *The New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee)—Plan of Liquidation, et al.*, served December 29, 1980. In that decision the Commission approved the liquidation plan of the Susquehanna, the application of NYS&W to acquire and operate the bankrupt carrier's lines, and an application by NYS&W to issue securities.

10901 to acquire and operate the rail lines of the Susquehanna. The main line extends from Croxton Yard to Sparta, NJ, a distance of 59.9 miles in Hudson, Bergen, Passaic, Morris, and Sussex Counties, NJ. NYS&W also proposes to acquire Susquehanna's non-connecting branch line known as the Suscon Branch, consisting of 5 miles of track extending from Suscon to Hillside Junction in Luzerne and Lackawanna Counties, PA.

The Susquehanna is now in reorganization under Section 77 of the Bankruptcy Act, 11 U.S.C. 205(d), before the United States District Court for the District of New Jersey (The Bankruptcy Court). (See *In the Matter of the New York, Susquehanna & Western Railroad Co., Debtor*, No. B76–182, slip opinion filed May 28, 1980.) The Bankruptcy Court has ordered the Trustee to liquidate all assets of the Susquehanna and to cease operations.

DO states that none of the railroads it controls compete with each other, nor are they connected to each other. Each railroad has a separate Board of Directors, drawn from the community served by the particular carrier. Although DO's officers contribute managerial time to each railroad, the business of each is separate.

None of the railroads is located in New Jersey. Except for the Suscon Branch in Pennsylvania, Susquehanna's line is located entirely in New Jersey. The highway distance between Susquehanna and the nearest DO controlled line is approximately 100 miles. Because the market served by each railroad is separate, the Susquehanna does not, and NYS&W will not, compete for traffic with any of the railroads controlled by DO.

The total mileage of DO's currently controlled rail system is 84 miles. With the inclusion of Susquehanna's 64.9 miles, the total mileage operated will be 148.9 miles. DO's gross revenues for 1979 were $3,573,329, and Susquehanna's were $2,691,755. In 1979, DO carried 3,200 carloads of shipments, whereas Susquehanna carried 6,939 carloads.

In the slip opinion in No. B–76–182, *supra*, the Bankruptcy Court stated that DO's proposal was the best of three competing offers to acquire the assets of Susquehanna. The Court found, among other facts supporting its holding, that DO "has the ability to continue rail service evidenced by its operation of other short line railroads."

Discussion and Conclusions

Rail transportation policy. We do not believe that regulation of this transaction is necessary to carry out the goals of the rail transportation policy outlined in section 10101a. The objective of NYS&W's acquisition and operation of Susquehanna is to continue service to a segment of the rail transportation system; the control of NYS&W by DO will further that objective. The proposed transaction will not adversely affect any of the parties, but will be of significant benefit to all concerned. Additionally, the aggregate carloads and revenues to the DO system, as it would be enlarged by control of Susquehanna, would have only a minimal impact on interstate commerce.

Limited scope. We believe that the scope of the transaction is limited and will have no direct impact on any other railroad. There will be no change in the competitive balance with other carriers. The underlying transaction concerns a small geographic area, 65 miles in New Jersey and 5.0 miles in Pennsylvania. The Susquehanna and the other railroads controlled by DO each have separate operations and serve separate markets; there are no physical connections between any of the involved rail lines.

Since the proposed transaction is of limited scope, it is not necessary to consider whether our regulation is needed to protect shippers from the abuse of market power.

Labor Protection

In granting an exemption under section 10505, the Commission may not relieve a carrier of its obligation to protect the interests of employees as otherwise required by 49 U.S.C., Subtitle IV. See 49 U.S.C. 10505(g)(2). We have determined that the employee protective provisions developed in *New York Dock Ry-Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), satisfy the statutory requirements of 49 U.S.C. 11347 for protection of employees involved in rail control transactions for which approval is sought under 49 U.S.C. 11343. Accordingly, these employee protective provisions will be imposed here as a condition to the exemption.

Prior criteria. In addition to meeting the criteria of section 10505, as amended by the Staggers Act, this proposal also meets the criteria of former section 10505. We have already indicated that this transaction is of limited scope. Furthermore, the discussion relating to 49 U.S.C. 10101a also applies to the National Transportation Policy of 49 U.S.C. 10101. Because of the transaction's limited scope and the resources required to prepare and review a formal application under 49 U.S.C. 11343, our review of the transaction would be an unreasonable burden on petitioner, and would serve little or no useful public propose.

The exemption granted here will become effective 30 days from the date this decision is published in the **Federal Register**. Any party may file a petition to reopen this proceeding for reconsideration in accordance with 49 CFR 1100.98(d). This petition must be filed no later than 20 days following the date of publication. The filing of a petition will not automatically stay the effect of this action; we may, on our own motion or on petition, stay the effective date. A petition to stay must be filed no later than 10 days following the date of publication.

We find:

(1) The application of the requirements of 49 U.S.C. 11343 for the approval of control by DO of NYS&W is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a, and the transaction is of limited scope.

(2) This decision will not relieve any rail carrier from an obligation either (a) to provide contractual terms for liability and claims which are consistent with 49 U.S.C. 11707 or (b) to protect the interests of employees as required by 49 U.S.C. 11347.

(3) This action will not significantly affect either energy consumption or the quality of the human environment.

It is ordered:

(1) The proposed control of NYS&W by DO is exempted under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343, subject to the employee protective provisions set forth in *New York Dock Ry.-Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

(2) If DO obtains control of NYS&W, it shall have 60 days after the transaction is completed to submit three copies of a sworn statement showing all journal entries, if any, required to record the transaction.

(3) Notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, **Federal Register**, for publication.

(4) This exemption will continue in effect for one year from the effective date of this decision. DO must consummate this transaction during that time in order to take advantage of the exemption.

(5) This decision shall be effective 30 days from the date of its publication in the **Federal Register**.

(6) Petitions to stay the effective date of this decision must be filed no later than 10 days following the date of publication in the **Federal Register**.

(7) Petitions to reopen the proceeding must be filed no later than 20 days following the date of publication in the **Federal Register**.

Decided: February 27, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7455 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP43-004

Decided: February 26, 1981.

By the Commission Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 29555 (Sub-199), filed February 9, 1981. Applicant: BRIGGS TRANSPORTATION CO., North 400, Griggs-Midway Bldg., St. Paul, MN 55104. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603, (312) 236-9375. Transporting *general commodites* (except classes A and B explosives), between points in the U.S. (except ME, NH, VT, MA, CT, RI, NY, NJ, PA, VA, WV, DE, MD, AK, HI, and DC).

MC 59655 (Sub-43, filed February 9, 1981. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Rd., Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435-7140. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 99825 (Sub-3), filed February 9, 1981. Applicant: AUG. DEIKE TRANSFER, INC., P.O. Box 727, Mankato, MN 56001. Representative: Timothy H. Butler, 4200 IDS Center, 80 South 8th St, Minneapolis, MN 55402, (612) 371-3211. Transporting *general commodities* (except classes A and B explosives), between Minneapolis, MN, on the one hand, and, on the other, points in Blue Earth, Waseca, Nicollet and LeSueur Counties, MN. Condition: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration MC 99825 Sub 1.

MC 106195 (Sub-33), filed February 9, 1981. Applicant: CLARK BROS. TRANSFER, INC., 900 North First St., Norfolk, NE 68701. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Rd., Omaha, NE 68114, (402) 397-7033. Transporting *general commodities* (except classes A and B explosives), between points in Knox, Cedar, Dixon, Dakato, Pierce, Wayne, Madison, Thurston, Stanton, Cuming, Burt, Platte, Colfax, Dodge, Washington, Polk, Nance, Merrick, Douglas, Sarpy, and Scotts Bluff Counties, NE, Yankton, Clay, Union, Lincoln, Turner, and Minnehaha Counties, SD, and Woodbury, Pottawattamie, Monona, and Harrison Counties, IA, on the one hand, and, on the other, points in IL, IN, IA, KS, MI, MN, MO, NE, SD, and WI.

Note.—Applicant intends to tack the requested authority with MC 106195 Sub 2.

MC 116254 (Sub-324), filed February 9, 1981. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant), (205) 766-9111. Transporting *silicon metal and silica dust*, between points in AL, on the one hand, and, on the other, points in KS, NE, OK, and TX.

MC 116544 (Sub-243), filed February 9, 1981. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303, (415) 856-0117. Transporting *food and related products*, between the facilities of Ivy Food Sales, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 116915 (Sub-143), filed February 9, 1981. Applicant: ECK MILLER TRANSPORTATION CORPORATION, Route No. 1, Box 248, Rockport, IN 47635. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602, 502 227-2254. Transporting *metal products*, between points in Porter County, IN, Baltimore County, MD, and Erie County, NY, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, KY, LA, MI, MS, MO, NY, NC, OH, PA, SC, TN, TX, VA, WV, and WI.

MC 117685 (Sub-6), filed February 9, 1981. Applicant: CONSOLIDATED TRUCK SERVICE, INC., 1 Scout Avenue, South Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *such commodities* as are dealt in by retail department stores and discount houses, between points in the U.S., under continuing contract(s) with S. E. Nichols, of New York, NY.

MC 119774 (Sub-111), filed February 9, 1981. Applicant: EAGLE TRUCKING COMPANY, P.O. Box 471, Kilgore, TX 75662. Representative: Bernard H.

English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 713–8431. Transporting *barite* and *mud compounds*, between points in Washington County, MO, on the one hand, and, on the other, points in the U.S.

MC 127745 (Sub-9), filed February 9, 1981. Applicant: GEORGE B. KING, d.b.a. KING TRANSFER, 714 Pearl Street, Onawa, IA 51040. Representative: Robert A. Wichser, 5000 South Lewis Blvd., P.O. Box 417, Sioux City, IA 51102, 402 494–5466. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with CENEX, Saint Paul, MN.

MC 129645 (Sub-86), filed February 9, 1981. Applicant: SMEESTER BROS, INC., 1330 South Jackson St., Iron Mountain, MI 49801. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, (502) 589–5400. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. Condition: Issuance of a certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certification No. MC 129645 and subs thereunder.

MC 133405 (Sub-14), filed February 9, 1981. Applicant: BOWIE HALL TRUCKING, INC., P.O. Box 1470, LaPlata, MD 20646. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014, 301–654–2240. Transporting *malt beverages*, between points in the U.S. in and east of TX, AR, MO, IA, and WI.

Note.—Issuance of a certificate is conditioned upon prior or coincidental cancellation, at applicant's written request of Certificate No. MC 133405 Subs 3, 5, 7, 10, 12, and 13.

MC 143304 (Sub-22), filed February 9, 1981. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd., P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop, (same address as applicant), (205) 249–2425. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Delaware Valley Shippers Association, Bristol, PA.

MC 144115 (Sub-14), filed February 9, 1981. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth Street NW., Rochester, MN 55901. Representative: Charles E. Dye, P.O. 971, West Bend, WI 53095; 414–677–2586. Transporting *foods and related products*, between the facilities of Banner Beef Company, in the U.S. on the one hand, and, on the other, points in the U.S.

MC 146865 (Sub-3), filed February 9, 1981. Applicant: M.T. SERVICES, INC., d.b.a. BRENNAN EXPRESS, P.O. Box 18402, Baltimore, MD 21237. Representative: Raymond P. Keigher, 401 E. Jefferson Street, Suite 102, Rockville, MD 20850, 301 414–2420. Transporting *such commodities* as are dealt in or used by manufacturer and distributors of cooling towers and evaporative condensers, between points in the U.S., under continuing contract(s) with Baltimore Aircoil Company, Inc., of Baltimore, Md.

MC 147574 (Sub-1), filed February 9, 1981. Applicant: MARINE TRUCKING, INC., 47595 North Gratiot Ave., Mt. Clemens, MI 48045. Representative: William B. Elmer, 624 Third St., Traverse City, MI 49684, (313) 776–1706. Transporting boats, between points in WI, on the one hand, and, on the other, points in the U.S.

MC 147864 (Sub-1), filed February 9, 1981. Applicant: YANTICAW TRUCKING CORPORATION, 69 Yanticaw St., Clifton, NJ 07013. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435–7140. Transporting *machinery*, between points in Hudson County, NJ, on the one hand, and, on the other, points in the U.S.

MC 148965 (Sub-3), filed February 9, 1981. Applicant: CLARK BROS. TRANSPORTATION, INC., 1808 North 30th Street, Brimingham, AL 35207. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–435–7140. Transporting *general commodities* (except classes A and B explosives), between points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, and TX.

MC 153394 (Sub-1), filed Feb. 9, 1981. Applicant: FULLER BROS., INC., 3912 Oakbrook Dr., Del City, OK 73115. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma, City, OK 73106, (405) 528–3884. Transporting *petroleum, natural gas and their products*, between points in OK, on the one hand, and, on the other, West Memphis, AR, New Orleans, LA, Kansas City and St. Louis, MO, Dallas, Houston, and Port Arthur, TX.

MC 154185, filed February 9, 1981. Applicant: RENN TRANSPORTATION CO., INC., 780 North Water St., Milwaukee, WI 53202. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) Warner-Lambert Company, of Morris Plains, NJ, (2) Chicago Shortening Corp., of Chicago, IL, (3) DCA Food Industries, Inc., of New York, NY, (4) Borden Incorporated, of Columbus, OH, (5) A. E. Staley Manufacturing Company, of Decatur, IL, (6) Chef Pierre, Inc., of Traverse City, MI, (7) Amstar Corporation, of New York, NY, (8) Gourmet Food, Inc., of St. Paul, MN, (9) The Pillsbury Company, of Minneapolis, MN, (10) Central Soya Company, Inc., of Fort Wayne, IN, (11) Standard Brands Incorporated, of New York, NY, (12) Armour and Company, of Phoenix, AZ, (13) R.T. French Company, of Rochester, NY, (14) Nabisco, Inc., of East Hanover, NJ, (15) M&M/Mars, a Division of Mars Incorporated, of Hackettstown, NJ, (16) Hygrade Food Products Corporation, of Detroit, MI, (17) Oscar Mayer & Co., Inc., of Madison, WI, (18) The J. M. Smucker Company, of Orrville, OH, (19) Packerland Packing Co., Inc., of Green Bay, WI, (20) Galloway Company, Inc., of Neenah, WI, (21) Wilson Foods Corporation, of Oklahoma City, OK, (22) Swift Independent Packing Company, of Chicago, IL, (23) Giant Eagle Markets, Inc., of Pittsburgh, PA, (24) Kraft, Inc., of Chicago, IL, (25) Land O'Lakes, Inc., of Minneapolis, MN, (26) L.D. Schreiber Cheese Co., Inc., of Green Bay, WI, (27) The Nestle Company, Inc., of White Plains, NY, and (28) Leaf Confectionery, Inc., of Chicago, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7428 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decision; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted

problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP4–57

Decided February 27, 1981.

By the Commission Review Board No. 2, members Chandler Eaton and Liberman.

MC 59666 (Sub-8), filed February 6, 1981. Applicant: TRAFIK SERVICES, INC., 25 Esten Ave., Pawtucket, RI 02860. Representative: A. Joseph Mege (same address as applicant). Transport (1) *chemicals and related products*, (2) *metal products*, and (3) *rubber and plastic products*, between points in the U.S., under continuing contract(s) with George Mann & Co., of Providence, RI.

MC 100597 (Sub-10), filed February 6, 1981. Applicant: FAIRFIELD TRUCKING, INC., P.O. Box 272, Hamburg, AR 71646. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting (1) *lumber and wood products*, and (2) *building materials*, between points in AL, AR, KY, LA, MS, MO, OK, TN, TX, and those points in IL on and south of U.S. Hwy 40.

MC 110656 (Sub-20), filed February 6, 1981. Applicant: PARKER MOTOR FREIGHT, INC., 1505 Steele Ave., SW., Grand Rapids, MI 49507. Representative: Ronald J. Mastej, 900 Guardian Bldg., Detroit, MI 48226. Transporting *general commodities* (except classes A and B explosives), between points in IL, IN, MI, OH, PA, WI, and Erie, Niagara, Cattaraugus, and Chautauqua Counties, NY.

MC 121236 (Sub-10), filed February 6, 1981. Applicant: SERVICE TRANSPORTATION LINES, INC., 729 34th Ave., Rock Island, IL 61201. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *general commodities* (except classes A and B explosives), between points in IA, IL, IN, KS, KY, MI, MN, MO, NE, OH, SD, and WI.

MC 129326 (Sub-37), filed January 27, 1981. Applicant: CHEMICAL TANK LINES, INC., Highway 60 West, Mulberry, FL 33860. Representative: Charles A. Webb, Suite 1111, 1826 L St., NW., Washington, DC 20036. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with USAMEX Fertilizers, Inc., of Tampa, FL.

MC 143066 (Sub-1), filed February 5, 1981. Applicant: BGM TRUCKING, INC., 12634 E. Freeway, Houston, TX 77015. Representative: Timothy Mashburn, P.O. Box 2207, Austin, TX 78768. Transporting *food and related products*, between points in Galveston County, TX, Mobile County, AL, and Harrison County, MS, on the one hand, and, on the other, points in the U.S.

MC 153197 (Sub-1), filed February 6, 1981. Applicant: ILLINOIS AUTO DELIVERY, INC., d.b.a., AUTO DELIVERY CO., 706 Center St., Des Plaines, IL 60016. Representative: Keith G. O'Brien, 1729 H Street, NW., Washington, DC 20006. Transporting *transportation equipment*, between points in the U.S.

MC 153897 (Sub-1), filed February 4, 1981. Applicant: MONTEZUMA WEST, INC., 11884 Ehlen Rd., NE., Aurora, OR 97002. Representative: John A. Anderson, Suite 1600, One Main Place, 101 SW Main St., Portland, Or 97204. Transporting *lumber and wood products*, between points in the U.S., under continuing contract(s) with Navajo Forest Products Industries, of Navajo, NM.

MC 154026 (Sub-1), filed January 29, 1981. Applicant: ADVANCE EXPRESS, INC., 410 Coitsville Rd., Campbell, OH 44405. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with the United States Steel Corporation, Jones & Laughlin Steel Corporation, and Ductmate Industries, Incorporated all of Pittsburgh, PA, and United States Service, Inc., of Brookfield, OH.

MC 154227, filed January 21, 1981. Applicant: LARRY GEORGE and IRMA THOMPSON, a partnership, d.b.a., INVECON COMPANY, 550 W. 1st South, P.O. Box 1557, Salt Lake City, UT 84110. Representative: Mark K. Boyle, Suite 400, 10 Broadway Bldg., Salt Lake City, UT 84101. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with United States Welding, Inc., Deseret Press, and Sorenson Research Company, all of Salt Lake City, UT.

MC 154307, filed February 5, 1981. Applicant: PETROLEUM TRANSPORT, INC., 1790 16th St., SE., Salem, OR 97302. Representative: Lawrence V. Smart, Jr., 419 NW. 23d Ave., Portland, OR 97210. Transporting *petroleum, natural gas and their products*, between points in OR, WA, ID, MT, NV, UT, and those in CA in and north of Santa Cruz, Santa Clara, Stanislaus, Calaveras, Amador, and El Dorado Counties, CA.

MC 154316, filed February 5, 1981. Applicant: ATLANTIC TRUCKING, INCORPORATED, 15 Coachman Dr., Branford, CT 06405. Representative: William E. Hitchcock III (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with The Atlantic Wire Company, of Branford, CT, and Orban Industries, of Buffalo, NY.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7429 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by

Special Rule 251 of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPY—14

Decided: March 4, 1981.

By The Commission, Review Board No. 3, members Krock, Joyce and Dowell.

MC 154286, filed February 3, 1981. Applicant: NATIONWIDE BROKERAGE CO., INC., 105 West 21st St., Sioux Falls, SD 57105. Representative: Bruce E. Mitchell, Forth Floor, Lenox Towers So., 3390 Peachtree Rd., NE., Atlanta, GA 30326, (404) 262–7855. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–7460 Filed 3–9–81; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3–194

Decided: March 4, 1981.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams.

MC 29854 (Sub-35), filed February 6, 1981. Applicant: THE HUDSON BUS TRANSPORTATION CO., INC., 437 Tonnele Ave., Jersey City, NJ 07306. Representative: W. C. Mitchell, 370 Lexington Ave., New York, NY 10017. Transporting *passengers and their baggage*, in the same vehicle with passengers, in special operations, beginning and ending at points in Rockland County, NY, and extending to Atlantic City, NJ.

MC 38154 (Sub-17), filed February 5, 1981. Applicant: C. S. HENRY TRANSFER, INC., 1621 North Church Street, P.O. Box Drawer 2306, Rocky Mount, NC 27801. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th St. NW., Washington, D.C. 20004. Transporting *general commodities* (except classes A and B explosives).

between points in CT, DE, GA, MD, NJ, NY, NC, PA, SC, VA, and DC.

MC 107064 (Sub-149), filed February 5, 1981. Applicant: STEERE TANK LINES, INC., P.O. Box 220998, Dallas, TX 75202. Representative: Hugh T. Matthews, 555 Griffin Square, Suite 850, Dallas, TX 75202. Transporting *comodities in bulk*, between points in AZ, AR, CO, KS, LA, NM, OK, TX and UT, on the one hand, and, on the other, points in the U.S.

MC 107515 (Sub-1412), filed February 6, 1981. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE., 5th Floor—Lenox Towers South, Atlanta, GA 30326. Transporting *electrical equipment and supplies*, and *rubber and plastic products*, between the facilities used by Union Carbide Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 97275 (Sub-42), filed February 6, 1981. Applicant: ESTES EXPRESS LINES, a Corporation, 1405 Gordon Ave., Richmond, VA 23224. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th St., NW., Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives), between points in GA, NC, TN, and VA.

Note.—Applicant intends to tack this authority with its existing authority.

MC 108835 (Sub-58), filed February 6, 1981. Applicant: HYMAN FREIGHTWAYS, INC., 2380 Wycliff, P.O. Box 43393, St. Paul, MN 55114. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *general commodities* (except classes A and B explosives), between points in AR, CO, IA, IL, IN, KS, LA, MI, MN, MO, NE, ND, OH, OK, SD, TX, and WI, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Certificate Nos. MC 108835 Subs 24, 39, 42, 46, 47, 49, 51, 52 and 55..

MC 135605 (Sub-15), filed February 5, 1981. Applicant: WILKINSON TRANSPORT, INC., P.O. Box 25, Barton, AR 72312. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. Transporting *general commodities* (except classes A and B explosives), between the facilities of Union Camp Corporation at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 149404 (Sub-1), filed February 8, 1981. Applicant: POTAWATOMI TRAILS, INC., 51585 Winding Waters Lane North, Elkhart, IN 46514. Representative: Paul D. Borghesani, Suite 300, Comunicana Bldg., 421 So. Second St., Elkhart, IN 46516. Transporting *storage tanks and pressure vessels*, between points in Hamilton County, OH and Grayson County, KY, on the one hand, and, on the other, points in the U.S.

MC 151014, filed February 5, 1981. Applicant: WITTE ASSOCIATES, INC., a Michigan Corporation, d.b.a. Witte Travel, 7195 Thornapple River Drive, Ada, MI 49301. Representative: Curtis D. Jonker, 880 Union Bank Building, Grand Rapids, MI 49503. Transporting *passengers and their baggage*, in special and charter operations, between Grand Rapids, MI and Chicago, IL, restricted to traffic having prior or subsequent movement by air.

MC 153705 (Sub-1), filed February 5, 1981. Applicant: SATURN FREIGHT SYSTEM, INC., 420–B2 W. Stone Rd., Villa Park, IL 60181. Representative: JOEL H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting *food and related products*, between Chicago, IL, and Joplin, MO, Friendswood, TX, Portland, OR, LaJunta, CO, Norris, TN, Lubbock, TX, Richmond, CA, Philadelphia, PA, Minneapolis, MN, Rialto, CA, Grimes, IA, Phoenix, AZ and Detroit, MI, on the one hand, and, on the other, points in the U.S.

MC 152674 (Sub-2F), filed December 4, 1980, previously published in the **Federal Register** issue of January 6, 1981. Applicant: MIDWEST EXPRESS, INC., P.O. Box 550, Miami, OK 74354. Representative: David Hunter (same address as applicant). Transporting (1) *lawn mowers, garden tractors, and chain saws*, and (2) *parts and accessories* for the commodities in (1) above, between points in OK, on the one hand, and, on the other, points in AR, CO, CT, GA, IL, KS, OR, TN, and TX.

Note.—This republication corrects the State of KS, which was erroneously published as KY.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7461 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in

interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor codntract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPY-15

Decided: March 4, 1981.

By the Commission Review Board No.l 3, 1981, Members Krock, Joyce and Jones.

MC 2066 (Sub-7), filed February 13, 1981. Applicant: R. M. SULLIVAN TRANSPORTATION, INC., 649 Cottage St., P.O. Box 155, Highland Station, Springfield, MA 01104. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103 (413) 732-1136. Transporting *general commodities* (except classes A and B explosives), between points in Westchester, Rockland, Dutchess, Greene, Sullivan, Orange, Ulster, Columbia, Rensselaer, Schenectady, Washington, Saratoga, Warren, Putnam, Albany, and Amsterdam Counties, NY, and points in MA, CT, RI, and NH.

MC 138286 (Sub-7), filed February 9, 1981. Applicant: JOHN F. SCOTT CO., 404 Washington Ave., Dravosburg, PA 15034. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219 (412) 471-1800. Transporting (1) *metal products* and (2) *machinery*, (a) between points in Cuyahoga and Lorain Counties, OH, on the one hand, and, on the other, points in CT, DE, IN, ME, MD, MA, NH, NJ, PA, RI, VT, and WV, and (b) between points in Allegheny, Beaver, and Bucks Counties, PA, on the one hand, and, on the other, points in CT, IL, IN, KY, ME, MA, MI, NH, RI, and VT, and (c) between points in Cook County, IL and Lake County, IN, on the one hand, and, on the other, points in CT, ME, MD, MA NH, NY, NJ, OH, PA, RI, VT, and WV.

MC 142336 (Sub-2), filed February 24, 1981. Applicant: D. TERRY CHAMNESS d.b.a. TERRY'S ROAD, TRUCK & WRECKER SERVICE, 4331 So. 12th St., Kalamazoo, MI 49009. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933 (517) 489-5724. Transporting *building materials*, between points in Kalamazoo County, MI, on the one hand, and, on the other, points in IN, IL, OH and PA.

MC 154216, filed February 19, 1981. Applicant: DAY TRIPPERS, INC., 153 Farist Rd., Fairfield, CT 06430. Representative: Muriel Lefsetz (same address as applicant), (203) 368-0528. To engage in operations, in interstate of foreign commerce as a *broker* at Fairfield, CT, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, in special and charter operations, ending at Fairfield, Bridgeport and Stratford, CT, and extending to points in MA, RI, ME, VT, CT, NY, NJ, PA, DE, VA, and DC.

MC 154256, filed February 9, 1981. Applicant: THE TOUR COMPANY, INC., 1703 Clifton Ave., Lakewood, NJ 08701. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722. To engage in operations, in interstate or foreign commerce as a *broker* at Lakewood, NJ, in arranging for the transportation, by motor vehicle, of *passengers and their baggage*, between points in Monmouth and Ocean Counties, NJ, on the one hand, and, on the other, points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7462 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 34]

Restriction Removals; Decision-Notice

Decided: March 4, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, approporiate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Alspaugh, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 42866 (Sub-19)X, filed February 24, 1981. Applicant: NATIONAL VAN LINES, INC., 2800 Roosevelt Rd., Broadview, IL 60153. Representative: John P. Torpats (same as above). Applicant seeks to remove restrictions in its lead certificate to (1) remove the exception which probibits transportation of household goods to AK and HI in its nationwide authority, and (2) expand the commodity description household goods as defined by the Commission to "household goods and furniture and fixtures". The purpose of this republication is to reflect the requested commodity expansion in the first part of its lead certificate. This republication renders moot the prior publication.

MC 89861 (Sub-17)X, filed February 23, 1981. Applicant: GOUVERNEUR TRUCKING, INC., Box 114, Gouverneur, NY 13642. Representative: Roy A. Jacobs, 550 Mamaroneck Avenue, Harrison, NY 10528. Applicant seeks to remove restrictions from its lead certificate to broaden the territorial scope by replacing city-wide (Emeryville, NY and Carteret, NJ) authority with county-wide (St. Lawrence County, NY and Middlesex County, NJ), and one-way authority with radial between St. Lawrence County, NY and points in MA, OH, NJ, and PA and New York, NY and between Middlesex County, NJ and points in 10 NY counties.

MC 116371 (Sub-23)X, filed February 19, 1981. Applicant: LIQUID CARGO LINES LIMITED, P.O. Box 269, Clarkson, Ontario, Canada, L5J 2Y4. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Applicant seeks to remove restrictions in its Sub-Nos. 2, 4, 8, 11F, 13F, 15F, 16F, and 21F certificates to (1) broaden the commodity description to "commodities in bulk," from liquid commodities in bulk such as coal tar residual oil, liquid packinghouse products, liquid rendering plant products, liquid edible oil refinery products, liquid sugar, liquid commodities, sulfonic acid, and non-exempt foods or kindred products; (2) expand specific ports of entry on the international boundary line between the United States and Canada to authorize all border crossing points within the State, remove facilities limitations and authorize radial service in (a) Sub-No. 2, between Cleveland and Warren, OH and Buffalo, NY and ports of entry in MI and NY (Detroit, MI and Buffalo, NY); (b) Sub-No. 4, between points in NY (except 4 counties), OH, MI, IN, and IL and ports of entry in NY and MI (Buffalo, NY, Detroit and Port Huron, MI); (c) Sub-No. 8, between ports of

entry in MI (located on the Detroit and St. Clair Rivers in MI) and MI and OH; (d) Sub-No. 11F, ports of entry in NY (on the Niagara River) and points in NY, OH, and PA; (e) Sub-No. 13F, ports of entry in MI and NY (on the Detroit and Niagara Rivers) and Memphis, TN (facilities at Memphis); (f) Sub-No. 15F, between Detroit and Port Huron, MI and Chicago, IL (facilities at Chicago); (g) Sub-No. 16F between ports of entry on the international boundary line between the United States and Canada, and points in IL, IN, and NJ; (h) Sub-No. 21F, between ports of entry in MI and NY and Du Page County, IL, (3) in Sub-Nos. 2 and 8, remove, the restriction limiting service to the transportation of traffic originating at or destined to points in Canada; (4) in Sub-No. 11F, 13F, 15F, and 16F, remove the foreign commerce restriction and (5) remove the in tank vehicle restrictions in all Sub-Nos. except 21F.

MC 116459 (Sub-81)X, filed February 20, 1981. Applicant: RUSS TRANSPORT INC., P.O. Box 4022, Chattanooga, TN 37405. Representative: David K. Fox (same address as applicant). Applicant seeks to remove restrictions in its lead and Sub-Nos. 1, 2, 3, 16, 29, 30, 42, 44, 46, 53, 55, 65, 66, 69, and 75F, certificates to (1) change the commodity description from road tar, creosote oil, pipe dip compounds, pitch, and compounds, in bulk, in its lead, liquid asphalt and liquid asphalt products in Sub-No. 1, coal tar products, in bulk, in Sub-No. 2, residual fuel oil, in bulk in Sub-Nos. 3 and 53, vegetable oils and fats, and blends thereof, in bulk, in Sub-No. 16, fuel oils, in bulk, in Sub-No. 29, salt and salt products, in bulk, in Sub-No. 44, animal and poultry feed ingredients, in bulk, in Sub-No. 46, asphalt and asphalt products, in bulk, in Sub-Nos. 55 and 75F, fertilizer and fertilizer materials, in bulk, in Sub-No. 65, feric chloride, in bulk, in Sub-No. 66, and liquid coal tar, in bulk, in Sub-No. 69, to "commodities in bulk"; (2) remove originating at or destined to restrictions in Sub-Nos. 42 and 46; (3) remove facilities limitations in Sub-No. 46, 55, 65, and 69; (4) remove a restriction requiring prior or subsequent movement by rail in Sub-No. 66; (5) broaden the territorial description by (a) substituting Hamilton County, TN for Chattanooga, TN in its lead and Sub-Nos. 1, 2, 3, 16, 29, 42, 46, 53, and 69; Knox County, TN, for Knoxville, TN, in Sub-Nos. 3, 55, 66 and 75F, and (b) changing one-way to radial authority between the named counties, Shelby and Bradley Counties and Tyner, TN and AL, AR, FL, GA, IL, IN, KY, MS, NC, SC, TN, VA and WV, and (6) remove vehicle restrictions in its lead and Sub-Nos. 1, 2, 3, 16, 29, 46, 53, 55, 65, 66, 69, and 75F.

MC 116859 (Sub-27)X, filed February 26, 1981. Applicant: CLARK TRANSFER, INC., P.O. Box 190, Burlington, NJ 08016. Representative: David A. Sutherlund, Suite 400, 1150 Connecticut Ave., NW, Washington, DC 20036. Applicant seeks to remove restrictions from its Sub-No. 15F certificate to (1) remove the exceptions of "uncrated", and "when moving as displays and display materials to and from conventions, . . .", from its authority to transport store, restaurant, and bar fixtures and equipment, and (2) eliminate the exceptions to AK and HI, on its radial authority between Chicago, IL and points in the United States.

MC 121496 (Sub-59)X, filed February 23, 1981. Applicant: CANGO CORPORATION, 2727 North Loop West, Houston, TX 77008. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Streeet, N.W., Washington, DC 20001. Applicant seeks to remove restrictions in its Sub-No. 45F certificates, to (1) broaden the commodity description from chemicals, in bulk, in tank vehicles, to "commodities in bulk", and (2) broaden the territorial description by removing the facilities restriction at LeMoyne, AL, and changing to county-wide authority of Mobile County, AL, to authorize radial service between Mobile County and TX and LA.

MC 121496 (Sub-61)X, filed February 23, 1981. Applicant: CANGO CORPORATION, 2727 North Loop West, Houston, TX 77008. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Streeet, N.W., Washington, DC 20001. Applicant seeks to remove restrictions in its Sub-No. 41F certificates, to (1) broaden its commodity description from liquefied petroleum gases, in bulk, in tank vehicles, to "commodities in bulk"; (2) replace its city-wide authority in Mont Belvieu, TX, Arcadia, LA, and Petal, MS, with county-wide authority to authorize radial service between Chambers County, TX, Bienville County, LA, and Forrest County, MS, and points in the U.S.; and (3) eliminate the AK and HI exception.

MC 123124 (Sub-7)X, filed February 26, 1981. Applicant: BOOTH DELIVERY SERVICE, INC., P.O. Box 1364, Fargo, ND 58107. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. Applicant seeks to remove restrictions in its lead and Sub-Nos. 5 and 6 certificates to (1) broaden the commodity description from meats, meat products, and meat by-products, dairy products, and articles distributed by meat packinghouses, (except commodities in bulk and hides) to "food and related products" in all Sub-Nos., (2) obtain county-wide for city authority and authorize radial service in place of one-way authority between Cass County, (Fargo) ND, on the one hand, and on the other, points in ND and named MN counties, and (3) eliminate the restriction limiting service to shipments having a prior movement in interstate commerce by rail or motor vehicle in lead certificate.

MC 133932 (Sub-3)X, filed February 20, 1981. Applicant: CATAWBA VALLEY MOTOR LINES, INC., P.O. Box 370, Claremont, NC 28610. Representative: D. R. Beeler, 1261 Columbia Avenue, Franklin, TN 37064. Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description from uncrated upholstered furniture to "furniture and fixtures", and (2) authorize radial authority for existing one-way authority to serve between Catawaba, Alexander, Burke, and Caldwell Counties, NC, and, in described parts of VA, MD, PA, and points in NJ, DE and DC.

MC 145623 (Sub-11)X, filed February 19, 1981. Applicant: O. K. MESSENGER SERVICE, INC., 9107 Telegraph Road, Taylor, MI 48180. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Applicant seeks to remove restrictions in its lead and Sub-Nos. 4F and 8F permits, which authorize the transportation of iron and steel articles, to broaden the territorial description to authorize between points in the United States, under continuing contract(s) with a named shipper.

MC 147313 (Sub-1) X, filed February 20, 1981. Applicant: JOHN PFROMMER, INC., P.O. Box 307, Douglassville, PA 19518. Representative: Theodore Polydoroff, 1307 Dolley Madison Blvd., Suite 301, McLean, VA 22101. Applicant seeks to remove restictions in its MC-118745 and Sub-Nos. 2, 3, 4, 6, 7, 8, 9, 11, 12, 16F, 22F, 23F, 26F, 27F, 28F, and 29F permits to (1) change the commodity description (a) from lime and crushed stone in its lead, lime and limestone in Sub-No. 2, trap rock in Sub-No. 6, sand and stone in Sub-No. 9, and overburden and crushed stone in Sub-No. 26F, to "ores and minerals," (b) from cement, in bulk, in Sub-No. 8 to "clay, concrete, glass or stone products," (c) from stone, lime, cement, sand in bags, mixtures of the foregoing, and mineral rock wool in Sub-No. 3, lime and limestone, and mixtures and products thereof in Sub-No. 4, lime, limestone, and limestone products in Sub-Nos. 11 and 16, lime and limestone products in Sub-No. 22F, and

slag, sand, gravel, lime, limestone, and limestone products in Sub-No. 29F, to "ores and minerals" and "clay, concrete, glass or stone products"; (d) from scrap metal in Sub-Nos. 12 and 28F to "waste or scrap materials not identified by industry, producing"; and (e) from petroleum coke in Sub-Nos. 7, 23F, and 27F to "coal and coal products" and "petroleum, natural gas and their products"; (2) remove restrictions (a) requiring commodities to move in specific types of equipment in Sub-Nos. 3, 12, 16, 23F, 26F, and 28F, (b) against the transportation of sand and stone between points in NJ, and the transportation of cement, in bags in Sub-No. 3 and (c) against the transportation of lime and limestone to named NY counties, and (3) change the territorial description in Sub-Nos. 2, 3, 4, 6, 7, 8, 9, 11, 12, 16F, 22F, 23F, 26F, 27F, 28F, and 29F to between points in the U.S. under contract(s) with named shippers.

MC 147831 (Sub-20) X, filed February 20, 1981. Applicant: CENTRAL STATES EXPRESS, INC., 20 Bayberry Drive, Jackson, TN 38301. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Applicant seeks to remove restrictions in its Sub-No 19F certificate to broaden the commodity descriptions from foodstuffs (except in bulk), and materials, equipment and supplies used in the manufacture and distribution of foodstuffs to "food and related products"; and to broaden the territorial scope by substituting countywide authority for the named facility at or near Humboldt, TN, and removing the exceptions of AK and HI as follows: between points in Gibson County, TN, and points in the U.S.

MC 147913 (Sub-3)X, filed February 23, 1981. Applicant: ACME TRANSFER & STORAGE CO., INC., 201 5th Ave., SW, New Brighton, MN 55112. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW, Washington, DC 20036. Applicant seeks to remove restrictions from its Sub-No. 1F certificate to (1) eliminate the facilities restriction at Minneapolis, MN, and (2) remove all exceptions to its general commodities authority (except classes A and B explosives)

[FR Doc. 81-7453 Filed 3-9-81; 8:45 am]
BILLING CODE 7035-01-M

Long-and-Short-Haul Applications for Relief (Formerly Fourth Section Application)

March 5, 1981.

These applications for long-and-short-haul or aggregate-of-intermediates relief have been filed with the I.C.C.

Protests are due at the I.C.C. within 15 days from the date of publication of the notice.

Aggregate-of-Intermediates

No. 43906, Trans-Continental Freight Bureau, Agent's No. 559, rates on motor vehicles, passenger or passengers, or hi-level or tri-level cars, from Toledo, OH to Pacific Northwest points in states of Oregon and Washington, primarily destinations being Kent, Seattle, Spokane, WA and Tigard and Portland, OR. Rates are to be published in Trans-Continental Freight Bureau Tariff ICC TCFB 3001–C. Grounds for relief-maintenance of the rates covered hereby to meet market competition without use of such rates as factors in constructing combination rates beyond objective origins.

Long-and-Short-Haul

No. 43907, Southwestern Freight Bureau, Agent's No. B–115, rates on lime, in carloads, minimum 50,000 pounds, from points in Alabama to Point Comfort, TX, also, returned shipments in reverse direction. Rates are published to become effective March 31, 1981, in Item No. 4885–A, Supplement No. 77, to ICC SWFB 4798. Grounds for relief-market competition.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-7438 Filed 3-9-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. OP5–69]

Motor Carrier Permanent Authority Decisions; Decision-Notice

Decided: March 5, 1981.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 3. Members Parker, Fortier, and Hill.
Agatha L. Mergenovich,
Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 35628 (Sub-442), filed January 9, 1981. Initially published in the **Federal Register** on January 28, 1981. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 110 Ionia Avenue NW., P.O. Box 175, Grand Rapids, MI 49501. Representative: Michael P. Zell (same

address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S.

Note.—This application is republished to except "household goods." The date for filing statements in opposition to this application remains unchanged, that is, March 16, 1981.

[FR Doc. 81-7439 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[EX Parte No. 387 (Sub-11)]

Southern Pacific Transportation Company Exemption for Contract Tariff ICC-SP-C-0002; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed will become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: By petition filed February 26, 1981, Southern Pacific Transportation Company (SP) has reqested an exemption from the requirement of 49 U.S.C. 10713(e) that its contract tariff ICC-SP-C-0002 be made effective on a minimum of 30 days' notice. SP seeks to file the contract tariff on one day's notice with an effective date of March 1, 1981. The duration of the contract is six months with an option to extend for three additional months.

The contract involves the movement of pipe for the Northern Border Pipeline Project over the lines of SP, the St. Louis Southwestern Railway Company, and Burlington Northern Inc. The pipe will be used for construction of a pipeline in the northern tier States as part of the overall Pipeline Project. Because the pipe is being imported, a shipping schedule had to be planned even before fianalizing the contract. Similarly, SP argues that it was necessary for the receiver to develop a production schedule which requires initiation of shipments on March 1, 1981. SP states that, in regognition of the statutory notice requirement of section 10713(e), the parties engaged in vigorous negotiation over terms of the shipping contract. Although each party worked diligently to resolve problems which arose, negotiations took longer than expected. Petitioner thus contends that a 30 day waiting period would be extremely disruptive to the scheduling to which the shipper and receiver have already committed themselves.

SP does not expect any protests of the contract tariff to be filed. It alleges that the contract is of limited scope because it involves a single commodity moving over a single route and has only a six month duration. It also contends that the 30 day notice period is not required to protect shippers from any abuse of market power. SP will use a pool of leased rail cars to provide service under the contract, so its own fleet of rail cars will be avilable to meet its common carrier obligation to serve other shippers. For these reasons, petitioner argues that the requested exemption is warranted.

There is no provision for waiving the section 10713(e) requirement that contracts must be filed to become effective on not less than 30 nor more than 60 days' notice. CF. former section 10762(d)91). However, we may address the same relief under our section 10505 exemption authority and we do so here.

The contract at issue is designed to allow responsive transportation services in connection with a major energy project. To permit the contract to become effective only after a 30 day period could seriously disrupt shipping and production schedules already in place. The contract proposal should enhance carrier service by encouraging efficient use of transportation facilities. It should not impair the carriers' obligation to provide service to other shippers because SP will use a pool of leased cars to move the pipe. Thus, we conclude that a provisional exemption should be granted.

SP has already agreed in its petition to be bound by the following conditions, which have been imposed in similar exemption proceedings:

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposed of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding, on its own initiative or on complaint, to review the contract or to disapprove it during the periods specified in 49 U.S.C. 10713.

In this proceeding as in other requests for exemptions from the statutory notice provisions for contract tariffs, we have acted as expeditiously as possible in order to meet the stated needs of the shippers and carriers involved. We will continue to make all efforts to avoid undue regulatory delay. We take note here, however, that SP filed its petition on February 26, only two working days before the requested effective date of March 1 for its contract tariff. Petitioner has not given any reasons why the petition could not have been filed earlier, giving this Commission a more reasonable period for considering the request. SP is advised that, in the future, the filing of an exemption request on such short notice with no explanation as to why the request was not made earlier will be considered a strong indication that the requested exemption is not actually required.

Subject to compliance with the conditions set out above, under 49 U.S.C. 10505(a) we find that the 30 day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. The contract tariff may become effective on one day's notice. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication of the **Federal Register.**

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Decided: February 27, 1981.

By the Commission, Division 1, Commissioners Clapp, Gresham, and Gilliam. Commissioner Gilliam was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

FR Doc. 81-7436 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Volume No. OPI-057]

Republications of Grants of Operating Rights Authority Prior to Certification.

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of opposing verified statements must be filed with the Commission within 45 days after the date of this Federal Register notice. Applicant may file a verified statement in rebuttal within 60 days. Such pleadings shall comply with 49 CFR 1100.247 (renumbered 1100.251) addressing specifically the issue(s) indicated as the purpose for republication. Special Rule 247 (renumbered 251) was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

MC 82841 (Sub-295F) (Republication) filed October 8, 1980, previously noticed

in the FR issue of November 4, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 I St., Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Road, Suite 610, Omaha, NE 68106. A Decision by the Commission, Review Board Number 1, decided February 2, 1981, and served February 13, 1981, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *lumber or wood products, except furniture*, (2) *clay, concrete, glass, or stone products*, (3) *primary metal products, including galvanized, except coating or other allied processing*, (4) *fabricated metal products, except ordnance, machinery, or transportation equipment, and* (5) *machinery except electrical, as described in Items 24, 32, 33, 34, and 35, respectively, of the Standard Transportation Commodity Code*, between points in Allegheny and Beaver Counties, PA, Mahoning, Cuyahoga, and Stark Counties, OH, Lake County and Indianapolis, IN, Macomb County, MI, and Windham County, CT, on the one hand, and, on the other, points in Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wisconsin. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to add specified counties in CT, IN, and MI.

Agatha L. Mergenovich

Secretary.

[FR Doc. 81-7437 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPY-012

Decided: February 27, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 5227 (Sub-84), filed February 9, 1981. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101, (605) 335-1777. Transporting *lumber and wood products*, between points in WA, OR, WY, ID, CA, MT, and SD, on the one hand, and, on the other, points in NE, IA, and MN.

MC 30237 (Sub-46), filed February 10, 1981. Applicant: YEATTS TRANSFER COMPANY, P.O. Box 666, Altavista, VA 24517. Representative: Eston H. Alt (same address as applicant), (804) 369-5695. Transporting (1) *rubber and plastic products*, (2) *toys*, (3) *metal products*, and (4) *pulp, paper and related products*, between those points in the U.S. in and east of IL, KY, TN, and MS.

MC 42487 (Sub-1031), filed February 10, 1981. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208, (503) 226-4692. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Port of Seattle, of Seattle, WA.

MC 63417 (Sub-303), filed February 17, 1981. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant), (703) 342-1835. Transporting *furniture and fixtures*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

MC 63417 (Sub-304), filed February 10, 1981. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant), (703) 342-1835. Transporting (1) *rubber and plastic products*, and (2) *chemicals and related products*, between the facilities of Mobil Chemical Company in the U.S., on the one hand, and, on the other, points in the U.S.

MC 110567 (Sub-23), filed February 17, 1981. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304, (515) 245-2730. Transporting *clay, concrete, glass or stone products*, between points in AR, KS, and OK, on the one hand, and, on the other, points in the U.S.

MC 111967 (Sub-12), filed February 10, 1981. Applicant: CADDELL TRANSIT CORPORATION, P.O. Box 146, Lawton, OK 73502. Representative: Wilburn L. Williamson, Suite 615-East, The Oil

Center, 2601 Northwest Expressway, Oklahoma City, OK 73113, (405) 848–7946. Transporting *petroleum, natural gas and their products*, between points in Jones County, TX, on the one hand, and, on the other, points in OK.

MC 113297 (Sub-1), filed February 18, 1981. Applicant: ALGONQUIN ASSOCIATES, INC., d.b.a. TWELVE GATE HORSE TRANSPORTATION, 63A Community Place, Long Branch, NJ 07740. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410, (201) 792–2270. Transporting *livestock*, other than ordinary livestock, and in connection therewith, *personal effects* of attendants, and *supplies and equipment*, including mascots, used in the care and/or exhibition of such animals, between points in NJ and NY, on the one hand, and, on the other, points in FL, GA, and KY.

MC 117427 (Sub-87), filed February 18, 1981. Applicant: G.G. PARSONS TRUCKING COMPANY, a corporation, P.O. Box 1085, N. Wilkesboro, NC 28659. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760, (301) 840–8565. Transporting *lumber and wood products*, between points in the U.S.

MC 120257 (Sub-56), filed February 10, 1981. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731–8431. Transporting *metal products*, between points in Gregg County, TX and Warren County, MO, on the one hand, and, on the other, points in the U.S.

MC 120257 (Sub-57), filed February 10, 1981. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116, (817) 731–8431. Transporting *machinery*, between points in Gregg and Cameron Counties, TX, and Warren County, MS, on the one hand, and, on the other, points in the U.S.

MC 134477 (Sub-429), filed February 17, 1981. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., W. St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164, (612) 457–9712. Transporting *food and related products*, between points in IA, MN, WI, NE, and MO, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC.

MC 134477 (Sub-433), filed February 17, 1981. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164, (612) 457–9700. Transporting *freezers*, between points in Stearns County, MI, on the one hand, and, on the other, points in the U.S.

MC 144017 (Sub-3), filed February 10, 1981. Applicant: GEORGE W. NOFFS MOVING AND STORAGE, INC., 1735 E. Davis St., Arlington Heights, IL 60005. Representative: Robert J. Gallagher, 1000 Connecticut Ave., N.W., Washington, DC 20036, (202) 463–6044. Transporting *household goods*, as defined by the Commission, between Chicago, IL and points in Boome, McHenry, Lake, Winnebago, Ogle, Lee, Dekalb, kane, DuPage, Kendall, Will, Grundy, LaSalle, Bureau, Putnam, Marshall, Woodford, Livingston, McLean, Ford, Iroquois, Kankakee, Vermilion and Champaign Counties, IL, points in Kenosha, Racine, Walworth, Milwaukee, Waukesha, Jefferson and Rock Counties, WI, Cass, Van Buren, and Berrien Counties, MI, Warren, Benton, Newton, Jasper, Lake, Porter, LaPorte, Starke, Pulaski, White, Carroll, Tippecanoe, Cass, Fulton, Marshall, St. Joseph, Elkhart and Kosciusko Counties, IN, on the one hand, and, on the other, points in TX, MD, CA, AZ, OK, NV, UT, LA, WA, OR, ID, WY, NM, NE, MS, and DC.

MC 145517 (Sub-5), filed February 10, 1981. Applicant: MANITO TRANSIT CO., a corporation, Box No. 8, Ashkum, IL 60911. Representative: Douglas G. Brown, 913 So. Sixth St., Springfield, IL 62703, (217) 758–3925. Transporting *petroleum, natural gas and their products*, between points in Lake, White and Tippecanoe Counties, IN, on the one hand, and, on the other, points in Iroquois, Ford, Kankakee, Livingston, Grundy, Vermilion and Will Counties, IL.

MC 146717 (Sub-8), filed February 19, 1981. Applicant: JACK MYER & BUDDY C. MOORE, d.b.a., MIDWEST VIKING, Johnson, NE 68378. Representative: Ronald R. Adams, 600 Hubbell Bldg., Des Moines, IA 50309, (515) 244–2329. Transporting (1) *lumber and wood products*, and (2) *furniture and fixtures*, between points in Jackson, Josephine, Douglas, Lane, Linn, Coos, and Deschutes Counties, OR; Clark and Pierce Counties, WA; Missoula, Flathead, and Lincoln Counties, MT; and Ada, Elmore, Boise, Gem, Payette, Kootenai, Nez Perce, and Clearwater Counties, ID, and TX, LA, and AR, on the one hand, and, on the other, points in IN, IL, MI, WI, IA, AR, OH, MS, TX, AZ, CA, CO, GA, KS, MN, MO, and OK.

MC 152807 (Sub-1), filed February 10, 1981. Applicant: L. R. CONNELL, INC., Route 4, Box 74, Arkadelphia, AR 71923. Representative: Sarah Lea Connell (same address as applicant), (501) 246–6259. Transporting (1) *metal products*, (2) *machinery*, (3) *lumber and wood products*, and (4) *building materials*, between points in Clark and Garland Counties, AR, on the one hand, and, on the other, points in LA, TN, OK, TX, and MS.

MC 153067 (Sub-1), filed February 11, 1981. Applicant: BILL LUTZ, d.b.a. J & B TRUCKING, 301 N. Main, Springfield, MO 65806. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804, (417) 883–7311. Transporting *general commodities* (except classes A and B explosives), between points in Greene County, MO, on the one hand, and, on the other, points in AR and MO.

MC 154177, filed February 9, 1981. Applicant: TRI-STATE AIR CARGO, INC., Box 712, Cierto, WV 25507. Representative: James W. Muldoon, 50 W. Broad, Columbus, OH 43215, (614) 464–4103. Transporting *general commodities* (except classes A and B explosives), between points in Boyd, Carter, Floyd, Greenup, Johnson, Lawrence, Martin, Perry, and Pike Counties, KY, Gallia, Lawrence, and Scioto Counties, OH, and Boone, Cabell, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam and Wayne Counties, WV, on the one hand, and, on the other, points in KY, OH, PA, and WV.

MC 154207, filed February 10, 1981. Applicant: J.C. ELLIS TRANSPORTATION, INC., P.O Box 1009, Washington Park, IL 62204. Representative: Denis M. Neill, 1156 15th St., N.W., Washington, DC 20003. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Banquet Foods Corporation of St. Louis, MO.

Volume No. OPY–013

Decided: February 27, 1981.

By the Commission, Review Board No. 2, members Chandler, Eaton and Liberman.

MC 148487 (Sub-3), filed February 9, 1981. Applicant: DAN L. HUFFMAN, d.b.a. HUFFMAN TRUCKING CO., P.O. Box 973, Chatsworth, CA 91311. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

Volume No. OPI–059

Decided: February 28, 1981.

By The Commission, Review Board No. 3, Members Parker, Fortier and Hill.

MC 720 (Sub-89), filed February 9, 1981. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 227, Waupun, WI 53963. Representative: Wayne W. Wilson, 150 E. Gilman, Madison, WI 53703. Transporting *general commodities* (except classes A and B explosives), (a) between points in IL, IN, IA, KY, MI, MN, MO, OH, and WI, and (b) between points in AL, AR, CO, CT, DE, FL, GA, KS, LA, ME, MD, MA, MS, NE, NH, NJ, NY, NC, ND, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and DC, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO, OH, and WI.

MC 730 (Sub-523), filed February 9, 1981. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a Corporation, 25 North Via Monte, Walnut Creek, CA 94598. Representative: Alfred G. Krebs (same address as applicant). Transporting *general commodities* (except classes A and B explosives), serving points in Emery and Carbon Counties, UT, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 35320 (Sub-637), filed February 9, 1981. Applicant: T.I.M.E.-DC, INC., 2598 74th St., P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except classes A and B explosives), serving points in Barnstable County, MA, as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 85970 (Sub-48), filed February 10, 1981. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook St., Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *machinery* between points in Dyer County, TN, on the one hand, and, on the other, points in the U.S.

MC 93840 (Sub-62), filed February 10, 1981. Applicant: GLESS BROS., INC., P.O. Box 219, Blue Grass, IA 52726. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *chemicals and related products*, between points in IA and IL.

MC 94790 (Sub-3), filed February 9, 1981. Applicant: BILL GERLOCK TOWING CO. (a corporation), 702 NE Schuyler St., Portland, OR 97212. Representative: Jerry R. Woods, Suite 1600, One Main Place, 101 SW Main St., Portland, OR 97204. Transporting (1) *transportation equipment*, and (2) *machinery*, between points in CA, ID, MT, NV, OR, and WA.

MC 115730 (Sub-92), filed February 9, 1981. Applicant: THE MICKOW CORP., 531 S.W. Sixth St., P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines, IA 50307. Transporting *machinery*, between points in Boone County, MO, on the one hand, and, on the other, points in the U.S.

MC 115821 (Sub-57), filed February 9, 1981. Applicant: BEELMAN TRUCK CO. (a corporation), P.O. Box 93, St. Libory, IL 62282. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. Transporting *general commodities* (except classes A and B explosives), (1) between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and (2) between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, and NM (except HI). Condition: Prior to issuance of a certificate in this proceeding, applicant must request cancellation of those certificates which duplicate the above authority.

MC 119821 (Sub-6), filed February 9, 1981. Applicant: OCHROCH TRANSPORTATION CO., INC., 2nd St. and Erie Ave., Philadelphia, PA 19140. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Transporting *machinery*, (1) between Philadelphia, PA, on the one hand, and, on the other, points in CT, DE, MD, MS, NJ, NY, NC, OH, RI, SC, VA, WV, and DC, and (2) between points in Spartanburg, County, SC, on the one hand, and, on the other, points in Franklin County, OH.

MC 133841 (Sub-22), filed February 9, 1981. Applicant: DAN BARCLAY, INC., P.O. Box 426, 362 Main St., Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *machinery*, between the facilities used by Komline-Sanderson Engineering Co., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 145130 (Sub-4), filed February 10, 1981. Applicant: ATICO TRANSPORT, INC., 6700 S. LeClaire Ave., Chicago, IL 60638. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by manufactureres and distributors of chemicals, building materials, and floor covering, between points in IL, on the one hand, and, on the other, points in Marshall County, KY, and Union County, NJ.

MC 148791 (Sub-9), filed February 9, 1981. Applicant: TRANSPORT-WEST, INC., 2125 North Redwood Road, Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O Box 2465, Salt Lake City, UT 84110. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with McGraw Edison Company, of Rolling Meadows, IL.

MC 148791 (Sub-10), filed February 9, 1981. Applicant: TRANSPORT-WEST, INC., 2125 North Redwood Road, Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O Box 2465, Salt Lake City, UT 84110. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Associated Grocers, of Phoenix, AZ.

MC 152360 (Sub-3), filed February 9, 1981. Applicant: WILCO TRANSPORTATION, INC., Route 16, Box 73, Springfield, MO 65803. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Wil Fischer Distributing Company, of Springfield, MO.

MC 153190 (Sub-1), filed February 9, 1981. Applicant: C. & O. TRANSFER, INC., 2120 Prairieton Rd., Terre Haute, IN 47802. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. Transporting *clay, concrete, glass or stone products*, between points in Vigo County, IN, Houston County, GA, Okmulgee County, OK, Monmouth County, NJ, and Scott County, MN, on the one hand, and, on the other, points in the U.S.

MC 153220 (Sub-1), filed February 9, 1981. Applicant: RECOVERY SPECIALISTS, INC., P.O. Box 255, Saline, MI 48176. Representative: Norman a. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. Transporting *hazardous materials*, between points in MI, on the one hand, and, on the other, points in the U.S. Condition: To the extent that any certificate issued in this proceeding authorizes the transportation of hazardous materials, it shall expire 5 years from its date of issuance.

MC 153280 (Sub-1), filed February 9, 1981. Applicant: ROYAL FOODS, INC., P.O. Box 385, Salt Lake City, UT 84110. Representative: Kathryn Denholm, 660 South 200 East #100, Salt Lake City, UT 84111. Transporting *food and related products*, between points in UT, NV, CA, and ID.

MC 153830 (Sub-1), filed February 9, 1981. Applicant: LORI-MATT CARRIERS, INC., 8803 Meadow Parkway, Omaha, NE 68138. Representative: Marshall D. Becker,

Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *machinery*, between points in the U.S., under continuing contract(s) with Sperry Vickers, of Omaha, NE.

MC 154120, filed February 9, 1981. Applicant: R.F.D., INC., d.b.a. RURAL ROUTE TOURS INTERNATION AND AMERICAN GROUP TRAVEL SERVICE, 308 West 79th Terrace, Kansas City, MO 64114. Representative: J. Mike Schulze, 408 West 61st Terrace, Kansas City, MO 64113. As a *broker*, at Kansas City, MO, in arranging for the transportation of *passengers and their baggage*, in round trip, special and charter operations, between points in the U.S.

MC 154121, filed February 9, 1981. Applicant: TRAILINER CORP., P.O. Box 357, Gladstone, NJ 07934. Representative: George A. Olsen (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between the facilities used by The Enterprise Companies and Insilco Company, their subsidiaries, and divisions, in the U.S., on the one hand, and, on the other, points in the U.S.

MC 154121 (Sub-1), filed February 9, 1981. Applicant: TRAILINER CORP., P.O. Box 357, Gladstone, N.J. 07934. Representative: George A. Olsen (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Montgomery Elevator Company, of McKinney, TX.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7432 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before [45 days from date of publication], (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-058

Decided: February 28, 1981.

By The Commission, Review Board No. 3, members Parker, Fortier, and Hill.

MC 108341 (Sub-198), filed February 5, 1981. Applicant: MOSS TRUCKING COMPANY, INC., 3027 North Tryon St., P.O. Box 26125, Charlotte, NC 28213. Representative: Jack F. Counts (same address as applicant). Transporting *those commodities*, which because of their size or weight require the use of special handling or equipment, *transportation equipment*, and *machinery*, between the facilities used by Tower Cranes of America, Inc., at those points in the U.S. in and east of MN, IA, MO, AR, and LA, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, MO, AR, and LA.

MC 127610 (Sub-7), filed February 6, 1981. Applicant: J. P. NOONAN TRANSPORTATION, INC., 436 West Street, West Bridgewater, MA 02379. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting *petroleum, natural gas and their products*, between points in CT, ME, MA, NH, RI and VT.

Note.—To the extent that any certificate issued in this proceeding authorizes the transportation of liquefied petroleum gas, it shall expire 5 years from its date of issuance.

MC 129480 (Sub-54F), filed January 5, 1981, and previously noticed in **Federal Register** issue of January 28, 1981. Applicant: TRI-LINE EXPRESSWAYS LTD., 9559-40th Street, SE., Calgary, Alberta, Canada 52H 2J1. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Bldg., 1660 Lincoln Street, Denver, CO 80264. *In foreign commerce only*, transporting (1) *lumber and wood products and forest products*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one hand, and, on the other, points in AR, DE, FL, GA, IA, IL, IN, KY, LA, MD, MI, MO, MS, NC, OH, PA, SC, TN, VA, WI, WV, and DC, (2) *those commodities which because of their size or weight require the use of special handling or equipment, Mercer commodities, transportation and materials handling equipment, and industrial, construction, mining and agricultural machinery, equipment, materials and supplies*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except CT, HI, MA, ME, NH, NJ, NY, RI, and VT), and (3) *chemicals and related products*, between ports of entry on the International Boundary Line between the U.S. and Canada, on the one hand, and on the other, points in the U.S. (except CT, HI, MA, ME, NH, NJ, NY, RI, and VT).

Note.—This republication clarifies the commodity description in part (2) above.

MC 138000 (Sub-83), filed February 6, 1981. Applicant: ARTHUR H. FULTON, INC., PO Box 86, Stephens City, VA

22655. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., PO Box 1417, Hagerstown, MD 21740. Transporting *asbestos brake lining*, between points in Frederick County, VA and Rowan County, NC, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, KS, OK and TX.

MC 141261 (Sub-3), filed February 6, 1981. Applicant: SOUTHERN FURNITURE TRANSPORT, INC., 2003 Viscount Row, Orlando, FL 32809. Representative: Arthur J. Pikens, Queens Office Tower, 95–25 Queens Blvd., Rego Park, NY 11374. Transporting *furniture and fixtures*, (1) between points in GA and AL, on the one hand, and, on the other, those points in FL, on, north, and west of a line beginning at the FL–GA State line and extending along U.S. Hwy 441 to Gainesville, FL, then along FL Hwy 24 to Cedar Key, FL, at the Gulf of Mexico, and (2) between points in TN, on the one hand, and, on the other, points in AL, FL, and GA.

MC 142431 (Sub-11), filed January 23, 1981. Applicant: WAYMAR TRANSPORT CORP., 1755 S.E. 108th St., Runnells, IA 50237. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, of Chicago, IL.

MC 151900 (Sub-2), filed February 4, 1981. Applicant: AL-WAYS TRUCKING COMPANY, 2315 East Olive, Arlington Heights, IL 6000. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603. Transporting *rubber and plastic products*, between Chicago, IL, on the one hand, and, on the other, points in WI, MI, MO, OH, MN, IA, IN and Ky.

MC 154241, filed February 6, 1981. Applicant: SVS TRUCKING, INC., PO Box 990, Minneapolis, MN 55440. Representative: Andrew R. Clark, 1600 TCF Tower, 121 South 8th Street, Minneapolis, MN 55402. Transporting (1) *food and related products*, (2) *such commodities as are dealt in or used by grocery stores and food business houses*, (3) *such commodities* as are dealt in or used by retail catalog merchandise stores and department stores, and (4) *medical equipment and supplies*, between points in the U.S.

Volume No. OP2–023

Decided: February 18, 1981.

By the Commission, Review Board No. 3 Members Fortier, Hilland, Parker.

FF–332 (Sub-2), filed February 6, 1981. Applicant: TEXAS SHIPPERS ASSOCIATION, INC., 2311 Butler St., Dallas, TX 75235. Representative: S. S. Eisen, 370 Lexington Avenue, New York, NY 10017, 212–532–5100. To operate, in interstate commerce, as a *freight forwarder*, in connection with the transportation of *general commodities* (except classes A and B explosives) (1) between points in TX, on the one hand, and, on the other, points in CT, DE, IL, IN, IA, KY, ME, MD, MA, MI, MN, NH, NJ, NY, OH, PA, RI, TX, VT, VA, WV, WI, WA, and DC, and (2) between points in GA and FL, on the one hand, and, on the other, points in IL, IN, MI, MN, OH, and WI.

MC 107522 (Sub-3), filed January 30, 1981. Applicant: PEAK TRANSFER CO., INC., 57 Hathaway St., Wallington, NJ 07057. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123, (212) 239–4610. Transporting *metal products* between points in the U.S., under a continuing contract(s) with the Swedish Wire Corporation, of Mt. Vernon, NY.

MC 108223 (Sub-41F), filed February 3, 1981. Applicant: CENTURY–MERCURY MOTOR FREIGHT, INC., 2160 Mustang Dr., P.O. Box 43050, St. Paul, MN 55164. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402. Over regular routes, transporting *general commodities* (except classes A and B explosives), between Minneapolis-St. Paul, MN and Houston, TX: from Minneapolis-St. Paul over Interstate Hwy 35 to junction Interstate Hwy 35E, then over Interstate Hwy 35E to junction Interstate Hwy 45, then over Interstate Hwy 45 to Houston and return over the same route, serving all intermediate points and serving the off-route points of Forest City, IA, Topeka, KS and Tulsa, OK.

MC 111432 (Sub-13), filed January 30, 1981. Applicant: FRANK J. SIBR & SONS, INC., 5240 West 123rd Place, Alsip, IL 60658. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703, (217) 753–3925. Transporting *chemicals and related products* between points in the U.S., under continuing contract(s) with Onyx Chemical Company of Blue Island, IL.

MC 113362 (Sub-413), filed January 30, 1981. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912, (507) 433–3427. Transporting *general commodities* (except classes A and B explosives), between the facilities of the Hammermill Paper Company and as suppliers at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 124813 (Sub-234), filed February 3, 1981. Applicant: UMTHUN TRUCKING CO., 910 South Jackson St., Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *machinery*, between points in Wright County, IA, on the one hand, and, on the other, points in the U.S.

MC 129383 (Sub-3), filed February 4, 1981. Applicant: MCCARLEY MOVING & STORAGE CO., INC., 4245 Milgen Road, Coumbus, GA 31907. Representative: Price Y. McCarley (same address as applicant), 404–561–5585. Transporting *household goods*, between points in GA, FL, AL, MS, TN, SC, NC, LA, KY, and TX.

Note.—The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 136553 (Sub-105), filed February 2, 1981. Applicant: ART PAPE TRANSFER, INC., 1080. East 12th St., Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309.Transporting *lumber and wood products* between points in Grundy County, IA, on the one hand, and, on the other, points in the U.S.

MC 138432 (Sub-22), filed February 2, 1981. Applicant: GARLAND GEHRKE, 1800 N. Jefferson, Lincoln, IL 62656. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *printed matter*, between points in the U.S.

MC 148183 (Sub-35), filed January 29, 1981. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Building, 425 13th Street NW., Washington, DC 20004, (202) 737–2188. Transporting *machinery* between points in Hall County, GA, on the one hand, and, on the other, points in AL, FL, IL IN, LA, MI, MS, NC, OH, SC, TX, TN and WI.

MC 129712 (Sub-32), filed January 28, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569 McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE, Atlanta, GA 30326, 404–237–6472. Transporting *iron and steel articles*, between points in the U.S., under continuing contract(s) with Nucor Corporation, of Charlotte, NC.

MC 129712 (Sub-33), filed January 27, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569 McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree

Rd., NE, Atlanta, GA 30326, 404–237–6472. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Beall Manufacturing, Division of Barlen Corp., of Alton, IL.

MC 152282 (Sub-2), filed January 30, 1981. Applicant: FLOYD DUENOW, INC., P.O. Box 86, Savage, MN 55378. Representative: Stanley C. Olsen, Jr. 5200 Willson Road, Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *Lumber and wood products* between points in the U.S., under continuing contract(s) with Sprenger-Midwest, Inc., of Minneapolis, MN.

MC 153882, filed January 28, 1981. Applicant: CREATIVE HOLIDAYS UNLIMITED INC., 2013 Morris Ave., Union, NJ 07083. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–435–7140. As a *broker*, at Union, NJ, in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in round-trip, special, and charter operations, between points in the U.S.

MC 153902, filed January 23, 1981. Applicant: ANDERS TRUCKINGS, INC., Union Center, SD 57787. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701, 605–343–4036. Transporting (1) *such commodities* as are dealt in or used by farm, ranch supply stores, and food markets, and (2) *building materials*, between points in CO, IA, MN, MT, NE, ND, OR, UT, WA, and WY, on the one hand, and, on the other, those points in SD on and west of the MO River.

MC 153922, filed January 27, 1981. Applicant: M. A. TRANSPORTATION, INC., P.O. Box 2322, Peachtree City, GA 30269. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349, 404–996–6266. Transporting *Rubber and plastic products*, between points in the U.S., under continuing contract(s) with (a) Southeastern Plastic Container Co., of Arlington, TN, and (b) M.A. Industries, Inc., of Peachtree City, GA.

MC 153923, filed January 27, 1981. Applicant: OMNI, INC., 78–8 Buddington Road, Groton, CT 06340. Representative: Fred S. O'Donnell (same address as applicant), 203–449–0936. Transporting *petroleum, natural gas and their products*, between points in CT, RI, MA, NH, VT, ME, NY, and NJ.

Volume No. OP4–55

Decided: February 27, 1981.

By the Commission, Division 1 Acting as Appellate Division, Commissioners Clapp, Alexis and Gilliam.

MC 153227F, filed December 16, 1981. Applicant: FASTWAY FREIGHT, INC., Ro. 3, Box 186, Pell City, AL 35125. Representative: Ronald L. Stichweh, 727 Frank Nelson Bldg., Birmingham, AL 35203. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

Volume No. OP4–058

Decided: March 3, 1981.

By the Commission, Review Board No. 2 members Chandler, Eaton and Liberman.

MC 152117 (Sub-1), filed February 3, 1981. Applicant: LITTLE GINNY TRANSPORT SYSTEMS, INC., 824 27th Ave., S.W., Cedar Rapids, IA 52404. Representative: Virginia A. Wilson (same address as applicant). Transporting *general commodities* (except classes A and B explosives) between points in the U.S.

Volume No. OP4–059

Decided: March 3, 1981.

By the Commission, Review Board No. 1 members Carleton, Joyce and Jones.

MC 145357 (Sub-2), filed January 19, 1981, previously notice in the **Federal Register** issue of February 4, 1981, and republished this issue. Applicant: WESTMAR TRUCK LINES, INC., 801 So. Holgate St., Seattle, WA 98124. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., N.W., Washington, DC 20005. Transporting *such products* as are dealt in or used by a full line ship supplier and exporter, between points in CA, OR, WA, ID, and MT.

Note.—The purpose of this republication is to correctly state the requested authority.

Volume No. OP4–60

Decided: March 2, 1981.

By the Commission, Review Board No. 2, members Chandler, Eaton and Liberman.

MC 144806 (Sub-6), filed February 6, 1981. Applicant: FRED M. ANDERSON, d.b.a. DELTA VALLEY TRUCKING, 69 N. 200W, P.O. Box 51, Delta, UT 84624. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Delta Valley Farms, Inc., of Delta, UT.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-7433 Filed 3-9-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or before July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before [45 days from date of publication], (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 3, Members Parker, Fortier, and Hill.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1–056

Decided: March 2, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill.

MC 145260 (Sub-1F) (republication), filed September 22, 1980, published in the **Federal Register** of October 14, 1980 and republished this issue. Applicant: GLOUCESTER LOBSTER CO., INC., 3630 East St., Landover, MD 20785. Representative: Melvin Spitz (same address as applicant). A decision by the Commission, Review Board No. 3, decided December 29, 1980, served January 23, 1981, finds that applicant is authorized to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from points in MD and VA to points in CT, MA, ME, NH, RI and VT. Conditions: Applicant must conduct its for-hire motor carrier activities independently from its other business activities and maintain separate records for each. Applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to include NH in the destination points.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7430 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action signfficantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before [45 days from date of publication], (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unoppsed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract"

Volume No. OP2–034

Decided: February 25, 1981.

By the Commission, Review Board No. 1, members Carleton, Joyce and Jones.

MC 80443 (Sub-46), filed February 6, 1981. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Rd., Roseville, MN 55113. Representative: Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *machinery*, between Dallas, TX, Fayetteville, AR, Harrisburg, PA, Louisville, KY, Zion, IL, and points in Los Angeles County, CA, on the one hand, and, on the other, hand, points in the U.S.

MC 104523 (Sub-81), filed January 29, 1981. Applicant: HUSTON TRUCK LINE, INC., P.O. Box 427, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *metal products*, between Houston, TX, on the one hand, and, on the other, points in the U.S.

MC 130223 (Sub-1), filed February 5, 1981. Applicant: PETER PAN WORLD TRAVEL, INC., 1778 Main St., Springfield, MA 01103. Representative: Charles A. Webb, Suite 1111, 1828 L St., N.W., Washington, DC 20036, (202) 296–2929. As a *broker*, at points in the U.S. in arranging for the transportation by motor vehicle, of *passengers and their baggage*, in special and charter operations, between points in the U.S.

MC 134922 (Sub-340), filed January 28, 1981. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Diane Price (same address as applicant), (501) 758–0777. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Lamb-Weston, Inc., of Portland, OR.

MC 144222 (Sub-14), filed February 5, 1981. Applicant: RONALD HACKENBERGER, d.b.a. RON'S TRUCKING SERVICE, Rt. 3, Norwalk, OH 44812. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. Transporting *machinery and ores and minerals*, between points in MN, IA, MO, KS, AR, TN, KY, VA, WV, DE, MD, NJ, IL, IN, OH, PA, WI, MI, MA, CT, RI, NH, NY, VT, ME and DC, on the one hand, and, on the other, points in Crawford, Delaware and Wyandot Counties, OH.

MC 144622 (Sub-201), filed January 27, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021.

Transporting *rubber and plactic products*, between Los Angeles, CA, Chicago, IL, and points in Kern and Yolo Counties, CA, Fairfield County, CT, Fulton and Newton Counties, GA, Morgan and Will Counties, IL, Middlesex County, MA, Kent and Wayne Counties, MI, Ontario and Wayne Counties, NY, Warren County, NJ, Pottawatomie County, OK, Multnomah County, OR, Bell and Jefferson Counties, TX, and Wayne County, WA, on the one hand, and, on the other, points in the U.S.

MC 146632 (Sub-4), filed January 27, 1981. Applicant: BETS TRUCK LEASING, INC., P.O. Box 1050, Bennington, VT 05201. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103, (413) 781–8205. Transporting *machinery*, between the facilities used by U.S.T., Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 148522 (Sub-9), filed February 3, 1981. Applicant: PAUL E. ACE TRUCKING, INC., 930 Clay Ave., Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *food and related products*, (1) between South Volney Township, NY, Eden, NC, and Albany, GA, on the one hand, and, on the other, Milton, PA, points in Luzerne County, PA, points in Ocean, Union, Passaic, and Monmouth Counties, NJ, (2) between Newark, NJ, on the one hand, and, on the other, Geneva, NY, points in Northumberland, Susquehanna, Lycoming, and Mifflin Counties, PA, (3) between Winston-Salem, NC, on the one hand, and, on the other, points in Union and Monmouth Counties, NJ, points in Lycoming, Chester, Centre, Mifflin, and Clinton Counties, PA, (4) between points in Monroe County, NY, on the one hand, and, on the other, points in Ocean, Union, and Monmouth Counties, NJ, points in Chester County, PA, and (5) between Newark and Merrimack, NJ, Williamsburg, VA, points in Franklin County, OH, on the one hand, and, on the other, Easton and Allentown, PA, points in Northumberland, Schuykill and Wayne Counties, PA.

MC 151193 (Sub-4), filed January 23, 1981. Applicant: PAULS TRUCKING CORPORATION, 3 Commerce Dr., Cranford, NJ 07016. Representative: Michael A. Beam (same address as applicant), (202) 499–3869. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Progresso Foods Corporation, of Vineland, NJ.

MC 152743 (Sub-1), filed January 28, 1981. Applicant: AMERICAN CLEANING & MAINTENANCE ENTERPRISES, INC., 524 S. Union, Springfield, MO 65802. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, Mo 65804. Transporting *clay, concrete, and glass or stone products* and *metal products*, between points in the U.S., under continuing contract(s) with Concrete Company, of Springfield, MO.

MC 153212 (Sub-1), filed January 28, 1981. Applicant: JANE WINGER, d.b.a., SUN STATE TRUCKING, P.O. Box 1641, Haines City, FL 33844. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 South Orange Ave., Orlando, FL 32801. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Orchard Hill Farms, Inc., of Red Hook, NY.

MC 153772, filed January 21, 1981. Applicant: R & J TRANSPORTATION CO., INC., 1329 S. Johnson Ct., Lakewood, CO 80226. Representative: Gerald A. Seigal (same address as applicant). Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Iowa Beef Processors, Inc., of Dakota City, NE.

MC 153832, filed January 27, 1981. Applicant: DACHSHUND BUS LINES, LTD., P.O. Box 662, 837 S.W. Hurbert St., Newport, OR 97365. Representative: William D. Threlkeld, (same address as applicant), (503) 265–5618. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, between points in the U.S.

MC 153833, filed January 29, 1981. Applicant: POWELL-CHRISTENSEN, INC., d.b.a. GENERAL TRANSPORT CO., 501 East Main, Grandview, WA 98930. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009, (206) 453–0312. Transporting *petroleum, natural gas and their products*, between points in WA, OR, and ID.

MC 153872F, filed January 28, 1981. Applicant: MENDELSON EGG AND HENSLEY, INC., Route 1, Osakis MN 56360. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424. Transporting *food and related products*, between points in ND and MN, on the one hand, and, on the other, points in Fulton and Williams Counties, OH, and points in MI.

MC 153873, filed January 26, 1981. Applicant: JIM JACOBS TRUCKING, INC., 21850 Lemoyne Rd., Luckey, OH 43443. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603. Transporting *clay, concrete, glass or stone products*, between points in Fresno County, CA, Worcester County, MA, Monroe and Wayne Counties, MI, Wood and Wyandot Counties, OH, and Navarro County, TX, on the one hand, and, on the other, points in the U.S.

[FR Doc. 81-7431 Filed 3-9-81, 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new

entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP5–61

Decided: February 20, 1981.

By the Commission, Review Board No. 3, Members Parker, Fortier and Hill.

MC 105269 (Sub-92F), filed November 28, 1980, previously noticed in the **Federal Register** issue (republication) of January 8 and February 5, 1981. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI. Transporting *general commodities* (except commodities in bulk, in tank vehicles), between points in IL, IN, KY, MI, MN, MO, NY, OH, PA, WV, and WI, WV, and WI, restricted to the traffic originating at or destined to the facilities and warehouses of International Paper Company, its subsidiaries and Suppliers.

Note.—This republication is to include MI in territorial description, which was inadvertently omitted.

MC 109028 (Sub-15F), filed December 31, 1980, previously noticed in the **Federal Register** issue (republication) of January 29, 1981. Applicant: S & W TRANSFER, INC. 312 E. Wisconsin Ave., Milwaukee, WI 53202. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) between points in the U.S., under continuing contract(s) with (1) Amoco Foam Products Company of Chippewa Falls, WI, (2) Badger Paper Mills, Inc., of Peshtigo, WI, (3) Dura-Products, Inc., of Neenah, WI, (4) Green Bay Plastics, division of Mosinee Paper Corp., of Green Bay, WI, (5) Heywood-Wakefield Co., of Menominee, MI, (6) Pope & Talbot, Inc. of Eau Claire, WI, (7) Presto Products, Inc., of Appleton, WI, and (8) Tape, Inc., of Green Bay, WI.

Note.—Purpose of republication is to insert word "except" to show complete exception inadvertently omitted in original publication.

MC 141108 (Sub-14F), filed October 27, 1980. Applicant: D & C EXPRESS, INC., P.O. Box 746, Wilson, IA 52778. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting (1) *shaftings, bearings, bushings, crusher equipment and conveyor belt pulleys,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S. restricted to traffic originating at or destined to the facilities of R. J. Dick, Inc., its subsidiaries, affiliates and jobbers.

Volume No. OP5–62

Decided: February 25, 1981.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 40978 (Sub-81F), filed December 8, 1980, previously noticed in the **Federal Register** issue of January 27, 1981. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, a corporation, 3321 South Business Dr., Sheboygan, WI 53081. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *office furniture and office equipment,* and (2) *parts and supplies* for the commodities in (1), between points in Dodge and Washington Counties, WI, on the one hand, and, on the other, points in CT, DE, MD, NJ, NY, PA, and DC.

Note.—This republication adds Washington County, WI to the base of the territorial description.

MC 126899 (Sub-135), filed February 3, 1981. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Rd., Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., on the one hand, and, on the other, the facilities of Dealers Tire and Supply, Inc., in KY, IL, AR, IN, and MO.

Volume No. OP5–63

Decided: February 23, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 100449 (Sub-126), filed January 28, 1981. Applicant: MALLINGER TRUCK LINE, INC., R.R. 4, Ft. Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Wilson Foods Corporation, of Oklahoma City, OK.

MC 107478 (Sub-86), filed January 22, 1981. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. Box 2006, High Point, NC 27261. Representative: Kim D. Mann, 7101 Wisconsin Ave., Suite 1010, Washington, DC 20014. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with K Mart Corporation, of Troy, MI.

MC 109449 (Sub-54), filed February 2, 1981. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th St., Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). Transporting *food and related products,* between points in Hennepin County, MN, on the one hand, and, on the other, Denver, CO, and points in TX.

MC 121699 (Sub-14), filed January 23, 1981. Applicant: VOLUNTEER EXPRESS, INC., 404 Arlington Ave., P.O. Box 100886, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting *metal products,* between points in Carroll County, TN, on the one hand, and, on the other, points in the U.S.

Note.—Applicant intends to tack this authority with existing regular-route authority.

MC 126899 (Sub-134F), filed December 4, 1980. Applicant: USHER TRANSPORT, INC., P.O. Box 3156, Paducah, KY 42001. Representative: George M. Catlett, Suite 708 McClure Bldg., Frankfort, KY 40601. Transporting (1) *lumber and wood products,* and (2) *fabricated metal products,* between points in Jefferson County, KY, on the one hand, and, on the other, points in AR, IL, IN, MO, OH, TN, and WV.

MC 133119 (Sub-188), filed January 27, 1981. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, 200 Norka Drive, Akron, IA 51001. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *food and related products,* between points in TX, on the one hand, and, on the other, points in the U.S.

MC 141768 (Sub-1), filed February 2, 1981. Applicant: WESTERN ASPHALT (1972) LTD., P.O. Box 3195, Sherwood Park, Alberta T8A 2A6 Canada. Representative: Thomas M. O'Brien, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. Transporting *chemicals and related products,* between ports of entry on the international boundary line between the United States and Canada in MT, on the one hand, and, on the other, points in MT.

MC 142678 (Sub-2), filed January 29, 1981. Applicant: LES RAY & SONS, INC., Box 114A, Route 2, Lindsborg, KS 67456. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *general commodities, (except classes A and B explosives)*, between points in the U.S., under continuing contract(s) with Farmer's Union Elevator Co., Inc., of Lindsborg, KS.

MC 144189 (Sub-13), filed February 2, 1981. Applicant: CORPORATE TRANSPORT, INC., 107 7th North St., Liverpool, NY 13088. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *printing inks*, between points in the U.S., under continuing contract(s) with H. Blacker Printing Inks, of Hamilton, OH.

MC 144969 (Sub-27), filed February 2, 1981. Applicant: WHEATON CARTAGE COMPANY, a corporation, 3rd and "G" Sts., Millville, NJ 08332. Representative: Laurence J. DiStefano, Jr., 1101 Wheaton Ave., Millville, NJ 08332. Transporting *clay, concrete, glass or stone products*, between the facilities used by Bartlett-Collins Company in the U.S., on the one hand, and, on the other, points in the U.S.

MC 145548 (Sub-5), filed February 6, 1981. Applicant: COMMUNITY TRANSIT LINES, INC., 315 Howe Ave., Passaic, NJ 07055. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Over regular routes, transporting *passengers and their baggage*, in the same vehicle with passengers, between junction Garden State Parkway and Interstate Hwy 280 at East Orange, NJ, and New York, NY: from junction Garden State Parkway and Interstate Hwy 280 over Interstate Hwy 280 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 495 at Secaucus, NJ, then over Interstate Hwy 495 via the Lincoln Tunnel to New York, NY, and return over the same route, serving no intermediate points.

MC 146689 (Sub-6), filed January 29, 1981. Applicant: RONALD D. DINNOCENTI, ANGELINE DINNOCENTI, ROBERT L. LIST, AND CHARLES W. YETTER, III, a partnership, d.b.a. LARK LEASING CO., 261 Maplewood Drive, Pottstown, PA 19464. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Perk Foods Company, Div. of C.H.B. Foods, of Camp Hill, PA. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 147008 (Sub-3), filed February 4, 1981. Applicant: ALBERT NEAL WEBBER, JR., d.b.a. A. N. WEBBER, P.O. Box 95, Chebanse, IL 60922. Representative: Joel H. Steiner, 39 South LaSalle St., Suite 600, Chicago, IL 60603. Transporting *appliances, and water and air heating equipment*, between points in Kankakee County, IL and Chesterfield County, SC, on the one hand, and, on the other, points in the U.S.

MC 147388 (Sub-5), filed February 2, 1981. Applicant: EARLY BIRD FREIGHT LINES, INC., R. R. 1, Box 49, St. Libory, NE 68872. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. Transporting *general commodities* (except classes A and B explosives), between points in NE, on the one hand, and, on the other, points in the U.S.

MC 151028 (Sub-2), filed November 19, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S., under continuing contract(s) with R. T. French Co., of Rochester, NY.

MC 151298 (Sub-1), filed December 2, 1980. Applicant: REGILLES ST.-ARNEAULT, P.O. Box 84, La Reine, Abitibi, Quebec, Canada JOZ 2LO. Representative: Richard H. Streeter, 1729 H St. NW., Washington, DC 20006. Transporting *lumber* between points in the U.S., under continuing contract(s) with J. H. Normick, Inc., of La Sarre, Quebec, Canada.

MC 151489 (Sub-1), filed January 27, 1981. Applicant: BOYD L. COLLINS, d.b.a. BOYD'S HOTSHOT SERVICE, 5440 Magnolia St., Commerce City, CO 80022. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *machinery and transportation equipment*, between Denver, CO, on the one hand, and, on the other, points in CO, KS, MT, NE, NM, OK, ND, SD, TX, UT, and WY.

MC 153769, filed January 16, 1981. Applicant: RITEWAY TRUCKING, INC., 1111 West Mockingbird, Dallas TX 75247. Representative: James W. Hightower, 5801 Marvin D. Love Freeway, No. 301, Dallas TX 75237. Transporting (1) *waste or scrap materials not identified by industry producing*, (2) *metal products*, and (3) *chemicals and related products*, between points in the U.S.

MC 153878, filed January 28, 1981. Applicant: ZALE TRANSPORT, INC., 2600 Walnut St., McKeesport, PA 15132. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. Transporting (1) *such commodities* as are dealt in or used by manufacturers of drug store merchandise, between points in the U.S., under continuing contract(s) with The Kent Fixture Corp., of Hingham MA, Revco D.S., Inc., of Twinsburg, OH, and Pennex Products Co., Inc., of Verona, PA.

MC 153888, filed January 29, 1981. Applicant: JOSEPH VALLES, d.b.a. J. VALLES TRUCKING, 43116 Gallegos Ave., Fremont, CA 94538. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *metal products, and rubber and plastic products*, between points in the U.S., under continuing contract(s) with Pacific Pipe Company, of Oakland, CA.

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Decided: February 27, 1981.

By the Commission Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 1778 (Sub-8), filed February 3, 1981. Applicant: MOTOR EXPRESS, INC., 6501 West 65th St., Chicago, IL 60638. Representative: Joel H. Steiner, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Sweetheart Cup and Northwest Cone, Divisions of Maryland Cup Corporation, of Chicago, IL.

MC 5618 (Sub-6), filed February 3, 1981. Applicant: GEM CITY TRANSFER LINE, INC., 1811 North 30th St., Quincy, IL 62301. Representative: Douglas G. Brown, 913 South Sixth St., Springfield, IL 62703. Transporting *store fixtures*, between points in the U.S., under continuing contract(s) with Huck Fixture Company, of Quincy, IL.

MC 5619 (Sub-8), filed February 2, 1981. Applicant: CLEVELAND GENERAL TRANSPORT CO., INC., One Van St., Staten Island, NY 10310. Representative: Edward F. Bowes, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting (1) *gypsum and gypsum products*, (2) *building materials*, (3) *pulp, paper and related products*, (4) *chemicals and related products*, and (5) *plastic products*, between points in the

U.S., under continuing contract(s) with Georgia-Pacific Corporation, of Rosemont, PA.

MC 6078 (Sub-94), filed February 6, 1981. Applicant: D. F. BAST, INC., P.O. Box 2288, 1425 North Maxwell St., Allentown, PA 18001. Representative: Sander M. Bieber, Suite 920, 1100 Connecticut Ave. NW., Washington, D.C. 20036. Transporting (1) *general commodities* (except classes A and B explosives), between those points in the U.S. in and east of MN, IA, NE, KS, OK and TX, and (2) transportation equipment, between points in the U.S.

MC 119038 (Sub-3), filed February 2, 1981. Applicant: EAGLE TRANSFER CO., INC., P.O. Box 617, Wenatchee, WA 98801. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except classes A and B explosives), between points in Chelan, Okanogan, Grant, Douglas, and Kittitas Counties, WA, on the one hand, and, on the other, points in WA.

MC 121568 (Sub-80), filed February 6, 1981. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant) Transporting *machinery*, between points in TN, AR, TX, and OK.

Note.—Applicant intends to tack this authority with its existing authority in MC 121568.

MC 129908 (Sub-76), filed February 6, 1981. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th St., Oklahoma City, OK 73107. Representative: T. J. Blaylock, P.O. Box 75410, Oklahoma City, OK 73147. Transporting *chemicals and related products*, between points in UT, on the one hand, and, on the other, points in OK and TX.

MC 133219 (Sub-30), filed February 2, 1981. Applicant: NEBRASKA BULK TRANSPORTS, INC., P.O. Box 215, Bennet, NE 68317. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting (1) *general commodities* (except classes A an B explosives), between the facilities of Archer-Daniels-Midland Company, at points in the U.S., on the one hand, and, on the other points in the U.S., and (2) *transportation equipment*, between points in Lancaster County, NE, on the one hand, and, on the other, points in the U.S.

MC 134798 (Sub-5), filed February 5, 1981. Applicant: BLAIR CARTAGE, INC., 11330 Kinsman Rd., P.O. Box 252, Newbury, OH 44065. Representative: Lewis S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting *general commodities*, between points in Fayette County, KY, and points in OH, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 135678 (Sub-31), filed February 2, 1981. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *printed matter*, between points in AZ, CA, CO, NV, NM, OK, TX, UT, and WY.

MC 138039 (Sub-8), filed February 2, 1981. Applicant: BAY DELIVERY CORP., 1919 Broadhollow rd., Farmingdale, NY 11735. Representative: Bruce J. Robbins, 118–21 Queens Blvd., Forest Hills, NY 11375. Transporting *general commodities* (except classes A and B explosives), between those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 138069 (Sub-13), filed February 5, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Rd., Omaha, NE 68114. Transporting *food and related products*, between Omaha, NE, on the one hand, and, on the other, points in the U.S.

MC 140549 (Sub-22), filed February 5, 1981. Applicant: FRITZ TRUCKING, INC., East Highway 7, Clara City, MN 56222. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *food and related products*, between points in Clark County, SD, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 143098 (Sub-3), filed February 5, 1981. Applicant: LAUGHLIN TRUCKING, INC., Rt. 1 B 95, Carlton, OR 97111. Representative: Lawrence V. Smart, Jr., 419 N W 23rd Ave., Portland, OR 97210. Transporting *chemicals and related products*, between points in OR, WA, CA, ID, and UT.

MC 144188 (Sub-26), filed January 29, 1981. Applicant: P. L. LAWTON, INC., P.O. Box 325, Berwick, PA 18603. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *general commodities* (except classes and A and B explosives), between points in the U.S.

MC 146728 (Sub-3), filed February 6, 1981. Applicant: GOLDEN BROS., INC., 234 East McClure Street, Kewanee, IL 61433. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603. Transporting *metal products*, between points in IL, on the one hand, and, on the other, points in the U.S. (except AK, ID, HI, MT, NV, and WY).

MC 148198 (Sub-3), filed February 5, 1981. Applicant: A. MATTEO TRUCKING, INC., 1465 Crown Point Rd., Verga, NJ 08093. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Transporting *cat litter*, between Pennsauken, NJ, on the one hand, and, on the other, points in MD, NY, PA, and VA.

MC 149049 (Sub-2), filed February 5, 1981. Applicant: MOTORWAYS FREIGHT SYSTEMS, INC., 10360 Stoudertown Rd., Pickerington, OH 43147. Representative: Frank L. Calvary, 3066 N. Star Rd., Columbus, OH 43207. Transporting (1) *athletic goods*, between points in Franklin and Greene Counties, OH, on the one hand, and, on the other, points in the U.S., and (2) *lumber and wood products*, between points in IN, IL, IA, KY, MI, MN, MO, NY, OH, PA, and WI, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, LA, MS, NM, NC, ND, OR, SC, SD, TN, TX, VA, WA, and WY.

MC 150388 (Sub-1), filed February 6, 1981. Applicant: BOSS TRANSPORTATION CO., INC., P.O. Box 40977; Memphis, TN 38104. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting *general commodities* (except classes A and B explosives) between points in MA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 150388 (Sub-2), filed February 6, 1981. Applicant: BOSS TRANSPORTATION CO., INC., P.O. Box 40977, Memphis, TN 38104. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting *rubber and plastic products*, between points in Worcester County, MA, Tarrant County, TX, Mohave County, AZ, on the one hand, and, on the other, points in the U.S.

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Decided: February 27, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 52858 (Sub-128), filed February 6, 1981. Applicant: CONVOY COMPANY, a corporation, 3900 N.W. Yeon Ave., Portland, OR 97210. Representative:

Raymond A. Greene, Jr., 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *transportation equipment*, between points in Keweenaw, Houghton, Ontonagon, Gobebic, Iron, Baraga, Marquette, Dickinson, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac and Chippewa Counties, MI, and points in AR, AZ, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, ND, OK, OR, SD, TX, UT, WA, WI, and WY. Condition: issuance of a certificate in this proceeding is subject to prior or coincidental cancellation at applicant's written request of all of its existing certificates except No. MC 52858 Sub 124.

MC 83539 (Sub-542), filed February 5, 1981. Applicant: C & H TRANSPORTATION CO., INC., 9757 Military Parkway, P.O. Box 270535, Dallas, TX 75227. Representative: Thomas E. James (same address as applicant). Transporting *classes A, B and C explosives*, between points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of the issuance of the certificate.

MC 99938 (Sub-10), filed February 2, 1981. Applicant: VAN'S AUTO & AIR EXPRESS, INC., C.P.O. Box 609, Kingston, NY 12401. Representative: Bruce J. Robbins, 118–21 Queens Blvd., Forest Hills, NY 11375. Transporting *general commodities* (except classes A and B explosives), between New York, NY, and points in Albany, Columbia, Delaware, Dutchess, Greene, Orange, Otego, Putnam, Rennselaer, Rockland, Sullivan, Ulster, and Westchester Counties, NY, New York, NY, and points in Otego County, NY.

Note.—The purpose of this application is the conversion of applicant's certificate or registration in MC 99938 Sub 8 to a certificate of public convenience and necessity. Issuance of a certificate here is conditioned upon the prior or coincidental cancellation at applicant's request of the named certificate of registration.

MC 109708 (Sub-104), filed February 5, 1981. Applicant: INDIAN RIVER TRANSPORT COMPANY, INC., P.O. Box AG, Dundee, FL 33838. Representative: Russell E. Haas (same address as applicant). Transporting *food and related products*, between points in Shelby County, TN, Allegheny County, PA, Sandusky County, OH, Ottawa County, MI, Muscatine County, IA, Mecklenburg County, NC, and Winchester, VA, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MS, MO, NC, OK, SC, TN, TX, and VA.

MC 111729 (Sub-769), filed February 3, 1981. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Rd., New Hyde Park, NY 11042. Representative: Elizabeth L. Henock (same address as applicant). Transporting *printed matter*, between points in the U.S., under continuing contract(s) with Federal Loan Bank of Atlanta, of Atlanta, GA.

MC 114569 (Sub-378), filed Feburary 5, 1981. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same as applicant). Transporting *floor coverings*, between points in Kankakee County, IL, and Hinds County, MS, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NY, NJ, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WV, WI, and DC.

MC 126899 (Sub-138), filed February 6, 1981. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Rd., Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601. Transporting *such commodities* as are dealt in by manufacturers or converters of paper and paper products, between points in the U.S. on the one hand, and, on the other, the facilities of Westvaco Corporation, in U.S.

MC 135518 (Sub-30), filed January 29, 1981. Applicant: WESTERN CARRIERS, INC., 53 South Dawson St., Seattle, WA 98108. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *food and related products*, between points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, OK, OR, TX, UT, WA, and WY.

MC 136278 (Sub-1), filed February 4, 1981. Applicant: TRUCKWAY SERVICE, INC., 1099 Oakwood Blvd., Detroit, MI 48217. Representative: James R. Stiverson, 1396 W. Fifth Ave., Columbus, OH 43212. Transporting (1) *commodities* in bulk, and (2) *salt and salt products*, between points in AL, DE, GA, IL, IN, IA, KY, MD, MI, MN, MO, NC, NJ, NY, OH, PA, SC, TN, VA, WI, WV, and DC.

MC 138068 (Sub-5F), filed November 20, 1980. Applicant: WAREHOUSE TRANSPORTATION COMPANY, INC., P.O. Box 84, Urbana, OH 43078. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with The Drackett Products Company, of Cincinnati, OH.

MC 138069 (Sub-14), filed February 5, 1981. Applicant: LUCIUS, INC., 2512 South 163rd Street, Omaha, NE 68130. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Rd., Omaha, NE 68114. Transporting food and related products, between points in York County, NE, on the one hand, and, on the other, points in the U.S.

MC 138308 (Sub-129F), filed November 6, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *fertilizer compounds, and materials, equipment, and supplies* used in the manufacture and distribution of fertilizer compounds (except commodities in bulk), between points in Fayette County, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138308 (Sub-140), filed February 5, 1981. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., on the one hand, and, on the other, the facilities used by Levi Strauss & Co., in the U.S.

MC 142059 (Sub-158), filed February 6, 1981. Applicant: CARDINAL TRANSPORT, INC., P.O. Box 911, Joliet, IL 60434. Representative: Jack Riley (same address as applicant). Transporting *metal products*, between points in the U.S., on the one hand, and, on the other, the facilities used by Freedom Stove Work, its customers and suppliers, in the U.S.

MC 142399 (Sub-3), filed February 6, 1981. Applicant: ELLERBROCK TRUCKING, INC., Highway 20 East, Sac City, IA 50583. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *metal products*, and (2) *lumber and wood products*, between points in Buena Vista County, IA, on the one hand, and, on the other, points in CO, ID, IL, IN, KS, MN, MO, MS, MT, NE, NY, UT, OR, and WI.

MC 143188 (Sub-3), filed February 4, 1981. Applicant: THE G & K HAULING COMPANY, a Corporation, 744 Water St., Toledo, OH 43604. Representative: James R. Stiverson, 1396 West Fifth Ave., Columbus, OH 43212. Transporting *commodities in bulk, and clay, concrete, glass, or stone products*, between points in IL, KY, MI, NY, OH, PA, TN, WI, and WV. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 146888 (Sub-7), filed February 6, 1981. Applicant: GLASS CONTAINER TRANSPORT, INC., Route 1, Box 271, Ridgeway, SC 29130. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *such commodities* as are dealt in by manufacturers and distributors of household products, between those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 151198 (Sub-1), filed January 29, 1981. Applicant: JOHN R. SEASHOLTZ, JR. and THOMAS M. TATE, a partnership, d.b.a. MERRIMACK SHUTTLE AND EXPRESS SERVICE, 28 Constance St., Merrimack, NH 03054. Representative: John R. Seaholtz, Jr. (same address as applicant). Transporting *passengers and their baggage and express in the same vehicle with passengers*, in special and charter operations, between Merrimack and Nashua, NH, on the one hand, and, on the other, Logan International Airport at Boston, MA.

MC 151599 (Sub-2), filed February 6, 1981. Applicant: J. L. McCOY, INC., P.O. Box 525, Ravenswood, WV 26164. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Transporting *general commodities*, (except classes A and B explosives) between points in the U.S., under continuing contract(s) with the L. B. Foster Company, of Doraville, GA.

MC 153328 (Sub-2), filed February 5, 1981. Applicant: RED K TRANSPORT, INC., 2545 Peach Tree, Cape Girardeau, MO 63701. Representative: Joel H. Steiner, 39 South Lasalle, Suite 600, Chicago, IL 60603. Transporting *metal products*, between points in Jefferson County, IL, on the one hand, and, on the other, points in the U.S.

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Decided: February 24, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton and Liberman.

MC 143699 (Sub-4), filed February 4, 1981. Applicant: QUALITY CONTRACT CARRIERS, INC., 1009 West Edgewood Ave., Indianapolis, IN 46217. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *printed matter*, between points in the U.S., under continuing contract(s) with R. R. Donnelley & Sons Company, of Crawfordsville, IN.

MC 145088 (Sub-7), filed January 27, 1981. Applicant: S & T TRUCKLOAD, INC., 2527 N.E. 28th St., Fort Worth, TX 76106. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. Transporting *machinery*, between points in Henderson County, TX, on the one hand, and, on the other, points in the U.S.

MC 147329 (Sub-3)(MIF), (M2F), and (M3F), filed February 5, 1981. Petitioner: All STATE TRANSPORT, INC., 5959 South Alameda St., Los Angeles, CA 90001. Representative: Bobbie F. Albanese, Suite 310, Whittier Square Bldg., 13215 East Penn St., Whittier, CA 90602. Transporting *ferrous and non-ferrous metals, raw, and ferrous and non-ferrous metal articles*, between points in CA, CO, ID, MT, NM, NV, OR TX, UT, WA, and AZ, under continuing contract(s) with (a) California Steel Works, Inc. and Capitol Metals Co., Inc., of Livermore, CA, (b) Capitol Metals Co., Inc., of Torrance, CA, (c) Omni Steel Co., Inc., of Sherman Oaks, CA, (d) Champion Metal Company, of Klamath Falls, OR, and (e) Wa-Lu Supply, Inc., of Murrary, UT. Condition: Issuance of a modified permit in this proceeding is conditioned upon coincidental cancellation at applicants written request of Permit MC 147329 (Sub-3F), issued January 21, 1981.

Note.—The purpose of this application is to add additional contracting shippers.

MC 151618 (Sub-1), filed February 4, 1981. Applicant: H. F. RADANDT, INC., 3106 Locust Lane, 2nd Crossing, Eau Claire, WI 54701. Representative: John L. Bruemmer, 121 West Doty St., Madison, WI 53703. Transporting *those commodities* which, because of their size or weight, require the use of special handling or equipment, between points in Eau Claire County, WI, on the one hand, and, on the other, points in IA, IL, MI, and MN.

MC 152619 (Sub-1), filed February 4, 1981. Applicant: CLARENCE E. SCHMIDT, d.b.a. C & J TRUCKING, Route 2, Beaver Dam, WI 53916. Representative: John L. Bruemmer, 121 West St., Madison, WI 53703. Transporting *foods and related products*, between points in Dodge County, WI, on the one hand, and, on the other, points in IL, MD, MI, NY, NJ, OH, PA, and DC.

MC 152768 (Sub-1), filed February 3, 1981. Applicant: HAMILTON TRUCK CORP., 141 Willis St., Bedford, OH 44146. Transporting *machinery, transportation equipment, and chemicals, and related products*, between points in Lorain, Cuyahoga, Medina, Summit, Portage, Geauga, and Lake Counties, OH, on the one hand, and, on the other, points in MI, IL, and NY.

MC 152998 (Sub-1), filed February 3, 1981. Applicant: LYNWAY TRUCKING CORP., 147-61 77th Ave., Flushing, NY 11367. Representative: Ronald Podolsky, 15 Park Row, New York, NY 10038. Transporting *general commodities* (except classes A and B explosives), between New York, NY, on the one hand, and, on the other, points in ME, NH, VT, CT, MA, RI, NY, NJ, PA, DE, MD, VA, FL, and DC.

MC 153328 (Sub-1), filed January 29, 1981. Applicant: RED K TRANSPORT, INC., 2545 Peach Tree, Cape Girardeau, MO 63701. Representative: Joel H. Steiner, 39 South LaSalle St., Suite 600, Chicago, IL 60603. Transporting *general commodities* (except classes A and B explosives), between points in New Madrid County, MO, on the one hand, and, on the other, points in the U.S.

MC 153379 (Sub-1), filed February 3, 1981. Applicant: FRANK LACKEY TRUCKING, Route 4, Tuscumbia, AL 35674. Representative: Gerald D. Colvin, Jr., 603 Frank Nelson Bldg., Birmingham, AL 35203. Transportation *general commodities* (except classes A and B explosives), continuing contract(s) with International Minerals and Chemical Corp. of Florence, AL.

MC 153838 (Sub-1), filed February 3, 1981. Applicant: VALLEY TRANSPORT, INC., 1810 East Hwy. 30, Lexington, NE 68850. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Transporting (1)(a) *such commodities* as are dealt in or used by manufacturers of livestock handling and feeding equipment and supplies, livestock and metal products, between points in Dawson County, NE, on the one hand, and, on the other, points in the U.S., and (2) *lumber and wood products, and forest products*, between those points in that part of NE on and west of U.S. Hwy 81, on the one hand, and, on the other, points in AL, AR, AZ, CA, CO, GA, ID, KY, LA, MS, MT, NV, ND, NM, OK, OR, SD, TN, TX, UT, WA, and WY.

MC 154068, filed February 2, 1981. Applicant: ROTELLE, INC., P.O. Box 273, Spring House, PA 19477. Representative: Steven L. Weiman, 4 Professional Dr., Suite 145, Gaithersburg, MD 20760. Transporting *food and related products*, between points in CT, DE, IL, MA, MD, NJ, NY, PA, and VA, on the one hand, and, on the other, points in Montgomery County, PA.

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Decided: February 27, 1981.

By the Commission, Review Board No. 2 members Chandler, Eaton and Liberman.

MC 36448 (Sub-12), filed February 6, 1981. Applicant: MURFREESBORO FREIGHT LINE CO., P.O. Box 1113, Murfreesboro, TN 37130. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting *general*

commodities (except classes A and B explosives) between Louisville, KY and Atlanta, GA.

MC 43038 (Sub-498), filed February 6, 1981. Applicant: COMMERCIAL CARRIERS, INC., 20300 Civic Center Dr., Fourth Floor, Box CS 5027, Southfield, MI 48037. Representative: Nicholas W. Hetman, 3800 Frederica St., Owensboro, KY 42301. Transporting *motor vehicles,* between points in the U.S., under continuing contract(s) with Mazda Motors of America (Central), Inc., of Compton, CA.

MC 52579 (Sub-215), filed January 30, 1981. Applicant: GILBERT CARRIER CORP., One Gilbert Drive, Secaucus, NJ 07094. Representative: Zoe Ann Pace, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *wearing apparel,* between Long View and San Antonio, TX, on the one hand, and, on the other, Greer, SC, Tucker, GA, Wilmington, DE, Chicago, IL, Los Angeles, and North Bergen, NJ.

MC 55889 (Sub-70), filed January 28, 1981. Applicant: AAA COOPER TRANSPORTATION, P.O. Box 6827, Dothan, AL 36302. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Over *regular* routes, transporting *general commodities,* (except classes A and B explosives) (1) between McAllen, TX, and Alva, OK, over U.S. Hwy 281, (2) between San Antonio and Laredo, TX over U.S. Hwy 81, (3) between San Antonio and Van Horn, TX over U.S. Hwy 90, (4) between Lake Charles, LA and Las Cruces, NM over Interstate Hwy 10, (5) between Laredo, TX and Miami, OK over U.S. Hwy 59, (6) between Brownsville, TX and Newkirk, OK over U.S. Hwy 77, (7) between Galveston and Dallas, TX, over Interstate Hwy 45, (8) between Memphis, TN and Albuquerque, NM, over Interstate Hwy 40, (9) between Birmingham, AL and junction Interstate Hwy 20 and U.S. Hwy 10 near Kent, TX over Interstate Hwy 20, (10) between Beaumont, TX and Boise City, OK over U.S. Hwy 287, (11) between Del Rio, TX and Oklahoma City, OK over U.S. Hwy 277, (12) between Port Lavaca and Dalhart, TX over U.S. Hwy 87, (13) between Las Vegas, NM and Laurel, MS over U.S. Hwy 84, (14) between Montgomery, AL and El Paso, TX over U.S. Hwy 80, (15) between De Ridder, LA and Brady, TX over U.S. Hwy 190, (16) between Dallas, TX and Bartlesville, OK over U.S. Hwy 75, (17) between Dallas and San Antonio, TX over Interstate Hwy 35, (18) between Miami and Oklahoma City, OK over Interstate Hwy 44, (19) between Little Rock, AR and Dallas, TX over Interstate Hwy 30, (20) between Memphis, TN and Rogers, AR, from Memphis over U.S. Hwy 63 to Imboden, AR, then over U.S. Hwy 62 to Rogers, and return over the same routes, (21) between Montgomery, AL and Las Cruces, NM over U.S. Hwy 82, (22) between Lufkin, TX and Vinita, OK over U.S. Hwy 69, (23) between Las Cruces, NM and Little Rock, AR over U.S. Hwy 70, (24) Between Las Vegas and Las Cruces, NM over Interstate Hwy 25, (25) between Brownfield and El Paso, TX over U.S. Hwy 62, (26) between Farwell, TX and Vinita, OK over U.S. Hwy 60, (27) between Shreveport, LA and Rogers, AR over U.S. Hwy 71, (28) between Ruston, LA and Horseshoe Bend, AR over U.S. Hwy 167, (29) between Harrison, AR and Tallulah, LA over U.S. Hwy 65, (30) between Round Rock, TX and Memphis, TN over U.S. Hwy 79, (31) between Boise City, OK and Little Rock, AR over U.S. Hwy 64, (32) between Newbern, TN and Turrell, AR from Newbern over U.S. Hwy 51 to junction Interstate Hwy 155, then over Interstate Hwy 155 to junction Interstate Hwy 55, then over Interstate Hwy 55 to Turrell, and return over the same routes, (33) between Memphis, TN and junction Interstate Hwy 55 and Interstate Hwy 10, over Interstate Hwy 55, (34) between Memphis, TN and New Orleans, LA over U.S. Hwy 61, (35) between Memphis, TN and Birmingham, AL over U.S. Hwy 78, (36) between Waynesboro, MS and Jackson, TN over U.S. Hwy 45, (37) between Tupelo and Clarksdale, MS over MS Hwy 6, (38) between Hattiesburg and Yazoo City, MS over U.S. Hwy 49, (39) between Memphis, TN and Birmingham, AL, from Memphis over U.S. Hwy 72 to Athens, AL, then over Interstate Hwy 65 to Birmingham, and return over the same routes, (40) between Hattiesburg and Natchez, MS over U.S. Hwy 98, and (41) between Walnut and Laurel, MS over MS Hwy 15; serving in routes (1) through (41) above, (a) all intermediate points, and (b) the off-route points in Dona Ana, Otero, Eddy, Lea, Lincoln, Chaves, Roosevelt, Curry, Sante Fe, De Baca, Socorro, Sierra, Guadalupe, Quay, San Miguel, Bernalillo, Sandoval, Torrance, and Valencia Counties, NM, and points in AR, LA, MS, OK, and TX, in connection with applicants otherwise authorized regular route operations.

Note.—Applicant intends to tack this authority with its existing regular and irregular route operations.

MC 108119 (Sub-280), filed February 5, 1981. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: James L. Nelson, 1241 Pierce Butler Route, St. Paul, MN 55104. Transporting (1) *those commodities which because of their size or weight require the use of special handling or equipment,* (2) *self-propelled articles,* (3) *metal products,* (4) *contractors' equipment,* (5) *construction equipment,* and (6) *machinery,* (1) between those points in the U.S. in and east of MN, IA, MO, AR, and LA, and (2) between those points in the U.S. in and east of MN, IA, MO, AR, and LA, on the one hand, and, on the other, those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX.

MC 108119 (Sub-283), filed February 4, 1981. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. Box 43010, St. Paul, MN 55164. Representative: Donald A. Morken, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *such commodities* as are dealt in or used by manufacturers of (1) pollution control equipment, (2) energy producing, reclamation and mining equipment, and (3) self-propelled vehicles and self-propelled machinery, between points in the U.S. on the one hand, and, on the other, the facilities used by Envirotech Corporation and its subsidiaries in the U.S.

MC 110288 (Sub-22), filed February 5, 1981. Applicant: HARRY HENERY, INC., 3517 West Washington St., Indianapolis, IN 46214. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities,* between points in the U.S., under continuing contract(s), with Hoover Universal, Inc., of Georgetown, KY. Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 114829 (Sub-26), filed January 29, 1981. Applicant: GENERAL CARTAGE COMPANY, INC., P.O. Box 417, Sterling, IL 61081. Representative: Daniel C. Sullivan, 10 S. LaSalle St., Suite 1600, Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers of paper, paper products, and containers between points in the U.S., under continuing contract(s) with Stone Container Corporation and Weyerhauser Company of Chicago, IL, Container Corporation of America of Carol Stream, IL, and Brothers Paperbox Company of Sioux City, IA.

MC 114969 (Sub-97), filed February 4, 1981. Applicant: PROPANE TRANSPORT, INC., 1734 State Route 131, P.O. Box 232, Milford, OH 45150. Representative: James R. Stiverson, 1396 W. Fifth Ave., Columbus, OH 43212. Transporting (1) *petroleum, natural gas*

and their products, and (2) *chemicals and related products,* between those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 121318 (Sub-14F), filed February 3, 1981. Applicant: YOURGA TRUCKING, INC., 145 Shenango Street, P.O. Box 335, Wheatland, PA 16161. Representative: Harold G. Hernly, Jr., 110 South Columbus Street, P.O. Box 1281, Alexandria, VA 22313. Transporting (1) *metal products,* (2) *building materials,* (3) *machinery,* (4) *rubber and plastic products,* and (5) *transportation equipment,* between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NY, NJ, OH, PA, RI, VT, VA, WV, and DC.

MC 124328 (Sub-142), filed February 3, 1981. Applicant: BRINK'S, INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Keith G. O'Brien, 1729 H. St., NW., Washington, DC 20006. Transporting *precious metals,* between points in the U.S., under continuing contract(s) with Jackson Precious Metals, Inc., of Jackson, OH.

MC 126899 (Sub-136), filed February 4, 1981. Applicant: USHER TRANSPORT, INC., 3925 Old Benton, Rd., Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601. Transporting *general commodities* (except classes A and B explosives) between points in Fayette County, KY, on the one hand, and, on the other, points in U.S.

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Decided: February 23, 1981.

By the Commission, Review Board No. 2, Members Chandler, Eaton, and Liberman.

MC 126899 (Sub-137), filed February 4, 1981. Applicant: USHER TRANSPORT, INC., 3925 Old Benton, Rd., Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Bldg., Frankfort, KY 40601. Transporting *coal and coal products, chemicals and related products, and petroleum, natural gas and their products,* (1) between points in Alexander County, IL, and Mississippi and Pemiscot Counties, MO, on the one hand, and, on the other, points in AR, IL, KY, MO, and TN, and (2) between points in Gibson and Posey Counties, IN, on the one hand, and, on the other, points in KY.

MC 127799 (Sub-11), filed January 29, 1981. Applicant: LUPPES TRANSPORT COMPANY, INC., Box 101, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Transporting *chemicals and related products,* (1) between points in IA, MN, and IL, and (2) between points in MN, on the one hand, and, on the other, points in ND and SD.

MC 133119 (Sub-189), filed February 3, 1981. Applicant: HEYL TRUCK LINES, INC., P.O. Box 206, 200 Norka Dr., Akron, IA 51001. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *food and related products,* between points in Jefferson County, CO, on the one hand, and, on the other, points in TN, LA, and MS.

MC 136228 (Sub-42), filed February 4, 1981. Applicant: LUISI TRUCK LINES, INC., P.O. Box H, Milton-Freewater, OR 97862. Representative: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232. Transporting *food and related products,* between points in Whitman County, WA, on the one hand, and, on the other, points in CA.

MC 136818 (Sub-125), filed February 3, 1981. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 W. Elwood Rd., Phoenix, AZ 85041. Representative: Donald E. Fernaays, 4040 E. McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *general commodities* (except classes A and B explosives), between Kansas City, MO, on the one hand, and, on the other, points in the U.S.

MC 142059 (Sub-157), filed January 27, 1981. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting *machinery,* between Minneapolis, MN, and points in Madison County, AL, on the one hand, and, on the other, points in the U.S.

MC 143059 (Sub-160), filed February 3, 1981. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting *such commodities* as are dealt in by manufacturers or distributors of building materials, between points in the U.S.

MC 143059 (Sub-161), filed February 6, 1981. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting *general commodities,* between the facilities of Abex Corporation in the U.S. on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes the transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate.

MC 145219 (Sub-21), filed February 4, 1981. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 500, Camden, SC 29020. Representative: William P. Sullivan, 818 Connecticut Ave., NW., Washington, D.C. 20006. Transporting *rubber and plastic products,* between Trumbull County, OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 148978 (Sub-3), filed January 30, 1981. Applicant: OHIO SWIFTWAY, INC., 105 Jamison Ave., Cadiz, OH 43907. Representative: William J. Lavelle, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Wilgus & Co., Truss & Panel, Inc., and Lumber Wholesalers, Inc., all of Cadiz, OH, (b) Medina Door, Inc., of Medina, OH, (c) Florida Made Door Corp., of Ashtabula, FL, (d) L. J. Smith Inc., of Bowerston, OH, (e) Dealers Warehouse Corporation of Knoxville, TN, (f) Bennett Supply Company of Pittsburgh, PA, and (g) Schultz, Snyder & Steele Lumber Co., of Lansing, MI.

MC 149269 (Sub-1), filed February 3, 1981. Applicant: PALMER INDUSTRIES, INC., P.O. Box 839, Macon, GA 31202. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting *plastic products,* between points in Franklin County, OH, and Tuscaloosa County, AL, on the one hand, on the other, points in the U.S.

MC 151078 (Sub-3), filed January 27, 1981. Applicant: COASTAL FAST FREIGHT, INC., P.O. Box 445, Jersey City, NJ 07305. Representative: Charles A. Webb, 1828 L Street NW., Suite 1111, Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives), between Jersey City, NJ, and points in Hartford, Middlesex, New Haven, and New London Counties, CT, Bristol and Middlesex Counties, MA, and points in RI.

MC 151709 (Sub-1), filed January 28, 1981. Applicant: U. S. SERVICES, CORP., 470 Mall Circle Dr., Monroeville, PA 15146. Representative: Michael J. Peretto (same address as applicant). Transporting *waste or scrap materials not identified by industry producing,* between those points in the U.S. in and east of MS, TN, KY, IL, and WI.

MC 151768 (Sub-11), filed February 3, 1981. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101. Transporting *such commodities* as are dealt in or

used by the manufacturers and distributors of floor tile, between the facilities of Kentile Floors, Inc., in the U.S., on the one hand, and, on the other, points in the U.S.

MC 152268 (Sub-1), filed January 29, 1981. Applicant: KEN WILKINSON, d.b.a. WILKINSON FREIGHT LINES, 15 S Main St., Belmont, NC 28012. Representative: Ken Wilkinson (same address as applicant). Transporting *textile mill products*, between points in NC on and west of Interstate Hwy 77, on the one hand, and, on the other, points in Florence, Chesterfield and York Counties, SC.

MC 153909, filed February 2, 1981. Applicant: FREIGHT SERVICES, INC., P.O. Box 96, Smithboro, IL 62284. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with USS Agri-Chemicals Division, United States Steel Corporation, of Atlanta, GA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7434 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient interest in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-028

Decided: February 23, 1981.

By the Commission, Review Board No. 3, members Fortier, Hill, and Parker. (Member Hill not participating)

MC 24943 (Sub-2), filed February 2, 1981. Applicant: WOODBURN TRUCK LINE, INC., 1365 N Front St., Woodburn, OR 97071. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Avenue, Portland, OR 97210, (503) 226-3755. Transporting *Chemicals and related products* between points in OR and WA.

MC 32882 (Sub-154F). Applicant: MITCHELL BROS. TRUCK LINES, 3841 N. Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217, (503) 285-0481. Transporting *metal products*, between points in Maricopa County, AZ, on the one hand, and, on the other, points in the U.S.

MC 43963 (Sub-32), filed February 8, 1981. Applicant: CHIEF TRUCK LINES, INC., 1479 Ripley Street, Lake Station, IN 46405. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602. Transporting *commodities which because of size or weight require the use of special equipment; lumber and wood products, metal products, machinery and transportation equipment*, between points in IL, IN, OH and WI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, OK and TX.

MC 52323 (Sub-3), filed January 15, 1981. Applicant: E. I. BRANDT TRUCKING CO., INC., 560 No. George Washington Blvd., P.O. Box 125, Yuba City, CA 95991. Representative: E. I. Brandt (same address as applicant), (916) 673-7323. Transporting *lumber and wood products, and pulp, paper and related products*, between points in CA, on the one hand, and, on the other, points in OR and WA.

MC 59292 (Sub-46), filed February 6, 1981. Applicant: THE MARYLAND TRANSPORTATION CO., 1111 Frankfurst Avenue, Baltimore, MD 21225. Representative: Charles J. Braun, Jr. (same address as applicant), (301) 355-5800. Transporting *metal products*, between points in CT, DE, MD, NJ, NY, NC, OH, PA, VA, WV, and DC.

MC 61993 (Sub-11), filed January 22, 1981. Applicant: KEYSTONE TOURS, INC., R.D. 2, Box 116, Bath, PA 18014. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *passengers, and their baggage*, in charter and special operations, between points in PA, NJ, and NY, on the one hand, and, on the other, points in the U.S.

Note.—Applicant may now provide charter service in the area applied for, by tacking its charter authority between points in NY, NJ, and PA with its incidental charter authority under its regular route between Bangor, PA and Atlantic City, NJ via a tacking point in PA or NJ authorized to be served on its regular route.

MC 63562 (Sub-81F), filed February 3, 1981. Applicant: BN TRANSPORT, INC., P.O. Box 22694, Wellshire Station, Denver, CO 80222. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting *such commodities* as dealt in by wholesale and retail restaurant supply houses, grocery stores, hotels, schools and institutions, between points in CO and NM, on the one hand, and, on the other, points in the U.S.

MC 72442 (Sub-49), filed February 6, 1981. Applicant: AKERS MOTOR LINES, INCORPORATED, P.O. Box 34303,

Charlotte, NC 28234. Representative: Jay R. Hanson (same address as applicant), (704) 523–6448. Transporting *general commodities* (except classes A and B explosives), between points in FL and GA.

Note.—Applicant indicates intention to tack at points in GA, and with other existing authority.

MC 77972 (Sub-38), filed January 26, 1981. Applicant: MERCHANTS TRUCK LINE, INC., P.O. Box 908, New Albany, MS 38652. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205, 601–948–6820. Transporting over regular routes, *general commodities* (except classes A and B explosives), (1) between Dallas, TX and Jackson, MS over U.S. Hwy 80 and Interstate Hwy 20, serving all intermediate points and Tyler, TX as an off-route point, (2) between the AL–GA State line and Atlanta, GA and Covington, GA as an off-route point, (3) between the AL–GA State line and Chattanooga, TN over U.S. Hwy 11 and Interstate Hwy 59, serving all intermediate points, and (4) serving all points in MS as off-route points in connection with applicant's otherwise authorized regular-route operations.

Note.—Applicant intends to tack the above requested authority with existing regular route authority.

MC 109822 (Sub-3), filed January 30, 1981. Applicant: JAMES F. ENTSMINGER, 2572 Johnstown Road, Columbus, OH 43299. Representative: James F. Entsminger (same address as above), (614) 252–0055. Transporting *general commodities* (except classes A and B explosives), between points in OH, on the one hand, and, on the other, points in MI, IL, IN, WI, IA, NE, KS, OK, OH, AR, TX, CA, TN, AL, MS, LA, FL, GA, NC, SC, VA, WV, MD, DE, PA, NJ, NY, MO and KY.

MC 110012 (Sub-80), filed January 27, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street NW., Washington, D.C. 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives), between Hamblen and Grainger Counties, TN on the one hand, and, on the other, points in the U.S.

MC 110012 (Sub-81), filed February 6, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, NW., Washington, D.C. 20004, (202) 737–1030. Transporting *furniture and fixtures*, between Jackson County, FL on the one hand, and, on the other, points in the U.S.

MC 111302 (Sub-177), filed January 30, 1981. Applicant: HIGHWAY TRANSPORT, INC., 1500 Amherst Road, P.O. Box 10108, Knoxville, TN 37919. Representative: David A. Petersen (same address as applicant), (615) 584–8631. Transporting *commodities in bulk*, between points in LA and TX, on the one hand, and on the other, points in the U.S.

MC 112113 (Sub-12), filed February 5, 1981. Applicant: GYPSUM HAULAGE, INC., 6500 Pearl Road, P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *building materials*, between points in the U.S., under continuing contract(s) with National Gypsum Company, of Charlotte, NC.

MC 114822 (Sub-1), filed December 15, 1980. Applicant: RUDOLPH PAFFRATH, WILLIAM PAFFRATH, AND THOMAS PAFFRATH, d.b.a. PAFFRATH BROS., 1415 Clinton Street, Linden, NJ 07036. Representative: Charles J. Williams, P.O. Box 186, 1815 Front Street, Scotch Plains, NJ 07076. Transporting *metal products*, in dump vehicles, between points in CT, NY, NJ, PA, DE and MD.

MC 117313 (Sub-10), filed February 4, 1981. Applicant: TRYON TRUCKING, INC., P.O. Box 68, Fairless Hills, PA 19030. Representative: A. Charles Tell, 100 E. Broad Street, Columbus, OH 43215. Transporting *metal products*, between those points in the U.S. in and east of MN, WI, IL, KY, TN, AR and TX.

MC 119522 (Sub-53), filed February 6, 1981. Applicant: MCLAIN TRUCKING, INC., 2425 Walton Street (P.O. Box 2159), Anderson, IN 46011. Representative: John B. Leatherman, Jr. (same address as applicant). Transporting *metal products*, between points in Jay County, IN, on the one hand, and, on the other, points in KY, IL, MI, and OH.

MC 121082 (Sub-23), filed February 5, 1981. Applicant: ALLIED DELIVERY SYSTEM, INC., 2201 Fenkell, Detroit, MI 40238. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084, 313–649–6650. Transporting *general commodities* (except classes A and B explosives), between those points in the U.S. in and west of NM, OK, KS, NE, SD, and ND, on the one hand, and, on the other, points in the U.S. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343 or submit an affidavit indicating why such approval is unnecessary.

MC 121372 (Sub-12), filed February 6, 1981. Applicant: EXPRESS TRANSPORT COMPANY, 1333 W. 7th Street, Cincinnati, OH 45203. Representative: Paul F. Beery, 275 E. State Street, Columbus, OH 43215. Transporting *metal products*, between Boyd and Greenup Counties, KY, on the one hand, and, on the other, points in AL, GA, FL, LA, MS, NC, SC, TN, VA, and WV.

MC 123993 (Sub-93), filed January 30, 1981. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768, (512)476–6083. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Proctor & Gamble Company of Cincinnati, OH.

MC 124673 (Sub-58), filed February 6, 1981. Applicant: FEED TRANSPORTS, INC., P.O. Box 2167, Amarillo, TX 79105. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Iowa Beef Processors, Inc., of Dakota City, NE.

MC 126693 (Sub-3), filed February 2, 1981. Applicant: NEWARK INDUSTRIAL SUPPLY, 409 Wallingford Terrace, Union, NJ 07983. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076. Transporting *such commodities* as are dealt in or used by a manufacturer of paints, between points in Union County, NJ, on the one hand, and, on the other, points in ME, NH, MA, RI, CT, NY, DE, VA, and FL.

MC 127303 (Sub-84), filed February 6, 1981. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting *rubber and plastic products, chemicals and related products, metal products, textile mill products, and petroleum, natural gas, and their products*, between points in Rockdale County, GA, on the one hand, and, on the other, points in the U.S.

MC 128462 (Sub-9), filed February 3, 1981. Applicant: PRAIRIE REFRIGERATED EXPRESS, INC., P.O. Box 36, Long Prairie, MN 56347. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Transporting *meats, meat products and meat byproducts, dairy products, articles distributed by meat-packing house, and such commodities as are used by meat*

packers in the conduct of their business when destined to and for use by meat packers, between points in the U.S., under continuing contract(s) with Held Beef Industries, Inc., of West Fargo, ND.

MC 128772 (sub-20), filed February 6, 1981. Applicant: STAR BULK TRANSPORT, INC., 821 North Front Street, New Ulm, MN 56073. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *General Commodities* (except Class A and B explosives) between points in the U.S. under continuing contract(s) with (a) the Kroger Company and (b) Pace Dairy Foods Co., a division of the Kroger Company, of Cincinnati, OH.

MC 135653 (Sub-11), filed January 28, 1981. Applicant: SPECIAL SERVICE TRANSPORTATION, INC., 1100 W. Smith, Medina OH 44256. Representative: Michael Spurlock, 275 E. State St., Columbus OH 43215. *General commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s), with Shell's, Inc., of Wadsworth, OH.

MC 136123 (Sub-14), Filed February 4, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same as applicant). Transporting *machinery* between the facilities of Addison Products, its division and subsidiary, at points in the U.S., on the one hand, and, on the other, points in the U.S., under continuing contract(s) with Addison Products Company, of Addison, MI.

MC 136123 (Sub-15), Filed February 3, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers or distributors of air conditioning equipment, furnaces, and stoves, between the facilities of the Carrier Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 136123 (Sub-18), Filed February 3, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same address as applicant). Transporting *rubber and plastic products*, between the facilities of Cooper Tire Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 140273 (Sub-27), Filed February 6, 1981. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels St., Long Lake, MN 55356. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *commodities in bulk*, between points in MT, WY, CO, KS, NE, SD, ND, MN, IA, MO, IL, IN, WI, MI, OH, and KY.

MC 142603 (Sub-41), Filed February 6, 1981. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Transporting *such commodities* as are dealt in or used by pool manufacturers or distributors, between points in the U.S., under continuing contract(s) with Major Pool Equipment Corp. and its Division Burton Pools, of Clifton, NJ.

MC 143032 (Sub-35), Filed February 2, 1981. Applicant: THOMAS J. WALCZYNSKI d.b.a. WALCO TRANSPORT, 3112 Truck Center Dr., Duluth, MN 55806. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minniapolis, MN 55401. Transporting *metal products*, between points in Muscatine County, IA, on the one hand, and, on the other, points in the U.S.

MC 144303 (Sub-42), Filed February 3, 1981. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Henry B. Stockinger (same address as applicant). Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Ashley Outlet Store Group, a Division of Kellwood Company, of New Haven, MO.

MC 144533 (Sub-2), Filed February 4, 1981. Applicant: FRANK PAGLIUGHI, d.b.a. GENERAL TRANSFER COMPANY, East Landis Avenue, Vineland, NJ 08360. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. Transporting *food and related products* between points in DE, MD, NJ, NY, PA, VA and DC.

MC 144622 (Sub-200), Filed January 28, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *(1) food and related products* between Chicago, IL and points in Jefferson County, AL, Orange, Santa Clara, and Solano Counties, CA, Polk County, FL, Fulton County, GA, Minidoka County, ID, La Porte and Marion Counties, IN, Wyandotte County, KS, Cumberland County, ME, Hennepin and Martin Counties, MN, Oktibbeha County, MS, Hudson and Union Counties, NJ, Onondaga and Seneca Counties, NY, Van West County, OH, Linn County, OR, Berks, Northumberland, and Tioga Counties, PA, Chester and York Counties, PA, Dallas and Harris Counties, TX, King County, WA, and Fond Du Lac, Milwaukee, and Sheboygan Counties, WI, on the one hand, and, on the other, points in the U.S.

MC 144622 (Sub-204), Filed February 5, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *chemicals and related products*, between points in Phillips County, AR, Fairfield County, CT, De Kalb County, GA, Story County, IA, Wicomico County, MD, Bristol County, MA, Midland County, MI, St. Louis County, MO, Shelby County, TN, and Chesterfield County, VA and points in CA, DE, IL, NJ, NY, NC, PA, and TX, on the one hand, and, on the other, points in the U.S.

MC 144622 (Sub-206), Filed February 2, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *general commodities* (except classes A and B explosives) between the facilities of American Cyanamid Company and its affiliates and subsidiaries at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 144693 (Sub-9F), filed February 6, 1981. Applicant: GLENN'S TRUCK SERVICE, INC., No. 1 Produce Row, St. Louis, MO 63102. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309, (515) 244–2329. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Joseph George Distributor, of Santa Clara, CA.

MC 146293 (Sub-77), filed February 5, 1981. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers of lighting fixtures, between points in the U.S.

MC 146583 (Sub-3), filed February 5, 1981. Applicant: TERRAIN TAMERS, INC.—INTERSTATE TRANSPORT, Box 1457, Roseburg, OR 97470. Representative: Thomas Y. Higashi, 3762 Bayonne Dr., S.E., Salem, OR 97301, (503) 362–0005. Transporting *waste or scrap materials not identified by Industry Producing*, between points in Douglas County, OR, on the one hand, and, on the other, points in CA, WA, OR, ID and NV.

MC 146822 (Sub-4), filed February 4, 1981. Applicant: EUGENE L. FRAZIER, d.b.a. SUNSET TRANSPORT SYSTEMS, 2200 N. Parmalee, Compton, CA 90222. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting *leather and leather products, food and related products, chemicals and related products, and metal products*, between points in the U.S.

MC 146703 (Sub-27), filed February 5, 1981. Applicant: ROBERT & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K St, NW, Washington, DC 20006. Transporting *general commodities* (except classes A and B explosives), between points in AR, GA, IN, IL, IA, KS, KY, MN, MO, NE, OH, OK, SD, TN and WI, on the one hand, and, on the other, points in AL, LA and MS.

MC 147993 (Sub-4) (M1F) (notice of filing of petition to modify permit), filed February 5, 1981. Applicant: C. H. MASLAND & SONS, Box 40, Carlisle, PA 17013. Representative: J. Roger Gratz (same as applicant). Petitioner holds motor *contract carrier* permit in MC 147993 Sub-4, issued February 5, 1981, authorizing over irregular routes: *motor vehicle parts and motor vehicle accessories* used in the manufacturing of cars, trucks and trailers, between points in the U.S., under continuing contract(s) with Chrysler Corp., of Detroit, MI. By the instant petition, petitioner seeks to add American Motors Corporation as a shipper to the above authority.

MC 150473 (Sub-2), filed February 6, 1981. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, D.C. 20014. Representative: William P. Sullivan, 818 Connecticut Ave. NW., Washington, D.C. 20006, 202–331–1174. Transporting *chemicals and related products*, and *food and related products*, between points in the U.S., under continuing contract(s) with Morton Salt Division of Morton-Norwich Products, Inc., of Chicago, IL.

MC 129712 (Sub-34F), filed February 3, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA. 30326. Transporting *metal products* between points in the U.S., under continuing contract(s) with DuBose Steel, Inc., of Roseboro, NC.

MC 150783 (Sub-7), filed January 30, 1981. Applicant: SCHEDULED TRUCKWAYS, INC., P.O. Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth (same address as applicant), 501–636–1979. Transporting *food and related products*, between points in AR, CA, IA, IL, MI, NJ, OH, PA, TN and TX, on the one hand, and, on the other, points in the U.S.

MC 150883 (Sub-6), filed February 6, 1981. Applicant: PDR TRUCKING, INC., P.O. Box 609, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 434, 1511 K St. NW., Washington, D.C. 20005, 202–347–9332. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 151392 (Sub-1F), filed February 1, 1981. Applicant: ALPHA MOTOR WAYS, INC., 25 County Ave., Secaucus, NJ 07094. Representative: Harold L. Reckson, 33–28 Halsey Rd., Fair Lawn, NJ 07410. Transporting *general commodities* (except classes A and B explosives) between St. Louis, MO, and points in IL and IN, on the one hand, and, on the other, points in IL, IN, ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, VA, WV, OH, MI and DC.

MC 151752 (Sub-1), filed January 21, 1981. Applicant: BOSS INDUSTRIES, INC., 3801 West Reno, P.O. Box 75147, Oklahoma City, OK 73107. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106, (405) 528–3884.Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under a continuing contract(s) with T. G. & Y. Stores Co., of Oklahoma City, OK 73125.

MC 152553 (Sub-1), filed February 5, 1981. Applicant: M. F. KREDOVSKI, d.b.a. LONE TRAIL KENNELS, P.O. Box 46, Friedensburg, PA 17933. Representative: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108. Transporting *hazardous materials and waste or scrap material not identified by Industry producing*, between points in the U.S., under continuing contract(s) with Applied Technology, Inc., of Toms River, NJ. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issuance.

MC 152622 (Sub-1), filed February 4, 1981. Applicant: DARYL THOMASON TRUCKING, INC., P.O. Box 1087, Broken Bow, OK 74728. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103, (817) 332–4718. Transporting *lumber and wood products*, between points in the U.S., under continuing contract(s) with Thomason Lumber Co., of Broken Bow, OK.

MC 152763 (Sub-2), filed February 5, 1981. Applicant: EXPRESSCO, INC., 105 Rhine St., Madison, TN 37215. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *general commodities*, (except Classes A & B explosives), between points in the U.S., under continuing contract(s) with IKG Industries, Inc., Division of Harsco Corporation.

MC 152782 (Sub-2), filed February 5, 1981. Applicant: EDWARDS FAMILY ENTERPRISES, 1821 E. Diana Ave., Anaheim, CA 92805. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Transporting *food and related products* between points in the U.S., under a continuing contract(s) with Packers Bar M Meat Company of Los Angeles, CA.

MC 153192 (Sub-1F), filed February 4, 1981. Applicant: ORVIN HELGESON, d.b.a. HELGESON TRUCKING, 814 19th Street South, Fargo, ND 58103. Representative: Charles E. Johnson, P.O. Box 2578, Bismarck, ND 58502. Transporting *general commodities*, (except Classes A and B explosives), Between points in the U.S., under continuing contract(s) with Stein Chemical Company of Moorhead, MN, and Interstate Seed Corp., and Thermo-Pak Manufacturing, Inc., of Fargo, ND.

MC 153983 (Sub-1), filed February 5, 1981. Applicant: STEAM KAT CORPORATION, P.O. Box 1686, Salisbury, MD 21801. Representative: Daniel B. Johnson, 4304 East-West Hwy., Washington, DC 20014. Transporting *hazardous materials, and waste or scrap materials not identified by industry producing*, between points in MD, on the one hand, and, on the other, points in the U.S. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issuance.

MC 154123, filed February 5, 1981. Applicant: V.C. TRANSPORTATION CO., INC., 140 Bay Street, Jersey City, NJ 07302. Representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006, (201) 575–7700. Transporting *general commodities* (except classes A and B explosives) between points in the U.S., under continuing contract(s) with Aceto Chemical Co. and its subsidiaries: Roehr Chemicals, Inc.; Pfaltz & Bauer, Inc.; Arsynco, Inc.; and Aceto Agricultural Chemicals Corporation, of Flushing, NY.

Volume No. OP2–029

Decided: February 23, 1978.

By the Commission, Review Board No. 3, members Fortier, Hill, and Parker. (Member Parker not participating.)

MC 10343 (Sub-42), filed February 4, 1981. Applicant: CHURCHILL TRUCK LINES, INC., U.S. Highway 36, West, P.O. Box 250, Chillicothe, MO 64601. Representative: Vernon M. Masters (same address as applicant), 816-646-1590. Over *regular routes*, transporting *general commodities* (except classes A and B explosives), serving points in Dickinson County, KS, as off-route points in connection with applicant's otherwise authorized regular-route operations.

MC 16503 (Sub-12), filed February 2, 1981. Applicant: GUEX TRUCKING, INC., P.O. Box 359, Shawano, WI 54166. Representative: Daniel R. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203, (414) 273-7410. Transporting *food and related products* between points in the U.S., under continuing contract(s) with Lakeside Packing Company, of Manitowoc, WI.

MC 29643 (Sub-18), filed February 2, 1981. Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Ave., Massena, NY 13662. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048, 212-466-0220. Transporting *metal products*, between points in St. Lawrence County, NY, on the one hand, and, on the other, points in IL, KY, OH, IN, VA, WV, MI, TN, PA, and DC.

MC 32882 (Sub-155), filed February 2, 1981. Applicant: MITCHELL BROS. TRUCK LINES, a corporation, 3841 N. Columbia Blvd., Portland, OR 97217. Representative: David J. Lister, P.O. Box 17039, Portland, OR 97217, (503) 285-0481. Transporting *rubber and plastic products*, between points in Orange County, CA, on the one hand, and, on the other, points in the U.S.

MC 42343 (Sub-20), filed January 23, 1981. Applicant: CORPENZA, INC., 310 Chestunut Ave., Vineland, NJ 08360. Representative: Mark D. Russell, Suite 348 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004, 202-737-2188. Transporting *petroleum, natural gas and their products*, (1) between points in Camden County, NJ, and New Castle County, DE, on the one hand, and, on the other, points in Chester, Lebanon, Lehigh, and Northampton Counties, PA, and (2) between points in Camden County, NJ, on the one hand, and, on the other, points in DE.

MC 61502 (Sub-12), filed February 6, 1981. Applicant: WM. McCULLOUGH TRANSPORTATION CO., INC., 1130 U.S. Highway No. 1, Elizabeth, NJ 07102. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123, 212-239-4610. Transporting *general commodities* (except classes A and B explosives), between points in MD, VA, NY, NJ, CT, MA, PA, RI, DE, and DC.

MC 65112 (Sub-1), filed February 5, 1981. Applicant: FOGARTY VAN LINES, INC., 1103 Cumberland Ave., Tampa, FL 33602. Representative: Bernard C. Pestcoe, 700 Brickell Ave., Suite 401, Miami, FL 33131, 305-379-0667. Transporting *household goods*, between points in AZ, AR, CA, CO, DE, WA, OR, ME, NV, NH, NM, NC, OK, RI, SC, TX, UT, and VT.

MC 87523 (Sub-117), filed February 4, 1981. Applicant: STEWART TRUCKING COMPANY, INC., P.O. Box 5155, Manchester, NH 03108. Representative: Edward J. Kiley, 1730 M St. NW., Washington, DC 20036, 202-296-2900. Transporting *pulp, paper, and related products*, between points in ME, NH, VT, MA, and NY, on the one hand, and, on the other, points in ME, NH, VT, MA, NY, RI, CT, NJ, PA, DE, MD, VA, WV, OH, and DC.

MC 103993 (Sub-1074), filed February 5, 1981. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: James B. Buda (same address as applicant), 219-295-2200. Transporting *rubber and plastic products*, between points in Cooke County, TX, on the one hand, and, on the other, points in the U.S.

MC 107012 (Sub-653), filed February 4, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), 219-429-2110. Transporting *furniture and fixtures*, between points in Hamblen County, TN, on the one hand, and, on the other, points in AL, FL, GA, KY, LA, ME, MS, NC, NH, SC, and VA.

MC 107012 (Sub-658), filed February 6, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), 219-429-2110. Transporting *clay, concrete, glass or stone products*, between points in Westmoreland County, PA, on the one hand, and, on the other, points in Cook County, IL and Desha County, AR.

MC 107012 (Sub-666), Filed February 5, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant), (219) 429-2110. Transporting *furniture and fixtures*, between the facilities of S & H Furniture, Inc., a Division of Spery & Hutchinson Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 108053 (Sub-182), Filed February 6, 1981. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601, (312) 332-5106. Transporting *general commodities* (except classes A and B explosives) between points in the U.S. (except AK, AL, FL, GA, HI, MS, NC, SC, TN and VA).

MC 109373 (Sub-4), Filed February 6, 1981. Applicant: NATIONAL TRUCKING, INC., P.O. Box 16081, Houston, TX 77022. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, 703-893-3050. Transporting *mercer commodities*, between points in the U.S., under continuing contract(s) with (a) The Brandt Company, (b) FMC Corporation—Wellhead Equipment Division, (c) Hydril Co., (d) International Tool & Supply Co., Inc., (e) NL/Atlas Bradford/NL Industries, Inc., (f) NL Baroid/NL Industires, (g) Plastic Applicators, Inc., and (h) Smith Industries, Inc., all of Houston, TX.

MC 110012 (Sub-83), Filed February 4, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg. 425-13th St. NW., Washington, D.C. 20004, 202-737-1030. Transporting *general commodities* (except classes A and B explosives), between points in Jefferson County, TN, on the one hand, and, on the other, points in the U.S.

MC 110012 (Sub-87), Filed January 30, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St. NW., Washington, D.C. 20004, 202-737-1030. Transporting *general commodities* (except classes A and B explosives), between points in Knox County, TN, on the one hand, and, on the other, points in the U.S.

MC 110012 (Sub-88), filed February 5, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St. NW., Washington, DC 20004, 202-737-1030. Transporting *furniture and fixtures*, between the facilities of S & H Furniture, Inc., Division of Sperry & Hutchinson Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 113313 (Sub-3), filed February 2, 1981. Applicant: UNION TRUCKING CO., INC., 315 North 14th St.,

Kenilworth, NJ 07033. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, 201–435–7140. Transporting *general commodities* (except classes A and B explosives), between points in NJ and CT, and points in Bucks, Chester, Delaware, Monroe, Montgomery, Northampton, Philadelphia, and Pike Counties, PA, Dutchess, Putnam, Orange, Rockland, Nassau, Suffolk, Sullivan, and Ulster Counties, NY, and New York, NY.

MC 115543 (Sub-2), filed February 5, 1981. Applicant: MINNESOTA STONE TRUCKING COMPANY, Rt. 5, Mankato, MN 56001. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, 612–333–1341. Transporting *clay, concrete, glass or stone products*, between points in the U.S., under continuing contract(s) with Vetter Stone Company, of Kasota, MN.

MC 124083 (Sub-62), filed January 30, 1981. Applicant: SKINNER MOTOR EXPRESS, INC., 1035 South Keystone Ave., Indianapolis, IN 46203. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204, 317–638–1301. Transporting *metal products*, between points in Winnebago County, WI, on the one hand, and, on the other, points in IN.

MC 125023 (Sub-87), filed February 2, 1981. Applicant: SIGMA–4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005, 202–347–3987. Transporting *food and related products*, between points in WI, IL, IN, KY, MI, OH, PA, NY, RI, NJ, MD, VA, NC, and GA, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, NE, KS, MO, TN, and MS.

MC 128302 (Sub-19), filed January 30, 1981. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215, 614–228–1541. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Amstar Corporation, of New York, NY.

MC 128302 (Sub-20), filed February 3, 1981. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215, 614–228–1541. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with The Cotton Club Bottling Company, of Cleveland, OH.

MC 129203 (Sub-3), filed January 9, 1981. Applicant: M & Y FREIGHT SYSTEM, INC., Box 36, Topeka, IN 46571. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 South Second St., Elkhart, IN 46514, 219–293–3597. Transporting *chemicals and related products*, between points in Harrison County, TX, on the one hand, and, on the other, points in the U.S.

MC 135953 (Sub-20), filed February 4, 1981. Applicant: CHEROKEE LINES, INC., 1113 North Little St., Cushing, OK 74023. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, 402–392–1220. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Ralston Purina Company, of St. Louis, MO.

MC 138432 (Sub-26), filed February 4, 1981. Applicant: GARLAND GEHRKE, 1800 N. Jefferson, Lincoln, IL 62656. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602 (312) 726–6525. Transporting *containers, carriers or devices*, shipping, returned empty, between the facilities of Kerr Glass Manufacturing Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 140273 (Sub-25), filed February 6, 1981. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels St., Long Lake, MN 55356. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402, 612–333–1341. Transporting *commodities in bulk*, between points in MN.

MC 140273 (Sub-26), filed February 6, 1981. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels St., Long Lake, MN 55356. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402. Transporting *metal products*, between Minneapolis, MN, on the one hand, and, on the other, points in the U.S.

MC 142672 (Sub-163), filed February 3, 1981. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same address as applicant), 501–977–1683. Transporting *general commodities* (except classes A and B explosives), between points in AR, on the one hand, and, on the other, points in the U.S.

MC 142873 (Sub-12), filed February 6, 1981. Applicant: D & W TRUCK LINES, INC., 200 First Street, Parsons, WV 26287. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001 (202) 628–9243. Transporting *food and related products*, between points in Morgan County, IL, on the one hand, and, on the other, points in the U.S.

MC 144622 (Sub-205), filed February 2, 1981. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219 Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021, 817–282–8344. Transporting *machinery*, between Los Angeles, CA, Chicago, IL, New York, NY, and points in Chilton, Jefferson, and Shelby Counties, AL, Denver County, CO, Pinellas County, FL, Fulton County, GA, Huntington and Miami Counties, IN, Linn County, IA, Boone and Fayette Counties, KY, St. Joseph and Wayne Counties, MI, Boone County, MO, Lancaster County, NE, Bergen, Burlington, and Hudson Counties, NJ, Genessee County, NY, Buncombe and Wake Counties, NC, Butler County, OH, Lehigh County, PA, Richland County, SC, Rutherford County, TN, Dallas County, TX, King, Pierce, and Spokane Counties, WA, and Milwaukee and Winnebago Counties, WI, on the one hand, and, on the other, points in the US.

MC 145102 (Sub-72), filed February 4, 1981. Applicant: FREYMILLER TRUCKING, INC., 1400 S. Union Ave., Bakersfield, CA 93307. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703, 608–256–7444. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses*, between the facilities of Wilson Foods Corporation (1) at points in the U.S., on the one hand, and, on the other, points in AZ and NV, and (2) between Omaha, NE and Sioux City, IA, on the one hand, and, on the other, points in AZ, CA, and NV.

MC 145163 (Sub-8), filed February 4, 1981. Applicant: DON MULDER d.b.a. DON MULDER TRUCKING, 1735 North 50th St., Lincoln, NE 68504. Representative: Lavern R. Holdeman, P.O. Box 81848, Lincoln, NE 68501, 402–476–1144. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 146703 (Sub-28), filed February 6, 1981. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K St. NW., Washington, D.C. 20006, 202–223–8270. Transporting *general commodities* (except classes A and B explosives), between points in AL, FL, GA, MS, NC, SC, and TN, on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MN, MO, NE, ND, OK, SD, TX, and WI.

MC 147173 (Sub-2), filed February 6, 1981. Applicant: C & T TRUCKING, INC., 1050 Brookside Drive, Richmond,

CA 94806. Representative: Brian S. Stern, 5411-D Backlick Road, Springfield, VA 22151, 703-941-8200. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Cascade Steel Rolling Mills, Inc., of Stockton, CA.

MC 150522 (Sub-4), filed February 6, 1981. Applicant: VIRGINIAN ELECTRIC COMPANY, d.b.a. VIRGINIAN POWER TRANSPORT, 530 29th St., Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526, 304-562-3460. Transporting *food and related products*, between points in Wayne, Macomb, and Oakland Counties, MI, Monroe County, NY, Seneca, Hancock, Wood, and Belmont Counties, OH, and Lehigh and Northampton Counties, PA, on the one hand, and, on the other, those points in the U.S., in and east of WI, IL, KY, TN, AR, and LA.

MC 150522 (Sub-5), filed February 6, 1981. Applicant: VIRGINIAN ELECTRIC COMPANY, d.b.a. VIRGINIAN POWER TRANSPORT, 530 29th St., Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Ave., Hurricane, WV 25526. Transporting *metal products*, between points in Mercer and Westmoreland Counties, PA and Guilford County, NC, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, AR and LA. Note: The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 129712 (Sub-35F), filed February 3, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326, (404) 237-6472. Transporting *metal products*, between points in the U.S., under a continuing contract(s) with Southwest Steel Supply Company, of St. Louis, MO.

MC 151423 (Sub-1), filed February 5, 1981. Applicant: KENGRAPHIC INTERIORS, INC., 1011 Lake Rd., Medina, OH 44256. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017, 614-889-2531. Transporting *chemicals and related products*, between points in the U.S., under continuing contract(s) with Plasti-Kote, Inc., of Medina, OH.

MC 152713 (Sub-1), filed February 3, 1981. Applicant: RAD, INC., Rural Route, Wannaska, MN 56761. Representative: Philip G. Skofstad, 1525 N.E. Weidler, Portland, OR 97232, 503-288-8141. Transporting *lumber and wood products*, between points in OR, WA, ID, CA, NV, UT, AZ, ND, SD, MN, CO, and NM.

MC 152763 (Sub-1), filed February 5, 1981. Applicant: REYNOLDS TRUCK LINES, INC., 215 Cherry St., Madison, TN 37215. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219, 615-255-6575. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with IKG industries, Inc., Division of Harsco Corporation, of Nashville, TN.

MC 153383 (Sub-1), filed January 21, 1981. Applicant: SIERRA RENTAL AND TRANSPORT COMPANY, INC., 1305 Kleppe Lane, Sparks, NV 89431. Representative: Mike Soumbeniotis, 402 North Division St., Carson City, NV 89701, 702-882-0202. Transporting (1) *ores and minerals*, (2) *clay, concrete, glass or stone products*, (3) *machinery*, and (4) *waste or scrap materials not identified by industry producing*, between points in NV and CA.

MC 153633 (Sub-1), filed February 2, 1981. Applicant: FREIGHT ASSEMBLY DISTRIBUTION INC., 740 24th Street, Detroit, MI 48216. Representative: William B. Elmer, 624 Third Street, Traverse City, MI 49684, (616) 941-5313. Transporting *general commodities* (except Classes A and B explosives), between points in the U.S., under continuing contract(s) with Eastman Kodak Company, of Rochester, NY.

MC 153913 filed January 29, 1981. Applicant: MISSOURI ALCOHOL FUEL, INC., 408 Thompson Bldg., Tulsa, OK 74103. Representative: Robert J. Wiruth (same address as applicant), 314-636-8135. Transporting *petroleum, natural gas and their products*, between points in MO, IA, and IL.

MC 153982 (Sub-1F), filed February 4, 1981. Applicant: BOEHIE'S EXPRESS, INC., 230 Sandbank Road, P.O. Box 906, Cheshire, CT 06410. Representative: John E. Fay, 663 Maple Avenue, Hartford, CT 06114. Transporting *general commodities* (except Classes A and B explosives), between points in CT and Springfield, MA.

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Decided: February 24, 1981.

By the Commission, Review Board No. 1, members Carleton, Joyce and Jones.

MC 3252 (Sub-115), filed February 2, 1981. Applicant: MERRILL TRANSPORT CO., 1037 Forest Ave., Portland, ME 04104. Representative: Francis E. Barrett, Jr., 10 Industrial Park Rd., Hingham, MA 02043, 617-749-6500. Transporting *petroleum, natural gas and their products*, between Boston, MA, and points in Norfolk County, MA, on the one hand, and, on the other, points in NH and VT.

MC 2633 (Sub-68), filed February 6, 1981. Applicant: CROSSETT, INC., P.O. Box 946, Warren, PA 16365. Representative: Kenneth T. Johnson, Bankers Trust Bldg., Jamestown, NY 14701, 716-664-5210. Transporting *petroleum, natural gas and their products*, between points in Warren County, PA, on the one hand, and, on the other, points in NJ.

MC 58852 (Sub-4), filed February 6, 1981. Applicant: SALEM MOTOR TRANS., INC., 121 Webster Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *general commodities* (except classes A and B explosives), between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC.

MC 58902 (Sub-22), filed February 2, 1981. Applicant: MANLEY TRUCK LINE, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: A. J. Whisler (same address as applicant), (417) 865-2800. Over regular routes, transporting *general commodities* (except classes A and B explosives) (1) between Ft. Smith, AR and Oklahoma City, OK, from Ft. Smith over U.S. Hwy 64 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Oklahoma City, and return over the same route, serving all intermediate points and off-route points in Sequoyah, Haskell, McIntosh, Okmulgee, Seminole, Okfuskee, Pottawatomie, and Oklahoma Counties, OK, (2) between Muskogee, OK and Lawton, OK, from Muskogee over U.S. Hwy 69 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 81, then over U.S. Hwy 81 to junction OK Hwy 7, then over OK Hwy 7 to Lawton, and return over the same route, serving all intermediate points and the off-route points in Muskogee, Pittsburg, Atoka, Bryan, Marshall, Johnson, Carter, Love, Jefferson, Stephens, and Comanche Counties, OK, (3) between Tulsa and Lawton, OK, from Tulsa over U.S. Hwy 66 to junction U.S. Hwy 77, then over U.S. Hwy 77 to junction U.S. Hwy 62, then over U.S. Hwy 62 to junction U.S. Hwy 277, then over U.S. Hwy 277 to Lawton, and return over the same route, seving all intermediate points and the off- route points in Tulsa, Creek, Lincoln, McClain, Grady, and Caddo Counties, OK, (4) between Tulsa and Ponca City, OK, from Tulsa over OK Hwy 51 to junction U.S. Hwy 81, then over U.S. Hwy 81 to junction OK Hwy 11, then over OK Hwy 11 to junction U.S. Hwy 177, then over U.S. Hwy 177 to

Ponca City, and return over the same route, serving all intermediate points and the off-route

points in Payne, Garfield, and Grant Counties, OK, (5) between Tulsa OK and Caney, KS, over U.S. Hwy 75, serving all intermediate points and the off-route points in Oswego and Washington, KS, (6) between Little Rock, AR, and Dallas, TX, over Interstate Hwy 30, serving all intermediate points and the off route points in Pulaski, Saline, Hot Springs, Clark, Nevada, Hempstead and Miller Counties, AR, and Bowie, Titus, Franklin, Hopkins, Hunt, Rockwall, and Dallas Counties, TX, (7) between Ft. Smith and Texarkana, AR, over U.S. Hwy 71, serving all intermediate points and the off-route points in Sebastian, Scott, Polk, Sevier, and Little River Counties, AR, (8) between Lawton, OK and Dallas, TX, from Lawton over U.S. Hwy 281 to junction U.S. Hwy 287, then over U.S. Hwy 287 to junction Interstate Hwy 30, then over Interstate Hwy 30 to Dallas and return over the same route, serving all intermediate points and the off-route points in Cotton County, OK and Wichita, Clay, Montague, Wise and Tarrant Counties, TX, (9) between Coffeyville, KS, and Dallas, TX, from Coffeyville over U.S. Hwy 166 to Junction U.S. Hwy 77, then over U.S. Hwy 77 to Dallas and return over the same route, serving all intermediate points and the off-route points in Chautauqua, and Cowley Counties, KS and Kay, Noble, Payne, Logan, Cleveland, Garvin, and Murray Counties, OK, and Cooke and Denton Counties, TX, (10) between Enid and Chickasha, OK, over U.S. Hwy 81, serving all intermediate points and the off route points in Kingfisher, Canadian and Caddo Counties, OK, (11) between Oklahoma City, OK, and Texarkana, TX, from Oklahoma City over Interstate Hwy 40 to junction U.S. Hwy 177, then over U.S. Hwy 177 to junction OK Hwy 3E, then over OK Hwy 3E to junction OK Hwy 3, then over OK Hwy 3 to junction U.S. Hwy 271, then over U.S. Hwy 271 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Texarkana and return over the same route, serving all intermediate points and the off-route points in Seminole, Pontotac, Coal, Choctaw, Pushmataha, and McCurtain Counties, OK, (12) between Tulsa, OK and Paris, TX, from Tulsa, OK over U.S. Hwy 75 to junction Indian National Turnpike, then over Indian National Turnpike to junction U.S. Hwy 271, then over U.S. Hwy 271 to Paris, and return over the same route, serving all intermediate points, (13) between Durant, OK and Dallas TX, over U.S. Hwy 75, serving all intermediate points and the off-route points in Collin County, TX, (14) between Wichita Falls, TX, and Texarkana, AR, over U.S. Hwy 82, serving all intermediate points and the off-route points in Garyson, Fannin, Lamar, and Red River Counties, TX, (15) between Ft. Smith, AR, and Greenville, TX, from Ft. Smith over U.S. Hwy 271 to junction TX Hwy 24, then over TX Hwy 24 to Greenville and return over the same route, serving all intermediate points and the off-route points in Leflore and Latimer Counties, OK, and Delta County, TX and (16) serving points in Ottawa, Craig, Rogers, Mayes, Delaware, Wagoner, Cherokee, and Adair Counties, OK, as off-route points in connection with existing authorized regular-route authority.

Note.—Applicant intends to tack this authority with its otherwise authorized regular-route authority in MO, KS, OK, and AR.

MC 58973 (Sub-8), filed January 30, 1981. Applicant: ABLER TRANSFER, INC., 1006 South 8th Street, Norfolk, NE 68701. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of laboratory and medical supplies, between the facilities used by Sherwood Medical Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 59292 (Sub-45), filed February 6, 1981. Applicant: THE MARYLAND TRANSPORTATION CO., 1111 Frankfurst Ave., Baltimore, MD 21225. Representative: Charles J. Braun, Jr. (same as applicant), (301) 355–5800. Transporting *such commodities* as are dealt in by hardware stores, drug stores, discount houses, grocery and food business houses between points in the U.S., in and east of WI, IL, KY, TN, MS and LA.

MC 71593 (Sub-82), filed February 4, 1981. Applicant: FORWARDERS TRANSPORT, INC., 1608 E. Second St., Scotch Plains, NJ 07076. Representative: David W. Swenson (same as above), (201) 322–5380. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. restricted to traffic originating at or destined to the facilities of the Pillsbury Company or its subsidiaries.

MC 73533 (Sub-13), filed October 20, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 South Oldham St., Baltimore, MD 21224. Representative: William F. Lamperelli (same address as applicant). Transporting *books and printed matter*, from Baltimore, MD, and points in Baltimore County, MD, to Philadelphia, PA, Albany, NY, New York, NY, Boston, MA, and Somerset, NJ.

MC 73533 (Sub-15), filed February 4, 1981. Applicant: KEY WAY TRANSPORT, INC., 820 South Oldham St., Baltimore, MD 21224. Representative: William F. Lamperelli (same as applicant), (301) 327–5800. Transporting *metal products* between points in the U.S., under continuing contract(s) with K–D Manufacturing Company of Lancaster, PA.

MC 82063 (Sub-121), filed February 6, 1981. Applicant: KLIPSCH HAULING CO., 10795 Watson Road, Sunset Hills, MO 63127. Representative: E. Stephen Heisley, 666 Eleventh Street, NW., No. 805, Washington, DC 20001, (202) 628–9243. Transporting *commodities in bulk*, between points in MO on the one hand, and, on the other, points in the U.S.

MC 94742 (Sub-41), filed February 6, 1981. Applicant: MICHAUD BUS LINES, INC., 61–63 Jefferson Ave., Salem, MA 01970. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip and charter operations, beginning and ending at points in York and Cumberland Counties, ME, Essex, Middlesex, Norfolk and Suffolk Counties, MA, and Hillsborough, Rockingham and Strafford Counties, NH, and extending to points in the U.S.

MC 107002 (Sub-585), filed January 22, 1981. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, Jackson, MS 39205. Representative: Harold D. Miller, Jr., 17 Floor, Deposit Guaranty Plaza; P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., and continuing contract(s) with (a) Hunt Oil Company, of Tuscaloosa, AL, (b) Research Solvents & Chemicals, Inc., of Pelham, AL, (c) Exxon Company, U.S.A. (a division of Exxon Corporation), of Houston, TX, (d) Texaco U.S.A., a division of Texaco, Inc., of Houston, TX, (e) Kerr-McGee Corporation, of Okalahoma City, OK, (f) VGS Corporation d.b.a. Southland Oil Company, of Jackson, MS, (g) Plaskolite, Incorporated, of Columbus, OH, (h) American Cyanamid Company, of Wayne, NJ, and its affiliates and subsidiaries, (i) Delta Refining Company, of Memphis, TN, (j) Vulcan Asphalt Refining Co., Inc., of Cordova, AL, (k) Mississippi Chemical Corporation, of Yazoo City, MS, and (l)

Chevron U.S.A. Inc., of San Francisco, CA.

MC 107012 (Sub-654), filed February 4, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as above), (219) 429–2110. Transporting *printed matter* between Muscatine, IA, Nashville, TN, and points in Du Page County, IL, Lake and Marion Counties, IN, Fayette and Woodford Counties, KY, Bristol County, MA, and Westchester County, NY, on the one hand, and, on the other, points in the U.S.

MC 107012 (Sub-656), filed February 6, 1981. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant), (219) 429–2110. Transporting *metal products* between points in Sheboygan County, WI, on the one hand, and, on the other, points in the U.S.

MC 109533 (Sub-138F), filed Feburary 6, 1981. Applicant: OVERNITE TRANSPORTATION COMPANY, a corporation, 1000 Semmes Avenue, Richmond, VA 23224. Representative: John C. Burton, Jr., (same address as applicant), (804) 231–8281. Over regular routes, transporting *general commodities* (except classes A and B explosives), (1) between Chattanooga and Memphis, TN, over U.S. Hwy 72, serving all intermediate points, and (2) serving points in TN on and west of U.S. Hwy 31 and 31–E, and those in AL as intermediate or off-route points in conjunction with applicant's existing regular-route authority.

Note.—Applicant intends to tack the authority with existing authority held in Docket MC–109533 and subs.

MC 109593 (Sub-14), filed February 3, 1981. Applicant: H. R. HILL, Box 875, 2007 West Shawnee, Muskogee, OK 74401. Representative: Max G. Morgan, 1503 East 19th St., P.O. Box 1540, Edmond, OK 73034, (405) 348–7700. Transporting *food and related products* between points in the U.S., under a continung contract(s) with Cole Grain Co., of Muskogee, OK.

MC 109593 (Sub-15), filed January 30, 1981. Applicant: H. R. HILL, Box 875, 2007 West Shawnee, Muskogee, OK 74401. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Transporting (1) *such commodities* as are dealt in by manufacturers of containers between points in the U.S., under a continuing contract(s) with Brockway Glass Company, Inc., of Brockway, PA.

MC 110012 (Sub-84), filed February 4, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, N.E., Washington, DC 20004, (202) 737–1030. Transporting *such commodities* as are dealt in by discount and department stores between points in the U.S.

MC 110012 (Sub-85), filed February 5, 1981. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, N.E., Washington, DC 20004. Transporting *general commodities* between points in Sullivan County, TN, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorized classes A and B explosives shall be limited in term to a period expiring 5 years from its date of issuance.

MC 111812 (Sub-758), filed February 5, 1981. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma, (same as applicant), (605) 339–8424. Transporting *printed matter, pulp, paper and related products*, between the facilities of Time, Inc., at points in IL, KY, OH, TN and WI, on the one hand, and, on the other, points in the U.S.

MC 115672 (Sub-25), filed January 30, 1981. Applicant: KENTUCKY WESTERN TRUCK LINES, INC., P.O. Box 623, Hopkinsville, KY 42240. Representative: James Clarence Evans, 1800 3rd National Bank Bldg., Nashville, TN 37219, 615–244–1440. Transporting *machinery*, between points in the U.S., under continuing contract(s) with York Division of Borg-Warner Corporation, of Madisonville, KY.

MC 117173 (Sub-1), filed January 21, 1981. Applicant: JON W. McCARTER, d.b.a. McCARTER TRANSIT, 2569 Darlington Road, Beaver Falls, PA 15010. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip and one-way charter and special operations, (a) between points in Hancock, Brooke, Ohio, and Marshall Counties, WV, and Washington County, PA, on the one hand, and, on the other, points in the U.S., and (b) between points in that portion of Allegheny County, PA on and west of a line beginning at the Allegheny-Butler County line, then south along PA Hwy 8 to junction PA Hwy 28, then southwesterly along PA Hwy 28 to junction U.S. Hwy 19, then south on U.S. Hwy 19 to junction PA Hwy 51, then south on PA Hwy 51 to the Allegheny-Westmoreland County line, on the one hand, and, on the other, points in the U.S.

MC 119192 (Sub-17F), filed February 6, 1981. Applicant: EASTERN DELIVERY SERVICE, INC., 80 Central Avenue, Bridgeport, CT 06607. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting (a) *furniture and fixtures, and giftware*, and (b) *such commodities* as are dealt in or used by retail department stores, (except those in (a) above) between the facilities of The Hitchcock Chair Company, at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 119702 (Sub-82F), filed February 6, 1981. Applicant: STAHLY CARTAGE CO., 119 S. Main St., Edwardsville, IL 62025. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting *commodities* in bulk, between points in the U.S. on the one hand, and, on the other, its facilities of Dow Chemical U.S.A. and The Carter-Waters Corporation in the U.S.

MC 119923, filed January 5, 1981. Applicant: ORFAC TRUCKING CO., a corporation, 254 Port Street, Port Newark, NJ 07114. Representative: Nathaniel H. Yohalem, Engelhard Building, Woodbridge, NJ 07095, (201) 549–5600. Transporting *food and related products*, between points in the U.S., under a continuing contract with Peter Paul Cadbury, Inc., Naugatuck, of Naugatuck, CT.

MC 124692 (Sub-359), filed February 5, 1981. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT. 59806. Representative: J. David Douglas (same address as applicant), (406) 728–2600. Transporting *building materials* between points in Albany County, WY, on the one hand and, on the other, points in US.

MC 124692 (Sub-361), filed February 3, 1981. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant), (406) 728–2600. Transporting: *Machinery, between points in MT, on the one hand, and, on the other, points in AL, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, ND, NY, TN, SD, WA, WI, and WY.*

MC 134783 (Sub-72F), filed February 6, 1981. Applicant: DIRECT SERVICE, INC., 940 East 66th Street, P.O. Box 2491,

Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203, (303) 839–5856. Transporting *Foods and related products*, between points in Jefferson County, KY, on the one hand, and, on the other, points in the U.S.

MC 136123 (Sub-16), filed February 3, 1981. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same address as applicant), (813) 722–0506. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Delaware Valley Shippers Association, of Bristol, PA.

MC 138432 (Sub- 24), filed February 5, 1981. Applicant: GARLAND GEHRKE, 1800 N. Jefferson, Lincoln, IL 62656. Representative: James R. Madler, 120 W. Madison Street, Chicago, IL 60602, (312) 726–6525. Transporting *clay, concrete, glass or stone products* between points in McKean County, PA and Logan County, IL, on the one hand, and, on the other, points in IL, IN, MI, MO, MN, NY, OH and TN.

MC 139083 (Sub-12), filed February 3, 1981. Applicant: BUILDING SYSTEMS TRANSPORTATION, INC., P.O. Box 142, Washington Court House, OH 43160. Representative: Marshall Kragen, 1919 Pennsylvania Avenue NW, Suite 300, Washington, DC. 20006, (202) 466–3778. Transporting (1) *metal products*, (2) *lumber and wood products, rubber and plastic products*, and (3) *clay, concrete, glass, or stone products*, between points in Jessamine and Fayette Counties, KY on the one hand, and, on the other, points in the U.S.

MC 140273 (Sub-24), filed February 6, 1981. Applicant: BUESING BROS. TRUCKING, INC., 2285 Daniels Street, Long Lake, MN 55356. Representative: Val M. Higgins, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting *ores and minerals*, between Minneapolis, MN and points in Scott County, MN, Jackson, Green Lake, Eau Claire, Fond du Lac and Marinette Counties, WI, and Story County, IA, on the one hand, and, on the other, points in the U.S.

MC 143023 (Sub-2), filed January 29, 1981. Applicant: CHIWAUKEE TRUCK LINES, INC., 1501 West Pershing Road, Chicago, IL 60609. Representative: Albert A. Andrin, 180 North La Salle Street, Chicago, IL 60601, (312) 332–5106. Transporting *food and related products, chemicals and related products, rubber and plastic products, and printed matter*, between points in IL, on the one hand, and, on the other, points in MN.

MC 143693 (Sub-10), filed February 2, 1981. Applicant: DFC TRUCKING COMPANY, a corporation, 17872 Cartwright Road, Irvine, CA 92705. Representative: Floyd L. Farano, 2555 E. Chapman Avenue, Suite 415, Fullerton, CA 92631, (714) 773–4111. Transporting *food and related products, pulp, paper and related products, machinery, chemicals and related products, miscellaneous products of manufacturing, apparel and other finished textile products or knit material, metal products, and furniture and fixtures*, between points in the U.S., under continuing contract(s) with (a) Denny's, Inc., of La Mirada, CA, (b) Delly Food Company, of Irvine, CA, (c) Proficient Food Co., of Irvine, CA, (d) Portion-Trol Foods, Inc., of Mansfield, TX, (e) Winchels Donut House, of La Mirada, CA, and (f) Anderson Clayton Foods, of Dallas, TX.

MC 144572 (Sub-47), filed February 5, 1981. Applicant: MONFORT TRANSPORTATION COMPANY, a corporation, P.O. Box G, Greeley, CO 80632. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202 (303) 892–6700. Transporting *pulp, paper and related products*, between Los Angeles, CA, on the one hand, and, on the other, points in CO.

MC 144913 (Sub-5), filed February 2, 1981. Applicant: COMPTON TRUCKING, INC., 5300 Kennedy Road, Forest Park, GA 30050. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133, (404) 949–7756. Transporting *such commodities* as are dealt in by discount *department stores*, between points in CT, NY, PA, OH, NJ, and WV, on the one hand, and, on the other, Atlanta, GA.

MC 147832 (Sub-4F), filed January 28, 1981. Applicant: JIM EDDLEMAN, d.b.a. J & J CATTLE COMPANY, 3395 Wright Street, Wheat Ridge, CO 80033. Representative: Truman A. Stockton, Jr., 1365 Logan Street, Suite 100, Denver, CO 80203. Transporting (1) *food and related products*, between points in the U.S., and (2) *instruments and photographic goods, chemicals and related products, and tobacco products*, between points in AL, AR, AZ, CA, FL, GA, IA, ID, IL, KS, KY, LA, MI, MN, MO, MS, MT, NE, ND, NM, NV, OK, OH, OR, SD, TN, TX, UT, WA, WI and WY, on the one hand, and, on the other, points in CO.

MC 148323 (Sub-4), filed January 21, 1981. Applicant: A.B. & K. TRUCKING, INC., 5535 Walter Avenue, Hammond, IN 46320. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317–846–6655. Transporting (1) *pulp, paper and related products*, (2) *metal products*, and (3) *lumber and wood products*, between points in the U.S., under continuing contract(s) with Corrugated Supplies Corporation, of Chicago, IL, and Cleaners Hanger Company, of Massillon, OH.

MC 148352 (Sub-3F), filed February 2, 1981. Applicant: R & B TRUCKING CO., INC., P.O. Box 351, Millport, AL 35576. Representative: Ronald L. Stichweh, 727 Frank Nelson Building, Birmingham, AL 35203. Transporting *forest products and lumber and wood products*, between points in AL, MS, AR, GA, and LA, on the one hand, and, on the other, those points in the U.S., in and east of TX, OK, KS, NE, IA, and MN.

MC 149963 (Sub-2), filed February 3, 1981. Applicant: NICK MIELE TRUCKING CO., INC., 475 Sonia Avenue, Matawan, NJ 07747. Representative: William J. Augello, 120 Main Street, P.O. Box Z, Huntington, NY 11743, (516) 427–0100. Transporting (1) *clay, concrete, glass or stone products*, and (2) *food and related products*, between points in U.S., under continuing contract(s) with (a) Midland Glass Co., of Cliffwood, NJ, and (b) Coca-Cola Co., Foods Division, of Hightstown, NJ.

MC 150102 (Sub-5F), filed February 6, 1981. Applicant: MUSTANG TRANSPORTATION, INC., 1101 Rue Corton, Slidell, LA 70458. Representative: Albert T. Riddle (same address as applicant), (504) 649–1333. Transporting *cleaning compounds and related products*, between points in the United States, under continuing contract(s) with Economics Laboratory, Inc., of St. Paul, MN.

MC 150522 (Sub-3), filed February 6, 1981. Applicant: VIRGINIAN ELECTRIC COMPANY, d.b.a. VIRGINIAN POWER TRANSPORT, 530 29th Street, Parkersburg, WV 26101. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526, 304–562–3460. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Scott Lumber, of Bridgeport, OH.

MC 150663, filed January 26, 1981. Applicant: JAMES LUCAS, 4060 E. Leonard Road, NE., Grand Rapids, MI 49506. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate NW., Comstock Park, MI 49321, (616) 784–1937. Transporting *chemicals and related products*, between Cincinnati, OH, points in Boone, Kenton, and Campbell Counties, KY, Vigo County, IN, Will County, IL, and Lucas County, OH, on the one hand, and, on the other, points in MI.

MC 151302 (Sub-1), filed February 5, 1981. Applicant: DONALD E. REYNOLDS, d.b.a. BAR-TRAN CO., 506 Manor, Box 119, Rock Port, MO 64482. Representative: Donald E. Reynolds (same as applicant), (816) 744-2700. Transporting *petroleum, natural gas and their products*, (1) between points in Wyandotte, Johnson, and Doniphan Counties, KS, on the one hand, and, on the other, points in MO, and (2) between points in Cass and Douglas Counties, NE, on the one hand, and, on the other, points in Atchison and Holt Counties, MO.

MC 152892 (Sub-1), filed January 26, 1981. Applicant: AGRI-GAINS, INC., Red Oak, IA 51566. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting chemicals and related products, (1) between points in Jasper County, MO, on the one hand, and, on the other, points in NE, and (2) between points in Douglas County, NE, on the one hand, and, on the other points in IA.

MC 153822 (Sub-1), filed February 3, 1981. Applicant: RICHARD A. JONES, d.b.a. JONES TRUCK LINE, 1206½ 3rd Avenue NW., Fort Dodge, IA 50501. Representative: Larry Knox, 600 Hubbell Building, Des Moines, IA 50309. Transporting *malt beverage*, between Peoria, IL, on the one hand, and on the other, points in Webster County, IA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-7435 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29549 (Sub-No. 1)]

Louisiana & Arkansas Railway Co.—Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343(a)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements for prior approval under 49 U.S.C. 11343 the trackage rights agreement for Louisiana & Arkansas Railway Company (L&A) to operate over a 3-mile segment of the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) track in Dallas, TX.

DATES: This exemption is effective immediately. Petitions for reconsideration of this decision must be filed no later than 20 days following this publication.

ADDRESSES: Send petitions for reconsideration to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, 12th Street and Constitution Ave. NW., Washington, DC 20423
and
(2) Petitioner's representative: Robert K. Dreiling, Attorney for Louisiana and Arkansas Railway Company, 114 West 11th Street, Kansas City, MO 64105.

Pleadings should refer to Finance Docket No. 29549 (Sub-1).

FOR FURTHER INFORMATION CONTACT: Ellen Hanson (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Background

The lines of L&A, a subsidiary of the Kansas City Southern Lines, extend from Dallas, TX, through Shreveport, LA, to the Gulf Port of New Orleans, LA. until May, 1977, L&A used Santa Fe's yard and terminal facilities in Dallas in providing rail service to, from, through the Dallas terminal. But it was forced to terminate this arrangement because increased traffic rendered joint use of the Santa Fe facilities impractical. Since then L&A has been using the Chicago, Rock Island and Pacific Railroad Company (Rock Island) track and terminal facilities in its Cadiz Yard at Dallas, TX, in providing such service.

To reach the Rock Island yard, which is situated beyond the Santa Fe yard, L&A must operater over a portion of Santa Fe track, between milepost 53 plus 1,802.2 feet and milepost 50 plus 4,100 feet, in Dallas. Santa Fe granted L&A use of such track by an agreement dated May 12, 1977. From May 19, 1977, through December 30, 1980, L&A operated over the Santa Fe track pursuant to various service orders issued by us under 49 U.S.C. 11123(a).[1] L&A's request to extend service beyond December 30, 1980, was denied because it failed to meet the new criteria established by the Staggers Rail Act of 1980 (Pub. Law No. 96-448, October 14, 1980) for issuance of service orders under section 11123(a)).[2]

L&A indicated that it had entered into agreements with both Rock Island and Santa Fe for permanent authority to use the involved facilities and trackage, and that it would soon file applications with the Commission for permanent authority to operate over the Santa Fe track. To avoid a disruption in rail service, we granted L&A a temporary exemption under 49 U.S.C. 10505, enabling it to continue operating over the Santa Fe track for 2 additional months without having to obtain prior approval under either 49 U.S.C. 10901 or 49 U.S.C. 11343(a). This exemption is scheduled to expire on March 1, 1981. See Finance Docket No. 29549, *Louisiana & Arkansas Railway Company—Exemption under 49 U.S.C. 10505 from 49 U.S.C. 10901 and 49 U.S.C. 11343(a)*, served on December 30, 1980 and published at 46 FR 1783 (January 7, 1981). No objections or comments have been received in response to our granting the temporary exemption.

On January 15, 1980, L&A filed a petition for clarification and waiver of certain filing requirements concerning its applications for permanent authority to operate over the Santa Fe trackage. This petition was amended on February 9, 1981, to include an alternative request for either exemption of the entire trackage rights transaction or an extension of the temporary exemption.

Discussion and Conclusions

The acquisition by a rail carrier of trackage rights over another rail line requires the Commission's prior approval under 49 U.S.C. 11343[3] in accordance with regulations established in *Railroad Acquisition, Control, Merger, Consolidation Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1979). See also *Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980).

Pursuant to 49 U.S.C. 10505, as amended by section 213 of the Staggers Act, we are authorized to exempt a transaction from regulation when we find that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a, and (2) either the transaction is of limited scope or regulation is not

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[1] On May 19, 1977, we issued Service Order No. 1267, *Louisiana & Arkansas Railway Company Authorized to Operate Over Trocks of the Atchison, Topeka & Santa Fe Railway Company*, which became effective on May 19, 1977, and was extended through 6 amendments. The last amendment extended Service Order No. 1267 until November 30, 1980. On December 1, 1960, Service Order No. 1491, *Louisiana & Arkansas Railway Company Authorized to Operate Over Tracks of the Atchison, Topeka and Santa Fe Railway Company*, was issued. It became effective on December 1, 1980, and expired on December 30, 1980.

[2] The Staggers Act limits the Commission's authority to issue service orders under section 11123(a) to emergency situations of such magnitude as to have substantial adverse effects on rail service in the United States or a substantial region of the United States.

[3] Approval under 49 U.S.C. 10901 is required for the acquisition, operation and construction of a line of railroad. However, where a carrier receives approval of its trackage rights application under 49 U.S.C. 11343, it may operate the line without approval under section 10901. The temporary exemption which we granted for the transaction involved here exempted L&A from section 10901 as well as section 11343(a) because of uncertainty as to whether section 10901 would apply in the absence of express authorization under section 11343. After further review of this matter, we believe that section 10901 would not apply and, therefore, L&A does not need to be exempted from section 10901 in order to conduct the proposed operation.

necessary to protect shippers from an abuse of market power. We believe the instant proposal satisfies the criteria of section 10505 and should be exempted.

Although technically the proposal is an extension of L&A's route from Shreveport to Dallas, it is an extension of only 3 miles and will not allow an expansion of L&A's service. It will simply allow L&A to continue an arrangement which has been in effect for over 3 years and which resulted from a necessary relocation of operations from one terminal facility to another in the same service area. This arrangement has not resulted in significantly changed rail operations, but it has allowed for a more effective mode of operation. The proposal will have no impact on interstate commerce.

Our detailed scrutiny of the transaction under the criteria of 49 U.S.C. 11343–11344 is not necessary to carry out any of the 15 objectives listed in the rail transportation policy of section 10101a. Indeed, our exempting this minor transaction from regulation will facilitate at least one of those objectives: to minimize the need for regulatory control and to require expeditious decisions when regulation is necessary. 49 U.S.C. 10101a(2).

Additionally, the transaction is of limited scope because (1) it involves only a small segment of track; (2) it will not result in significantly changed rail operations; and (3) is will not adversely affect any railroad employees, shippers, other carriers, or the environment. This conclusion is consistent with our prior denial of service order authority for the proposed operation because of L&A's failure to show that the operation was of national or regional significance.

Having concluded that the transaction is of limited scope, we need not determine whether regulation is necessary to protect shippers from the abuse of market power. We note, however, that since the exemption will merely allow a continuation of operations which have been in effect for over 3 years, it is not likely to have any adverse impact whatsoever on shippers. This conclusion is supported by the fact that no shipper has objected to the temporary exemption which we previously granted to L&A.

Since we have determined that the transaction should be exempted, L&A's request for clarification and waiver of various filing requirements is moot and need not be considered further.

Labor protection. In granting this exemption we may not relieve a carrier of its obligation to protect the interests of employees. See 49 U.S.C. 10505(g)(2). We have determined that the employee protective conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), satisfy the statutory requirements for protection of employees involved in trackage rights transactions. Accordingly, these conditions are imposed here as a condition to exercise of this exemption.

We find:

(1) Application of the requirements of 49 U.S.C. 11343(a) for prior approval of L&A's trackage rights and operations over the Santa Fe rail line between milepost 50 plus 4,100 feet and milepost 53 plus 1802.2 feet is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a.

(2) This transaction is of limited scope.

(3) This decision will not operate to relieve L&A from an obligation either (a) to provide contractual terms for liability and claims, which are consistent with 49 U.S.C. 11707, or (b) to protect the interest of its employees.

(4) This decision is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

It is ordered:

(1) Pursuant to 49 U.S.C. 10505, we exempt L&A's acquisition of trackage rights over the Santa Fe rail line from 49 U.S.C. 11343, subject to the employee protective conditions imposed in *Norfolk & Western Ry. Co.—Trackage Rights—BM*, 354 I.C.C. 650 (1978), as modified by *Mendocino Coast Ry., Incx.—Lease and Operate*, 360 I.C.C. 653 (1980).

(2) Within 60 days after this transaction is consummated, L&A shall submit three copies of a sworn statement showing all journal entries necessary to record the transaction.

(3) This exemption shall continue in effect for one year from the effective date of this decision. The parties must consummate the transaction during that time in order to take advantage of this exemption.

(4) Notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, Federal Register, for publication.

(5) This decision shall be effective immediately.

(6) Petitions to reopen this proceeding for reconsideration must be filed no later than 20 days after the date of publication in the **Federal Register.**

Decided: February 27, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam. Acting Chairman Alexis and Commissioner Gilliam were absent and did not participate.

Agatha L. Mergenovich,

Secretary.

FR Doc. 81-7458 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-9)]

Norfolk & Western Railway Co. Exemption for Contract Tariffs ICC-NW-C-5002, C-5003, C-5004, and C-5005

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.,

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The previously filed contract tariffs will become effective on 20 days' notice. This exemption may be revoked if protests are filed within 30 days of the initial filing of the tariffs.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 275–7656 or Richard Schiefelbein (202) 275–0826.

SUPPLEMENTARY INFORMATION: Norfolk and Western Railway Company (N&W) has requested an exemption from the requirement of 49 U.S.C. 10713(e) that its contract tariffs ICC–NW–C–5002, C–5003, C–5004, and C–5005 be made effective on a minimum of 30 days' notice. These tariffs are currently scheduled to take effect on March 16, 1981 (C–5002, C–5003, and C–5004), and March 22, 1981 (C–5005). N&W seeks to advance these effective dates by 10 days to March 6 and March 12, respectively. The tariffs reflect contracts of 30 days' duration with the exception of C–5002, which has a 45-day duration.

The contracts are designed to expedite the loading, line-haul movement, and dumping of export coal at N&W's Lamberts Point Piers located at Norfork, VA. Each contract relates to one or more vessel loads of coal and, with respect to each load, establishes a restricted number of origin mines, a specified period for carloading, a rail transit period, and a vessel berthing date. Non-contract operations are not subject to such schedules. N&W believes that the contracts will result in reductions in car detention times at origin and destination and in line-haul movement times. Coordination of coal and vessel arrivals at the piers and contractual limitations on blending operations should also improve utilization of pier facilities. Petitioner

states that these facilities are now extremely congested.

N&W takes the position that the 30-day notice period unnecessarily delays these benefits. It further points out the approaching expiration of the United Mine Workers' contract on March 27, 1981, and the possibility of a strike on that date. Such a strike would jeopardize full performance of the contracts if they did not become effective until March 16 and March 22. N&W believes that the requested 10-day advancement of these dates would allow performance even in the event of a strike. Petitioner states that it is not aware of any protests which will be filed against the tariffs.

Under 49 U.S.C. 10713(e), contracts must be filed to become effective on not less than 30 nor more than 60 days' notice. There is no provision for waiving this requirement. CF. former section 10762(d)(1). However, we may address the same relief under our section 10505 exemption authority and we do so here.

The contracts will allow the most efficient use of N&W's Norfolk pier facilities. To permit the contracts to become effective only after a 30 day period could frustrate this purpose in the event of a coal miners' strike. We believe that the contract proposals will enhance carrier service by encouraging efficient use of transportation facilities and should not impair the carrier's obligation to provide service to other shippers. We thus conclude that authorization of a provisional exemption is warranted.

N&W has already indicated in its petition a willingness to be bound by the following conditions, which have been imposed in similar exemption proceedings:

> If the Commission permits the contracts to become effective on 20 days' notice, this fact neither shall be construed to mean that these are Commission approved contracts for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding, on its own initiative or on complaint, to review the contracts and to disapprove them during the periods specified in 49 U.S.C. 10713.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. These interests can be fully protected by allowing the contracts to become effective on 20 days' notice. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed by March 16, 1981, with respect to tariffs ICC–NW–C–5002, C–5003, or C–5004, and by March 22, 1981, with respect to tariff ICC–NW–C–5005.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Decided: February 26, 1981.

By the Commission, Division 1, Commissioners Clapp, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81–7454 Filed 3–9–81; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 415]

Petitions and Applications

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operating Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix numbers (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected.*

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

MC 117344 (Sub-283M1F), filed January 19, 1981, notice of filing of a petition to modify a certificate. Petitioner: THE MAXWELL CO., a corporation, 10380 Evendale Dr., Cincinnati, OH 45215. Representative: James R. Stiverson, 1396 West Fifth Ave., Columbus, OH 43212. Petitioner was issued *common carrier* authority in MC 117344 Sub 283 on January 8, 1981, transporting *petroleum, petroleum products, and chemicals,* (in bulk), between the facilities of Ashland Oil, Inc., in Boyd County, KY, Lawrence County, OH, and Wayne County, WV, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA. By the instant petition, petitioner seeks to modify the authority to read: "*Commodities in bulk,* between Boyd County, KY, Lawrence County, OH, and Wayne County, WV, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA."

MC 134404 (Sub-51), M1F, filed January 1, 1981, notice of filing of a petition to modify a permit. Petitioner: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. Petitioner holds motor *contract* carrier Permit in MC–134404 Sub 51, issued January 31, 1981. MC–134404 Sub 51 authorizes transportation, over irregular routes, of *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in the U.S. in and east of MN, IA, MO, AR, and LA, restricted to the transportation of traffic originating at or destined to the facilities of Union Camp Corporation, of Wayne, NJ. By the instant petition, petitioner seeks to modify the permit by adding "Georgia Pacific Corporation, of Darien, CT, as a contracting shipper."

Note.—This proceeding was previously published in Volume 157, in error.

MC 149145 (Sub-2M1F), filed November 10, 1980, notice of filing of a petition to add a contracting shipper. Petitioner: NATIONAL TRANSPORTATION SYSTEMS, INC. (formerly ITOFCA TRUCK LINE, INC.), 2285 183d Place, Lansing, IL 60438. Representative: Charles W. Singer, P.O. Box 2298, Green Bay, WI 54306. Petitioner has applied for *contract carrier* authority in MC 149145 Sub 2 transporting *general commodities* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and comodities requiring special handling or equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with ITOFCA, Inc., of Clarendon Hills, IL. That proceeding was published July 10, 1980, and is now unopposed. By the instant petition, petitioner seeks to add Charter Oak

Shippers Cooperative Association, Inc., as a contracting shipper.

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: February 3, 1981.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendment to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 128114 (Sub-10), filed March 14, 1980, previously noticed in the **Federal Register** issue of June 26, 1980, and February 13, 1981. Applicant: SAVAGE & SONS, INC., P.O. Box 2422, Building 141, Pasco Airport, Pasco, WA 99302. Representative: Boyd Hartman, P.O. Box 3641, Bellevue, WA 98009. Transporting *fertilizer* and *fertilizer ingredients*, (1) from Finley Hedges, WA, to points in MT, and (2) from Three Forks, MT, to Finley Hedges, WA.

Note.—This republication corrects the commodity description. This was previously published in the FR of February 13, 1981 with the incorrect prefix.

[FR Doc. 81-7452 Filed 3-9-81; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Deputy Assistant Administrator for the Near East; Redelegation of Authority

1. Pursuant to the authority delegated to me as Assistant Administrator, Bureau for the Near East, I hereby delegate to the Deputy Assistant Administrator, Bureau for the Near East, authority to act as my alter ago, and to be responsible, under my direction and concurrently with me, for all aspects of the activities of said Bureau. In accordance with this delegation, said Deputy Assistant Administrator is authority to represent me and to exercise my authority, with respect to all functions now or hereafter conferred upon me by A.I.D. Delegations of Authority, regulations, manual orders, handbook provisions, directives, notices, or other documents, by law or by any competent authority.

2. Redelegation of Authority No. 5.2 dated August 6, 1962 is hereby rescinded.

3. This Delegation of Authority is effective immediately. Dated February 26, 1981.

Alfred D. White,

Acting Assistant Administrator, Bureau for the Near East.

[FR Doc. 81-7378 Filed 3-9-81; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Borden, Inc. et al.; Proposed Consent Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Sections 16 (b)–(h), that a proposed consent judgment and a Competitive Impact Statement, as set forth below, have been filed with the United States District Court for the District of Arizona in *United States* v. *Borden, Inc. et al.*

The complaint in this case alleged that Borden, Inc. conspired with other dairies (1) to fix, raise, maintain and stabilize the wholesale prices of dairy products; (2) to fix the terms of discounts on dairy products; (3) to submit collusive bids to public agencies; and (4) to allocate customers for dairy products in violation of Section 1 of the Sherman Act.

The proposed judgment prohibits Borden from entering into any agreement or understanding with any other dairy to fix, raise, maintain or stabilize prices or discounts, to submit collusive bids, or to allocate markets or customers for dairy products sold at wholesale in the State of Arizona.

The judgment requires Borden to distribute copies of the judgment to its officers and directors and to those employees with responsibility for pricing or sale of dairy products in Arizona. It also requires that Borden institute an antitrust compliance program which it must continue for five years from the date of the judgment.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, San Francisco, California 94102.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. District Court for the District of Arizona

Anthony E. Desmond, Don B. Overall, Glenda R. Jermanovich, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Room 16216C, Box 36046, San Francisco, CA 94102, Telephone: 415/556-6300.

United States of America, Plaintiff, v. *Borden, Inc.; and Shamrock Foods Company,* Defendants.

Civ 74-560 PHX-CAM.

Filed: February 25, 1981.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties hereto consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or any other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff or defendants in this or any other proceeding.

Dated: February 25, 1981.

For the Plaintiff: Sanford M. Litvack, *Assistant Attorney General;* Joseph H. Widmar, Anthony E. Desmond, Glenda R. Jermanovich, Charles F. B. McAleer, *Attorneys, Department of Justice.*

For the defendant Borden, Inc.: By Nathan P. Eimer, *Attorney for Defendant Borden, Inc.*

U.S. District Court for the District of Arizona

Attorneys for the United States:

Anthony E. Desmond, Don. B. Overall, Glenda R. Jermanovich, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16216C, San Francisco, California 94102, Telephone: (415) 556-6300.

United States of America, Plaintiff, v. *Borden, Inc.; and Shamrock Foods Company,* Defendants.

CIV 74-560 PHX CAM.

Filed: February 25, 1981.

Final Judgment as to Defendant Borden, Inc.

(As to Count I—Injunctive Relief)

Plaintiff, United States of America, having filed its Compliant herein on August 16, 1974, and plaintiff and defendant, by their respective attorneys, having each consented to the making and entry of this Final Judgment as to Count I of the Complaint (hereinafter "Final Judgment") without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

Now, Therefore, before any testimony has been taken herein and without trail or adjudication of any issues of fact or law herein, and upon consent of the parties as aforesaid, it is hereby Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Compliant in Count I states claims upon which relief may be granted against the defendant under Section One of the Sherman Act, 15 U.S.C. § 1.

II

As used in this Final Judgment:

(a) "Person" means any individual, sole proprietorship, trusteeship, partnership, association, corporation, or any other business or legal entity;

(b) "Dairy products" means fluid pasteurized and homogenized milk, two percent milk, skim milk, chocolate milk, buttermilk, whipping and table cream, half and half, sour cream, yogurt, cottage cheese, ice cream and ice milk, and butter; and in addition means related products which are not processed from raw milk but which are regularly marketed by diaries such as margarine, non-diary creamers, orange and other fruit drinks, sherbert, popsicles, and other frozen novelties;

(c) "Dairy" means any person which processes raw milk into dairy products and/or sells and distrubutes dairy products to customers such as grocery stores, restaurants, hotels, schools, hospitals, military, installations, other government agencies and home delivery purchasers.

III

The provisions of the Final Judgment are applicable to Borden, Inc. (when acting through its combined Foods and Dairy Divisions, dairy group or any successor thereto), hereinafter referred to as "Borden", and to any successor entity thereto and to the parents, subsidiaries, successors and assigns, directors, officers, agents and employees of defendants and to all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Borden as defined in Section III above, shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets of its dairy business or dairy operations within the State of Arizona and/or within the geographic region which serves Arizonia that the acquiring party agree to be bound by the provisions of this Final Judgment. An acquiring party subject to this provision shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

V

Borden is enjoined and restrained from directly or indirectly:

(a) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to fix, raise, stabilize or maintain the wholesale prices of any dairy products to be sold to any third person in the State of Arizona;

(b) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to reduce, fix or stabilize discounts for the sale at wholesale of any dairy products offered to any third person in the State of Arizona;

(c) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to submit collusive or rigged bids or quotations for the sale of dairy products in the State of Arizona to any person seeking bids or quotations such as schools, hospitals, military installations or other government agencies; and

(d) Entering into, maintaining or furthering any contract, agreement, understanding, combination or conspiracy to allocate customers, territories or markets for the sale at wholesale of any dairy products in the State of Arizona.

VI

Borden is enjoined and restrained from communicating to or exchanging with any other dairy any actual or proposed prices, price lists, price changes, or other terms or conditions of sale at or upon which any dairy product is to be or has been sold at wholesale in the State of Arizona. *Provided*, however, that the defendant may (a) communicate such information with a person acting as a distributor of the defendant's dairy products pursuant to a bona fide distributorship agreement; and (b) solely in connection with a proposed or actual bona fide sales transaction, quote to any person a price and other applicable terms and conditions of sale for a specific dairy product.

VII

Borden is ordered and directed to:

(a) Furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers and directors, and to each of its employees and agents who have responsibility for the pricing or sale of dairy products in the State of Arizona;

(b) Furnish a copy of this Final Judgment to each successor to those officers, directors, employees, or agents described in Paragraph (a) of this Section, within thirty (30) days after such successor is employed by or becomes associated with Borden;

(c) File with this Court and with plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Paragraph (a) of this Section; and

(d) Obtain from each officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (a) of the Section, and from each successor to each such officer, director, employee and agent served with a copy of this Final Judgment pursuant to Paragraph (b) of this Section, a written statement evidencing such person's receipt of a copy of this Final Judgment; and to retain such statements in its files.

VIII

(A) Borden shall advise each of its officers and employees who have responsibility for or authority over the establishment of prices for dairy products for use in the State of Arizona and/or the determination and submission of bids to the State of Arizona or to any federal agency for dairy product contracts in or for the State of Arizona, of its and their obligations under this Final Judgment. For a period of five (5) years from the entry of this Final Judgment, Borden shall maintain a program to insure compliance with this Final Judgment, which program shall include at a minimum the following with respect to each of the persons described immediately above:

(1) The annual distribution to them of this Final Judgment;

(2) The annual submission to them of a written directive setting forth the defendant's policy regarding compliance with the Sherman Act and with this Final Judgment, with such directive to include (a) an admonition that non-compliance with such policy and this Final Judgment will result in appropriate disciplinary action determined by the defendant and which may include dismissal, and (b) advice that the defendant's legal advisors are available at all reasonable times to confer with such persons regarding any compliance questions or problems;

(3) The imposition of a requirement that each of them sign and submit to his employer, once a year, a certificate in substantially the following form:

"The undersigned hereby (1) acknowledges receipt of a copy of the 1981 Arizona Milk Final Judgment and a written directive setting forth the Company policy regarding compliance with the antitrust laws and with such Final Judgment, (2) represents that the undersigned has read and understands such Final Judgment and directive, (3) acknowledges that the undersigned has been advised and understands that non-compliance with such policy and Final Judgment will result in appropriate disciplinary measures determined by the company and which may include dismissal, and (4) acknowledges that the undersigned has been advised and understands that non-compliance with the Final Judgment may also result in conviction for contempt of court and imprisonment and/or fine";

(4) The holding of one or more meetings with them to review the terms of this Final Judgment and the obligations it imposes, with such meetings to be arranged and conducted so that each of them attends at least one such meeting within each twelve-month period; and

(B) For a period of five (5) years from the entry of this Final Judgment, Borden shall file with the plaintiff and under seal with the Court, on or before the anniversary date of this Final Judgment, a sworn statement, by a responsible official designated by the defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under this Section VIII. This statement shall be accompained by copies of all written directives issued by Borden concerning the manner of compliance with Paragraph A of this Section VIII.

Upon motion of the plaintiff or upon this Court's own motion, responsible officials of Borden may from time to time be ordered to appear before this Court to give sworn testimony relating to Borden s manner of compliance with the provisions of this Final Judgment.

For the purposes of determing or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(a) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Borden made to its principal office, be permitted:

(1) Access during Borden s office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Borden, who may have counsel present, relating to any matters contained in this Final Judgment, and;

(2) Subject to the reasonable convenience of Borden and without restraint or interference from it, to interview officers, employees, and agents of Borden, who may have counsel present, regarding any such matters.

(b) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Borden's principal office, Borden shall submit such written reports, under oath if requested, with respect to any of the matters, contained in this Final Judgment as may be requested.

(c) No information or documents obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except

in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment or as otherwise required by law. If at the time information or documents are furnished by Borden to plaintiff, Borden represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, "Subject to protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Borden prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which Borden is not a party.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or compliance therewith and punishment of any violation of any of the provisions contained herein.

XII

This Final Judgment shall be in force and effect for a period of ten (10) years from the date of entry.

XIII

The entry of this Final Judgment is in the public interest.

Dated:

———— ————,

United States District Judge

U.S. District Court for the District of Arizona

Attorneys for the United States:

Anthony E. Desmond, Don B. Overall, Bernard H. Meyers, Glenda R. Jermanovich, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16216C, San Francisco, California 94102, Telephone: (415) 556-6300.

United States of America, Plaintiff, v. *Borden, Inc.; and Shamrock Foods Company*, Defendants.

CIV 74-560 PHX CAM.
Filed: February 25, 1981.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)], the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. Nature of the Proceeding

On August 16, 1974, the United States filed a three count civil complaint under Section 4 of the Sherman Act and Section 4A of the Clayton Act [15 U.S.C. §§ 4 and 15a] and under the False Claims Act [31 U.S.C. §§ 231-233] against defendant Borden, Inc., and against Carnation Company, Foremost-McKesson, Inc., and Shamrock Foods Company. The Complaint alleged that beginning sometime prior to 1966 the defendants, along with unnamed co-conspirators, engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce the substantial terms of which were: (a) to fix, raise, stabilize and maintain the prices of dairy products sold to their wholesale customers; (b) to reduce, fix and stabilize discounts for the sale of dairy products to certain customers; (c) to submit collusive and rigged bids for the sale of dairy products to customers seeking bids such as schools, hospitals, military installations and other government agencies; and (d) to allocate among themselves customers for the sale of dairy products.

In a federal grand jury indictment, also filed on August 16, 1974, the same corporate defendants and certain of their employees were charged with a criminal violation of the Sherman Act, arising out of the same alleged conspiracy. All defendants in the criminal case were permitted to enter pleas of *nolo contendere*. In February 1975 United States District Court Judge Carl A. Muecke sentenced the corporate defendants to pay a fine of $50,000 each. In February 1975 and January 1976 the individual defendants received sentences of fines and probation which were subsequently reduced because defendants had fulfilled an "alternative" program of supplying milk to and working for charitable organizations.

Counts II and III of the civil complaint, which pertained to the damages incurred by the United States and to the False Claims Act, were terminated in July 1977 when defendants Borden, Inc. Carnation Company and Foremost-McKesson, Inc. agreed to pay a total of $300,000 and in July 1979 when defendant Shamrock Foods Company agreed to pay $225,000 to the United States in settlement.

On March 31, 1980, Count I was dismissed as to defendants Carnation Company and Foremost-McKesson, Inc., because existing nationwide, perpetual consent judgments contained all the injunctions which the government would have sought to obtain against them under Count I.

Count I will be terminated as to defendant Borden, Inc. by entry by the Court of the proposed consent judgment, except insofar as the Court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of the provisions of the judgment.

II. Description of Practices Involved in the Alleged Violation

Within the time period covered by the complaint, each of the four defendant corporations was engaged in the business of processing and selling dairy products in Arizona. Their total sales in 1973 in Arizona were approximately $80 million, which accounted for approximately 90 percent of the total sales of dairy products by dairies in Arizona.

The government would have been prepared to prove at trial that defendant Borden, Inc (hereinafter "Borden") and the other corporate defendants, through their employees, had frequent communications and meetings about various aspects of the dairy business. Evidence would have been offered that, at various times during the alleged conspiracy, defendants' employees met, discussed, and agreed on raising wholesale prices to their customers. Evidence would also have been offered to prove that defendants' employees agreed to limit discounts to certain customers. The government was also prepared to prove that on several occasions, representatives of the defendant corporations met, discussed and reached an understanding as to who would be the successful bidder on contracts being offered by public agencies (federal, state and local) and that there existed an agreement among the defendants to divide the public agency business among themselves pursuant to discussions among their representatives.

According to the complaint, the alleged conspiracy had the following effects: (a) competition between and among the defendants and co-conspirators in Arizona had been restrained; (b) purchasers of dairy products in Arizona had been deprived of free and open competition in the sale of dairy products; and (c) wholesale prices of dairy products in Arizona had been raised, fixed and maintained at artificial and noncompetitive levels.

Borden, in its formal pleadings filed in the case, denied all the allegations in the government's complaint and was prepared to dispute the evidence to be offered by the government at a trial.

III. Explanation of the Proposed Consent Judgment

The United States and Borden have stipulated that the proposed consent judgment, which is in a form negotiated by the parties, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there has been no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment by the Court is conditioned upon a determination by the Court that the judgment is in the public interest.

A. Prohibited Conduct

The proposed judgment applies to Borden when acting through its combined Foods and Dairy Division, dairy group or any successor thereto.

The proposed judgment will expire ten years from the date of its entry and prohibits Borden from entering into, maintaining or furthering any agreements or arrangements to fix, raise, stabilize or maintain the wholesale prices of or to reduce, fix or stabilize discounts for any dairy products to be sold to any third person. The judgment prohibits Borden from entering into, maintaining or furthering any agreement to submit collusive bids to schools, hospitals, military installations or other government agencies in the State of Arizona. The judgment also prohibits Borden from agreeing to allocate customers, territories or markets for wholesale sales of dairy products in Arizona.

Borden is further enjoined from communicating to or exchanging with any other dairy the prices or other terms or

conditions of sale upon which any dairy product is to be or has been sold at wholesale in Arizona.

B. Required Conduct

For the purpose of notifying all responsible employees of the prohibitions of the judgment, Borden is required, within 30 days of the entry of the judgment, to serve a copy of the judgment on each of its directors and officers, and upon each of its employees or agents who have any responsibility for the pricing or sale of dairy products in the State of Arizona. If new employees are hired in these positions in the future, Borden must also serve a copy of the judgment on these new employees. Requiring the defendant to give such notice to its responsible personnel serves two purposes: it enables the affected employees to know what activities they are prohibited from engaging in, and it facilitates prosecution for criminal contempt of those employees who disregard the provisions of the judgment.

The judgment further requires Borden to maintain, for a period of five years, a program to insure compliance with the judgment. At a minimum, the program must include: (1) the annual distribution of the judgment to the officers and other company employees described above; (2) the annual submission to these officers and employees of a directive setting forth the defendant's policy for compliance with the Sherman Act and this judgment, with a warning that non-compliance will result in disciplinary action and advice that defendant's legal advisors are available to answer any questions concerning compliance; (3) the annual submission by each of these officers and employees of a certificate acknowledging that he or she has received and understands the judgment and the directive; and (4) annual meetings for these officers and employees to review the terms of the judgment and the obligations it imposes. Each year for a period of five years, a responsible official of the defendant is also required to file with the plaintiff and under seal with the Court, a sworn statement setting forth all the steps it has taken during the preceding year to discharge these obligations, along with copies of all directives issued by the company in compliance with this judgment. Such officials may also be required to give sworn testimony before the Court relating to defendant's manner of compliance.

If Borden sells all or substantially all of its assets of its dairy business in Arizona, the judgment compels the defendant to require the acquiring party to be bound by the provisions of the judgment and to file with the Court and the plaintiff its written consent to be bound by the judgment.

Under the proposed judgment, the Department of Justice is given access to the files and records of the defendant corporation for the purpose of examining such records for compliance or non-compliance with the judgment.

IV. Alternatives to the Proposed Consent Judgment

The proposed judgment is the product of lengthy negotiations. In accordance with the Antitrust Division's policy and with past consent judgments against other dairy companies in various parts of the country, the government originally sought a nationwide judgment. The government also sought a judgment not limited to the wholesale market. However, since the complaint was limited in its terms to wholesale sales, and since the evidence the government would adduce at trial was limited to the State of Arizona, the parties agreed to limit the judgment to wholesale sales in the State of Arizona.

V. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act [15 U.S.C. § 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. Following the filing of the government's complaint in this action, several lawsuits were brought on behalf of various classes of persons allegedly injured as a result of the violation of the antitrust laws alleged in the government's suit. These lawsuits are pending before the United States District Court for the District of Arizona under the caption *In Re Arizona Dairy Products Litigation*, Civ. No. 74-569-A PHX CAM. The plaintiffs in these actions and any other potential plaintiffs will retain the same rights to seek monetary damages and equitable remedies that they would have had if the proposed judgment had not been entered. However, pursuant to Section 5(a) of the Clayton Act, as amended 15 U.S.C. § 16(a), the judgment may not be used as *prima facie* evidence in private litigation.

VI. Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Anthony E. Desmond, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the **Federal Register**. All comment will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary to the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)] were considered in formulating this proposed judgment.

Dated:

Glenda R. Jermanovich,
Bernard H. Meyers,
Attorneys, U.S. Department of Justice.

[FR Doc. 81-7379 Filed 3-9-81; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket Nos. 79-20 and 79-21]

Ontario Drugs, Inc., Fullerton-Kedzie Pharmacy, Inc.; Denial of Applications

On October 18, 1979, the Administrator of the Drug Enforcement Administration [DEA] issued Orders to Show Cause proposing to deny the pending applications for registration of Ontario Drugs, Inc. ["Ontario"], and Fullerton-Kedzie Pharmacy, Inc. ["Fullerton-Kedzie"]. Both of these applicants, through their attorney, requested hearings on the issues raised by the Orders to Show Cause. At various stages of the proceedings leading toward a hearing, the requests for hearing were withdrawn and proceedings pending before the Administrative Law Judge were terminated.

These matters have reached the Administrator, under the provisions of 21 CFR 1301.54(e), for resolution without a hearing, based upon facts contained in the investigative file and the record of the administrative proceedings, such as they were. After a thorough consideration of all of this information, and pursuant to 21 CFR 1316.67, the Administrator hereby publishes his final order, based upon findings of fact and conclusions of law as set forth below.

On August 18, 1978, the Illinois Department of Registration and Education revoked the pharmacy licenses of both Ontario and Fullerton-Kedzie as well as the personal license of Morton Einstein as a registered pharmacist in the State of Illinois. DEA Certificate of Registration AE3875765, previously issued to Fullerton-Kedzie expired on August 31, 1978. On December 11, 1978, Mr. Einstein surrendered that registration.

On December 1, 1978, Mr. Einstein applied for renewal of DEA registration AO3861590 on behalf of the Ontario Drug pharmacy. In his application, Mr. Einstein falsely stated that the pharmacy was currently licensed by the State of Illinois and that it was thus authorized to handle controlled substances under the laws of that State. On January 18, 1979, the Administrator issued an Order to Show Cause proposing to revoke Ontario's DEA registration. As stated in the Order to Show Cause, the proposed action was based upon the registrant's lack of current State licensure and the

submission of a materially false application for renewal of that registration. The Administrator also found that the registrant's continued possession of a registration during the pendency of the proceedings initiated by the Order to Show Cause posed an imminent danger to the public health and safety. This finding was based upon the fact that Mr. Einstein had continued to use the Ontario registration to obtain controlled substances in spite of the fact that the pharmacy had been unlicensed since August 18, 1978, and could not, therefore, lawfully dispense the controlled substances it was ordering. Accordingly, the Administrator ordered the immediate suspension of Ontario's registration. The Order to Show Cause and Immediate Suspension Order were served on Mr. Einstein on January 25, 1979. Ontario Drugs failed to respond to the Order to Show Cause and, on March 5, 1979, the Administrator ordered that DEA registration AO3861590 be revoked. Thus, by March 5, 1979, neither Ontario nor Fullerton-Kedzie had a valid DEA registration—Ontario's registration had been suspended on January 18, 1979, and has subsequently been revoked; and Fullerton-Kedzie's registration had expired on August 31, 1978, and had subsequently been formally surrendered on December 11 of the same year.

By July 2, 1979, Mr. Einstein had obtained at least interim relief from the terms of the August 1978 revocation order of the Illinois Department of Registration and Education. On that date, he submitted on behalf of both Ontario and Fullerton-Kedzie the new applications which became the subject matter of the instant proceedings. These applications rekindled the investigation of Mr. Einstein and his pharmacies. The investigation revealed that Mr. Einstein had been using the Fullerton-Kedzie registration, which he had surrendered on December 11, 1978, to obtain controlled substances from a distributor in Niagara Falls, New York, and that when the distributor asked for proof of current registration, Mr. Einstein provided a photocopy of the Fullerton-Kedzie registration on which the expiration date had been altered to read August 31, 1980. The investigation also revealed that Mr. Einstein had been using the Ontario Drug registration number to obtain controlled substances, both after that registration had been suspended and after it had been formally revoked. Again, when the distributor in Long Island, New York, asked for evidence of current registration, Mr. Einstein provided an altered photocopy of the then-revoked Ontario Drug registration certificate. The expiration date in this case had been changed to read December 31, 1979.

The Administrator concludes that there is a lawful or statutory basis for the denial of each of the applications for registration herein. Mr. Einstein has materially falsified an application for registration under the Controlled Substances Act. Additionally, on April 6, 1980, Mr. Einstein was convicted, in the Circuit Court of Illinois, in and for Cook County, of ten counts of theft and 142 counts of forgery; these offenses stemmed from his submission of fradulent prescriptions to the Illinois Department of Public Aid. A number of these prescriptions involved controlled substances. Thus, the Administrator finds that there are additional grounds for denial under 21 U.S.C 824(a)(2).

Having concluded that there are lawful grounds, pursuant to 21 U.S.C. 824(A)(2) and 824(a)(3), se *In the Matter of S & S Pharmacy, Inc.*, 46 FR 13051 (1981), and cases cited therein, and having determined that Morton Einstein has most casually disregarded the law and abused the registrations previously issued to him, it is the Administrator's decision that the applications of the Ontario and Fullerton-Kedzie pharmacies must be denied.

Accordingly, under the authority vested in the Attorney General by Section 304 of the Controlled Substances Act, 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the applications of Ontario Drug, Inc., and Fullerton-Kedzie Pharmacy, Inc., for registration as retail pharmacies under Section 303 of the Act, 21 U.S.C. 823, be, and they hereby are, denied.

Dated: March 4, 1981.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 81-7425 Filed 3-9-81; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-81-14-C]

Cress Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Cress Coal Company, 100 E. Main Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment, general) to its #1 Slope located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if a "makeshift" safety device were installed, it would be activated on knuckles and curves, when no emergency existed, causing a tumbling effect on the conveyance which would increase rather than decrease the hazard to the miners.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, which have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 9, 1981. Copies of the petition are available for inspection at that address.

Dated: March 3, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-7449 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-5-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 3846 Retsof Road, Retsof, New York 14539

has filed a petition to modify the application of 30 CFR 57.14–13 (canopies) to its Retsof Mine located in Livingston County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fork-lift trucks, front-end loaders, and bulldozers be provided with substantial canopies when necessary to protect the operator.

2. Petitioner is presently using an electric lift truck with three wheels which is used only near the bottom of the production shaft. Because the vehicle moves so slowly, the greatest distance it travels is approximately one hundred yards to the underground mine shop area.

3. Petitioner states that with the canopy attached to the lift truck, the truck becomes top heavy and the truck could tip over easily.

4. Petitioner believes that the use of the canopy results in a diminution of safety for the miners affected and requests a modification to operate the lift truck without a canopy.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 9, 1981. Copies of the petition are available for inspection at that address.

Dated: March 3, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc 81-7450 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-16-C]

Kentucky Elkhorn Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Kentucky Elkhorn Coals, Inc., Box 229, Virgie, Kentucky 41572 has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its No. 2–A Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's face equipment.

2. The coal bed has irregularities in height and ascending and descending grades, creating dips and rolls in the roof and floor.

3. Because of these irregularities, canopies must be installed in such a manner as to prevent them from destroying roof support; this limits the visibility of the operator to such a degree that it creates a hazard to not only the operator but other nearby miners.

4. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 9, 1981. Copies of the petition are available for inspection at that address.

Dated: March 3, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-7451 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-8039G]

American Sunroof Corp.; Negative Determination Regarding Application for Reconsideration

By letter of February 9, 1981, after being granted a filing extension, counsel for the workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of the Wixom, Michigan plant of the American Sunroof Corporation. The determination was published in the **Federal Register** on December 30, 1980, (45 FR 85859).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

Counsel claims that the work performed at the Wixom, Michigan facility of the American Sunroof Corporation and its relationship to the Ford Motor Company's Wayne Assembly Plant would support a certification. Specifically, counsel claimed that Ford employees were present at the Sunroof plant directing and supervising the work of the Sunroof employees.

The Department's review showed that the petition did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's survey of American Sunroof Corporation's customers showed that none imported automobile roof packages during the period under investigation.

The Department does not see any relationship between the Wixom facility of the American Sunroof Corporation and the Ford Motor Company's Wixom and Wayne Assembly plants that would provide a basis for certification. Workers at the American Sunroof's Wixom facility produced only component parts for the vehicles produced at Ford Motor Company's Wixom and Wayne Assembly plants. Increased imports of directly competitive components parts did not contribute importantly to their layoffs. Given the above, workers at American Sunroof's Wixom facility may then only be certified if their primary customer, the Ford Motor Company, whose workers at the Wixom and Wayne Assembly plants were certified eligible to apply for adjustment assistance, (TA-W-6955A and 6957) is the "workers' firm" within the meaning of Section 222 of the Act. Ford may be determined to be the "workers' firm" if Ford and American Sunroof are related by ownership or by a substantial degree of proprietary control, or if the workers are *de facto* employees of Ford. The Ford Motor Company is not the "workers' firm" under either test. The American Sunroof Corporation is an independent firm. Further, its workers are not *de facto* employees of Ford since all payroll transactions, personnel actions and employee benefits are under the control of American Sunroof. The mere fact that American Sunroof's Wixom facility is located near the Ford Wixom and Wayne Assembly plants and installs roof packages in Ford cars and that some Ford employees have supervisory and perhaps task control over American Sunroof workers is not sufficient in itself

to support a determination that the Ford Motor Company is the "workers' firm."

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 3rd day of March 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-7444 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7187, 7280 through 7297 TA-W-8033, and 8265 A through U]

Chrysler Corp.; Negative Determination on Reconsideration

On December 1, 1980, the Department reopened the instant investigations on behalf of workers and former workers at certain Service and Parts Depots and Divisional Officers of the Chrysler Corporation, Detroit, Michigan. The Department's Negative Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance in the instant cases were published in the **Federal Register** on May 2 and 16, 1980 and August 8, 1980 (45 FR 29437), (45 FR 32450) and (45 FR 52968) in seriatim.

The Department's original denial of certification of workers at the instant facilities was based on the finding that they did not produce an article within the meaning of Section 222(3) of the Trade Act of 1974 and a direct connection could not be established between the production declines at certified Chrysler manufacturing plants and declines in part sales and employment at various Chrysler Service and Parts Division depots and offices.

The Department reconsidered the denials following written representations made by Chrysler Corporation officials.

Chrysler contends that Chrysler Service and Parts Depot and Office workers should have been certified because they work for Chrysler whose vehicles are import-impacted and the depots receive and distribute basically all replacement parts for Chrysler cars and trucks—the fact that most of the parts are not manufactured by Chrysler should have no bearing on the determination. Chrysler also argued that consideration should have been given to the fact that approximately eighty percent of the Division's parts sales are made exclusively to Chrysler, Plymouth and Dodge new vehicle dealerships.

The Department's position, with respect to service workers generally, is that they may be certified eligible to apply for adjustment assistance only if an important cause of their separations was a reduction in demand for their services which (1) directly and substantially related to the articles adversely impacted by imports, and (2) originated at a facility of the same firm (or another firm related by ownership or control) at which workers independently meet the group eligibility requirements (Section 222 of the Trade Act of 1974). In this particular case, the Department's position is that the Chrysler Service and Parts Depot and Office workers do not meet the above criteria.

The Department recognizes two bases on which program coverage might be extended to Chrysler Service and Parts Depots and Offices. One, an indirect link to import competition, would be if the parts activities were directly and substantially dependent on the production or sale of new import-impacted Chrysler vehicles. The other, a direct link to import competition, would be if the parts activities were adversely affected by increased imports of parts like or directly competitive with those produced by Chrysler and handled by these workers. On neither basis does the evidence support a certification.

(1) In its investigation the Department found that virtually all of the activity of the Service and Parts Division Depots and Offices was associated with providing parts to Chrysler vehicles which had already been sold. Direct import competition is felt at the point of sale and reflected back up the earlier stages in the manufacturing chain. While there may be an adverse subsequent impact on follow-on parts activity—because of the import-related decline in new car sales—the reduced demand for such activity is less direct. The service and parts depots are not a direct link in the production-sales chain but rather operate at a later stage, subsequent to the sale of the new vehicles. The activities carried out by workers at the Service and Parts Division Depots take place after title to the new vehicle has passed from Chrysler to the dealership or to the individual consumer. The impact of automobile import competition on replacement part operations might occur after a lag of several years. There is no evidence in the Trade Act of 1974 or in the legislative history that it was Congress' intent to extend program coverage to these kinds of indirect and delayed import effects.

With respect to the warranty workers, who might under certain circumstances be eligible for assistance, the record shows that some of the parts handled by the service and parts depots are for warranty work, but the amount of activity by the depots associated with warranty does not constitute a substantial share of overall service and parts depot activity. Moreover, the workers at the depots are not separately identifiable along the lines of warranty versus non-warranty parts. The fact that the depots engaged in some warranty work and that warranties may play a role in the promotion and sale of new cars would not provide an adequate basis for coverage.

(2) The parts handled by the Chrysler Service and Parts Depots were predominantly produced by independent parts companies and not by Chrysler-owned plants which produce parts. Chrysler-owned facilities generally only produce parts as original equipment for Chrysler-assembled vehicles. The predominant share of Chrysler's own parts production is used for this purpose. Chrysler parts production for the replacement market or for warranty activity is not substantial. Under the circumstances, increased imports of directly competitive parts—if indeed there are any—would not provide an adequate basis for covering the workers at Chrysler's Service and Parts Depots since most of the parts handled by the Chrysler depot workers are not parts produced by the Chrysler Corporation.

Conclusion

In view of the above it is concluded that increased imports of passenger cars and trucks did not contribute importantly to the separation of workers at the Chrysler Corporation Service and Parts Depots.

Signed at Washington, D.C. this 3rd day of March 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-7445 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,664]

The Exolon Co.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on September 8, 1980 in response to a petition which was filed by the United Steelworkers of America on behalf of workers at the Tonawanda, New York plant of the Exolon Company. Workers at the Tonawanda plant produce abrasive and refractory materials, primarily aluminum oxide and silicon carbide.

The investigation revealed that criterion (3) has not been met.

The Exolon Company sells its abrasive and refractory materials (aluminum oxide and silicon carbide) to a variety of markets, including the automotive industry. Petitioners allege tht increased imports of automobiles contributed importantly to the decline in sales, production and employment at the Tonawanda, New York plant of the Exolon Company. Although abrasive and refractory materials are utilized in the production of imported automobiles, imports of automobiles are not like or directly competitive with abrasive and refractory materials. Imports of abrasive and refractory materials must be considered in determining import injury to workers producing such products at the Tonawanda, New York plant of the Exolon Company.

U.S. imports of silicon carbide decreased in quantity absolutely and relative to domestic production in 1979 from 1978. Imports remained relatively stable in the January–September period of 1980 compared to the same period of 1979. U.S. exports exceeded imports of silicon carbide during this period.

U.S. imports of aluminum oxide decreased in quantity in the January–September period of 1980 compared to the same period of 1979. U.S. exports significantly exceeded imports of aluminum oxide in 1979 and the January–September period of 1980.

U.S. imports of silicon carbide and aluminum oxide amounted to a relatively small proportion of total domestic production of each product during the period under investigation.

Conclusion

After careful review, I determine that all workers of the Tonawanda, New York plant of the Exolon Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of March 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc 81-7446 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,905]

Optique Du Monde, Limited; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on September 15, 1980 in response to a petition which was filed on behalf of workers at Optique Du Monde, Limited, Trumbull, Connecticut. Workers at the plant produced eyeglass frames.

The investigation revealed that criterion (3) has not been met.

Optique Du Monde, Limited began operations in 1975 as an importer of eyeglass frames. Additionally, from April 1979 through April 1980, the firm experimented with an innovative production technique manufacturing eyeglass frames domestically. The domestic production venture proved unsuccessful due to technical problems resulting in financial losses. The firm discontinued domestic production in April 1980, and filed for Chapter II bankruptcy in May 1980. The company reorganized and resumed operations solely as an importer in July 1980.

Conclusion

After careful review, I determine that all workers of Optique Du Monde, Limited, Trumbull, Connecticut are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of February 1981.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 81-7447 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8143, et al.]

Perfection Pattern and Manufacturing Co., et al., Affirmative Determination Regarding Application for Reconsideration

In the matter of TA-W-8143, Perfection Pattern and Manufacturing Company, Madison Heights, Michigan; TA-W-8144, Automotive Pattern, Foundry Tooling Division, Detroit, Michigan; TA-W-8145, Coventry Pattern Company, Troy, Michigan; TA-W-8146, Commerce Engineering and Pattern Company, Walled Lake, Michigan; TA-W-8147, Sherwood Pattern Company, Walled Lake, Michigan; TA-W-8148, Admiral Pattern Works, Inc., Warren, Michigan; TA-W-8149, Progress Pattern, Division of Lear Siegler, Inc., Southfield, Michigan; TA-W-8150, J & I Pattern Company, Troy, Michigan; TA-W-8151, Annex Pattern Company, Inc., Southfield, Michigan; TA-W-8152, Sherwood Metal Products, Inc., Drayton Plains, Michigan; and TA-W-8166, Mack Pattern Works, Inc., Detroit, Michigan.

By an application dated December 3, 1980, Counsel for the Pattern Makers Association of Detroit requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing wood and/or metal patterns for the automobile industry at the various above-listed firms. The determinations were published in the **Federal Register** seriatim: November 7, 1980 (45 FR

74121); November 7, 1980 (45 FR 74121); November 25, 1980 (45 FR 78299); November 7, 1980 (45 FR 74120); November 7, 1980 (45 FR 76273); November 7, 1980 (45 FR 74120); November 7, 1980 (45 FR 74121); November 7, 1980 (45 FR 74120); November 18, 1980 (45 FR 76273); and November 7, 1980 (45 FR 74120). The determination on Mack Pattern Works, Inc. (TA-W-8166) will be published shortly.

The petitioner maintains that a proper review of the actual facts would show that the work of automotive pattern makers is being done outside of the United States, resulting in layoffs for persons represented by the Pattern Makers Association of Detroit. Petitioner cites, for example, that a pattern making job on which local companies bid was awarded to FIAT and that the work was to be performed in Italy.

Conclusion

After review of the application, I conclude that the petitioner's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 2nd day of March 1981.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 81-7448 Filed 3-9-81; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

March 3, 1981.

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92-563, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

Date: March 24, 1981.
Time: 4 p.m. to 6 p.m.
Room: 911.
Program: This meeting will review applications submitted for the Media Humanities Projects Program, Division of Public Programs, for projects beginning after May 15, 1981.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 81-7511 Filed 3-9-81; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Electrical Power Systems; Meeting

The ACRS Subcommittee on Electrical Power Systems will hold a meeting at 8:30 a.m. on March 25, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to discuss matters relating to the safety implications of reactor control systems.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Wednesday, March 25, 1981, 8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, members of industry, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5, U.S.C. 552b(c)(4).

Dated: March 4, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-7373 Filed 3-9-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on NRC Safety Research Program; Postponement

The ACRS Subcommittee meeting on the NRC Safety Research Program has been postponed to April 8, 1981 (Tentatively). Notice of this meeting was published February 23, 1981.

Dated: March 4, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-7374 Filed 3-9-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Virgil C. Summer Nuclear Station; Change of Time/Location

The ACRS Subcommittee on Virgil C. Summer Nuclear Station will hold a meeting on March 11, 1981. The meeting time and location has been changed to 8:30 a.m. in Room 1046 at 1717 H Street, N.W., Washington, D.C. instead of 3:00 p.m. in Room 762.

All other items regarding this meeting remain the same as announced in the **Federal Register** published Wednesday, March 4, 1981.

Further information may be obtained by a prepaid telephone call to the cognizant Designated Federal Employee for this meeting, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: March 5, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-7375 Filed 3-9-81; 8:45 am]

BILLING CODE 7590-01-M

Determination of the Federal Tort Claim of General Public Utilities

The Nuclear Regulatory Commission has decided that the Federal tort claim of the General Public Utilities group (GPU) will be ruled on by the Commission rather than the Executive Director for Operations or his designee. Accordingly, the Commission will not apply the provisions of 10 CFR 14.6, as to authority regarding tort claims, to the GPU claim. GPU filed an administrative claim with NRC under the Federal Tort Claims Act (28 U.S.C. 2671 et seq.) on December 8, 1980, for $4,010,000,000.00 for property damages arising from the TMI–2 accident.

Dated: February 27, 1981.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-7376 Filed 3-9-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-184]

National Bureau of Standards, National Bureau of Standards Test Reactor; Availability of Applicant's Environmental Report and Notice of Intent To Publish an Environmental Impact Statement; Scoping Meeting

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, the National Bureau of Standards has filed an environmental report as part of their application for renewal of the operating license for the National Bureau of Standards Test Reactor in Gaithersburg, Md. The original request for renewal was submitted on December 2, 1980 as supplemented by letter dated December 11, 1980, and Notice of Consideration of Application for Renewal at Increased Power was published in the **Federal Register** on December 24, 1980 (45 FR 85235). The report, which discusses environmental considerations related to the continued operation of the facility is available for public inspection at the Commission's Public Document Room, 1717 H. Street, N.W., Washington, D.C. 20555. Copies of the report are also being made available at the State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201 and at the Metropolitan Washington Council, 1225 Connecticut Avenue, N.W., Washington, D.C. 20036.

In order to determine the scope of the issues to be addressed in the Environmental Impact Statement and to identify the significant issues related to the proposed license renewal, an open scoping meeting will be held in Room P–110 of the Phillips Building, 7920 Norfolk Avenue in Bethesda, Maryland at 9:30 a.m. on March 20, 1981.

After the environmental report has been analyzed by the staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register** a summary notice of availability of the draft statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and Local officials will be made available when received. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will issue a final environmental statement, the availability of which will be published in the **Federal Register.**

Any questions regarding the proposed license renewal or the environmental impact statement should be addressed to James R. Miller, Chief, Standardization & Special Projects Branch, Division of Licensing, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, (301) 492–7014.

Dated at Bethesda, Maryland, this 27th day of February 1981.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Standardization & Special Projects Branch, Division of Licensing.

[FR Doc. 81-7335 Filed 3-9-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[70-6553; Release No. 21949]

Louisiana Power & Light Co. and Middle South Utilities, Inc.; Notice of Proposal To Issue and Sell Common Stock to Parent

March 4, 1981

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70174, an electric utility subsidiary, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9(a), 10 and 12(f) and Rules 43 and 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposes to issue and sell to Middle South, and Middle South proposes to acquire, from time to time through December 31, 1981, at a price of approximately $6.60 per share, or $40,000,000 in the aggregate, up to 6,060,700 shares of Louisiana's common stock, no par. Louisiana presently has 75,746,400 shares of no par common stock outstanding all of which are owned by Middle South. Upon consummation of the sale, Louisiana will have issued and outstanding 81,807,100 shares of common stock, no par, stated in its Common Stock Account at an aggregate of $538,900,000. The proceeds will be used to finance, in part, Louisiana's construction program, to repay short-term borrowings and for other corporate purposes. The construction program contemplates expenditures of approximately $280,000,000 in 1981 and will require funds in excess of available treasury funds. The company will have short-term borrowings up to an aggregate principal amount of $165,000,000 outstanding at any one time during the remainder of 1981 as authorized by order of this Commission dated December 1, 1980 (HCAR No. 21811).

To the extent funds are required from external sources to acquire the new common stock, Middle South will obtain such funds through the issuance and sale of its unsecured promissory notes issued under a revolving credit agreement dated as of June 27, 1980, as amended, with a group of banks, authorized by this Commission by order dated June 17, 1980 (HCAR No. 21628) or pursuant to other future bank borrowing arrangements for which authorization would be sought.

The fees and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $3,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 27, 1981, 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 the 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 applicant-declarants at the above stated addresses, and proof of service (by affidavit or, in the 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 or 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. 81-7382 Filed 3-9-81; 8:45 am]

BILLING CODE 8010-01-M

[70-6554; Rel. No. 21948]

Mississippi Power and Light Co. and Middle South Utilities, Inc.; Notice of Proposal To Issue and Sell Common Stock to Parent

March 4, 1981

Notice is hereby given that Middle South Utilities, Inc. ("Middle South") P.O. box 1640, Jackson, Mississippi 39205, a registered holding company and Mississippi Power & Light Company ("MP&L"), 225 Baronne Street, New Orleans, Louisiana 70112, an electric utility subsidiary, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a), 7, 9(a), 10 and 12(f) and Rules 43 and 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

MP&L proposes to issue and sell to Middle South, and Middle South proposes to acquire, up to 870,000 shares of MP&L common stock, no par, at $23.00 per share for an aggregate purchase price of $20,010,000. MP&L presently has 4,540,000 shares of no-par common stock outstanding. All of these shares are owned by Middle South and have an aggregate book value of $176,547,000. Upon consummation of the proposed transaction, MP&L will credit its common stock capital account with $20,010,000 and Middle South with the same amount to reflect its investment.

MP&L proposes to use the net proceeds from the issuance and sale of the new common stock to pay short-term indebtedness incurred to finance the company's budget as set forth in the exhibits to the filing. MP&L and Middle South propose that the common stock be sold in installments and at such times during calendar year 1981 as the companies determine based upon MP&L's construction financing requirements.

MP&L has sought Commission authorization for an amendment to its Restated Articles of Incorporation to increase the authorized number of common shares from 5,000,000 to 15,000,000 shares. Notice of this proposal was issued on February 20, 1981 (HCAR No. 21926). The issuance and sale of more than 460,000 shares of the proposed 870,000 shares is contingent upon authorization by this Commission and approval by MP&L's sole stockholder, Middle South.

To the extent funds are required from external sources to acquire the new common stock, Middle South will obtain such funds through the issuance and sale of its unsecured promissory notes issued under a revolving credit agreement dated as of June 27, 1980, as amended, with a group of banks authorized by Commission order dated June 17, 1980 (HCAR No. 21628) or pursuant to other bank borrowing arrangements for which Commission authorization would be sought.

The fees and expenses to be incurred in connection with the proposed transaction are estimated not to exceed $3,000. It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 27, 1981, 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 the 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 applicant-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 or 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. 81-7383 Filed 3-9-81; 8:45 am]

BILLING CODE 8010-01-M

[File No. SR-NASD-80-21; Rel. Nos. 17599 and 11662]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Related Interpretation Under Section 36 of the Investment Company Act

March 4, 1981.

On November 21, 1980, the National Association of Securities Dealers, Inc. ("the NASD"), 1735 K Street, N.W., Washington, D.C. 20546, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, copies of a proposed rule change to amend portions of Article III, Section 26 of its Rules of Fair Practice, governing the distribution of investment company securities, and to repeal certain interpretations thereof. In particular, the proposal would modify Section 26(k) of the NASD Rules of Fair Practice and related interpretations ("the Anti-Reciprocal Rule"). The amended Anti-Reciprocal Rule would no longer prohibit, subject to certain restrictions, members from seeking or granting brokerage commissions in connection with the sale of fund shares and would permit members to sell shares of investment companies that follow a disclosed policy of considering sales of their shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to best execution. In addition, the proposal would limit and codify the NASD's "Special Deals Interpretation" to allow underwriters of an investment company to pay non-uniform amounts of compensation to dealers if such payments are disclosed in the prospectus of the investment company.

Notice of the filing together with its terms of substance was given by publication of a Commission Release (Securities Exchange Act Release No. 17367, December 11, 1980) and by publication in the **Federal Register** (45 FR 82777, December 16, 1980). One comment was received on the filing, that comment favoring approval.

The NASD Anti-Reciprocal Rule presently prohibits NASD members, acting as broker-dealers or principal underwirters of open-end management investment companies,from selling a fund's shares based upon brokerage received or expected, or allocating brokerage to a particular broker-dealer in return for that broker-dealer's sale of investment company shares. The amended rule would extend the provisions of Section 26 to all investment companies and, subject to certain restrictions, would no longer prohibit members from seeking or granting brokerage commissions in connection with the sale of investment company shares. The amended rule would also provide that, subject to certain restrictions, nothing therin prohibits NASD members from selling shares of investment companies which follow a disclosed policy of considering sales of their shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to best execution.

The NASD Special Deals Interpretation presently prohibits principal underwriters from making special payments, which are not available to all dealers, to individual broker-dealers or their employees for sales of a specific investment company's shares. The proposed revision, codified in Section 26(1) of the Rules of Fair Practice, would not require such uniformity and would permit special arrangements with individual selling dealers of investment company shares if accompanied by adequate specific prospectus disclosure. The proposed rule would also permit non/cash concessions if disclosed and if selling dealers have an option to recieve cash equivalents.

Other portions of the proposal would repeal a NASD interpretation concerning "Contractual Plan Withdrawal and Reinstatement Privileges." Withdrawal and reinstatement privileges allow shareholders in certain contractual plans to redeem their shares and later repurchase new shares without being charged a sales load. The NASD interpretation concerning this practice prohibits borker-dealers from encouraging investors to use these privileges for speculative purposes. Repeal of this interpretation is suggested since the forward pricing provisions of Rule 22c-1 under the Investment Company Act of 1940 ("1940 Act") have largely eliminated the possibility of abuse in this area. The proposed rule change will also make other technical revisions to Section 26.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations applicable to registered national securities associations, and in particular, with the requirements of Section 15A of the Act and the rules and regulations thereunder, and Section 22 of the 1940 Act. The Commission believes that since the recently adopted rule 12b-1 under the 1940 Act[1] authorizes open-end management investment companies to bear expenses associated with the distribution of their shares, subject to certain conditions and procedures, it is not inappropriate for investment companies to seek to promote the sale of their shares through the placement of brokerage *without* the incurring of any additional expense. In addition, the Commission believes that the adoption by an investment company of a policy with respect to brokerage is, because of its importance and the conflicts of interest which may be involved, required to be determined by the board of directors of the investment company in the exercise of their fiduciary duties. Moreover, the Commission believes that the directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices. A director's breach of these duties may serve as a basis for action pursuant to Section 36 of the 1940 Act. The Commission expects that in considering the adoption of a policy to consider the sale of an investment company's shares as a factor in the selection of broker-dealers to execute portfolio transactions, subject to the requirements of best execution, the company's board of directors will carefully weigh the possible advantages to the investment company and its shareholders and the possible abuses that may stem from the use of portfolio brokerage to encourage the sale of investment company shares. The Commission also expects that the board of directors will approve such a policy only if they find the policy in the interest of the company and its shareholders, being mindful of their continuing duty to assure that the company's brokerage allocation practices are designed to obtain best price and execution and to avoid any unnecessary trading.

The Commission believes that the NASD proposal, which allows underwriters flexibility in setting different compensation rates to different dealers selling shares of the same investment company and which requires specific prospectus disclosure designed to inform investors, may increase dealer competition for selling investment company shares.

The Commission believes the NASD's proposals are not designed to permit unfair discrimination between brokers and dealers. In addition, the Commission finds that the proposals will not significantly, if at all, increase burdens upon competition, and that any burdens on competition are necessary and appropriate in furtherance of the purposes of the Act.

Copies of the proposed rule change, all written statements with respect to

[1] *See Securities Act Rel. No. 6254 (Oct. 28, 1980), 45 FR 73898 (Nov. 7, 1980).*

the proposed rule change which were filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons were considered and are available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. (file No. SR-NASD-80-21).

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.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-7384 Filed 3-9-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17598; File No. SR-OCC-81-2]

Self-Regulatory Organization; Proposed Rule Change by the Options Clearing Corp. Relating to the Issuance of Options on GNMA Securities, the Clearance and Settlement of Transactions Therein, and the Processing and Settlement of Exercises Thereof

Comments requested by March 31, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 20, 1981, The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is Publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would provide for the issuance of options of GNMAs, the clearance and settlement of GNMA options transactions, and the processing and settlement of GNMA option exercises. In general, the OCC rules applicable to stock options would apply to GNMA options as well, with only such changes as are expressly specified in the proposed rule change.

Specifically, the proposed rule change would establish definitions applicable to GNMA options, provide for the establishement of a separate Clearing Fund to protect OCC against losses sustained in connection with GNMA options and other debt securities options, fix margin requirements for short positions in dept securities options, and establish procedures for the settlement of GNMA option exercises.

The main difference between the OCC rules governing stock options and the proposed rules governing GNMA options is in the exercise settlement system. Under the proposed rule change, exercises of GNMA options would be settled on a monthly, rether than a daily, basis. Settlements would be conducted member-to-member, under a form of balance order system, rather than though the continuous net settlement systems of correspondent clearing corporations. In general, the proposed exercise settlement system for GNMA options is similar to the system currently in use for the settlement of GNMA transactions in the primary market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory oranization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory oganization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the trading of GNMA options as proposed by the CBOE and the NYSE. The proposed rule change would establish a separate Debt Securities Clearing Fund, Designed to protect OCC against losses sustained in connection with options on GNMAs and government securities. To the extent that Fund is insufficient to make good such losses, the Stock Clearing Fund would be available for such purpose. The proposed rule change also provides for the margining of short positions in debt securities options. The proposed margin system for debt securities options is similar to the system used by OCC for margining short positions in stock options, except that OCC's protective "cushion" would consist of minimum dollar amount per contract (ranging from $250 for deep-out-of-the-money positions to $1,000 or more for in-the-money positions) rather than a percentage of the premium value of a corresponding long position.

The proposed rule change would also establish an exercise settlement system for GNMA options, similar to the system used for settling GNMA transactions in the primary market. Settlement would take place monthly in New York City, on a member-to-member basis, with OCC specifying the receiving Clearing Members with whom each delivering Clearing Member would be required to make settlement.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 because it would apply to GNMA options substantially the same procedures and safeguards that have been used successfully by OCC in connection with stock options, with only such variations as are necessary to reflect the special characteristics of GNMAs and GNMA options and the differences between the manner in which GNMA transactions are settled and the settlement system for stock transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any material impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** 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 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street,

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., 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 orgnaization. All submissions should refer to the file number in the caption above and should be submitted March 31, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 3, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-7385 Filed 3-9-81; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

March 4, 1981.

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 common stock of:

Rowan Companies, Inc., Common Stock, $.25 Par Value (File No. 7-7568)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 25, 1981 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-7386 Filed 3-9-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Certification Docket No. CT4574CE-D]

Application for Amendment to Type Certificate; Gates Learjet Models 54/55/56 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of certification status and statement of amended type certification basis.

SUMMARY: The Gates Learjet Corporation (Learjet) has applied to amend Type Certificate A10CE for their Models 54/55/56 series airplanes. This announces the type certification program for these airplanes and provides information on the type certification basis to be established under Section 21.101 of the Federal Aviation Regulations (FARs). This is a non-rulemaking proceeding within the meaning of the administrative procedure provisions of 5 U.S.C. 551, *et. seq.*

The issuance of special conditions under Sections 21.16 and 21.101 is required where it is found that the airworthiness regulations otherwise applicable to an aircraft do not contain adequate or appropriate safety standards because of a novel or unusual design feature. Special conditions required as part of the certification basis for these aircraft are discussed under the topic *Special Conditions* of this announcement. In accordance with the policy announced in Amendment 21-51, Airworthiness Review Program (45 FR 60154), effective October 14, 1980, the issuance of special conditions is usually initiated by Notice of Proposed Rule Making. However, the application for amendment of Type Certificate A10CE had been filed and the special conditions thereto have been accepted by the applicant and incorporated into the aircraft type design prior to the adoption of Amendment 21-51.

Furthermore, the certification program has been substantially completed and, pursuant to the program schedule, the amendment to the type certificate should be issued March 16, 1981, or shortly thereafter. Accordingly, the special conditions are being issued concurrent with the status report. In this connection, it should be noted that the special conditions are substantially the same as those issued by the FAA for previous Gates Learjet models, and service experience has shown they adequately provide for the novel and unusual design features in the models 54/55/56 series airplanes. It has also been determined that delaying the issuance of the amended type certificate would cause unnecessary production delays and impose an undue financial burden and hardship on the applicant and users of the airplane.

DATE: Comments on this announcement will be considered if received prior to the amendment of the aircraft type certificate. Learjet is proposing to complete the certification program for the Model 55 in mid-March 1981.

FOR FURTHER INFORMATION CONTACT: Barry D. Clements, Chief, Aircraft Certification Progam (ACE-211), Room 238, Terminal building 2299, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (Area Code 316) 942-4285.

Availability of Additional Copies of Announcement

Any person may obtain additional copies of this Announcement by submitting a request to the Federal Aviation Administration, Public Affairs Officer, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (Area Code 816) 374-5449. Each communication must identify the docket number which is CT4574CE-D.

Background

On August 2, 1976, Learjet applied to the FAA Central Region to amend Type Certificate A10CE by adding the Model PD1311. In November 1977, the Model PD1311 was defined as the Learjet Models 54/55/56. These models have the same exterior configuration but have different size fuel tanks in the aft fuselage area. The Models 54/55/56 are "executive jet" airplanes having a low wing with supercritical winglets. There are two aft fuselage-mounted, Garrett TFE-731-3A-2B engines each producing 3700 pounds thrust. These models have the characteristic Learjet T-tail. The Models 54/55/56 will accommodate a maximum of 10 passengers. The Models 54/55/56 will have a maximum takeoff weight of 18,500, 19,500 and 20,500 pounds respectively. The maximum approved operating altitude of the airplanes will be 51,000 feet.

Program Process

The statutory prerequisite for the issuance of an aircraft type certificate or an amendment thereto is a finding by the Administrator that the aircraft is of proper design, material, specification, construction and performance for safe operation and meets the standards, rules and regulations prescribed therefore. (Section 603(a) of the Federal Aviation Act of 1958 (Act), 490 U.S.C. 1423(a)(1).) In exercising his powers and duties under the Act, the Administrator must do so consistently with any obligation assumed by the United States in any treaty or other international agreement (Section 1102 of the Act, supra). For example, when components are produced by an aircraft overseas supplier and they are not readily inspectable during assembly, they are subject to reciprocal agreements, known as "bilaterals," which have been consummated between this country and the exporting country. In such cases, the FAA would notify the foreign certifying authority of the applicable design data, test and quality control requirements to be met.

The type certifications process for aircraft projects in which complete type certification is involved generally consists of the following major steps:

1. Establishment of a Type Certification Board which programs its meetings according to need but generally includes at least three significant phases (preliminary, preflight, and final);

2. Issuance of a Type Inspection Authorization (TIA) when the examination of the technical data required for type certification is completed or has reached a point where it appears that the aircraft will meet the pertinent regulations. The TIA is the authorization for FAA personnel to begin flight testing and assure that the test aircraft meets design standards. The preflight type board is also held at this time. After flight testing is completed, the final type board is held to resolve any outstanding matters.

3. Issuance of the amended Type Certificate Data Sheet which becomes a part of the type certificate, setting forth the limitations prescribed by the applicable airworthiness regulations and any other limitations and information found necessary for type certification.

4. Issuance of a "decision document," which will be a public document, that summarizes the basis for the decision to issue a type certificate, or an amendment thereto, including an identification of all applicable regulations, issues, means of compliance (including tests and analyses) and resolution of issues.

After an amended Type Certificate Data Sheet has been prepared, all outstanding items have been resolved, all applicable regulations have been met, the decision document has been approved, the airplane is considered safe in its operational environment, and the airplane flight manual has been approved, an amendment to the aircraft type certificate will be issued. Throughout the type certification process, from the time the Type Certification Board is convened to the final issuance of the amended type certificate, reviews are conducted to establish the operational suitability of the aircraft. These reviews include evaluation of the aircraft for operations under FAR 91, FAA operational advisory circulars, airport and air traffic control compatibility, minimum equipment lists, training requirements, and other areas. Thereafter, a Type Inspection Report (TIR) is prepared which provides an official record of the inspection and flight test conducted to show compliance with the applicable regulations.

Program Status

Type Certification Board meetings were held as follows: Preliminary—December 21, 1977; First Interim—March 21, 1979; Preflight—May 23, 1980; and the Second Interim—November 21, 1980. At the Preflight Type Certification Board meeting, Learjet expressed their primary interest in certification of the Model 55 first with the Models 54 and 56 to be certified at a later time. The initial Type Inspection Authorization for the Model 55 was issued May 1980, and it has been revised through Revision F as of November 1980. All substantiating reports were to be submitted to the FAA by the first week in February. Flight testing is scheduled to be completed in early March, with subsequent amendment of the Type Certificate scheduled for mid-March 1981.

Type Certification Basis—General

The applicable airworthiness standards are those regulations designated in accordance with Section 21.101 of the FAR Part 21, which are collectively known as the "type certification basis" for the airplane design. Special conditions are issued, and amended as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with Section 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the Learjet Models 54/55/56 series airplanes.

Statement of Type Certification Basis

Based on the existing certification requirements presented on Type Certificate Data Sheet No. A10CE for the Gates Learjet Models 35A and 36A plus other later FAR sections established in separate correspondence, the type certification basis of the Learjet Models 54/55/56 airplanes will be:

Part 25 of the Federal Aviation Regulations (FARs) effective February 1, 1965, as amended by Amendments 25–2, 25–3, 25–4, 25–7, 25–10, 25–12, 25–18, 25–21, 25–22 and 25–30, plus Section 25.955(b)(2) of Amendment 25–11, Section 25.954 of Amendment 25–14, Sections 25.803(e), 25.811(f), 25.853(a), 25.853(b) and 25.855(a) of Amendment 25–15, Section 25.1359 of Amendment 25–17, Section 25.785(c) of Amendment 25–20, Sections 25–251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.781, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23, Sections 25.1013(e), 25.1305(c)(4), and 25.1305(c)(8) of Amendment 25–36, Sections 25.815, 25.1322 and 25.1403 of Amendment 25–38, Sections 25.903(e), 25.939 and 25.943 of Amendment 25–40, Section 25.255 of Amendment 25–42; and Section 25.1326 of Amendment 25–43;

Part 36 of the Federal Aviation Regulations effective, December 1, 1969, Amendments 36–1 through 36–10;

Part 27 of the Special Federal Aviation Regulations, effective February 1, 1974, Amendments 27–1 and 27–2;

Exemption

As of the date of this announcement, Learjet has not petitioned the FAA for any exemptions relative to the type certification of the Models 54/55/56 series airplanes.

Findings of Equivalencies

FAR Section 21.21(b)(1) permits the FAA to accept deviations from the applicable airworthiness requirements if the deviation is compensated by a factor that provides an equivalent level of safety. Learjet has requested four equivalent level of safety findings as provided for in FAR 21 Section 21.21(b)(1). These findings involve the following regulations:

FAR 25.201 thru 25.207—Stalls
FAR 25.253—High-Speed Characteristics
FAR 25.773(b)(2)—Pilot Compartment View
FAR 25.1305(f)—Powerplant Instruments

Special Conditions

There are additional design features and airworthiness standards which pertain to the certification basis for the Learjet Models 54/55/56 series airplanes that have been considered. They are being included as part of the certification basis as special conditions pursuant to Section 21.101 to the extent they involve novel or unusual design features. These features which involve special conditions for operation to 51,000 feet are:

1. Airframe—Pressure Vessel Integrity.
2. Systems—Ventilation; Air Conditioning; Pressurization; Oxygen Equipment and Supply; Operation Without Normal Electrical Power; Stability Augmentation and Automatic and Power Operated Systems.
3. Flight—Environmental Testing.

Finally, design evaluation does not end with the issuance of the amended type certificate. The FAA continues to monitor the safety performance of the design after the type design is approved and the product is introduced into service. This is accomplished through the various reports and data the FAA receives daily and which regulations require aircraft owners and operators to submit, as well as, in some cases, post-certification design reviews. The airworthiness standards published in the FARs such as Part 25, as well as the operational regulations in Parts 91 and 121, are amended from time to time to consider new technologies and to upgrade the existing level of safety. If during any evaluation an unsafe condition is found as a result of service experience and that condition is likely to exist or develop in other products of the same type, the FAA issues an airworthiness directive under Part 39 to require a change to the type design or to define special inspection or operational limitations. In effect, these are also retroactive applications of required type design changes.

Issued in Kansas City, Missouri, on March 5, 1981.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 81-7594 Filed 3-9-81; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 21490; S.C. No. 25-99-CE-14]

Special Conditions: Gates Learjet Models 54, 55, and 56 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to § 21.16 and § 21.101 of the Federal Aviation Regulations (FAR) to Gates Learjet Corporation (Learjet) for the amended type certification of the Learjet Models 54, 55, and 56 series airplanes. These airplanes will have novel or unusual design features associated with the unusually high operating altitude (51,000 feet) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions are therefore necessary to establish a level of safety equivalent to that established in the regulations.

DATE: Effective March 10, 1981.

ADDRESSES: Comments on this action may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 21490, 800 Independence Avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C., 20591. All comments must be marked: Docket No. 21490. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Iven Connally, Lead Region Staff, FAA Northwest Region, FAA Building, Boeing Field, Seattle, WA 98108. Telephone (206) 767-2565.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1976, Gates Learjet Corporation (Learjet), Mid-Continent Airport, Box 7707, Wichita, Kansas 67277, filed an application for an amendment to Type Certificate No. A10CE to include its Models 54, 55, and 56 airplanes. The Learjet Models 54, 55, and 56 are derivatives of the Learjet Models 35 and 36. Wings are extended, wingtip tanks deleted, and supercritical winglets are added. The fuselage diameter has been increased and the fuselage has been lengthened by 48 inches. The engines have been moved aft and up and have been changed from Garrett AiResearch TFE-731-2-2B's to TFE-731-3A-2B's. The vertical stabilizer area has been increased and the horizontal stabilizer has been raised approximately 30 inches. The right-hand plug-type escape hatch has been replaced with a large outward-opening hinged door which also serves as a baggage door. Baggage compartments have been added to the tail cone and in the enlarged nose compartment. A larger windshield with separate openable side windows and a new cockpit arrangement have been added. The maximum certificated weight has been increased from 18,000 pounds to 19,500 pounds with an option to 20,500 pounds.

The applicable airworthiness standards are those regulations designated in accordance with § 21.101 of the FAR which are collectively known as the "type certification basis" for the airplane design. Special conditions may be issued, and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of the Learjet Models 54, 55, and 56 series airplanes.

The type design of the Learjet Models 54, 55, and 56 contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of Part 25 of the FAR. Those features include a relatively small passenger cabin volume and a high operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the Learjet Models 54, 55, and 56. Therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

The special conditions require a higher degree of pressure vessel integrity than envisioned by the original type certification basis to assure that depressurization at high altitude is unlikely. The ventilation, air conditioning, and pressurization systems requirements have been upgraded to assure survivability in the event of certain system failures at altitudes above 40,000 feet. The special conditions also redefine the oxygen system, since § 25.1441(d), incorporated into type certificate A10CE, does not define the oxygen system required for operations above 40,000 feet. Finally, the special conditions require the applicant to show that the airplane can be operated safely in Visual Flight Rules (VFR) conditions with the electrical power inoperative. Service experience has shown that loss of normal electrical power is not a sufficiently remote possibility to assure an acceptable level of safety.

Type Certification Basis

The type certification basis for the Learjet Models 54, 55, and 56 is: Part 25 of the Federal Aviation Regulations (FAR) effective February 1, 1965, as amended by Amendments 25-2, 25-3, 25-4, 25-7, 25-10, 25-12, 25-18, 25-21, and 25-30; plus § 25.955(b)(2) of Amendment 25-11; § 25.954 of Amendment 25-14; §§ 25.803(e), 25.811(f), 25.853(a), 25.853(b), and

25.855(a) of Amendment 25–15; § 25.1359 of Amendment 25–17; § 25.785(c) of Amendment 25–20; §§ 25.251(c), 25.251(d), 25.251(e), 25.303, 25.305(b), 25.307(d), 25.331(a)(3), 25.335(b), 25.335(f), 25.337(b), 25.349(b), 25.351(a), 25.363, 25.395(a), 25.395(b), 25.471(a)(1), 25.471(a)(2), 25.473, 25.493(b), 25.499(b), 25.499(c), 25.499(d), 25.509(a)(3), 25.561(b)(3), 25.581, 25.607, 25.615, 25.619, 25.625, 25.629, 25.677, 25.697, 25.699, 25.701, 25.721, 25.723, 25.725, 25.727, 25.729, 25.733, 25.735, 25.865, 25.867, 25.871, 25.903(d), 25.934, 25.994, 25.1103(d), 25.1143(e), 25.1303, 25.1307, 25.1331, and 25.1585(c) of Amendment 25–23; §§ 25.1013(e), 25.1305(c)(4) and 25.1305(c)(6) of Amendment 25–36; §§ 25.815, 25.1322, and 25.1403 of Amendment 25–38; §§ 25.903(e), 25.939, and 25.943 of Amendment 25–40; § 25.255 of Amendment 25–42; § 25.1326 of Amendment 25–43; Part 36 of the FAR effective December 1, 1969, either as amended through Amendment 36–10 or as amended at the time of the noise test; SFAR 27 effective February 1, 1974, as amended through Amendment SFAR 27–2; and the special conditions set forth herein.

Need for Immediate Adoption

The issuance of special conditions under §§ 21.61 and 21.101 is required where it is found that the airworthiness regulations otherwise applicable to an aircraft do not contain adequate or appropriate safety standards because of a novel or unusual design feature. In accordance with the policies announced in Amendment 21–51, Airworthiness Review Program (45 FR 60154), effective October 14, 1980, the issuance of special conditions is usually initiated by a Notice of Proposed Special Conditions; however, the application for the amendment to Type Certificate A10CE had been filed and the special conditions applicable thereto had been accepted by the applicant and incorporated into the airplane type design prior to the adoption of Amendment 21–51. Furthermore, the certification program has been substantially completed, and, pursuant to the program schedule, the amendment to the type certificate should be issued March 16, 1981, or shortly thereafter. Accordingly, the special conditions are being issued concurrent with the status report. In this connection it should be noted that the special conditions are substantially the same as those issued by the FAA for previous Learjet models, and service experience has shown that they adequately provide for the novel and unusual design features in the previous Learjet models. It has also been determined that delaying issuance of the amended type certificate would cause unnecessary production delays and impose an undue financial burden and hardship on the applicant and users of the airplanes. Accordingly, the FAA has determined, in accordance with § 553 of the Administrative Procedure Act, that good cause exists for making the special conditions effective in less than 30 days.

Interested persons, however, are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. A report summarizing each FAA public contact concerned with the substance of these special conditions will be filed in the Rules Docket.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Learjet for the type certification of the Learjet Models 54, 55, and 56 series airplanes under Type Certificate A10CE:

A. *Pressure Vessel Integrity.* 1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph D of these special conditions must be determined. It must be demonstrated by crack propagation and fail-safe testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not progress or that the pressurization system capability will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. The pressure vessel structure, including doors and windows, must comply with § 25.365(d) using a factor of 1.67 in lieu of the 1.33 factor prescribed therein.

4. In addition to the requirements of § 25.571, the loads prescribed in § 25.571(c) and this paragraph must be multiplied by a factor of 1.15 unless the dynamic effects of failure under static load are otherwise considered. In addition, the following apply as ultimate loading conditions:

(a) The normal operating pressures combined with the expected external aerodynamic pressures must be applied simultaneously with the flight loading conditions specified in § 25.571(c); and

(b) The combined pressures set forth in subparagraph (a) of this paragraph multiplied by a factor of 1.67 must be applied to the pressurized cabin without any other load.

B. *Ventilation.* In lieu of the requirements of § 25.831(a), the following applies: The ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and in the event of any minor failure of any system on the airplane which would adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered recirculated air, based on the volume and composition at the corresponding cabin pressure altitude of no more than 8,000 feet.

C. *Air Conditioning.* In addition to the requirements of § 25.831 (b) through (e), cabin cooling systems must be designed to meet the following conditions during flight above 15,000 feet MSL:

1. After any probable failure, the cabin temperature/time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature/time history may not exceed the values shown in Figure 2.

D. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system must be capable of maintaining the following relationships between specific failure and cabin altitude/time histories for operations above 45,000 feet:

(a) The cabin altitude/time history may not exceed that shown in Figure 3 after each of the following:

(1) Any probable double failure in the pressurization system.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude/time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from crack propagation for a period encompassing two normal inspection intervals. The initial crack must be at least one-half the local panel width in length. Mid-panel cracks and cracks through skin/

stringer and skin/frame combinations must be considered.

(2) The pressure vessel opening resulting from probable damage, while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas, or stall warning vanes, or any probable equipment failure.

(3) Complete loss of thrust from all engines.

2. In showing compliance with paragraph 1 of this special condition, it may be assumed that an emergency descent is made in accordance with an approved emergency procedure. In showing compliance with paragraph 1(b) of this special condition, a 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

E. *Oxygen Equipment and Supply.* In addition to the requirements of § 25.1441(d), the following apply:

1. A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

2. A continuous-flow oxygen system must be provided for the passengers.

F. *Operation without Normal Electrical Power.* In addition to the requirements of §§ 25.1309 and 25.1351, it must be shown by analysis, test, or both, that the airplane can be operated safely in VFR conditions, for a period of not less than 5 minutes, with the normal electrical power (electrical power sources, excluding the battery) inoperative, with critical type fuel (From the standpoint of flameout and restart capability) and with the airplane initially at the maximum certificated altitude. Parts of the electical system may remain on if—

1. A single malfunction, including a wire bundled or junction box fire, cannot result in loss of the part turned off and the part turned on;

2. The parts turned on are electrically and mechanically isolated from the parts turned off; and

3. The electrical wire and cable insulation, and other materials, of the parts turned on are self-extinguishing when tested in accordance with § 25.1359(d).

G. *Stability Augmentation and Automatic and Power-Operated Systems.* In lieu of the requirements of § 25.672, as amended by Amendment 25–23, if the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of Part 25, such systems must comply with the following:

1. A warning which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system which could result in an unsafe condition if the pilot were not aware of the failure. Warning systems must not activate the control systems.

2. The design of the stability augmentation system or of any other automatic or power-operated system must allow initial counteraction of failures without requiring exceptional pilot skill or strength, either by the deactivation of the system or a failed portion thereof or by overriding the failure by movement of the flight controls in the normal sense.

3. It must be shown after any single failure of the stability augmentation system or any other automatic or power-operated system that:

(a) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure begin considered;

(b) The controllability and maneuverability requirements of part 25 are met within a practical operational flight envelope (for example speed, altitude, normal acceleration, and airplane configurations) which is described in the Airplane Flight Manual; and

(c) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

H. *Environmental Testing.* An investigation shall be made in turbulence to determine the airplane's dynamic response with the primary considerations for controllability and the pilot's physiological reactions which may affect the pilot's ability to see and use the flight instruments. This evaluation shall be conducted with the yaw damper both operative and inoperative.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.28 and 11.29(b))

Note.—This action is not a regulation under Executive Order 12291 or the President's Memorandum of January 29, 1981.

Issued in Washington, D.C., on March 6, 1981.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 81–7959 Filed 3–9–81; 8:45 am]

BILLING CODE 4910–13–M

VETERANS ADMINISTRATION

Crossover Road, Massachusetts National Cemetery, Bourne, Mass.; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a Crossover Road at the Massachusetts National Cemetery, Bourne, Massachusetts.

The proposed project involves the construction of a roadway to interconnect the east/west traffic lanes of Connery Avenue with the new entrance of the National Cemetery. The project will include landscaping, earthwork and storm water drainage.

Present cemetary access via the main entrance road can be reached only by traveling east on Connery Avenue. Additionally, exiting traffic must turn right, travel approximately 650 feet, turn left, and then complete another turn to gain access to the west travel lane of Connery Ave. All of the road construction will be outside the cemetary boundary.

Project alternatives are being considered in the planning process. One alternative will be the construction of the roadway as a divided road consisting of two separated 20 ft. wide lanes.

The other considered plan is to develop a non-divided two-way road consisting of two 12 ft. lanes; one for each direction. Primary advantage with this plan would be less area required and lower cost.

The "No Action" option would sustain all current traffic patterns which presents a significant number of traffic movements and results in a hazardous highway condition when larger numbers of automobiles are involved.

Development of the project will have impacts on the human and natural environment in only minor ways. Primarily, these are limited in time and effect. They include visual/aesthetic impact of tree removal, soil erosion related to construction, and construction noise. All environmental attributes analyzed would not be affected to any extent should the "No Action" alternative be selected.

The commitment of resources, energy and labor to implement the development of the project is irreversible and permanent once the project is in place.

Mitigation will occur during project development. Construction contract documents will include Environmental Protection specifications, section EP, which specifically address the actions that will be undertaken to avoid adverse environmental effects described above.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (40 CFR, 1508.27). This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. 20420, (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Environmental Affairs Office (003A), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: March 3, 1981.

By direction of the Acting Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 81-7381 Filed 3-9-81; 8:45 am]

BILLING CODE 8320-01-M

Facility Upgrading, Illinois State Veterans Cemetery, Quincy, Ill.; Finding of no Significant Impact

The Veterans Administration (VA) and the State of Illinois have assessed the potential environmental impacts that may occur as a result of the construction of a Facilities Upgrading project at the Illinois State Veterans Cemetery, Quincy, Illinois.

The proposed Facility Upgrading action includes an entrance gate and bituminous roadway with all necessary landscaping and drainage procedures incorporated into the design and implementation. The entrance gate will be a security type gate located at the intersection of the new entrance road and State Route 24. The new roadway will be approximately 1000 feet in length and 20 feet in width. The roadway will traverse land owned by the State of Illinois Veterans Home.

Temporary construction related impacts which will exist through project completion include noise, dust, fumes and visual impacts. These environmental impacts will be minimal.

The project will comply with Federal, State, and local codes. Mitigating actions will be implemented to reduce the temporary construction impacts as identified in the Environmental Assessment.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (40 CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. 20420, (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to: Director, Environmental Affairs Office (003A), 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: March 3, 1981.

By direction of the Acting Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator

[FR Doc. 81-7380 Filed 3-9-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 46
Tuesday, March 10, 1981

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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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, March 10, 1981.

PLACE: Commission Conference Room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE DISCUSSED:

1. Public Affairs Information Brochure.
2. Report on Commission Operations by the Executive Director.

Closed to the Public:

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued March 3, 1981.

[S-375-81 Filed 3-6-81; 10:01 am]

BILLING CODE 6570-06-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

March 3, 1981.

TIME AND DATE: 10 a.m., Wednesday, March 11, 1981.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following case.

1. Local 781, District 17, UMWA v. Eastern Associated Coal Corporation, Docket No. WEVA 80-473-C.

Following the oral argument, the Commission will consider and act on the following cases:

2. Indian Coal Land Company, WEVA 80-5 (Petition for Discretionary Review; issues include whether the order of default was proper).

3. NACCO Coal Mining Company, VINC 76X99-P, IBMA 77-15 (Issues include whether violation of 30 CFR § 75.200 occurred).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-379-81 Filed 3-6-81; 1:58 pm]

BILLING CODE 6820-12-M

3

FEDERAL RESERVE SYSTEM.

Board of Governors

TIME AND DATE: 8 a.m., Saturday, March 14 and Sunday, March 15, 1981.

PLACE: The Sheraton Inn, Fredericksburg, Virginia.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Conference concerning possible directions for the Federal Reserve System in the 1980's in meeting new regulatory and service needs evolving from a changing financial system. Discussions will be informal and tentative among members of the Board, Federal Reserve Bank officials, and Board senior staff. However, it is recognized the possibility exists that the discussions might lead to such collegial consideration or crystalization of members' opinions as to constitute a meeting under the Government in the Sunshine Act and therefore notice is being given under the Act of a meeting that will be closed to public observations.

The conference is intended to provide preliminary and exploratory consideration regarding the Federal Reserve System's role in the payments system, its provision of financial services and its financial institutions regulatory and supervisory responsibilities. These discussions may include discussion of new legislative and regulatory initiatives in these areas.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated March 6, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-381-81 Filed 3-6-81; 1:48 pm]

BILLING CODE 6210-01-M

4

NATIONAL SCIENCE BOARD.

DATE AND TIME:

March 19, 1981
8:30 a.m. Open Session
10:30 a.m. Closed Session
March 20, 1981
9:00 a.m. Open Session

PLACE: 1800 G Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS: Thursday, March 19, 8:30 a.m.:

1. Minutes—Open Session—223rd Meeting.
2. Chairman's Items.
3. Director's Report:
a. Report on Grant & Contract Activity—2/19-2/18/81.
b. Organizational and Staff Changes.
c. Congressional and Legislative Matters.
d. NSG Budgets for fiscal Years 1981 and 1982.
e. Other Items.
4. Board Committees-Reports on Meetings (continued on March 20).
5. Board Representation at Future Events.
6. Program Review—Behaviorial and Neural Sciences.

Friday, March 20, 9 a.m.:

4. Board Committees—Reports on Meetings (continued from March 19).
7. Other Business.
8. Next Meeting National Science Board—April 15-16, 1981.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION: Thursday, March 19, 10:30 a.m.:

A. Minutes—Closed Session—223rd Meeting.
B. Grants, Contracts and Programs.
C.NSF Budget Requests and Proposed Changes for Future Fiscal Years.
D. Export of Technological Data.
E. NSB Annual Reports.
F. NSB and NSF Staff Nominees.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, (202) 357-9582.

[S-380-81 Filed 3-6-81; 1:58 pm]

BILLING CODE 7555-01-M

5

[NM-81-7]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, March 17, 1981.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D C. 20594.

STATUS: The first three items will be open to the public, the last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Commercial Fishing Boat *Arlon* Capsizing in the Pacific Ocean while being towed by a Coast Guard 44-foot Motor Life Boat near Grays Harbor, Washington, July 3, 1980.
2. *Discussion:* Medical Examinations of Surving Crewmembers.
3. *Recommendation* to the Federal Aviation Administration regarding Human Physiology of Aerobatic Maneuvers.
4. *Opinion and Order:* Administrator v. Booher, Docket SE-4395.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202-472-6022.

March 6, 1981.

[S-379-81 Filed 3-6-81; 11:39 am]

BILLING CODE 4910-58-M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION.

DATE AND TIME: Meeting of the OPIC Board of Directors: Tuesday, March 17, 1981 at 9 a.m. (closed portion); 11 a.m. (open portion).

PLACE: Offices of the Corporation, seventh floor board room; 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 11 a.m. will be closed to the public. The open portion of the meeting will start at 11 a.m.

MATTERS TO BE CONSIDERED: Closed to the public: 9 a.m. to 11 a.m.:

1. 1981 Legislative Renewal.
2. Insurance Project in Central American Country.
3. Insurance Project in Mediterranean Country.
4. Insurance Project in South Asian Country.
5. Claims Report.
6. Information Reports.

Open to the public: 11 a.m.

1. Approval of the Minutes of the Previous Board Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Personnel Actions: Testimonials.
4. Financial Statements.
5. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2949.

March 6, 1981.

Elizabeth A. Burton,

Corporate Secretary.

[S-377-81 Filed 3-6-81; 11:44 am]

BILLING CODE 3210-01-M

7

POSTAL SERVICE.

BOARD OF GOVERNORS

Vote to Close Meeting

At its meeting of March 2 and 3, 1981, the Board of Governors of the United States Postal Service unamimously voted to close to public observation its next meeting, currently scheduled for April 6, 1981. Each of the members of the Board present voted in favor of closing the meeting, which is expected to be attended by the following persons: Governors Hardesty, Babcock, Camp, Ching, Hughes, Hyde, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary of the Board Cox; and Counsel to the Governors Califano.

The meeting to be closed will consist of discussions of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1978 National Agreements between the Postal Service and four labor organizations representing certain postal employees, which are scheduled to expire in July of 1981, and of prospects for identifying additional measures to curb postal deficits. Both discussions are likely to involve information prepared for use in connection with the negotiation of collective-bargaining agreements under chapter 12 of title 39, United States Code, and the latter discussin is likely to include information prepared for use in connection with proceedings under chapter 36 of that title.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Further, the Board is of the opinion that public access to the discussion would be likely to disclose matters whose disclosure would be inconsistent with the public interest in having the Board able to provide policy guidance to postal management on issues that may come before the Postal Rate Commission under chapter 36 of title 39, without concern for unreasonably influencing particular litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

Further, the Board has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), in that it is likely to disclose information prepared for use in connection with proceedings under chapter 36 of title 39 (having to do with postal ratemaking, mail classification,

and postal service), which is specifically exempted from disclosure by section 410(c)(4) of title 39. The Board determined further that, pursuant to section 552b(c)(10) of title 5 § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding, and the initiation of a particular case involving a determination on the record after opportunity for a hearing. Finally, the Board of Governors has determined that the public interest does not require that the Board's discussion of its possible chapter 36 strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3), (9)(B), and (10) of title 5 and section 410(c)(3) and (4) of title 39, United States Code, and §§ 7.3(c) and 7.3(i) and (j) of title 39, Code of Federal Regulations.

Louis A. Cox,

Secretary.

[S-378-81 Filed 3-6-81; 8:45 am]

BILLING CODE 7710-12-M

federal register

Tuesday
March 10, 1981

Part II

Foreign Service Labor Relations Board, Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and Foreign Service Impasse Disputes Panel

Processing of cases; interim rules

FOREIGN SERVICE LABOR RELATIONS BOARD

FEDERAL LABOR RELATIONS AUTHORITY

GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

FOREIGN SERVICE IMPASSE DISPUTES PANEL

22 CFR Chapter XIV

Processing of Cases; Interim Rules

AGENCY: Foreign Service Labor Relations Board, Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and the Foreign Service Impasse Disputes Panel.

ACTION: Interim rules and regulations.

SUMMARY: These interim rules and regulations principally govern the processing of vases by the Foreign Service Labor Relations Board (Board), Federal Labor Relations Authority (Authority), the General Counsel of the Federal Labor Relations Authority (General Counsel), and the Foreign Service Impasse Disputes Panel (Panel) under Chapter 41 of title 22 of the United States Code. These interim rules and regulations are required by title 1 of the Foreign Service Act of 1980, and will expire no later than July 30, 1981.

DATES:

Effective Date: February 15, 1981.
Comment date: June 15, 1981.

ADDRESS: Sent comments to: Foreign Service Labor Relations Board, 1900 E Street, NW., Washington, D.C. 20424.

FOR FURTHER INFORMATION CONTACT:

Jerome P. Hardiman, Director, Office of Operations, Authority (202) 254–7362
Harold D. Kessler, Deputy Executive Director, Authority (202) 632–3920
S. Jesse Reuben, Deputy General Counsel, (202) 254–8305
Howard W. Solomon, Executive Director, Panel (202) 653–7078

SUPPLEMENTARY INFORMATION: 1. Paragraph referring to savings clause of the Foreign Service Act:

Consistent with 22 U.S.C. 4172, all determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization, or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law, including Executive Order 11636, repealed, modified, or affected by this Act shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law, including Executive Order 11636, and are pending resolution on the effective date of this Act shall continue to be governed by the provisions repealed, modified, or affected by this Act.

2. Paragraph referring to Privacy Act:

No systems of records, as defined in the Privacy Act, are maintained by the Foreign Service Labor Relations Board or the Foreign Service Impasse Disputes Panel. Accordingly, no regulations pertaining to the Privacy Act are included below. All requests for access to, or amendment or correction of, records maintained by the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel that are contained in a system of records and contain information about an individual, will be processed in accordance with the Rules and Regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, Title 5, Code of Federal Regulations, Part 2412 (effective January 28, 1980).

3. Processing of Pending Cases:

All cases pending before the Employee-Management Relations Commission on February 14, 1981, shall be processed by the Foreign Service Labor Relations Board in accordance with the regulations of the Employee-Management Relations Commission, Title 22, Code of Federal Regulations, Part 801 *et seq.* (Revised as of April 1, 1980), to the extent practicable, except that the word "Board" shall be substituted, as appropriate, wherever the word "Commission" appears in such regulations.

Title 22 of the Code of Federal Regulations is amended by establishing Chapter XIV—Foreign Service Labor Relations Board; Federal Labor Relations Authority: General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel and adding Subchapter B, consisting of Parts 1411, 1413, 1414, Subchapter C, consisting of Parts 1420, 1421, 1422, 1423, 1424, 1425, 1427, 1428, 1429 and Subchapter D, consisting of Parts 1470 and 1471 and Appendix A to Chapter XIV to read as follows:

CHAPTER XIV—FOREIGN SERVICE LABOR RELATIONS BOARD; FEDERAL LABOR RELATIONS AUTHORITY; GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY; AND THE FOREIGN SERVICE IMPASSE DISPUTES PANEL

Subchapter A—[Reserved]

Subchapter B—General Provisions

Part
1411 Availability of official information.
1413 Open meetings.
1414 Ex parte communications.

Subchapter C—Foreign Service Labor Relations Board and General Counsel of the Federal Labor Relations Authority

1420 Purpose and scope.
1421 Meaning of terms as used in this subchapter.
1422 Respresentation proceedings.
1423 Unfair labor practice proceedings.
1424 Expedited review of negotiability issues.
1425 Review of implementation dispute actions.
1427 General statements of policy or guidance.
1428 Enforcement of Assistant Secretary standards of conduct decisions and orders.
1429 Miscellaneous and general requirements.

Subchapter D—Foreign Service Impasse Disputes Panel

1470 General.
1471 Procedures of the panel.
Appendix A to Chapter XIV—Current Addresses and Geographic Jurisdictions
Appendix B—[Reserved]

SUBCHAPTER A—[Reserved]

SUBCHAPTER B—GENERAL PROVISIONS

PART 1411—AVAILABILITY OF OFFICIAL INFORMATION

Sec.
1411.1 Purpose and scope.
1411.2 Delegation of authority
1411.3 Information policy
1411.4 Procedure for obtaining information.
1411.5 Identification of information requested.
1411.6 Time limits for processing requests.
1411.7 Appeal from denial of request.
1411.8 Extension of time limits.
1411.9 Effect of failure to meet time limits.
1411.10 Fees.
1411.11 Compliance with subpenas.
1411 12 Annual report.

Authority: 5 U.S.C. 552.

§ 1411.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board (the Board), the General Counsel of the Federal Labor Relations Authority (the General Counsel) and the Foreign Service Impasse Disputes Panel (the Panel) providing for public access to

information from the Board, the General Counsel or the Panel. These regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552, and the policy of the Board, the General Counsel and the Panel to disseminate information on matters of interest to the public and to disclose to members of the public on request such information contained in records insofar as is compatible with the discharge of their responsibilities, consistent with applicable law.

§ 1411.2 Delegation of authority.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* Regional Directors of the Federal Labor Relations Authority, the Freedom of Information Officer of the Office of the General Counsel, Washington, D.C., and the Solicitor of the Federal Labor Relations Authority are delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 1411.4(a).

(b) *Foreign Service Impasse Disputes Panel.* The Executive Director of the Federal Service Impasse Panel is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 1411.4(b).

§ 1411.3 Information policy.

(a) *Foregin Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* (1) It is the policy of the Foreign Service Labor Relations Board and the General Counsel of the Federal Labor Relations Authority to make available for public inspection and copying: (i) final decisions and orders of the Board and administrative rulings of the General Counsel; (ii) statements of policy and interpretations which have been adopted by the Board or by the General Counsel and are not published in the **Federal Register**; and (iii) administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases). Any person may examine and copy items (i) through (iii) at each regional office of the Authority and at the offices of the Authority and the General Counsel, respectively, in Washington, D.C., under conditions prescribed by the Board and the General Counsel, respectively, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the Board and the General Counsel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Board and the General Counsel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(b) *Foreign Service Impasse Disputes Panel.* (1) It is the policy of the Foreign Service Impasse Disputes Panel to make available for public inspection and copying: (i) procedural determinations of the Panel; (ii) factfinding and arbitration reports; (iii) final decisions and orders of the Panel; (iv) statements of policy and interpretations which have been adopted by the Panel and are not published in the **Federal Register**; and (v) administrative staff manuals and instructions to staff that affect a member of the public. Any person may examine and copy items (i) through (v) at the offices of the Federal Service Impasses Panel in Washington, D.C., under conditions prescribed by the Panel, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Federal Service Impasse Panel and the Panel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Panel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(c) The Board, the General Counsel and the Panel shall maintain and make available for public inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each member of the Board and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Board, the General Counsel or the Panel at the offices the Authority, the General Counsel, or the Federal Service Impasse Panel, as appropirate, in Washington, D.C., under conditions prescribed by the Board, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the Board, the General Counsel, the Federal Service Impasse Panel, or the Panel.

(d) The Board, the General Counsel or the Panel may decline to disclose any matters exempted from the disclosure requirements in 5 U.S.C. 552(b), particularly those that are:

(1)(i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such executive order;

(2) related solely to internal personnel rules and practices of the Authority, the general Counsel or the Federal Service Impasses Panel;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy or

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with an enforcement proceeding;

(ii) Deprive a person of a right to a fair trail or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(e)(1) The formal documents constituting the record in a case or proceeding are matters of official record

and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel or the Federal Service Impasses Panel in Washington, D.C., as appropriate, under conditions prescribed by the Authority, the general Counsel or the Federal Service Impasses Panel at reasonable times during normal working hours so long as it does not interfere with the efficent operations of the Authority, the General Counsel or the Federal Service Impasses Panel.

(2) The Board, the General Counsel or the Panel, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f)(1) Copies of forms prescribed by the Board for the filing of charges and petitions may be obtained without charge from any regional office of the Authority.

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the offices of the Federal Service Impasses Panel in Washington, D.C.

§ 1411.4 Procedure for obtaining information.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal Labor Relations Authority.* Any person who desires to inspect or copy any records, documents or other information of the Board or the General Counsel, covered by this part, other than those specified in paragraphs (a)(1) and (c) of § 1411.3, shall submit a written request to that effect as follows:

(1) If the request is for records, documents or other information in a regional office of the Authority, it should be made to the appropriate Regional Director;

(2) If the request is for records, documents or other information in the Office of the General Counsel and located in Washington, D.C., it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, D.C., and

(3) If the request is for records, documents or other information in the offices of the Authority in Washington, D.C., it should be made to the Solicitor of the Authority in Washington, D.C.

(b) *Foreign Service Impasse Disputes Panel.* Any person who desires to inspect or copy any records, documents or other information of the Panel covered by this part, other than those specified in paragraphs (b)(1) and (c) of § 1411.3, shall submit a written request to that effect to the Executive Director, Federal Service Impasses Panel, Washington, D.C.

(c) All requests under this part should be clearly and prominently identified as a request for information under the Freedom of Information Act and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, until the time it is actually received by such person.

§ 1411.5 Identification of information requested.

(a) Each request under this part should reasonably describe the records being sought in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought.

(c) Upon receipt of a request for records, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to paragraphs (b) and (c) of § 1411.6, the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§ 1411.6 Time limits for processing requests.

(a) All time limits established pursuant to this section shall begin as of the time at which a request for records is logged in by the appropriate Regional Director the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, processing the request pursuant to paragraph (c) of § 1411.5. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but in that event the applicable time limit for response set forth in paragraph (b) of this section shall begin upon the request being logged in as required by paragraph (c) of § 1411.5.

(b) Except as provided in § 1411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Federal Service Impasses Panel, as appropriate, shall, within ten (10) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(1) If all the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all of the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of $25.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (a) of § 1411.10 before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Board, the General Counsel or the Panel.

(c) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 1411.7.

§ 1411.7 Appeal from denial of request.

(a) *Foreign Service Labor Relations Board/General Counsel of the Federal*

Labor Relations Authority. (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. If the denial was made by a Regional Director or by the Freedom of Information Officer of the Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, D.C. If the denial was made by the Solicitor of the Authority, the appeal shall be filed with the Chairperson of the Board in Washington, D.C.

(2) The Chairperson of the Board or the General Counsel, as appropriate, shall, within twenty (20) working days from the time of receipt of the appeal, except as provided in § 1411.8, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of $25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 1411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Board or the General Counsel.

(b) *Foreign Service Impasse Disputes Panel.* (1) Whenever any request for records is denied by the Executive Director of the Federal Service Impasses Panel, a written appeal may be filed with the Chairperson of the Panel within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial.

(2) The Chairperson of the Panel, within twenty (20) working days from the time of receipt of the appeal except as provided in § 1411.8, shall make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of $25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 1411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Panel.

(2) The Chairperson of the Panel, within twenty (20) working days from the time of receipt of the appeal, except as provided in § 1411.8, shall make a determination whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of $25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 1411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Panel.

(c) If on appeal the denial of the request for records is upheld in whole or in part by the Chairperson of the Board, the General Counsel, or the Chairperson of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairperson of the Board, the General Counsel or the Chairperson of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

§ 1411.8 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single requests; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

§ 1411.9 Effect of failure to meet time limits.

Failure by the Board, the General Counsel or the Federal Service Impasses Panel either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 1411.10 Fees.

Persons requesting records from the Board, the General Counsel or the Panel shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures and conditions:

(a) The following fees shall be charged for disclosure of any record pursuant to this part:

(1) *Copying of records.* Ten cents per copy of each page.

(2) *Clerical searches.* $1.25 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* $2.50 for each one-quarter hour spent by

professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(b) All charges may be waived or reduced whenever it is in the public interest to do so.

(c) Requests for copies of transcripts of hearings should be made to the official hearing reporter. However, a person may request a copy of a transcript of a hearing from the Board, the Panel or the General Counsel, as appropriate. In such instance, the Board, the Panel or the General Counsel, as appropriate, may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(d) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(e) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

§ 1411.11 Compliance with subpenas.

No member of the Board or the Panel, or the General Counsel, or employee of the Authority, the Federal Service Impasses Panel, or the General Counsel shall produce or present any files, documents, reports, memoranda, or records of the Board, the Panel or the General Counsel, or testify in behalf of any party to any cause pending in any arbitration or in any court or before the Board or the Panel, or any other board, commission, or administrative agency of the United States, territory, or the District of Columbia with respect to any information, facts, or other matter to their knowledge in their official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board, the Panel or the General Counsel, whether in answer to a subpena, subpena duces tecum, or otherwise, without the written consent of the Board, the Panel or the General Counsel, as appropriate. Whenever any subpena, the purpose for which is to adduce testimony or require the production of records as described above, shall have been served on any member of the Board or of the Panel or employee of the Authority, the Federal Service Impasses Panel or the General Counsel, such person will, unless otherwise expressly directed by the Board, the Panel or the General Counsel, as appropriate, and as provided by law, move pursuant to the applicable procedure to have such subpena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

§ 1411.12 Annual report.

On or before March 1 of each calendar year, the Executive Director of the Authority shall submit a report of the activities of the Board, the General Counsel and the Panel with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include for such calendar year all information required by 5 U.S.C. 552(d) and such other information as indicates the efforts of the Board, the General Counsel and the Panel to administer fully the provisions of the Freedom of Information Act, as amended.

PART 1413—OPEN MEETINGS

Sec.

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Authority: 5 U.S.C. 552b.

§ 1413.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board implementing the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 1413.2 Public observation of meetings.

Every portion of every meeting of the Board shall be open to public observation, except as provided in § 1413.4, and Board members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this part.

§ 1413.3 Definition of meeting.

For purposes of this part, "meeting" shall mean the deliberations of at least two (2) members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this part.

§ 1413.4 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpena, the Board participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of particular cases of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

§ 1413.5 Action necessary to close meeting; record of votes.

A meeting shall be closed to public observation under § 1413.4, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 1413.4(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation and on whether the public interest requres that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 1413.4(b),

the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular metters where such subsequent meetings are scheduled to be held within thirty (30) days after the initial meeting. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available for the public within one (1) day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting, shall be kept and made available to the public within one (1) day after the vote is taken.

(d) After public announcement of a meeting as provided in § 1413.6, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 1413.4, the Solicitor of the Authority shall certify that in the Solicitor's opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification s'1all be retained by the agency and made publicly available as soon as practicable.

§ 1413.6 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings, or portions thereof, closed to public observation pursuant to the provisions of § 1413.4(a), shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 1413.4(a), the agency shall make public announcement of each meeting to be held at least seven (7) days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The seven (7) day period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one (1) day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of § 1413.4(b), the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Board who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved, a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section or pursuant to the provisions of § 1413.5(d) shall be submitted for publication in the **Federal Register** immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Director of the Authority.

§ 1413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

(a) For every meeting, or portion thereof, closed under the provisions of § 1413.4, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting, or portion thereof, there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 1413.4(a), the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered and the members' vote on each rollcall vote.

(b) The agency shall make promptly availabe to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552 (c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 1411.10 of this subchapter and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held whichever occurs later.

PART 1414—EX PARTE COMMUNICATIONS

Sec.
1414.1 Purpose and scope.
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1414.4 Duration of prohibition.
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Authority: 22 U.S.C. 4107(c).

§ 1414.1 Purpose and scope.

This part contains the regulations of the Foreign Service Labor Relations Board relating to ex parte communications.

§ 1414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any Board proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 1414.3 Definitions.

When used in this part:

(a) The term "person outside this agency," to whom the prohibitions apply, shall include any individual outside the Board or the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Board pursuant to 22 U.S.C. 4116.

(b) The term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 1414.5 and 1414.6.

§ 1414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of § 1414.2 shall be applicable in any Board proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

§ 1414.5 Communications prohibited.

Except as provided in § 1414.6, ex parte communications prohibited by § 1414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of Part 1429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

§ 1414.6 Communications not prohibited.

Ex parte communications prohibited by § 1414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Board is authorized by law or Board rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

(e) Oral of written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Board when the General Counsel is acting on behalf of the Board under 22 U.S.C. 4109(d).

§ 1414.7 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

§ 1414.8 Reporting of prohibited communications; penalties.

(a) Any Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Board member or Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (a) the communication, if it was written; (b) a memorandum stating the substance of the communication, if it was oral; (c) all written responses to the prohibited communication; and (d) memoranda stating the substance of all oral responses to the probibited communication. The Executive Director of the Authority, if the proceeding is then pending before the Board, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director of the Authority, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Board to impose an appropriate penalty under § 1414.9.

§ 1414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited

communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Board, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Board, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Board, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Board may censure, suspend or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Board institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Board may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Board agent who knowingly and willfully violates the prohibitions and requirements of this rule.

SUBCHAPTER C—FOREIGN SERVICE LABOR RELATIONS BOARD AND GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

PART 1420—PURPOSE AND SCOPE

§ 1420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of the Foreign Service Labor-Management Relations Statute. They prescribe the procedures and basic principles or criteria under which the Foreign Service Labor Relations Board or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

(a) Supervise or conduct elections and determine whether a labor organization has been selected as an exclusive representative by a majority of the employees who cast valid ballots and otherwise administer the provisions of the Statute relating to the according of exclusive recognition to a labor organization;

(b) Resolve complaints of alleged unfair labor practices;

(c) Resolve issues relating to the obligation to bargain in good faith;

(d) Resolve disputes concerning the effects, the interpretation, or a claim of breach of collective bargaining agreement, in accord with 22 U.S.C. 4114; and

(e) Take any action considered necessary to administer effectively the provisions of the Foreign Service Labor-Management Relations Statute.

(22 U.S.C. 4107(c))

PART 1421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

Sec.

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1421.2 Terms defined in section 1002 of the Foreign Service Act of 1980 (22 U.S.C 4102).
1421.3 Exclusive Recognition; Unfair Labor Practices.
1421.4 Department.
1421.5 Regional Director.
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1421.7 Hearing Officer.
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1421.15 Secret ballot.
1421.16 Showing of interest.
1421.17 Grievance Board.
1421.18 Regular and substantially equivalent employment.

Authority: 22 U.S.C. 4107(c).

§ 1421.1 Foreign Service Labor-Management Relations Statute.

The term "Foreign Service Labor-Management Relations Statute" means chapter 10 of title 1 of the Foreign Service Act of 1980, codified as chapter 41 of title 22 of United States Code.

§ 1421.2 Terms defined in section 1002 of the Foreign Service Act of 1980 (22 U.S.C. 4102).

(a) The terms "Authority," "Board," "collective bargaining," "collective bargaining agreement," "conditions of employment," "confidential employee," "dues," "employee," "exclusive representative," "General Counsel," "labor organization," "management official," "Panel," and "person," as used herein shall have the meanings set forth in 22 U.S.C. 4102.

(b) The term "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

§ 1421.3 Exclusive Recognition; Unfair Labor Practices

(a) "Exclusive Recognition" has the meaning as set forth in 22 U.S.C. 4111; and

(b) "Unfair Labor Practices" has the meaning as set forth in 22 U.S.C. 4115.

§ 1421.4 Department.

"Department" means the Department of State, except that with reference to the exercise of functions under this Act with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency.

§ 1421.5 Regional Director.

"Regional Director" means the Director of a region of the Authority with geographical boundaries as fixed by the Authority.

§ 1421.6 Executive Director.

"Executive Director" means the Executive Director of the Authority.

§ 1421.7 Hearing Officer.

"Hearing Officer" means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other matters as may be assigned.

§ 1421.8 Administrative Law Judge.

"Administrative Law Judge" means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 22 U.S.C. 4115, and such other matters as may be assigned.

§ 1421.9 Chief Administrative Law Judge.

"Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Authority.

§ 1421.10 Secretary.

"Secretary" means the Secretary of State, except that (subject to 22 U.S.C. 3921) with reference to the exercise of functions under the Foreign Service Act of 1980 with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency.

§ 1421.11 Party.

"Party" means (a) any person: (1) filing a charge, petition, or request; (2) named in a charge, complaint, petition, or request; (3) whose intervention in a proceeding has been permitted or directed by the Board; (4) who participated as a party (i) in a matter

that was decided by an agency head under 22 U.S.C. 4105 or (ii) in a matter where action by the Grievance Board was taken; and (b) the General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

§ 1421.12 Intervenor.

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Authority, its agents or representatives.

§ 1421.13 Certification.

"Certification" means the determination by the Board, its agents or representatives, of the results of an election.

§ 1421.14 Bargaining unit.

"Bargaining unit" has the meaning as set forth in 22 U.S.C. 4112 for the purpose of exclusive recognition under 22 U.S C. 4111, and for purposes of allotments to representatives under 22 U.S.C. 4118.

§ 1421.15 Secret ballot.

"Secret Ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 1421.16 Showing of interest.

"Showing of interest" means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current exclusive recognition or certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization; or other evidence approved by the Authority.

§ 1421.17 Grievance Board.

"Grievance Board" means the Foreign Service Grievance Board established under 22 U.S.C. 4135.

§ 1421.18 Regular and Substantially Equivalent Employment.

"Regular and substantially equivalent employment" means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, and seniority rights if any, of an employee prior to the cessation of employment in a Department because of any unfair labor practice under 22 U.S.C. 4115.

PART 1422—REPRESENTATION PROCEEDINGS

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Authority: 22 U.S.C. 4107.

§ 1422.1 Who may file petitions.

(a) A petition for exclusive recognition may be filed by a labor organization requesting an election to determine whether it should be recognized as the exclusive representative of employees of the Department in the unit described in 22 U.S.C. 4112 or should replace another labor organization as the exclusive representative of employees in such unit.

(b) A petition for an election to determine if a labor organization should cease to be the exclusive representative because it does not represent a majority of employees in the unit described in 22 U.S.C. 4112 may be filed by any employee or employees or an individual acting on behalf of any employee(s).

(c) A petition seeking to clarify a matter relating to representation may be filed by the Department where the Department has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the unit described in 22 U.S.C. 4112.

(d) A petition for clarification of the unit described in 22 U.S.C. 4112 or for amendment of recognition or certification may be filed by the Department or by a labor organization which is currently recognized by the Department as the exclusive representative.

(e) A petition for determination of eligibility for dues allotment may be filed by a labor organization in accordance with 22 U.S.C. 4118(c).

§ 1422.2 Contents of petition; filing and service of petition; challenges to petition.

(a) *Petition for exclusive recognition.* A petition by a labor organization for exclusive recognition shall be submitted on a form prescribed by the Board and shall contain the following:

(1) The name of the Department, its address, telephone number, and the persons to contact and their titles, if known;

(2) A description of the unit described in 22 U.S.C. 4112. Such description shall indicate the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit;

(3) Name, address, and telephone number of the recognized or certified representative, if any, and the date of such recognition or certification and the expiration date of any applicable agreement, if known to the petitioner;

(4) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioner;

(5) Name and affiliation, if any, of the petitioner and its address and telephone number;

(6) A statement that the petitioner has submitted to the Department and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(7) A declaration by such person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(8) The signature of the petitioner's representative, including such person's title and telephone number; and

(9) The petition shall be accompanied by a showing of interest of not less than

thirty percent (30%) of the employees in the unit described in 22 U.S.C. 4112 and an alphabetical list of names constituting such showing.

(b) *Department petition seeking clarification of a matter relating to representation; employee petition for an election to determine whether a labor organization should cease to be an exclusive representative.* (1) A petition by the Department shall be submitted on a form prescribed by the Board and shall contain the information set forth in paragraph (a) of this section, except subparagraphs (6) and (9), and a statement that the Department has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the unit described in 22 U.S.C. 4112. Attached to the petition shall be a detailed explanation of the reasons supporting the good faith doubt.

(2) A petition by any employee or employees or an individual acting on behalf of any employee(s) shall contain the information set forth in paragraph (a) of this section, except subparagraphs (6) and (9), and it shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit indicating that the employees no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization and an alphabetical list of names constituting such showing.

(c) *Petition for clarification of unit or for amendment of recognition or certification.* A petition for clarification of unit or for amendment of recognition or certification shall be submitted on a form prescribed by the Board and shall contain the information required by paragraph (a) of this section, except subparagraphs (2), (6) and (9), and shall set forth:

(1) A description of the unit and the date of recognition or certification;

(2) The proposed clarification or amendment of the recognition or certification; and

(3) A statement of reasons why the proposed clarification or amendment is requested.

(d) *Petition for determination of eligibility for dues allotment.* A petition for determination of eligibility for dues allotment in the unit may be filed if there is no exclusive representative. The petition shall be submitted on a form prescribed by the Board and shall contain the information required in subparagraphs (1), (4), (5), (6), (7), and (8) of paragraph (a) of this section, and shall set forth:

(1) A description of the unit described in 22 U.S.C. 4112. Such description shall indicate the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in this unit; and

(2) The petition shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit and an alphabetical list of names constituting such showing.

(e) *Filing and service of petition and copies.* (1) A petition for exclusive recognition, for an election to determine if a labor organization should cease to be the exclusive representative, for clarification of unit, for amendment of recognition or certification, or for determination of eligibility for dues allotment, filed pursuant to paragraphs (a), (b), (c), or (d) of this section respectively, shall be filed with the Regional Director for the region in which the unit exists, or, if the claimed unit exists in two or more regions, the petition shall be filed with the Regional Director for the region in which the affected employees are located.

(2) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence relating to the question concerning representation.

(3) Copies of the petition together with any attachments shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director: *Provided, however,* That the showing of interest or the showing of membership submitted with a petition filed pursuant to paragraphs (a), (b)(2), (d), or (h) of this section shall not be furnished to any other person.

(f) *Adequacy and validity of showing of interest or showing of membership.* (1) The Regional Director shall determine the adequacy of the showing of interest or the showing of membership administratively, and such determination shall not be subject to collateral attack at a unit or representation hearing. If the petition is dismissed or the intervention sought pursuant to § 1422.5 is denied, a request for review of such dismissal or denial may be filed with the Board in accordance with the procedures set forth in § 1422.6(d).

(2) Any party challenging the validity of any showing of interest or showing of membership of a petitioner, or a cross-petitioner filing pursuant to § 1422.5(b), or of a labor organization seeking to intervene pursuant to § 1422.5, must file its challenge with the Regional Director, with respect to the petitioner or a cross-petitioner, within twenty (20) days after the initial date of posting of the notice of petition as provided in § 1422.4(a), and with respect to any labor organization seeking to intervene, within twenty (20) days of service of a copy of the request for intervention on the challenging party. The challenge shall be supported with evidence including signed statements of employees and any other written evidence. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate which shall be final and not subject to review by the Board, unless the petition is dismissed or the intervention is denied on the basis of the challenge. Such request for review shall be filed with the Board in accordance with the procedures set forth in § 1422.6(d).

(g) *Challenge to status of a labor organization.* Any party challenging the status of a labor organization under chapter 41 of title 22 of the United States Code must file its challenge with the Regional Director and support the challenge with evidence. With respect to the petitioner or a cross-petitioner filing pursuant to § 1422.5(b), such a challenge must be filed within twenty (20) days after the initial date of posting of the notice of petition as provided in § 1422.4(a), and with respect to a labor organization seeking to intervene pursuant to § 1422.5, within twenty (20) days after service of a copy of the request for intervention on the challenging party. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate, which shall be subject to review by the Board. Such request for review shall be filed with the Board in accordance with the procedures set forth in § 1422.6(d).

§ 1422.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the employees, a petition will be considered timely filed provided a valid election has not been held within the preceding twelve (12) month period in the unit described in 22 U.S.C. 4112.

(b) When there is a certified exclusive representative of the employees, a petition will not be considered timely if filed within twenty-four (24) months after the certification as the exclusive representative of employees in unit described in 22 U.S.C. 4112, unless a signed and dated collective bargaining agreement covering the unit has been entered into in which case paragraphs (c) and (d) of this section shall be applicable.

(c) When a collective bargaining agreement covering the unit described in 22 U.S.C. 4112 has been signed and dated by the Department and the

incumbent exclusive representative, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period of review by the Secretary as set forth in 22 U.S.C. 4113(f), absent unusual circumstances.

(d) A petition for exclusive recognition or other election petition will be considered timely when filed as follows:

(1) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration date of a collective bargaining agreement having a term of three (3) years or less from the date it became effective.

(2) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period of a collective bargaining agreement having a term of more than three (3) years from the date it became effective, and any time after the expiration of the initial three (3) year period of such a collective bargaining agreement; and

(3) Any time when unusual circumstances exist which substantially affect the unit or the majority representation.

(e) When a collective bargaining agreement having a term of three (3) years or less is in effect between the Department and the incumbent exclusive representative, and a petition has been filed challenging the representation status of the incumbent exclusive representative and the petition is subsequently withdrawn or dismissed less than sixty (60) days prior to the expiration date of that collective bargaining agreement, or any time thereafter, the Department and incumbent exclusive representative shall be afforded a ninety (90) day period from the date the withdrawal is approved or the petition is dismissed free from rival claim within which to consummate a collective bargaining agreement: *Provided, however,* That the provisions of this paragraph shall not be applicable when any other petition is pending which has been filed pursuant to paragraph (d)(1) of this section.

(f) When an extension of a collective bargaining agreement having a term of three (3) years or less has been signed more than sixty (60) days before its expiration date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

(g) Collective bargaining agreements which go into effect automatically pursuant to 22 U.S.C. 4113(f) and which do not contain the date on which the agreement became effective shall not constitute a bar to an election petition.

(h) A petitioner who withdraws a petition after the issuance of a notice of hearing or after the approval of an agreement for an election, shall be barred from filing another petition for the unit described in 22 U.S.C. 4112 for six (6) months, unless a withdrawal request has been received by the Regional Director not later than three (3) days before the date of the hearing.

(i) The time limits set forth in this section shall not apply to a petition for clarification of unit or for amendment of recognition or certification, or to a petition for dues allotment.

§ 1422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

(a) Upon the request of the Regional Director, after the filing of a petition, the Department shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit described in 22 U.S.C. 4112.

(b) Such notice shall set forth:

(1) The name of the petitioner;

(2) The description of the unit;

(3) If appropriate, the proposed clarification of unit or the proposed amendment of recognition or certification; and

(4) A statement that all interested parties are to advise the Regional Director in writing of their interest and position within twenty (20) days after the date of posting of such notice: *Provided, however,* That the notice in a petition for determination of eligibility for dues allotment shall contain the information required in subparagraphs (1), (2), and (4) of this paragraph.

(c) The notice shall remain posted for a period of twenty (20) days. The notice shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(d) The Department shall furnish the Regional Director and all known interested parties with the following:

(1) Names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the unit described in 22 U.S.C. 4112;

(2) A copy of all relevant correspondence;

(3) A copy of existing or recently expired agreement(s) covering any of the employees described in the petition;

(4) A current alphabetized list of employees in included in the unit, together with their job classifications; and

(5) A current alphabetized list of employees described in the petition as excluded from the unit, together with their job classifications.

(e) The parties are expected to meet as soon as possible after the expiration of the twenty (20) day posting period of the notice of petition as provided in paragraph (a) of this section and use their best efforts to secure agreement on the unit.

(f) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall take action which may consist of the following, as appropriate:

(1) Approve an agreement for consent election in the unit as provided under § 1422.7;

(2) Approve a withdrawal request;

(3) Dismiss the petition; or

(4) Issue a notice of hearing.

(g) In processing a petition for clarification of unit or for amendment of recognition or certification, or dues allotment, where appropriate, the Regional Director shall prepare and serve a report and findings upon all parties to the proceedings and shall state therein, among other pertinent matters, the Regional Director's conclusions and the action contemplated. A party may file with the Board a request for review of such action of the Regional Director in accordance with the procedures set forth in § 1422.6(d). If no request for review is filed, or if one is filed and denied, the Regional Director shall take such action as may be appropriate, which may include issuing a clarification of unit or an amendment of recognizition or certification, or determination of eligibility for dues allotment.

(h) A determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Board.

§ 1422.5 Intervention.

(a) No labor organization will be permitted to intervene in any proceeding involving a petition filed pursuant to § 1422.2 (a) or (b) unless it has submitted to the Regional Director a showing of interest of ten percent (10%) or more of the employees in the unit described in 22 U.S.C. 4112 together with an alphabetical list of names constituting such showing, or has submitted a current or recently expired agreement with the Department covering any of the employees involved, or has submitted evidence that it is the currently recognized or certified exclusive representative of any of the employees involved: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding unless it serves on the Regional Director a written disclaimer of

any representation interest for the employees involved: *Provided, further,* That any such incumbent exclusive representative that declines to sign an agreement for consent election because of a disagreement on the matters contained in § 1422.7(c) as decided by the Regional Director, or fails to appear at a hearing held pursuant to § 1422.9, shall be denied its status as an intervenor.

(b) No labor organization may participate to any extent in any representation proceeding unless it has notified the Regional Director in writing, accompanied by its showing of interest as specified in paragraph (a) of this section, of its desire to intervene within twenty (20) days after the initial date of posting of the notice of petition as provided in § 1422.4(a), unless good cause is shown for extending the period. A copy of the request for intervention filed with the Regional Director, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service should be filed with the Regional Director: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding in accordance with paragraph (a) of this section.

(c) Any labor organization seeking to intervene in a proceeding involving a petition for determination of eligibility for dues allotment filed pursuant to § 1422.2(d) may intervene solely on the basis it claims to be the exclusive representative of some or all the employees specified in the petition and shall submit to the Regional Director a current or recently expired agreement with the Department covering any of the employees involved, or evidence that it is the currently recognized or certified exclusive representative of any of the employees involved.

(d) Any labor organization seeking to intervene must submit to the Regional Director a statement that it has submitted to the Department and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(e) The Regional Director may grant intervention to a labor organization in a proceeding involving a petition for clarification of unit or a petition for amendment of recognition or certification filed pursuant to § 1422.2(c), or a petition for determination of eligibility for dues allotment filed pursuant to § 1422.2(d), based on a showing that the proposed clarification, amendment or dues allotment affects that labor organization's existing exclusively recognized unit(s) in that it would cover one or more employees who are included in such unit(s).

§ 1422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention; review of action by Regional Director.

(a) If the Regional Director determines, after such investigation as the Regional Director deems necessary, that the petition has not been timely filed, the unit is not as described in 22 U.S.C. 4114, the petitioner has not made a sufficient showing of interest, the petition is not otherwise actionable, or an intervention is not appropriate, the Regional Director may request the petitioner or intervenor to withdraw the petition or the request for intervention. In the absence of such withdrawal within a reasonable period of time, the Regional Director may dismiss the petition or deny the request for intervention.

(b) If the Regional Director determines, after investigation, that a valid issue has been raised by a challenge under § 1422.2 (f) or (g), the Regional Director may take action which may consist of the following, as appropriate:

(1) Request the petitioner or intervenor to withdraw the petition or the request for intervention;

(2) Dismiss the petition and/or deny the request for intervention if a withdrawal request is not submitted within a reasonable period of time;

(3) Defer action on the petition or request for intervention until such time as issues raised by the challenges have been resolved pursuant to this part; or

(4) Consolidate such issues with the representation matter for resolution of all issues.

(c) If the Regional Director dismisses the petition and/or denies the request for intervention, the Regional Director shall serve on the petitioner or the party requesting intervention a written statement of the grounds for the dismissal or the denial, and serve a copy of such statement on the Department, and on the petitioner and any intervenors, as appropriate.

(d) The petitioner or party requesting intervention may obtain a review of such dismissal and/or denial by filing a request for review with the Board within twenty-five (25) days after service of the notice of such action. Copies of the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the request for review. Requests for extensions of time shall be in writing and received by the Board not later than five (5) days before the date the request for review is due. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. Any party may file an opposition to a request for review with the Board within ten (10) days after service of the request for review. Copies of the opposition to the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the opposition to the request for review. The Board may issue a decision or ruling affirming or reversing the Regional Director in whole or in part or making any other disposition of the matter as it deems appropriate.

§ 1422.7 Agreement for consent election.

(a) All parties desiring to participate in an election being conducted pursuant to this section or § 1422.16, including intervenors who have met the requirements of § 1422.5, must sign an agreement providing for such an election on a form prescribed by the Board. An original and one (1) copy of the agreement shall be filed with the Regional Director.

(b) The Department, a petitioner, and any intervenors who have complied with the requirements set forth in § 1422.5 may agree that a secret ballot election shall be conducted among the employees in the unit to determine whether the employees desire to be represented for purposes of exclusive recognition by any or none of the labor organizations involved.

(c) The parties shall agree on the eligibility period for participation in the election, the date(s), hour(s), and place(s) of the election, the designations on the ballot and other related election procedures.

(d) In the event that the parties cannot agree on the matters contained in paragraph (c) of this section, the Regional Director, acting on behalf of the Board, shall decide these matters without prejudice to the right of a party to file objections to the procedural conduct of the election under § 1422.20(b).

(e) If the Regional Director approves the agreement, the election shall be conducted by the Department, as appropriate, under the supervision of the Regional Director, in accordance with § 1422.17.

(f) Any qualified intervenor who refuses to sign an agreement for an election may express its objections to the agreement in writing to the Regional Director. The Regional Director, after careful consideration of such objections, may approve the agreement or take such other action as the Regional Director deems appropriate.

§ 1422.8 Notice of hearing; contents; attachments; procedures.

(a) The Regional Director may cause a notice of hearing to be issued involving any matters related to the petition.

(b) The notice of hearing shall be served on all interested parties and shall include:

(1) The name of the Department, petitioner, and intervenors, if any;

(2) A statement of the time and place of the hearing, which shall be not less than twenty (20) days after service of the notice of hearing, except in extraordinary circumstances;

(3) A statement of the nature of the hearing; and

(4) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A copy of the petition shall be attached to the notice of hearing.

(d) Hearings on matters related to the petition pursuant to paragraph (a) of this section shall be conducted by a Hearing Officer in accordance with §§ 1422.9 through 1422.15.

§ 1422.9 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Officer and shall be open to the public unless otherwise ordered by the Hearing Officer. At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Board can make an appropriate decision. An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

(b) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

§ 1422.10 Motions.

(a) *General.* (1) A motion shall state briefly the order or relief sought and the grounds for the motion: *Provided, however,* That a motion to intervene will not be entertained by the Hearing Officer. Intervention will be permitted only to those who have met the requirements of § 1422.5.

(2) A motion prior to, and after a hearing and any response thereto, shall be made in writing. A response shall be filed within five (5) days after service of the motion. An original and two (2) copies of such motion and any response thereto shall be filed and copies shall be served on the parties and the Regional Director. A statement of such service shall be filed with the original.

(3) During a hearing a motion may be made and responded to orally on the record.

(4) The right to make motions, or to make objections to rulings on motions, shall not be deemed waived by participation in the proceeding.

(5) All motions, rulings, and orders shall become part of the record.

(b) *Filing of motions.* (1) Motions and responses thereto prior to a hearing shall be filed with the Regional Director. During the hearing motions shall be made to the Hearing Officer.

(2) After the transfer of the case to the case to the Board, except as otherwise provided, motions and responses thereto shall be filed with the Board: *Provided,* That following the close of a hearing, motions to correct the transcript should be filed with the Hearing Officer within ten (10) days after the transcript is received in the regional office.

(c) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them, or they may refer them to the Hearing Officer. A ruling by a Regional Director granting a motion to dismiss a petition may be reviewed by the Board upon the filing by the petitioner of a request for review pursuant to § 1422.6(d).

(2) Hearing Officers shall rule, either orally on the record or in writing, on all motions made at the hearing or referred to them, except that a motion to dismiss a petition shall be referred for appropriate action at such time as the record is considered by the Regional Director or the Board. Rulings by a Hearing Officer reduced to writing shall be served on the parties.

(3) The Board shall consider the rulings by the Regional Director and the Hearing Officer when the case is transferred to it for decision.

§ 1422.11 Rights of the parties.

(a) A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) A party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Such oral argument shall not preclude a party from filing a brief under § 1422.14.

§ 1422.12 Duties and powers of the Hearing Officer.

It shall be the duty of Hearing Officers to inquire fully into the facts as they relate to the matters before them. With respect to cases assigned to them between the time they are designated and the transfer of the case to the Board, Hearing Officers shall have the authority to:

(a) Grant requests for subpenas pursuant to § 1429.7 of this subchapter;

(b) Rule upon offers of proof and receive relevant evidence and stipulations of fact;

(c) Take or cause depositions or interrogatories to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the Hearing Officer's own motion;

(h) Dispose of procedural requests, motions, or similar matters, which shall be made part of the record of the proceedings, including motions referred to the Hearing Officer by the Regional Director and motions to amend petitions;

(i) Call and examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Rule on motions to correct the transcript which are received within ten (10) days after the transcript is received in the regional office; and

(m) Take any other action necessary under this section and not prohibited by the regulations in this subchapter.

§ 1422.13 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objection, and be included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exceptions will be allowed to all adverse rulings.

§ 1422.14 Filing of briefs.

A party desiring to file a brief with the Board shall file the original and three (3) copies within thirty (30) days from the close of the hearing. Copies thereof shall be served on all other parties to the proceeding. Requests for additional time in which to file a brief under authority of this section shall be made to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extension of time shall be in writing and received not later than five (5) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Board.

§ 1422.15 Transfer of case to the Board; contents of record.

Upon the close of the hearing the case is transferred automatically to the Board. The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

§ 1422.16 Decision.

The Board will issue a decision directing an election or dismissing the petition, or making other disposition of the matters before it.

§ 1422.17 Election procedure; request for authorized representation election observers.

This section governs all elections conducted under the supervision of the Regional Director pursuant to § 1422.7 or § 1422.16. The Regional Director may conduct elections in unusual circumstances in accordance with terms and conditions set forth in the notice of election.

(a) Appropriate notices of election shall be posted by the Department. Such notices shall set forth the details and procedures for the election, the unit described in 22 U.S.C. 4112, the eligibility period, the date(s), hour(s) and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Board endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request the Regional Director to remove its name from the ballot. The request must be in writing and received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Regional Director whose decision shall be final.

(e) In a proceeding involving an election to determine if a labor organization should cease to be the exclusive representative filed by the Department or any employee or employees or an individual acting on behalf of any employee(s) under § 1422.2(b), an organization currently recognized or certified may not have its name removed from the ballot without having served the written request submitted pursuant to paragraph (d) of this section on all parties. Such request shall contain an express disclaimer of any representation interest among the employees in the unit.

(f) Any party may be represented at the polling place(s) by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own motion, the Regional Director may vary the time limits prescribed in this paragraph.

§ 1422.18 Challenged ballots.

Any party or the representative of the Board may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

§ 1422.19 Tally of ballots.

Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of ballots.

§ 1422.20 Certification; objections to election; determination on objections and challenged ballots.

(a) The Regional Director shall issue to the parties a certification of results of the election or a certification of representative, where appropriate: *Provided, however,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no rerun election is to be held.

(b) Within twenty (20) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, setting forth a clear and concise statement of the reasons therefor. The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections. An original and two (2) copies of the objections shall be filed with the Regional Director and copies shall be served on the parties. A statement of such service shall be filed with the Regional Director. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within ten (10) days after the filing of the objections, unless an extension of time has been granted by the Regional Director, the objecting party shall file with the Regional Director evidence, including signed statements, documents and other material supporting the objections.

(c) If objections are filed or challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate the objections or challenged ballots, or both.

(d) When the Regional Director determines that no relevant question of

fact exists, the Regional Director (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, indicate an intention to set aside the election, or (2) shall rule on determinative challenged ballots, if any, or both. The Regional Director shall issue a report and findings on objections and/or challenged ballots which shall be served upon all parties to the proceeding. Such report and findings shall state therein any additional pertient matters such as an intent to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) When the Regional Director determines that no relevant question of fact exists, but that a substantial question of interpretation or policy exists, the Regional Director shall notify the parties in the report and findings and transfer the case to the Board in accordance with this subchapter.

(f) Any party aggrieved by the findings of a Regional Director with respect to objections to an election or challenged ballots may obtain a review of such action by the Board by following the procedure set forth in § 1422.6(d) of this subchapter: *Provided, however,* That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Board.

(g) Where it appears to the Regional Director that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Regional Director shall cause to be issued a notice of hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Board in accordance with §§ 1423.14 through 1423.28 of this subchapter excluding § 1423.18 and § 1423.19(j), with the following exceptions:

(1) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under § 1423.26(a); and

(2) Reference to "charge, complaint" in § 1423.26(b) shall be read as "report and findings of the Regional Director."

(h) At a hearing conducted pursuant to paragraph (g) of this section the party filing the objections shall have the burden of proving all matters alleged in its objections by a preponderance of the evidence. With respect to challenged ballots, no burden of proof is imposed on any party.

(i) The Board shall take action which may consist of the following, as appropriate:

(1) Issue a decision adopting, modifying, or rejecting the Administrative Law Judge's decision;

(2) Issue a decision in any case involving a substantial question of interpretation or policy transferred pursuant to paragraph (e) of this section; or

(3) Issue a ruling with respect to a request for review filed pursuant to paragraph (f) of this section affirming or reversing, in whole or in part, the Regional Director's findings, or make such other disposition as may be appropriate.

§ 1422.21 Preferential voting

In any election in which more than two choices are on the ballot and no choice receives a majority of first preferences the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

§ 1422.22 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot is declared the winner. If there are no challenged ballots that would affect the results of the election, the Regional Director may declare the election a nullity and may order another election providing for a selection from among the choices afforded in the previous ballot.

(b) Only one further election pursuant to this section may be held.

PART 1423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

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Authority: 22 U.S.C. 4107.

§ 1423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Board on or after February 15, 1981.

§ 1423.2 Informal proceedings.

(a) The purposes and policies of the Foreign Service Labor-Management Relations Statute can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Board and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the Board.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 22 U.S.C. 4116(d), it shall be the policy of the Board and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

§ 1423.3 Who may file charges.

The Department or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 22 U.S.C. 4115.

§ 1423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 22 U.S.C. 4115 shall be submitted on forms

prescribed by the Board and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the Department or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 41 of title 22 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Foreign Service Impasse Disputes Panel or the Foreign Service Grievance Board for consideration or action; or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to Part 1424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

§ 1423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to Part 1424 of this subchapter a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under Part 1424 of this subchapter.

§ 1423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

§ 1423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The purposes and policies of the Foreign Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Board and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Board's and the General Counsel's continuing ability to obtain all relevant information.

§ 1423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in § 1423.6.

§ 1423.9 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of § 1423.11;

(4) Issue a complaint;

(5) Upon agreement of all parties, transfer to the Board for decision, after issuance of a complaint, a stipulation of facts in accordance with the provisions of § 1429.1(a) this subchapter; or

(6) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d). The General Counsel will initiate and prosecute injunctive proceedings under 22 U.S.C. 4109(d) only upon approval of the Board. A determination by the General Counsel not to seek approval of the Board for such temporary relief is final and may not be appealed to the Board.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Board to seek appropriate temporary relief (including a restraining order) under 22 U.S.C. 4109(d), the Regional Attorney or other designated agent of the Board to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the United States District Court for the District of Columbia. Such temporary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the Department to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 22 U.S.C. 4109(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Board handling the case for the Board shall inform the United States District Court for the

District of Columbia of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 1423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within twenty-five (25) days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party shall notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than five (5) days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extension of time in which to file an appeal, but any failure to give such notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 1423.11 Settlement or adjustment of issues.

(a) *General settlement policy.* At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

(b)(1) *Precomplaint informal settlements.* Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will afford the charging party and the respondent a reasonable period of time in which to enter into an informal settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the informal settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to an informal settlement agreement offered by the respondent, if the Regional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with section 1423.10(c). The General Counsel shall take action on such appeal as set forth in section 1423.10(e).

(c) *Post complaint settlement policy.* Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Board favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Board. In such formal agreements, the parties shall agree to waive their right to a hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Board application for the entry of a decree by the United States Court of Appeals for the District of Columbia enforcing the Board's order.

(d)(1) *Post complaint—prehearing formal settlements.* If, after issuance of a complaint but before opening of the hearing, the charging party and the respondent enter into a formal settlement agreement, and such agreement is accepted by the Regional Director, the formal settlement agreement shall be submitted to the Board for approval.

(2) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. The charging party will be so informed and provided a brief written statement by the Regional Director of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Regional Director for other appropriate action.

(3) *Post complaint—prehearing informal settlements.* After issuance of a complaint but before opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may withdraw the complaint and approve an informal settlement agreement pursuant to paragraph (b) of this section.

(e)(1) *Informal settlements after the opening of the hearing.* After the issuance of a complaint and after opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Foreign Service Labor-Management Relations Statute, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve an informal settlement pursuant to paragraph (b) of this section.

(2) *Formal settlements after the opening of the hearing.* If, after issuance of a complaint and after opening of the hearing, the parties enter into a formal settlement agreement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Board for approval.

(3) If the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Foreign Service Labor-Management Relations

Statute, the agreement shall be between the respondent and the Regional Director. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any formal settlement agreement or return the case to the Administrative Law Judge for other appropriate action.

§ 1423.12 Issuance and contents of the complaint.

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Notice that a hearing will be held before an Administrative Law Judge;

(3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;

(4) A statement of the nature of the hearing;

(5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Board is predicated;

(6) A reference to the particular sections of chapter 41 of title 22 of the United States Code and the rules and regulations involved; and

(7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transmitted to the Board pursuant to § 1423.26, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transmitted to the Board pursuant to § 1423.26, upon motion by the Board at any time prior to the issuance of an order based thereon by the Board.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

§ 1423.13 Answer to the complaint; extension of time for filing; amendment.

(a) Except in extraordinary circumstances as determined by the Regional Director, within twenty (20) days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) The answer: (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Board, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the Administrative Law Judge or the Board. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Board, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Board.

§ 1423.14 Conduct of hearing.

(a) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

§ 1423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in § 1423.22. The motion shall state the grounds upon which such person claims involvement.

§ 1423.16 Rights of parties.

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 1423.17 Rules of evidence.

The parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by court. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

§ 1423.18 Burden of proof before the Administrative Law Judge.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 1423.19 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Subject to the rules and regulations of the Board and the General Counsel, an Administrative Law Judge presiding at a hearing may:

(a) Grant requests for subpenas pursuant to § 1429.7 of this subchapter;

(b) Rule upon petitions to revoke subpenas pursuant to § 1429.7 of this subchapter;

(c) Administer oaths and affirmations;

(d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;

(e) Order responses to written interrogatories whenever the ends of justice would be served thereby unless it would interfere with the Board's and the General Counsel's policy of protecting the personal privacy and confidentiality of sources of information as set forth in § 1423.7(d);

(f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;

(h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and transmit the decision pursuant to § 1423.26;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Approve requests for withdrawal of complaints based on informal settlements occurring after the opening of the hearing pursuant to § 1423.11(e)(1), and transmit formal settlement agreements to the Board for approval pursuant to § 1423.11(e) (2) and (3);

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

§ 1423.20 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

§ 1423.21 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Formal exceptions to adverse rulings are unnecessary. Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by the Administrative Law Judge shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with § 1423.27. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.22 Motions.

(a) *Filing of motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to postpone the hearing should be filed with the Chief Administrative Law Judge at least five (5) days prior to the opening of the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Board shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Board, motions and any response thereto shall be filed in writing with the Board: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Chief Administrative Law Judge.

(2) Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by the Regional Director shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board when the case is transmitted to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transmittal of the case to the Board. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

(4) Except by special permission of the Board, and in view of § 1429.11 of this subchapter, rulings by Administrative Law Judges shall not be appealed prior to the transmittal of the case to the Board, but shall be considered by the Board when the case is transmitted to it for decision. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 1423.23 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

§ 1423.24 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 1423.25 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and two (2) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for additional time to file a brief shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extension of time shall be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

§ 1423.26 Transmittal of the Administrative Law Judge's decision to the Board; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and conclusions as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Board including the judge's decision and the record. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and three (3) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Board within twenty-five (25) days after service of the decision: *Provided, however,* That the Board may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Board.

§ 1423.27 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's decision to which objection is made; and

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 1423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions and cross-exceptions and a supporting brief with the Board within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of the opposition to exceptions and the cross-exceptions and any supporting briefs shall be served on all other parties, and a statement of service shall be filed with the opposition to exceptions and cross-exceptions and any supporting briefs.

§ 1423.29 Action by the Board.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Board shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 1423.27, the Board may, at its discretion, adopt without discussion the decision of the Administrative Law Judge, in which event the findings and conclusions of the Administrative Law Judge, as contained in such decision shall, upon appropriate notice to the parties, automatically become the decision of the Board.

(b) Upon finding a violation, the Board shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in subparagraphs (1) through (3) of this paragraph (b) or such other action as will carry out the purpose of the Foreign Service Labor-Management Relations Statute.

(c) Upon finding no violation, the Board shall dismiss the complaint.

§ 1423.30 Compliance with decisions and orders of the Board.

When remedial action is ordered, the respondent shall report to the appropriate Regional Director within a specified period that the required remedial action has been effected. When the General Counsel finds that the required remedial action has not been effected, the General Counsel shall take such action as may be appropriate, including referral to the Board for enforcement.

§ 1423.31 Backpay proceedings.

After the entry of a Board order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Board and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a

backpay specification accompanied by a notice of hearing or a notice of hearing without a specification. The respondent shall, within twenty (20) days after the service of a backpay specification accompanied by a notice of hearing, file an answer thereto in accordance with § 1423.13 with the Regional Director issuing such specification. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the procedures provided in §§ 1423.14 to 1423.29, inclusive, shall be followed insofar as applicable.

PART 1424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Sec.

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Authority: 22 U.S.C. 4107(c).

PART 1424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

§ 1424.1 Conditions governing review.

Pursuant to the authority contained in 22 U.S.C. 4107(a)(3) and (c)(1) the Board will consider a direct appeal concerning whether a matter proposed to be bargained is within the obligation to bargain under the Foreign Service Act of 1980 as follows: If the Department is involved in collective bargaining with an exclusive representative and alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with applicable law, rule or regulation the exclusive representative may appeal the allegation to the Board when it disagrees with Department's allegation that the matter as proposed to be bargained is inconsistent with applicable law, rule or regulation.

§ 1424.2 Who may file a petition.

A petition for review of a negotiability issue may be filed by the exclusive representative which is a party to the negotiations.

§ 1424.3 Time limits for filing.

The time limit for filing an appeal under this Part is fifteen (15) days from the Department's allegation, which was requested in writing by the exclusive representative, is served on the exclusive representative. The Department shall make the allegation in writing and serve a copy on the exclusive representative: *Provided, however,* that review of a negotiability issue may be requested by the exclusive representative under this part without a prior written allegation by the Department if a written allegation has not been served upon the exclusive representative within ten (10) days after the date of receipt by any Department bargaining representative at the negotiations of a written request for such allegation.

§ 1424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the matter proposed to be bargained as submitted to the Department;

(2) A copy of all pertinent material, including the Department's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(3) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under Part 1423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the Secretary and on the principal Department bargaining representatives at the negotiations.

§ 1424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to Part 1423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve the Department's allegation that the duty bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under this part.

§ 1424.6 Position of the Department; time limits for filing; service.

(a) Within thirty (30) days after the date of receipt by the Secretary of a copy of the petition for review of a negotiability issue the Department shall file a statement—

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Board to consider in reaching its decision, including a full detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation.

(b) A copy of the Department's statement of position including all attachments thereto shall be served on the exclusive representative.

§ 1424.7 Response of the exclusive representative; time limits for filing; service.

(a) Within fifteen (15) days after the date of receipt by an exclusive representative of a copy of the Department's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for disagreeing with the Department's allegation that the matter, as proposed to be bargained, is inconsistent with applicable law or rule or regulation.

(b) A copy of the response of the exclusive representative including all attachments thereto shall be served on the Secretary and on the Department's representative of record in the proceedings before the Board.

§ 1424.8 Additional submissions to the Board.

The Board will not consider any submission filed by any party, whether supplemental or responsive in nature, other than those authorized under §§ 1424.2 through 1424.7 unless such

submission is requested by the Board; or unless, upon written request by any party, a copy of which is served on all other parties, the Board in its discretion grants permission to file such submission.

§ 1424.9 Hearing.

A hearing may be held, in the discretion of the Board, before a determination is made under 22 U.S.C. 4107(a)(3). If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 1424.10 Board decision and order; compliance.

(a) Subject to the requirements of this part the Board shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the Department a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(b) If the Board finds that the duty to bargain extends to the matter proposed to be bargained, the decision of the Board shall include an order that the Department shall upon request (or as otherwise agreed to by the parties) bargain concerning such matter. If the Board finds that the duty to bargain does not extend to the matter proposed to be bargained, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue. If the Board finds that the duty to bargain extends to the matter proposed to be bargained only at the election of the Department, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue.

(c) When an order is issued as provided in paragraph (b) of this section, the Department or exclusive representative shall report to the appropriate Regional Director within a specified period failure to comply with an order that the Department shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter. If the Board finds such a failure to comply with its order, the Board shall take whatever action it deems necessary, including enforcement under 22 U.S.C. 4109(b).

PART 1425—REVIEW OF IMPLEMENTATION DISPUTE ACTIONS

Sec.

1425.1 Who may file an exception; time limits for filing; opposition; service.
1425.2 Content of exception.
1425.3 Grounds for review.
1425.4 Board decision.

Authority: 22 U.S.C. 4107(c).

§ 1425.1 Who may file an exception; time limits for filing; opposition; service.

(a) Either party to an appeal to the Foreign Service Grievance Board under the provisions of 22 U.S.C. 4114 may file an exception to the action of the Foreign Service Grievance Board taken pursuant to the appeal.

(b) The time limit for filing an exception to a Foreign Service Grievance Board action is thirty (30) days after such action is communicated to the parties.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

§ 1425.2 Content of exception.

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Board;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the decision or other document representing the action taken by the Foreign Service Grievance Board, together with legible copies of other pertinent documents pertaining to the action.

§ 1425.3 Grounds for review.

The Board will review an action of the Foreign Service Grievance Board to which an exception has been filed to determine if it is deficient—

(a) Because it is contrary to any law, rule, or regulation; or

(b) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

§ 1425.4 Board decision.

The Board shall issue its decision taking such action and making such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

PART 1427—GENERAL STATEMENTS OF POLICY OR GUIDANCE

Sec.

1427.1 Scope.
1427.2 Requests for general statements of policy or guidance.
1427.3 Content of request.
1427.4 Submissions from interested parties.
1427.5 Standards governing issuance of general statements of policy or guidance.

Authority: 22 U.S.C. 4107(c).

§ 1427.1 Scope.

This part sets forth procedures under which requests may be submitted to the Board seeking the issuance of general statements of policy or guidance under 22 U.S.C. 4107(c)(2)(F).

§ 1427.2 Requests for general statements of policy or guidance.

(a) The head of the Department (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Board for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Board for such a statement provided the request is not in conflict with the provisions of the Foreign Service Labor-Management Relations Statute.

(b) The Board ordinarily will not consider a request related to any matter pending before the Board, General Counsel, Panel or Assistant Secretary.

§ 1427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under § 1427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under the Foreign Service Labor-Management Statute.

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, the Panel, and the Assistant Secretary, where appropriate.

§ 1427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Board, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

§ 1427.5 Standards governing issuance of general statements of policy or guidance.

In deciding whether to issue a general statement of policy or guidance, the Board shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether a Board statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability under the Foreign Service Labor-Management Relations Statute.

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Board of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the Foreign Service and would otherwise promote the purposes of the Foreign Service Labor-Management Relations Statute.

PART 1428—ENFORCEMENT OF ASSISTANT SECRETARY STANDARDS OF CONDUCT DECISIONS AND ORDERS

Sec.

1428.1 Scope.
1428.2 Petitions for enforcement.
1428.3 Board decision.

Authority: 22 U.S.C. 4107(c).

§ 1428.1 Scope.

This part sets forth procedures under which the Board, pursuant to 22 U.S.C. 4107(a)(5) enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120.

§ 1428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Board to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 22 U.S.C. 4117. The Assistant Secretary shall transfer to the Board the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Board enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Board, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such position. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

§ 1428.3 Board decision.

(a) A decision and order of the Assistant Secretary shall be enforced unless it is abitrary and capricious or based upon manifest disregard of the law.

(b) The Board shall issue its decision on the case enforcing, enforcing as modified, refusing to enforce, or remanding the decision and order of the Assistant Secretary.

PART 1429—MISCELLANEOUS AND GENERAL REQUIREMENTS

Subpart A—Miscellaneous

Sec.

1429.1 Transfer of cases to the Board.
1429.2 Transfer and consolidation of cases.
1429.3 Transfer of record.
1429.4 Referral of policy questions to the Board.
1429.5 Matters not previously presented; official notice.
1429.6 Oral argument.
1429.7 Subpenas.
1429.8 Stay of action taken by Grievance Board; requests.
1429.9 Amicus curiae.
1429.10 Advisory opinions.
1429.11 Interlocutory appeals.
1429.12 Service of process and papers by the Board.
1429.13 Official time.
1429.14 Witness fees.
1429.15 Board requests for advisory opinions.
1429.16 General remedial authority.

Subpart B—General Requirements

1429.21 Computation of time for filing papers.
1429.22 Additional time after service by mail.
1429.23 Extension; waiver.
1429.24 Place and method of filing; acknowledgement.
1429.25 Number of copies.
1429.26 Other documents.
1429.27 Service; statement of service.
1429.28 Petitions for amendment of regulations.

Authority: 22 U.S.C. 4107(c).

Subpart A—Miscellaneous

§ 1429.1 Transfer of cases to the Board.

(a) In any representation case under Part 1422 of this subchapter in which the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may transfer the case to the Board; and the Board may decide the case on the basis of the papers alone after having allowed twenty-five (25) days for the filing of briefs. In any unfair labor practice case under Part 1423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Board; and the Board shall decide the case on the basis of the case papers alone after having allowed twenty-five (25) days for the filing of briefs. The Board may remand any such case to the Regional Director if it determines that a material question of fact does exist. Orders of transfer and remand shall be served on all parties.

(b) In any case under Parts 1422 and 1423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Board, the Regional Director may, at any time, issue an order transferring the case to the Board for decision or other appropriate action. Such an order shall be served on the parties.

§ 1429.2 Transfer and consolidation of cases.

In any matter arising pursuant to Parts 1422 and 1423 of this subchapter, whenever it appears necessary in order to effectuate the purposes of the Foreign Service Labor-Management Relations Statute or to avoid unnecessary costs or delay, Regional Directors may consolidate cases within their own region or may transfer such cases to any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

§ 1429.3 Transfer of record.

In any case under Part 1425 of this subchapter, upon request by the Board, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits, briefs and other documents filed with the Grievance Board, to the Board.

§ 1429.4 Referral of policy questions to the Board.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the Board any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Board shall obtain the views of the parties and other interested

persons, orally or in writing, as it deems necessary and appropriate.

§ 1429.5 Matters not previously presented; official notice.

The Board will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or Grievance Board. The Board may, however, take official notice of such matters as would be proper.

§ 1429.6 Oral argument.

The Board or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances as they deem appropriate.

§ 1429.7 Subpenas.

(a) Any member of the Board, the General Counsel, any Administrative Law Judge appointed by the Board under 5 U.S.C. 3105, and any Regional Director, Hearing Officer, or other employee of the Board designated by the Board may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpena need be sought.

(c) A request for a subpena by any person, as defined in 22 U.S.C. 4102 shall be in writing and filed with the Regional Director, in proceedings arising under Parts 1422 and 1423 of this subchapter, or filed with the Board, in proceedings arising under Parts 1424 and 1425 of this subchapter, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under investigation and the request describes with sufficient particularity the documents sought. Service of an approved subpena is the responsibility of the party on whose behalf the subpena was issued. The subpena shall show on its face the name and address of the party on whose behalf the subpena was issued.

(e) Any person served with a subpena who does not intend to comply, shall, within five (5) days after the date of service of the subpena upon such person, petition in writing to revoke the subpena. A copy of any petition to revoke a subpena shall be served on the party on whose behalf the subpena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director, who may refer the petition to the Board, General Counsel, Administrative Law Judge, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, for ruling. A petition to revoke a subpena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s). The Regional Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpena was issued, but shall not be deemed to assume responsibility for such service. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall revoke the subpena if the evidence the production of which is required does not relate to any matter under investigation or in question in the proceedings, or the subpena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpena is invalid. The Board, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Board designated by the Board, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpena issued, upon the request of the party on whose behalf the subpena was issued, the General Counsel shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the General Counsel, the enforcement of such subpena would be inconsistent with law and the policies of the Foreign Service Labor-Management Relations Statute. The General Counsel shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

§ 1429.8 Stay of action taken by Grievance Board; requests.

(a) A request for a stay shall be entertained only in conjunction with and as a part of an exception to an action taken by the Grievance Board under Part 1425 of this subchapter. The filing of an exception shall not itself operate as a stay of the action involved in the proceedings.

(b) A timely request for a stay of an action taken by the Grievance Board to which an exception has been filed shall operate as a temporary stay of the award. Such temporary stay shall be deemed effective from the date of the action and shall remain in effect until the Board issues its decision and order on the exception, or the Board or its designee otherwise acts with respect to the request for the stay.

(c) A request for a stay of an action taken by the Grievance Board will be granted only where it appears, based upon the facts and circumstances presented, that:

(1) There is a strong likelihood of success on the merits of the appeal; and

(2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

§ 1429.9 Amicus curiae.

Upon petition of an interested person, a copy of which petition shall be served on the parties, and as the Board deems appropriate, the Board may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Board.

§ 1429.10 Advisory opinions.

The Board and the General Counsel will not issue advisory opinions.

§ 1429.11 Interlocutory appeals.

The Board and the General Counsel ordinarily will not consider interlocutory appeals.

§ 1429.12 Service of process and papers by the Board.

(a) *Methods of service.* Notices of hearings, reports and findings, decisions of Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other

papers required by this subchapter to be issued by the Board, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or by certified mail or by telegraph.

(b) *Upon whom served.* All papers required to be served under paragraph (a) of this section shall be served upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* Proof of service shall be the verified return by the individual serving the papers setting forth the manner of such service, the return post office receipt, or the return telegraph receipt. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail. When service is to be made to an addressee outside the United States, the date of service shall be the date received, as evidenced by official receipt.

§ 1429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Board, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Board, the General Counsel, any Administrative Law Judge, Regional Director, Hearing Officer, or other agent of the Board designated by the Board, such employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status. In addition, necessary transportation and per diem expenses shall be paid by the Department.

§ 1429.14 Witness fees.

(a) Witnesses (whether appearing voluntarily, or under a subpena) shall be paid the fee and mileage allowances which are paid subpennaed witnesses in the courts of the United States: *Provided,* That any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to § 1429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to (the preceding section).

§ 1429.15 Board requests for advisory opinions.

Whenever the Board, pursuant to section 1007(c)(2)(f) of the Foreign Service Act of 1980 (22 U.S.C. 4107) requests an advisory opinion from the Director of the Office of Personnel Management concerning the proper interpretation of rules, regulations, or policy directives issued by that Office in connection with any matter before the Board, a copy of such request, and any response thereto, shall be served upon the parties in the matter.

(b) The parties shall have fifeen (15) days from the date of service of a copy of the response of the Office of Personnel Management to file with the Board comments on that response which the parties wish the Board to consider before reaching a decision in the matter. Such comments shall be in writing and copies shall be served upon the other parties in the matter and upon the Office of Personnel Management.

§ 1429.16 General remedial authority.

The Board shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 41 of title 22 of the United States Code.

Subpart B—General Requirements

§ 1429.21 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 1422.3(c) of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday: *Provided, however,* In agreement bar situations described in § 1422.3(c) and (d), if the sixtieth (60th) day prior to the expiration date of an agreement falls on Saturday, Sunday or a Federal legal holiday, a petition, to be timely, must be received by the close of business of the last official workday preceding the sixtieth (60th) day. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When this subchapter requires the filing of any paper, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business on the last day of the time limit, if any, for such filing or extension of time that may have been granted.

§ 1429.22 Additional time after service by mail.

Whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period.

§ 1429.23 Extension; waiver.

(a) Except as provided in subsection (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be filed in writing no later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

(b) Except as provided in subsection (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) The time limits prescribed by 22 U.S.C. 4114(c) may not be waived.

§ 1429.24 Place and method of filing; acknowledgement.

(a) A document submitted to the Board pursuant to this subchapter shall be filed with the Board at the address set forth in the Appendix.

(b) A document submitted to the General Counsel pursuant to this subchapter shall be filed with the General Counsel at the address set forth in the Appendix.

(c) A document submitted to a Regional Director pursuant to this subchapter shall be filed with the appropriate regional office, as set forth in the Appendix.

(d) A document submitted to an Administrative Law Judge pursuant to this subchapter shall be filed with the

appropriate Administrative Law Judge, as set forth in the Appendix.

(e) All documents filed pursuant to paragraphs (a), (b), (c) and (d) of this section shall be filed by certified mail or in person, or if the filing party is outside the United States, by the most appropriate available means.

(f) All matters filed under paragraphs (a), (b), (c) and (d) of this section shall be printed, typed, or otherwise legibly duplicated: carbon copies of typewritten matter will be accepted if they are clearly legible.

(g) Documents in any proceedings under this subchapter, including correspondence, shall show the title of the proceeding and the case number, if any.

(h) The original of each document required to be filed under this subchapter shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

(i) A return postal receipt may serve as acknowledgement of receipt by the Board, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate. The receiving officer will otherwise acknowledge receipt of documents filed only when the filing party so requests and includes an extra copy of the document or its transmittal letter which the receiving office will date stamp upon receipt and return. If return is to be made by mail the filing party shall include a self-addressed, stamped envelope for the purpose.

§ 1429.25 Number of copies.

Unless otherwise provided by the Board or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, any document or paper filed with the Board, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted in an original and four (4) copies. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

§ 1429.26 Other documents.

(a) The Board or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

§ 1429.27 Service; statement of service.

(a) Except as provided in § 1423.10 (c) and (d), any party filing a document as provided in this subchapter is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Board pursuant to § 1429.9 to present written and/or oral argument as amicus curiae. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on another, shall be made by certified mail or in person. A return post office receipt or other written receipt executed by the party or person served shall be proof of service.

(c) A signed and dated statement of service shall be submitted at the time of filing. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person. When service is to be made to an addressee outside the United States, the date of service shall be the date received, as evidenced by official receipt.

§ 1429.28 Petitions for amendment of regulations.

Any interested person may petition the Board or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

SUBCHAPTER D—FOREIGN SERVICE IMPASSE DISPUTES PANEL

PART 1470—GENERAL

Subpart A—Purpose

Sec.
1470.1 Purpose.

Subpart B—Definitions

1470.2 Definitions.

Authority: 22 U.S.C. 4107(c), 4110.

Subpart A—Purpose.

§ 1470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 4110 of title 22 of the United States Code. They prescribed procedures and methods which the Foreign Service Impasse Disputes Panel may utilize in the resolution of negotiation impasses.

Subpart B—Definitions

§ 1470.2 Definitions.

(a) The term "Department" as used herein shall have the meaning set forth in 22 U.S.C. 3902 and 4103, and § 1421.4 of subchapter C of these regulations.

(b) The terms "labor organization," and "conditions of employment" as used herein shall have the meanings set forth in 22 U.S.C 4102.

(c) The term "Executive Director" means the Executive Director of the Federal Service Impasses Panel as defined in 5 U.S.C. 7119(c).

(d) The terms "designated representative" or "designee" of the Panel means a Panel member, a staff member, or other individual designated by the Panel to act on its behalf pursuant to 22 U.S.C. 4110(c)(1).

(e) The term "hearing" means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 22 U.S.C. 4110.

(f) The term "impasse" means that point in the negotiation of a collective bargaining agreement at which the parties are deadlocked, notwithstanding their efforts to reach agreement by direct negotiations and other voluntary arrangements, if any.

(g) The term "Panel" means the Foreign Service Impasse Disputes Panel described in 22 U.S.C. 4110(a) or a quorum thereof.

(h) The term "party" means the Department or the labor organization participating in the negotiation of a collective bargaining agreement.

(i) The term "quorum" means three (3) or more members of the Panel.

(j) The term "voluntary arrangements" means any appropriate technique, not inconsistent with the provisions of 22 U.S.C. 4110, used by the parties to assist in the negotiation of a collective bargaining agreement.

PART 1471—PROCEDURES OF THE PANEL

Sec.
1471.1 Request for Panel consideration.
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1471.8 Report and recommendations.
1471.9 Duties of each party following receipt of recommendations.
1471.10 Final action by the Panel.

Authority: 22 U.S.C. 4107(c), 4110.

§ 1471.1 Request for Panel consideration.

If direct negotiations and other voluntary arrangements for settlement, if any, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Panel to consider the matter by filing a request as hereinafter provided; or

(b) The Panel may, pursuant to 22 U.S.C. 4110(a), undertake consideration of the matter upon request of the Executive Director.

§ 1471.2 Content of request.

A request from a party or parties to the Panel for consideration of an impasse must be in writing and include the following information:

(a) Identification of the parties and individuals authorized to act on their behalf;

(b) Statement of issues at impasse and the summary of positions of the initiating party or parties with respect to those issues; and

(c) Number, length, and dates of negotiation sessions held, including the nature and extent of all other voluntary arrangements utilized.

§ 1471.3 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, Suite 209, 1730 K Street NW., Washington, D.C. 20006.

§ 1471.4 Copies and service.

Any party submitting a request for Panel consideration of an impasse and any party submitting a response to such requests shall file an original and one copy with the Panel, shall serve a copy promptly on the other party to the dispute, and shall file a statement of such service with the Executive Director. When the Panel acts on a request from the Executive Director, it will notify the parties to the dispute.

§ 1471.5 Investigation of request; Panel recommendation and assistance.

Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation. After due consideration, the Panel shall either:

(a) Decline to assert jurisdiction in the event that if finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(b) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Panel considers appropriate.

§ 1471.6 Preliminary hearing procedures.

When the Panel determines that a hearing is necessary under 1471.5 it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) Issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state (1) the names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representative appointed by the Panel; and (5) the issues to be resolved.

§ 1471.7 Conduct of hearing and prehearing conference.

(a) A designated representative of the Panel, when so appointed to conduct a hearing, shall have the authority on behalf of the Panel to:

(1) Administer oaths, take the testimony of deposition of any person under oath, receive other evidence, and issue subpenas;

(2) Conduct the hearing in open or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted (An original and one (1) copy of each brief, accompanied by a statement of service, shall be submitted to the designated representative of the Panel with a copy to the other party.); and

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Panel in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

(c) An official reporter shall make the only official transcript of a hearing. Copies of the offical transcript may be examined and copied at the Office of the Executive Director in accordance with Part 1411 of this chapter.

§ 1471.8 Report and recommendations.

(a) When a report is issued after a hearing conducted pursuant to §§ 1471.6 and 1471.7, it normally shall be in writing and, when authorized by the Panel, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two (2) copies to the Executive Director, within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Panel with a copy to each party within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any. The Panel shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

§ 1471.9 Duties of each party following receipt of recommendations.

(a) Within thirty (30) calendar days after receipt of a report containing recommendations of the Panel or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

(c) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a

copy has been served on the other party to the dispute.

§ 1471.10 Final action by the Panel.

(a) If the parties do not arrive at a settlement as a result of or during action taken under §§ 1471.5(a)(2), 1471.6, 1471.7, 1471.8, and 1471.9, the Panel may take whatever action is necessary and not inconsistent with 22 U.S.C. 4110 to resolve the impasse, including but not limited to methods and procedures which the Panel considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Panel deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in 22 U.S.C. 4110(c)(2), or it may appoint or designate one or more individuals pursuant to 22 U.S.C. 4110(c)(1) to exercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in § 1471.7 shall apply.

(d) Notice of any final action of the Panel shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

(e) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

Appendix A to Chapter XIV—Current Addresses and Geographic Jurisdictions

(a) The Office address of the Board is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424. Telephone: Office of Executive Director, FTS—254–9595; Commercial—(202) 254–9595. Office of Operations, FTS—254–7362; Commercial (202) 254–7362.

(b) The Office address of the General Counsel is as follows: 1900 E Street, NW, Room 7469, Washington, D.C. 20424. Telephone: FTS—632–6284; Commercial—(202) 632–6284.

(c) The Office address of the Chief Administrative Law Judge is as follows: 1111 20th Street, NW., Room 416, Washington, D.C. 20036. Telephone: FTS—653–7375.

(d) The Office addresses of Regional Directors of the Authority are as follows:

(1) *Boston Regional Office*, 441 Stuart Street, 8th Floor, Boston, MA 02116. Telephone: FTS—223–0920; Commercial—(617) 223–0920.

(2) *New York Regional Office*, 26 Federal Plaza, Room 241, New York, NY 10278. Telephone: FTS—264–4934; Commercial—(212) 264–4934.

(a) *Philadelphia Sub-Regional Office*, 325 Chestnut Street, Mall Building, Room 5000, Philadelphia, PA 1906. Telephone: FTS—597–1527; Commercial—(215) 597–1527.

(3) *Washington Regional Office*, 1133 15th Street, NW., Suite 300, Washington, D.C. 20005. Telephone: FTS—653–8452; Commercial—(202) 653–8452.

(4) *Atlanta Regional Office*, 1776 Peachtree Street, NW., Suite 501, North Wing, Atlanta, GA 30309. Telephone: FTS—257–2324; Commercial—(404) 881–2324 or 881–2325.

(5) *Chicago Regional Office*, 175 W. Jackson Blvd., Suite 1359–A, Chicago, IL 60604. Telephone: FTS—886–3468–69; Commercial—(312) 353–6306.

(a) *Cleveland Sub-Regional Office*, Room 821, Federal Office Building, 1240 E. Ninth Street, Cleveland, Ohio 44199. Telephone: FTS—293–3855; Commercial—(216) 522–3855.

(6) *Dallas Regional Office*, Downtown Post Office Station, Bryan and Ervay Streets, P.O. Box 2640, Dallas, TX 75221. Telephone: FTS—729–4996; Commercial—(214) 767–4996.

(7) *Kansas City Regional Office*, City Center Square, 1100 Main Street, Suite 680, Kansas City, MO 64105. Telephone: FTS—758–2199; Commercial—(816) 374–2199.

(a) *Denver Sub-Regional Office*, Room 170, U.S. Customs House, 721–19th Street, Denver, CO 80202. Telephone: FTS—327–5224; Commercial—(303) 837–5224.

(8) *Los Angeles Regional Office*, 350 So. Figueroa Street, 10th Floor, World Trade Center, Los Angeles, CA 90071. Telephone: FTS—798–3805; Commercial—(213) 688–3805.

(a) *Honolulu Sub-Regional Office*, Room 3206, 300 Alamoana Blvd., Honolulu, Hawaii 96850. Telephone: FTS—556–0220 through San Francisco FTS Operator; Commercial—(808) 546–8355.

(9) *San Francisco Regional Office*, 450 Golden Gate Avenue, Room 11408, P.O. Box 36016, San Francisco, CA 94102. Telephone: FTS—556–8105; Commercial—(415) 556–8105.

(e) The Office address of the Panel is as follows: 1730 K Street, NW., Suite 209, Washington, D.C. 20006. Telephone: FTS—653–7078; Commercial—(202) 653–7078.

(f) The geographic jurisdictions of the Regional Directors of the Authority, are as follows:

State or other locality	Regional Office
Alabama	Atlanta.
Alaska	San Francisco.
Arizona	Los Angeles.
Arkansas	Dallas.
California	Los Angeles/San Francisco.[1]
Colorado	Kansas City.
Connecticut	Boston.
Delaware	New York.
District of Columbia	Washington, D.C.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90¼E.	Los Angeles.
Idaho	San Francisco.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Kansas City.
Kansas	Kansas City.
Kentucky	Atlanta.
Louisiana	Dallas.
Maine	Boston.
Maryland	Washington, D.C.
Massachusetts	Boston.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri	Kansas City.
Montana	Kansas City.
Nebraska	Kansas City.
Nevada	San Francisco.
New Hampshire	Boston.
New Jersey	New York.
New Mexico	Dallas.
New York	Boston/New York.[2]
North Carolina	Atlanta.
North Dakota	Kansas City.
Ohio	Chicago.
Oklahoma	Dallas.
Oregon	San Francisco.
Pennsylvania	New York.
Puerto Rico	New York.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Kansas City.
Tennessee	Atlanta.
Texas	Dallas.
Utah	Kansas City.
Vermont	Boston.
Virginia	Washington, D.C.
Washington	San Francisco.
West Virginia	Washington, D.C.
Wisconsin	Chicago.
Wyoming	Kansas City.
Virgin Islands	New York.
Panama/Limited FLRA jurisdiction	Dallas.
All land and water areas east of the continents of North and South America to long. 90¼E, except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Washington.

[1] San Francisco includes the following California counties: Monterey, Kings, Tulare, Inyo, and all counties north thereof. All counties in California south thereof are within the Los Angeles jurisdiction.

[2] New York includes the following counties: Ulster, Sullivan, Greene, Columbia and all counties south thereof. All counties in New York state north thereof are in the jurisdiction of Boston.

Note.—The Foreign Service Labor Relations Board, the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority, and the Foreign Service Impasses Disputes Panel have determined that this document does not require preparation of a Regulatory Flexibility Analysis as required under section 605(b) of the Regulatory Flexibility Act of 1980.

Dated: February 23, 1981.

Foreign Service Labor Relations Board.

Ronald W. Haughton,

Chairperson.

Arnold Ordman,

Member.

Arnold M. Zack,

Member.

H. Stephan Gordon,

General Counsel.

[FR Doc. 7389 Filed 3-9-81; 8:45 am]

BILLING CODE 6727-01-M

FOREIGN SERVICE LABOR RELATIONS BOARD

22 CFR Ch. XIV

Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the Federal Labor Relations Authority Under the Foreign Service Labor-Management Relations Statute

AGENCY: Foreign Service Labor Relations Board.

ACTION: Foreign Service Labor Relations Board memorandum describing the authority and assigned responsibilities of the General Counsel of the Federal Labor Relations Authority under the Foreign Service Labor-Management Relations Statute.

SUMMARY: This memorandum of the Foreign Service Labor Relations Board describes the statutory authority and sets forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority under the Foreign Service Labor-Management Relations Statute.

EFFECTIVE DATE: February 15, 1981.

FOR FURTHER INFORMATION CONTACT:

James J. Shepard, Executive Director, Board (202) 254–9595

S. Jesse Reuben, Deputy General Counsel, (202) 254–8305

SUPPLEMENTARY INFORMATION: The Foreign Service Labor Relations Board was established by Chapter 10 of title 1 of the Foreign Service Act of 1980, effective February 15, 1981 (94 Stat. 2128). Pursuant to 5 U.S.C. 552(a)(1), the Board hereby publishes, the following memorandum of the Board describing the authority and assigned responsibilities of the General Counsel of the Federal Labor Relations Authority under the Foreign Service Labor-Management Relations Statute (Foreign Service Statute).

22 CFR Chapter XIV is amended by adding the following Appendix B to read as follows:

Appendix B to Ch. XIV—Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel of the Federal Labor Relations Authority Under the Foreign Service Labor-Management Relations Statute

The statutory authority and responsibility of the General Counsel of the Federal Labor Relations Board are stated in section 4108 subsections (1), (2) and (3), of the Foreign Service Labor-Management Relations Statute as follows:

Section 4108 Functions of the General Counsel

The General Counsel may—

(A) Investigate alleged unfair labor practices under this chapter,

(B) File and prosecute complaints under this chapter, and

(C) Exercise such other powers of the Board as the Board may prescribe.

This memorandum is intended to describe the statutory authority and set forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority under the Foreign Service Statute, effective February 15, 1981.

I. *Case handling.*

A. *Unfair labor practice cases.* The General Counsel has full and final authority and responsibility, on behalf of the Board, to accept and investigate charges filed, to enter into and approve the informal settlement of charges, to approve withdrawal requests, to dismiss charges, to determine matters concerning the consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Administrative Law Judges in hearings on complaints and prosecute as provided in the Board's and the General Counsel's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 4109(d) of the Foreign Service Statute. After issuance of the Administrative Law Judge's decision, the General Counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board's and the General Counsel's rules and regulations.

B. *Compliance actions (injunction proceedings).* The General Counsel is authorized and responsible, on behalf of the Board, to seek and effect compliance with the Board's orders and make such compliance reports to the Board as it may from time to time require.

On behalf of the Board, the General Counsel will, in full accordance with the directions of the Board, initiate and prosecute injunction proceedings as provided in section 4109(d) of the Foreign Service Statute: *Provided however,* That the General Counsel will initiate and conduct injunction proceedings under section 4109(d) of the Foreign Service Statute only upon approval of the Board.

C. *Representation cases.* The General Counsel is authorized and has responsibility, on behalf of the Board, to receive and process, in accordance with the decisions of the Board and with such instructions and rules and regulations as may be issued by the Board from time to time, all petitions filed pursuant to sections 4111 and 4118(c) of the Foreign Service Statute. The General Counsel is also authorized and has responsibility to supervise or conduct elections pursuant to section 4111 of the Foreign Service Statute and to enter into consent election agreements in accordance with section 4111(g) of the Foreign Service Statute.

The authority and responsibility of the General Counsel in representation cases shall extend, in accordance with the rules and regulations of the Board and the General Counsel, to all phases of the investigation through the conclusion of the hearing (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearings are reserved by the Board to itself. In the event a direction of election should issue by the Board, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters, except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with its procedural requirements. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of the Board-directed election under the provisions of section 4111 of the Foreign Service Statute, the General Counsel is authorized and has responsibility, on behalf of the Board, to certify to the parties the results of the election in accordance with regulations prescribed by the Board and the General Counsel.

Appeals from the refusal of the General Counsel to issue a notice of hearing, from the conclusions contained in a report and findings issued by the General Counsel, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Board, in accordance with its procedural requirements.

In processing election petitions filed pursuant to section 4111 of the Foreign Service Statute and petitions filed pursuant to section 4118(c) of the Foreign Service Statute, the General Counsel is authorized to conduct an appropriate investigation as to the authenticity of the prescribed showing of interest and, upon making a determination to proceed, where appropriate, to supervise or conduct a secret ballot election or certify the validity of a petition for determination

of eligibility for dues allotment. After an election, if there are no challenges or objections which require a hearing by the Board, the General Counsel shall certify the results thereof, with appropriate copies lodged in the Washington, D.C., files of the Board.

II. *Liaison with other governmental agencies.* The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 4117 of the Foreign Service Statute and the availability to the Board and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Board, to maintain appropriate and adequate liaison with the Foreign Service Grievance Board with respect to functions which may be performed by the Foreign Service Grievance Board.

IV. To the extent that the above-described duties, powers and authority rest by statute with the Board, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

Dated: February 23, 1981.

Foreign Service Labor Relations Board.

Ronald W. Haughton,

Chairperson.

Arnold Ordman,

Member.

Arnold M. Zack,

Member.

[FR Doc. 81-7304 Filed 3-9-81; 8:45 am]

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federal register

Tuesday
March 10, 1981

Part III

Environmental Protection Agency

Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment; Court Order on Inspection and Maintenance

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[TS FRL 1773-3; OPTS 62014]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment; Court Order on Inspection and Maintenance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule related court order and enforcement notice.

SUMMARY: On October 30, 1980, the U.S. Court of Appeals for the District of Columbia Circuit ruled, in relevant part, that regulations issued by EPA which characterized intact, non-leaking transformers, capacitors, and electromagnets containing polychlorinated biphenyls (PCBs) as "totally enclosed" for purposes of section 6(e) of the Toxic Substances Control Act (TSCA) were unsupported by the rulemaking record and remanded the regulations to EPA for further consideration. In response to a motion by EPA and certain other parties to the case, the Court issued an Order on February 12, 1981 requiring EPA to undertake rulemaking concerning the use of PCBs in electrical equipment and staying issuance of the Court's mandate for a period of eighteen months. During the period of the stay, the existing PCB regulations will remain in effect with the additional requirement that certain owners and users of transformers containing 50 parts per million (ppm) of PCBs or greater must undertake certain inspection and maintenance procedures known as the Interim Measures Program.

DATES: The Interim Measures Program for inspection and maintenance of PCB Transformers and PCB-Contaminated Transformers goes into effect on May 11, 1981.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 6(e) of the Toxic Substances Control Act (TSCA) prohibits all manufacture, processing, distribution in commerce, and use of PCBs after July 1, 1979. The statute sets forth only limited exceptions to this broad prohibition. Section 6(e)(2) provides that EPA may allow the continued use of PCBs in a "totally enclosed manner". A "totally enclosed manner" is defined to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Section 6(e)(2) also allows EPA to authorize, by rule, the continued use of PCBs in a manner other than in a "totally enclosed manner" if EPA finds such use "will not present an unreasonable risk of injury to health or the environment."

EPA promulgated regulations under 40 CFR Part 761, published in the **Federal Register** of May 31, 1979 (44 FR 31514), to implement section 6(e) of TSCA. The regulations designated all intact, non-leaking, electrical capacitors, electromagnets, and non-railroad transformers as "totally enclosed", thus permitting their continued use. The regulations also defined "PCB" for purposes of section 6(e) as PCBs in concentrations of 50 ppm or greater, thus excluding manufacturing, processing, distribution in commerce, and use of PCBs in concentrations below 50 ppm from regulation.

The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review three aspects of these PCB regulations, including the determination that intact, non-leaking transformers, capacitors, and electromagnets are "totally enclosed" and the 50 ppm cutoff for applicability of the regulations (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, No. 79-1580). On October 30, 1980 the Court rendered its decision. The Court found that the Agency did not have an adequate rulemaking record to support the determination that the use of PCB-containing transformers, capacitors, and electromagnets are "totally enclosed" uses of PCBs or to support the 50 ppm regulatory cutoff. The Court remanded these parts of the regulations to EPA for further action.

The effect of the Court's October 30, 1980 decision, once the mandate issues, would be to make the continued use of PCB-containing transformers, capacitors, and electromagnets and the continued manufacture, processing, distribution in commerce, and use of PCBs below 50 ppm a violation of section 6(e) of TSCA subjecting the persons involved in these activities to possible EPA enforcement actions or citizen suits under section 20 of TSCA.

Certain industry representatives had intervened in the *EDF* v. *EPA* case. They filed petitions for rehearing which were denied on December 15, 1980. On December 19, 1980, EPA, EDF, and certain intervenors asked the Court to stay its mandate until January 21, 1981 to allow the parties and others to reach agreement on such further rulemaking by EPA as might be necessary. The Court granted this request. During the period of this stay, EPA, EDF, the intervenors, and other interested persons from industry held extensive discussions to mutually develop a Joint Motion to submit to the Court.

On January 21, 1981, EPA, EDF, and certain intervenors from industry filed the Joint Motion with the Court asking for an eighteen-month stay of the Court's mandate with respect to the part of the decision which set aside the classification of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA would undertake a rulemaking relating to the use of PCBs in electrical equipment beginning with an Advance Notice of Proposed Rulemaking (ANPR). In addition, the Edison Electric Institute (EEI), through the Utility Solid Waste Activities Group (USWAG), agreed to undertake the development of some of the factual material necessary for further rulemaking. The movants agreed on certain interim, risk-reduction measures that could be taken with respect to transformers containing PCBs at 50 ppm or greater and suggested that the Court make these measures a condition of the eighteen-month stay. The movants indicated to the Court that the stay would be necessary in order to avoid the adverse impacts of the decision. If the mandate issued, persons who had been adhering to the PCB regulations would have found themselves in violation of section 6(e) of TSCA. Transformers and capacitors are widely used by electric utilities and industry for efficient energy transmission. Sudden cessation of their use would cause substantial dislocation. On February 12, 1981, the Court granted the requests of the Joint Motion and entered an Order.

The January 21, 1981 Joint Motion also requested a stay of that portion of the decision which set aside the 50 ppm regulatory cutoff. For the use of transformers, capacitors, and electromagnets with PCBs in concentrations below 50 ppm, the stay would be eighteen months. For all other manufacturing, processing, distribution in commerce, and use of PCBs below 50 ppm the Joint Motion requested a stay of only thirty days. This was because, as of

the time of the January 21, 1981 Joint Motion, a program for further action by EPA in response to the 50 ppm issue had not been developed. The Court granted this 30-day stay in its February 12, 1981 Order, and during the period of the stay, EPA, EDF, and industry representatives developed a plan which was submitted to the Court in another Joint Motion on February 20, 1981. The Court has not yet acted on the February 20, 1981 Joint Motion. If the Court grants the February 20, 1981 Joint Motion, EPA will publish further notices in the **Federal Register** discussing the 50 ppm problem. As of the present time, the stay with respect to the 50 ppm cutoff is still in effect.

II. The Court's February 12, 1981 Order

The text of the Court's Order of February 12, 1981 is set forth at the end of this Notice. The Order has a number of requirements as follows:

A. Stay of the Mandate

The Court's Order stays the mandate of the Court insofar as it set aside the classification of transformers, capacitors, and electromagnets containing PCBs in concentrations of 50 ppm or greater as totally enclosed uses of PCBs for a period of eighteen months. In other words, the Court does not allow the effect of its decision to take place for eighteen months. This means that the PCB regulations promulgated on May 31, 1979 regarding this classification (40 CFR 761.30) remain in effect for the duration of the stay. Thus, those persons who use such transformers, capacitors, and electromagnets may continue their use during the period of the stay as long as they comply with the May 31, 1979, PCB regulations and with the Interim Measures Program, detailed in the Court's Order. In addition, the use of transformers, capacitors, and electromagnets containing PCBs in concentrations below 50 ppm may continue during the stay because the stay also retains the 50 ppm regulatory cutoff for such equipment. During the stay EPA will be considering what action to take with respect to all PCBs in electrical equipment, including equipment with PCBs in concentrations below 50 ppm.

B. The EEI/USWAG Study

The Court's Order directs EEI, through USWAG, to undertake a factual study of the usage of PCBs in equipment used by the electric utility industry, the propensity of such equipment to leak or rupture, and an analysis of the feasibility of various measures to reduce or eliminate the risk of PCB contamination from such equipment. The details of the study are set forth in Appendix A to the Court's Order and are discussed more fully in the related ANPR which follows this Notice.

C. EPA Rulemaking for PCBs in Electrical Equipment

The Court's Order requires EPA to publish an ANPR relating to the use of PCBs in electrical equipment. The ANPR appears in today's **Federal Register** following this Notice. The Order also requires EPA to promulgate a final rule within six months of receipt of the EEI/USWAG study. This rulemaking activity is discussed more fully in the ANPR. Each person potentially affected by the Court's decision is encouraged to read and comment upon the ANPR.

D. Further Action by the Court

The Order provides that, if EEI or EPA fails to comply with the Order, any party may apply to the Court for appropriate relief, including immediate issuance of the Court's mandate. Immediate issuance of the mandate would place most users of PCB-containing transformers, capacitors, and electromagnets in violation of section 6(e) of TSCA. EPA does not anticipate that this circumstance will occur. However, if the EEI study and the request for information in the ANPR do not produce information sufficient to enable EPA to pursue rulemaking for PCB-containing electrical equipment, it is possible that EPA or another party would return to the Court seeking a change in the stay and possibly the issuance of the mandate.

III. The Interim Measures Program

Section 6(e)(2) of TSCA prohibits the use of any PCBs unless the use has been authorized by EPA or determined by rule to be "totally enclosed". As noted above, the Court set aside EPA's determination that transformers, capacitors, and electromagnets are totally enclosed. Since EPA has not authorized the use of PCBs in such units, section 6(e)(2) would prohibit the use of any transformer, capacitor, or electromagnet containing any PCBs in the absence of the Court's stay.

The Court stayed for a period of eighteen months the effectiveness of that portion of its decision which set aside EPA's designation of intact, non-leaking transformers, capacitors, and electromagnets as totally enclosed uses of PCBs. However, that stay was granted only for those persons who institute the risk reducing activities of the Interim Measures Program. The full text of the Interim Measures Program appears as Appendix B to the Court's Order. The major requirements of the program are as follows:

1. PCB Transformers (those that contain 500 ppm PCBs or greater) and PCB-Contaminated Transformers (those that contain between 50 ppm and 500 ppm PCBs) posing an exposure risk to food and feed products must be inspected for leaks once every week.

2. All other PCB Transformers must be inspected for leaks at least once every three months.

3. Any "moderate leak" discovered by the inspection must be repaired and cleaned or the transformer replaced beginning within 2 days from the time the leak is observed. Moderate leaks from transformers posing an exposure risk to food or feed products must be reported to EPA within 5 days from the date the leak is observed.

4. Records must be kept of the following:

(a) The location of each transformer subject to the Program.

(b) The date of each inspection and the name of the inspector.

(c) All leaks observed.

(d) A description of all servicing on the transformer after the date of the first inspection.

These requirements go into effect on May 11, 1981. This means that the first inspection of transformers posing an exposure risk to food or feed products must be completed by May 18, 1981, and the first inspection of other transformers subject to this Program must be completed by August 10, 1981.

A. Applicability

1. *Which transformers are subject to these requirements?* The requirements of the Interim Measures Program apply to all transformers containing PCBs in concentrations of 500 ppm or greater and to those transformers containing PCBs in concentrations of 50 ppm or greater which pose an exposure risk to food or feed products. Anyone complying with all applicable requirements of the Interim Measures Program may continue to use capacitors, electromagnets, and other transformers containing PCBs in compliance with the existing PCB regulations. EPA encourages owners and users of any PCB-containing equipment to perform voluntary inspections or institute other appropriate risk reduction measures to avoid exposure of humans or the environment to PCBs.

The weekly inspection requirement applies to any transformers containing PCBs in concentrations of 50 ppm or greater and "posing a risk of exposure to food and feed products." Included in this category is any transformer used in a facility manufacturing, processing, packaging or holding human food or

animal feed, or in any federally inspected meat, poultry product, and egg product establishment. The weekly inspection requirement applies to transformers in a location such that a discharge of the dielectric fluid could contaminate the food or feed products or processes. It does not apply to transformers in retail establishments such as grocery stores and restaurants. Because of the peculiar risks presented by the ingestion of PCBs, EPA intends to interpret the phrase "posing an exposure risk to food and feed products" very broadly. Although it does not include establishments such as paperboard manufacturers whose products may be sold to food packagers, or facilities manufacturing, processing or storing agricultural chemicals or fertilizers, it does include any establishment whose product(s) will be ingested by humans or animals, including additives. If there is any doubt whether or not a transformer poses an exposure risk to food and feed products, the weekly inspection and maintenance should be performed.

2. *Who is responsible for these requirements?* The owner of the PCB-containing transformer has the obligation to comply with the Interim Measures Program. There is one exception to this obligation. A user, who is not the owner, of a PCB Transformer or PCB-Contaminated Transformer which poses an exposure risk to food or feed products, has the obligation to comply with the Interim Measures Program until the user has informed the owner that the transformer poses an exposure risk to food or feed products.

B. Effect on Existing Agency PCB Regulations

The Interim Measures Program supplements, but does not replace, existing Agency regulations and policies regarding PCBs, including the marking and disposal regulations in 40 CFR Part 761. Thus, existing Agency rules and policies regarding PCBs are not changed by the Program. For example, under the regulations, transformers, capacitors, and electromagnets that are leaking or otherwise not intact are not totally enclosed and cannot lawfully be used. Compliance with the Interim Measures Program does not change this restriction. The existing regulation provides that any uncontrolled discharge of PCBs constitutes disposal. The requirement in the Interim Measures Program to begin servicing any leak within two days does not change the fact that the leak, while occurring, is an illegal disposal of PCBs. Of course, the Agency will take into account compliance with the Interim Measures Program, including prompt servicing and reporting, when determining the appropriate enforcement response. Additionally, under the existing regulations, intact, non-leaking transformers, capacitors, and electromagnets sold for purposes other than resale before July 1, 1979 can be distributed in commerce under 40 CFR 761.30. This exception will continue to be available for owners of equipment used pursuant to the Interim Measures Program.

C. Enforcement

EPA intends to enforce the Interim Measures Program and the PCB regulations vigorously. Compliance will be monitored by all means legally available to the Agency. This includes inspections pursuant to section 11 of TSCA. Persons who are not in strict compliance with the Interim Measures Program cannot claim the benefits of the Court's stay. The use of PCBs in transformers, capacitors, and electromagnets by persons not complying with both the Interim Measures Program and the regulations is a violation of section 6(e) of TSCA. Thus, continued use of PCB-containing transformers, capacitors, and electromagnets in violation of either the Interim Measures Program or the regulations in 40 CFR Part 761 is a violation of section 15 of TSCA for which the Agency can seek civil or criminal penalties under section 16 of TSCA. The Office of Enforcement is currently formulating guidelines for the assessment of civil penalties for violations of the Interim Measures Program.

D. Reporting

There is no required form for notices to the Agency required by the Interim Measures Program. The required information may be reported in letter form. Although it is not required by the Interim Measures Program, EPA requests that all notices to the EPA concerning transformer leaks contain the following information:

1. The cause of the leak and the total amount of dielectric fluid spilled.

2. The proximity of the transformer to areas where food or feed products are handled.

3. A brief description of the possible pathways for dielectric fluid from the transformer to reach food or feed products.

4. The type and amount of food or feed products contaminated, if any.

5. The steps taken to repair and clean up the leak and to assure proper disposal of all contaminated materials.

Notices must be sent to the appropriate EPA Regional Office as follows:

Region 1

(Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Chief, General Enforcement Branch, Enforcement Division, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203

Region 2

(New Jersey, New York)

Chief, Toxic Substances Inspection Section, Surveillance and Analysis Division, Environmental Protection Agency, Raritan Depot, Woodbridge Avenue, Edison, New Jersey 08817.

Region 3

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

Chief, Environmental Emergency Branch, Surveillance and Analysis Division, Environmental Protection Agency, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106

Region 4

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Chief, Toxic Substances Section, Air and Hazardous Materials Division, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Region 5

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Toxic Substances Coordinator, Air and Hazardous Materials Division, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region 6

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Deputy Director, Surveillance and Analysis Division, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270

Region 7

(Iowa, Kansas, Missouri, Nebraska)

Chief, Toxics and Pesticides Enforcement Section, Air & Hazardous Materials Division, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106

Region 8

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Chief, Field Operations Section, Pesticides and Toxic Substances Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295

Region 9

(Arizona, California, Hawaii, Nevada)

Chief, Hazardous Materials Section, Enforcement Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105

Region 10

(Alaska, Idaho, Oregon, Washington)

Chief, Pesticides and Toxic Substances Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington, 98101.

E. Recordkeeping

There is no specified format for records required by the Interim Measures Program. The information may be kept in any form as long as all the required information is available.

IV. Text of the Court's February 12, 1981 Order

Upon consideration of the joint motion filed by respondent, petitioner, and certain intervenors on January 21, 1981, to stay further the issuance of the mandate in this case, it is

Ordered: By the Court, that the mandate of the Court is stayed for a period of eighteen months insofar as the decision of the Court set aside the regulation promulgated by the Environmental Protection Agency (classifying the use of intact, non-leaking, PCB-containing transformers, capacitors, and electromagnets as uses of PCBs in a "totally enclosed manner,") 40 CFR 761.30 (44 FR 31530, 31531, 31548–9); this stay shall apply only where those claiming the benefit of the stay comply with any applicable requirements of the Interim Measures Program attached as Appendix B to this Order.

Further Ordered: That the mandate of the Court, insofar as the decision of the Court set aside the regulation promulgated by the Environmental Protection Agency defining "PCBs" (for purposes of the statutory prohibition on further manufacture, processing, distribution in commerce, and use of PCBs) as PCBs in concentrations of 50 parts per million or greater, 40 CFR 761.2(x) (44 FR 31444), is stayed for the following periods:

With respect to use of PCBs in transformers, capacitors, and electromagnets, for a period of eighteen months;

With respect to all other manufacture, processing, distribution in commerce and use of PCBs, for a period of thirty days.

Further Ordered: That Intervenor Edison Electric Institute undertake the actions set out in Appendix A to this Order.

Further Ordered: That Respondent Environmental Protection Agency publish in the **Federal Register** within three weeks after the date of this Order, an Advanced Notice of Proposed Rulemaking relating to the use of PCBs in electrical equipment.

Further Ordered: That Respondent Environmental Protection Agency promulgate a final rule with respect to the use of electrical equipment containing PCBs within six months of receipt of the material set out in Appendix A.

Further Ordered: That if the Edison Electric Institute or the Environmental Protection Agency fails to comply with the orders of this Court set out above, any party may apply to the Court for appropriate relief, including the immediate issuance of the Court's mandate.

Further Ordered: That the parties submit to the Court a status report on October 1, 1981.

Per Curiam
For the Court:
George A. Fisher,
Clerk.

Appendix A—Proposal To Supply EPA With Information for Rulemaking on Uses of PCBs by the Electric Utility Industry

Intent to Provide Information

To assist EPA in the development of an adequate rulemaking record for the regulation of PCBs, USWAG will retain independent contractor(s), acceptable to EPA and EDF,[1] to conduct a study on current PCB usage in utility equipment.[2] This study will address the effects of the use of PCB-containing equipment on human health and the environment. It is expected that data will be supplied on: types of electrical equipment; leakage phenomena, including the incidence and magnitude of leaks; feasibility of containment, inspection and maintenance; and feasibility of transformer and capacitor phase out. Additionally, several other areas of inquiry will be included, such as the impact of a regulatory cutoff above or below 50 ppm; the health effects of PCBs; a pathway analysis for PCBs that may be released into the environment from electrical systems; nonelectrical materials potentially containing PCBs; and viable substitutes for PCBs. Finally, an overall economic analysis would be developed to reflect both costs incurred to date to comply with the TSCA–PCB regulations as well as the incremental costs of new regulatory approaches.[3]

It is contemplated that the study will be completed within nine months and portions of it will be submitted to EPA prior to that time.[4] If it appears that USWAG will be unable to complete Tasks 1 through 4 below within nine months despite good faith efforts to do so, it may request of EPA and EDF an additional period of up to three months for its work. EPA and EDF will not unreasonably withhold their consent to such extension, after considering USWAG's efforts to date and the circumstances which USWAG believes necessitate the extension.

Scope of the Information Gathering Effort

The scope of information gathering will be divided into several discrete tasks, as set forth below.

1. *Compilation of a complete listing of all types of electrical equipment that contain mineral oil or other fluid containing PCBs.* The first task will be to list and quantify such equipment, describe its use, geographical location,[5] and distribution of ranges of PCB concentrations. Descriptions of equipment maintenance procedures and of measures taken for worker protection also will be provided. The inventory of equipment will include: transformers, capacitors, electromagnets, electrical switches, voltage regulators, and underground cable systems as well as any other utility equipment identified as containing PCBs. A complete narrative on each category of equipment will be provided covering its function, configuration and chemical content.

2. *Frequency of leaks or ruptures.* For purposes of the study, "leak" will be

[1] To insure the timely commencement of the study, EPA and EDF will promptly respond as to the acceptability of the contractor(s) proposed.

[2] Other uses of similar equipment by other industries may vary and for this reason will not be covered. In addition, other equipment containing PCBs, such as small capacitors, that is used more broadly throughout the industrial, commercial and residential sectors will not be included.

[3] In addition to the information contained in the study, USWAG reserves the right to submit to EPA such other studies, information, and data (e.g., problems of testing and development of testing protocols) as USWAG believes are necessary or appropriate to further rulemaking.

[4] Since some brief period of time will be necessary to engage consultants and develop sampling protocols following acceptance of the scope of work by the parties, the study period should commence no later than two months following the issuance of a stay of mandate by the Court. It is contemplated that Task 1 would be completed within three months of the commencement of the study and Task 2, with respect to PCB Capacitors and PCB Transformers, would be completed within six months of the commencement of the study.

[5] Geographical location shall include not only various geographical regions of the United States but also various types of terrains (e.g., deserts, swamps, near or over waterways).

defined quantitatively. Leaks may be described as small, as moderate or as ruptures.[6] Small leaks include all instances in which a PCB Article has any PCBs on any portion of its external surface, but no PCBs have run off the surface of the PCB Article.[7] Moderate leaks include instances in which a leak results in any quantity of PCBs running off the surface of the PCB Article. Initially, ruptures will mean leaks causing immediate cessation of equipment function, although other definitions may be applied. For each type of electrical equipment, an attempt will be made to determine the frequency of leak or rupture, the volume of liquid lost, equipment type, and geographical location. These leaks may conform to a frequency distribution of magnitude according to different variables. Equipment type, geographic location, age and electrical loading (to the extent data are available) are factors to be evaluated. The relationship between equipment failure and subsequent leaking will be studied.

3. *Feasibility of a program to contain, inspect and maintain different electrical equipment items.* This task will be to identify a number of inspection and maintenance programs and to provide costs estimates and technological feasibility evaluations with respect to each program. Variables to be considered may include electrical equipment type, geographical location, and potential for exposure to different concentrations and quantities of PCBs. At a minimum, the following programs shall be evaluated:

(a) A program to provide complete containment of any PCBs which might leak from each category of electrical equipment identified in Task 1.

(b) A program to inspect visually, at various frequencies ranging from weekly to annually, all items within each category of electrical equipment for leakage and to correct all moderate leaks detected.

4. *Feasibility of a phase-out program for transformers and capacitors.* The approach to this effort will be similar to the feasibility of inspection, maintenance and containment as described above.[8] Alternative approaches will be assessed, including the following:

(a) 2, 5, 10 and 20-year phase outs of PCB Transformers.

(b) 2, 5, 10 & 20-year phase outs of PCB-Contaminated Transformers.

(c) 2, 5, 10 & 20-year phase outs of PCB Capacitors.[9]

In this aspect of the study, the availability of replacement equipment and liquids will be examined, as well as their suitability,[10] the availability of storage and disposal facilities, and the feasibility of reducing or eliminating PCB concentrations by retrofilling.[11] An attempt also will be made to analyze the effect an increased demand for replacement equipment may have on prices.

5. *Literature Search.* A comprehensive literature search and review of the health effects of PCBs will be undertaken and an attempt will be made to assess the risks posed by phenomena such as small leaks and ruptures.

6. *Pathway analysis.* An attempt will be made to examine the environmental pathways that PCBs could take if they escape from electrical equipment. Conditions reflecting normal operation of transformers and capacitors will be evaluated, as well as those involving equipment that has exploded or otherwise suddenly released PCB-containing fluid into the environment. For example, volatility and transport mechanisms (such as surface water drainage, groundwater infiltration and ground cover embodiment and/or release) would be considered.

7. *Non-electrical system sources of PCBs.* The study will also seek to determine the risks and benefits of permitting the continuation of certain non-enclosed uses of PCBs, such as burning of fuel oil.

Sampling Procedures

The study must reflect a statistical approach that assures a high degree of confidence in the validity of the results.

EPA and EDF Review

It is contemplated that EPA, EDF, USWAG and the contractor performing the study will meet for progress reports periodically and with sufficient frequency to keep EPA and EDF abreast of the progress of the study. EPA and EDF, at their own expense, will have the right to review all underlying data generated in connection with the study. It is understood that identification of particular companies, facilities and locations may be masked. While it is not anticipated, review of the ongoing study may result in the need for additional information or for the refocusing of certain portions of this study. Such revisions may result in an extension of the completion date as set forth above.

Appendix B—Interim Measures Program

This document describes the interim measures required for all owners and users of PBC Transformers and certain owners and users of PCB-Contaminated Transformers who wish to continue to use, or store for reuse, transformers containing PCBs while EPA conducts further rulemaking with respect to PCB uses which the Agency previously had designated as "totally enclosed." To continue to use transformers containing PCBs during this interim period, owners and users of this equipment must comply with the requirements set forth in this document within sixty days after the publication by EPA of the **Federal Register** Notice announcing the Interim Measures Program or within ninety days after January 21, 1981 (the date of filing the Joint Motion for Further Stay of the Issuance of the Mandate), whichever is later.

I. Definitions

The following definitions apply to this document. The definitions which are part of EPA's PCB Ban Rule, 40 CFR Part 761, also apply to this document unless they are inconsistent with the definitions set forth below.

A. "leak" means any instance in which a PCB Unit has any PCBs on any portion of its external surface.

B. "moderate leak" means any leak which results in any quantity of PCBs running off or about to run off the external surface of the PCB Unit.

C. "PCB Unit" means any PCB Transformer or PCB-Contaminated Transformer in use or stored for reuse.

D. "posing an exposure risk to food and feed products" means any potential exposure of food and feed products to PCBs as defined below. PCB Units used by federally inspected meat, poultry product, and egg product establishments, as well as facilities manufacturing, processing, packaging or holding human food or animal feed, but excluding retail establishments such as grocery stores and restaurants, are considered to pose an exposure risk to food and feed products, unless the PCB Unit is in a location such that a discharge of the dielectric fluid cannot contaminate the food and feed products or processes.

E. "servicing" means repairing and cleaning or replacing the PCB Unit to eliminate the source of the leak.

[6] Further differentiations of leaks may be necessary.

[7] "PCB Article" is defined at 40 CFR 761.2(t).

[8] The evaluation will also reflect the viability of substitutes.

[9] The time frames will be measured from January 1982.

[10] For example, it may be necessary to assess the toxicity and flammability of substitute fluids, in addition to developing data on the availability of equipment and raw materials.

[11] In evaluating substitutes for PCBs, including retrofilling, the contractor performing the study shall seek and consider information from manufacturers of substitutes and independent servicing companies.

Cleaning of the PCB Unit means removing any unsolidified dielectric fluid on its external surface.

F. "visual inspection" means to investigate for any leak of dielectric fluid on or around the PCB Unit. A visual inspection should not require an electrical shutdown of the PCB Unit being inspected. The extent of the visual inspection will depend on the physical constraints of each PCB Unit installation.

II. The Following Procedures Must Be Followed With Respect to All PCB Units Posing an Exposure Risk to Food and Feed Products

A user of a PCB Unit posing an exposure risk to food and feed products shall notify the owner of the PCB Unit that the Unit poses an exposure risk to food and feed products. If the user fails to notify the owner, the user is responsible for the inspection, recordkeeping, reporting and servicing of the PCB Unit as set forth below.

The Owner of a PCB unit posing an exposure risk to food and feed products shall perform the following activities:[12]

A. A visual inspection of each PCB Unit posing an exposure risk to food and feed products shall be performed at least once every week.

B. All leaks shall be recorded. All moderate leaks shall be reported to the appropriate EPA regional office within five business days from the date the leak is observed. If a PCB Unit is found to have a moderate leak, servicing is required and must commence within two business days from the date the leak is observed.

C. Records, containing inspection/servicing history, with respect to all PCB Units posing an exposure risk to food and feed products shall be maintained for a period of three years and shall be made available for inspection, upon request, by EPA. Such records shall contain the following information for each PCB Unit:

(1) Its location.

(2) The date of each visual inspection made of the Unit, together with an identification of the person performing the inspection.

(3) All leaks observed in the Unit, together with the date observed, and whether the leak was a moderate leak.

(4) A description of all servicing performed on the Unit commencing as of the date the Unit is first inspected pursuant to these Interim Measures, together with the date of such servicing.

D. Reports to EPA regional offices shall be in writing and shall contain the location of the PCB Unit involved, the date the moderate leak was observed, an estimate of the extent of the leak and a description of the servicing performed, including the date(s) of the servicing performed.

III. The Following Procedures Must Be Followed With Respect to All PCB Transformers in Use or Stored for Reuse Posing No Exposure Risk to Food and Feed Products

(All PCB Transformers Not Covered in Section II)

Owners of PCB Transformers in use or stored for reuse posing no exposure risk to food and feed facilities shall perform the following activities:

A. A visual inspection of each PCB Transformer posing no exposure risk to food and feed products shall be performed at least once every three months.

B. All leaks shall be recorded. If a PCB Transformer is found to have a moderate leak, servicing is required and must commence within two business days from the date the leak is observed.

C. Records, containing inspection/servicing history, with respect to all PCB Transformers in use or stored for reuse shall be maintained for a period of three years and shall be made available for inspection, upon request, by EPA. Such records shall contain the following information for each PCB Transformer:

(1) Its location.

(2) The date of each visual inspection made of the PCB Transformer, together with an identification of the person performing the inspection.

(3) All leaks observed in the PCB Transformer, together with the date observed, and whether the leak is a moderate leak.

(4) A description of all servicing performed on the PCB Transformer commencing as of the date the PCB Transformer is first inspected pursuant to these Interim Measures, together with the date of such servicing.

IV. Related Rulemaking

Appearing immediately after this Notice is the Advance Notice of Proposed Rulemaking required by the Court's February 12, 1981 Order. Persons reading this Notice are encouraged to read the Advance Notice of Proposed Rulemaking which discusses EPA's future rulemaking regarding the use of PCBs in electrical equipment.

Dated: March 5, 1981.

Edwin H. Clark II,

Acting Assistant Administrator for Pesticides and Toxic Substances.

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BILLING CODE 6560-31-M

[12] If the owner of the PCB Unit is not the owner of the food and feed establishment, the owner of the PCB Unit shall have no obligation to perform the inspections required in this section, until the owner is notified by the establishment that the establishment is a food and feed facility or until the owner of the PCB Unit has other knowledge that the establishment is a food and feed facility. To inform food and feed establishments of the necessity of notifying owners of PCB Units used at their establishments, utilities undertake to mail to their commercial and industrial customers an announcement requesting food and feed establishments to contact the utility or other owner of the PCB Unit.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[TS FRL 1773-2; OPTS-62015]

Polychlorinated Biphenyls (PCBs); Use in Electrical Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: On October 30, 1980, the U.S. Court of Appeals for the District of Columbia Circuit ruled, in relevant part, that regulations issued by EPA which characterized intact, non-leaking transformers, capacitors, and electromagnets containing polychlorinated biphenyls (PCBs) as "totally enclosed" for purposes of section 6(e) of the Toxic Substances Control Act were unsupported by the rulemaking record and remanded the regulations to EPA for further consideration. In response to a motion by EPA and certain other parties to the case, the Court issued an Order on February 12, 1981 requiring EPA to undertake rulemaking concerning the use of PCBs in electrical equipment, beginning with this Advance Notice of Proposed Rulemaking, and staying issuance of the Court's mandate for a period of eighteen months during which time EPA will implement rulemaking activities.

DATES: Comments upon the issues raised in this Notice must be submitted by December 7, 1981.

ADDRESSES: All comments should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-401, 401 M St., SW., Washington, D.C. 20460. Comments, preferably in triplicate, should include the docket number OPTS-62015. Comments received on this Notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, in Room 107 East Tower, EPA Headquarters, 401 M St. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Industry Assistance Office (TS-799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C. (554-1404).

SUPPLEMENTARY INFORMATION: Appearing in today's **Federal Register**, immediately preceding this document is a Notice entitled "Polychlorinated Biphenyls; Use in Electrical Equipment; Court Order on Inspection and Maintenance" which discusses the impact of an Order issued by the U.S. Court of Appeals for the District of Columbia Circuit in the case *Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, No. 79-1580. That Notice should be read before reading this Advance Notice of Proposed Rulemaking (ANPR) in order to better understand the issues discussed in this ANPR as well as the interim requirements placed upon persons who own or use PCB-containing transformers, capacitors, and electromagnets.

I. Background

As discussed in the "Court Order on Inspection and Maintenance," section 6(e) of TSCA prohibits all manufacture, processing, distribution in commerce, and use of PCBs after July 1, 1979. This statute sets forth only limited exceptions to this broad prohibition. Section 6(e)(2) provides that EPA may allow the continued use of PCBs in a "totally enclosed manner". A "totally enclosed manner" is defined to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Section 6(e)(2) also allows EPA to authorize by rule the continued use of PCBs in a manner other than in a "totally enclosed manner" if EPA finds such use "will not present an unreasonable risk of injury to health or the environment." EPA promulgated regulations under 40 CFR Part 761, published in the **Federal Register** of May 31, 1979 (44 FR 31514), to implement section 6(e) of TSCA. The regulations designated all intact, non-leaking electrical capacitors, electromagnets, and transformers as "totally enclosed", thus permitting their continued use without regulation. The regulations also defined "PCB" for purposes of section 6(e) as PCBs in concentrations of 50 parts per million (ppm) or greater, thus excluding manufacturing, processing, distribution in commerce, and use of PCBs in concentrations below 50 ppm from regulation.

The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review three aspects of the PCB regulations, including the determination that intact, non-leaking transformers, capacitors, and electromagnets are "totally enclosed" and the 50 ppm cutoff for applicability of the regulations (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, No. 79-1580). In an October 30, 1980 decision in the case the Court found that there was "no substantial evidence in the record to support" the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed or the Agency's decision "to establish a regulatory cutoff at fifty ppm." The Court remanded these portions of the regulations to EPA for further action. The effect of the Court's decision would be to make the continued use of PCB-containing transformers, capacitors, and electromagnets and the continued manufacture, processing, distribution in commerce, and use of PCBs below 50 ppm a violation of section 6(e) of TSCA subjecting the persons involved in these activities to possible EPA enforcement actions or citizen suits under section 20 of TSCA.

On January 21, 1981, EPA, EDF, and certain industry intervenors in *EDF* v. *EPA* filed a Joint Motion with the Court asking for an eighteen-month stay of the Court's mandate with respect to the part of the decision which set aside the classification of transformers, capacitors, and electromagnets as totally enclosed. During the period of the stay, EPA would undertake a rulemaking relating to the use of PCBs in electrical equipment beginning with an ANPR. In addition, the Edison Electric Institute (EEI) through the Utility Solid Waste Activities Group (USWAG) would undertake the development of some of the factual material necessary for further rulemaking. In addition, the movants agreed on certain interim, risk-reduction measures that could be taken with respect to transformers containing PCBs at 50 ppm or greater and suggested that the Court make these measures a condition of the eighteen-month stay. The movants indicated to the Court that the stay would be necessary in order to avoid the adverse impacts of the decision. If the mandate issued, persons who had been adhering to the PCB regulations would have found themselves in violation of section 6(e) of TSCA. Transformers and capacitors are widely used by electric utilities and industry for efficient energy transmission. Sudden cessation of their use would cause substantial dislocation. On February 12, 1981, the Court granted the requests of the Joint Motion and entered an Order.

The January 21, 1981 Joint Motion also requested a stay of that portion of the decision which set aside the 50 ppm regulatory cutoff. For the use of transformers, capacitors, and electromagnets with PCBs below 50 ppm, the stay would be eighteen months. For all other manufacturing, processing, distribution in commerce, and use of

PCBs below 50 ppm the January 21, 1981 Joint Motion requested a stay of only thirty days. This was because, as of the time of the Joint Motion, a program for further action by EPA in response to the 50 ppm issue had not been developed. The Court granted this 30-day stay in its February 12, 1981 Order, and during the period of the stay, EPA, EDF, and industry representatives developed a plan which was submitted to the Court in another Joint Motion on February 20, 1981. The Court has not yet acted on the February 20, 1981 Joint Motion. If the Court grants the February 20, 1981 Joint Motion, EPA will publish further notices in the **Federal Register** discussing the 50 ppm issue. As of the present time, the stay with respect to the 50 ppm cutoff is still in effect.

II. The Court's February 12, 1981, Order

The text of the Court's Order of February 12, 1981 is set forth at the end of the "Court Order on Inspection and Maintenance" appearing in today's **Federal Register**. The Order has a number of requirements as follows:

A. *Stay of the Mandate*

The Court Order stays the mandate of the Court insofar as it set aside the classification of transformers, capacitors, and electromagnets containing PCBs in concentrations of 50 ppm or greater as totally enclosed uses of PCBs. This means that the PCB regulations promulgated on May 31, 1979 regarding this classification (40 CFR 761.30) remain in effect for the duration of the stay. The terms of the stay and the Interim Measures Program are set forth in the "Court Order on Inspection and Maintenance". Interested persons should read that document for a complete discussion.

B. *The EEI/USWAG Study*

The Court's Order directs EEI, through USWAG, to undertake a factual study of the usage of PCBs in equipment used by the electric utility industry, the propensity of such equipment to leak or rupture, and an analysis of the feasibility of various measures to reduce or eliminate the risk of PCB contamination from such equipment. The details of the study are set forth in Appendix A to the Court's Order appearing at the end of the "Court Order on Inspection and Maintenance" Notice.

The study will begin within two months after February 12, 1981, the date of the Order. The study will be completed within nine months after it commences. However, EPA and EDF can agree to an extension of up to three months if necessary for completion of the work. Certain portions of the study will be delivered before the end of the nine months as set forth in Appendix a to the Court's Order.

C. *EPA Rulemaking for PCBs in Electrical Equipment*

The Court's Order requires EPA to publish an ANPR relating to the use of PCBs in electrical equipment. This publication meets that requirement. The Order also requires EPA to promulgate a final rule within six months of receipt of the EEI/USWAG study. The schedule for further rulemaking, includes publication of a proposed rule within sixty days after receipt of the EEI/USWAG study. The proposal will have a sixty-day comment period. At or near the end of the comment period a public hearing would be held, if necessary. The final rule would be promulgated within sixty days after the end of the comment period. The Order does not require EPA to await completion of the EEI/USWAG study in order to proceed with rulemaking. If EPA believes circumstances warrant, it can proceed with rulemaking as to some or all of the matter relating to PCBs in electrical equipment at any time.

D. *Further Action by the Court*

The Order provides that, if EEI or EPA fails to comply with the Order, any party may apply to the Court for appropriate relief, including immediate issuance of the court's mandate. Immediate issuance of the mandate would place most owners and users of PCB-containing transformers, capacitors and electromagnets in violation of section 6(e) of TSCA. EPA does not anticipate that this circumstance will occur. However, if the EEI study and the request for information in this ANPR do not produce information sufficient to enable EPA to pursue rulemaking for PCB-containing electrical equipment, it is possible that EPA or another party would return to the Court seeking a change in the stay and possibly the issuance of the mandate. Accordingly, it is important that persons having an interest in the outcome of this rulemaking provide their comments and the requested technical information in order to support further rulemaking.

III. Further Rulemaking by EPA

A. *Effects of the Court's Decision*

In light of the Court's decision in *EDF v. EPA*, EPA will be compiling a factual record to support further rulemaking with respect to transformers, capacitors, electromagnets and other electrical equipment containing PCBs. Information gathered during the rulemaking could lead EPA to conclude that some or all of these uses of PCBs are "totally enclosed". This information could also lead EPA to conclude that these PCB uses are non-totally enclosed uses which EPA should authorize pursuant to section 6(e)(2)(B) of TSCA. Detailed factual information will be necessary to support EPA decisions to make exceptions to section 6(e)'s prohibition with respect to the continued use of PCBs, whether the exceptions are based on a conclusion that certain uses are "totally enclosed" or on a conclusion that they should be authorized. Without a convincing factual record to support one of these exceptions, EPA would implement the statutory ban of section 6(e) of TSCA.

Use authorizations for electrical equipment determined not to be "totally enclosed" can be implemented by promulgating rules under section 6(e)(2)(B) of TSCA. To promulgate such rules, EPA would have to determine that the use of PCBs in such equipment "will not present an unreasonable risk of injury to health or the environment." To make this determination, EPA would need to balance the risks against the benefits presented by these uses of PCBs. Thus, EPA is seeking to develop factual information on the use of such electrical equipment, the propensity of the equipment to rupture or leak, the nature of human or environmental exposure that might result from such leaks or rupture, and the costs of measures to reduce exposure or eliminate the use of PCBs in such equipment. Some necessary information will result from the EEI/USWAG study. However, a great deal more will be necessary, especially in those areas where the EEI/USWAG study will not be producing any information, such as non-utility use of electrical equipment containing PCBs.

B. *Information Development*

As set forth in Appendix A to the Order, EEI/USWAG is conducting a study to provide information on the use and other characteristics of PCB-containing electrical equipment in the utility industry. EPA hopes that this will provide a broad, useful data base. The EEI/USWAG study is required to supply data on the:

1. Types of utility electrical equipment which contain PCBs.

2. Frequency and magnitude of equipment leaks and ruptures.

3. Feasibility of various programs of containment, inspection, and maintenance of utility electrical equipment which contain PCBs.

4. Feasibility of phase out for electric utility transformers and capacitors.

The study will also provide information on:

1. The impact of compliance with current PCB regulations.
2. The impact of compliance with new regulatory approaches.
3. The health effects of PCBs.
4. The environmental pathways for PCBs released from utility electrical equipment.
5. Viable substitute dielectric fluids for PCBs.
6. Non-electrical systems which contain PCBs.

A more detailed outline of this proposed study appears as Appendix A to the Court's Order in the "Court Order on Inspection and Maintenance" Notice.

C. *Request for Comments and Further Information to Support Rulemaking*

Before developing new regulations which might permit the continued use of PCBs in electrical equipment, EPA must build a substantial factual rulemaking record. This record must document the facts concerning PCB use in electrical equipment, including transformers, capacitors, and electromagnets. Development of a rulemaking record will begin with pertinent material contained in the records of previous PCB rulemakings. Additional information for the rulemaking record must come from public comments regarding transformers, capacitors, electromagnets, and other electrical equipment containing PCBs, as well as from the EEI/USWAG study regarding electric utility equipment which contain PCBs. Without such information the Agency cannot sustain granting exceptions to the prohibitions of section 6(e) of TSCA.

EPA invites public comments and data relevant to determinations as to whether or not transformers, capacitors, and electromagnets are "totally enclosed" uses of PCBs. EPA also requests comments relevant to determinations as to whether or not these uses of PCBs present an unreasonable risk of injury to health or the environment. Comments should include a discussion of the risks from using such equipment and possible means of limiting those risks.

The information obtained from the EEI/USWAG study of electric utility equipment will not represent all uses of PCBs in electrical equipment. The study is not expected to contain information regarding non-utility industry applications of transformers and capacitors. The industry study will not specifically address uses of electromagnets and small capacitors (those containing less than 1.36 kg (3 lbs) of dielectric fluid), which are normally found in electronic circuitry, fluorescent light ballasts, high intensity discharge lighting fixtures, and motor control circuitry throughout industrial, commercial, and residential sectors.

Therefore, persons who believe the EEI/USWAG study of utility electrical equipment will not reflect their specific uses of PCBs in electrical equipment should submit information relating to the risks and benefits of the use of PCBs in applications not covered by the EEI/USWAG study. If possible, these comments should supply information similar to the data outlined for the EEI/USWAG study. Information about types of electrical equipment which contain PSCs; leakage rates and magnitudes; containment, inspection, and maintenance alternatives; and phase out feasibilities are especially important, including recommendations or suggestions for regulating PCBs in various equipment and applications.

D. *Comment Period and Further Rulemaking*

The comment period for this ANPR is 270 days. This comment period closes shortly before the completion of the EEI/USWAG study. EPA has chosen this time period in order to receive and analyze the information concerning use of PCBs in electrical equipment in an orderly manner. The EEI/USWAG study is scheduled to deliver portions of the study during the comment period. EPA hopes that public comments will be received throughout the comment period so that, if those comments contain matters that EPA feels would be of interest to other submitters of comment, EPA would have time to inform comment submitters of those developments. In addition, timely submission of the comments will facilitate EPA meeting the Court-Ordered, eighteen-month deadline for final rules.

EPA will consider the need for public meetings during the rulemaking process and will entertain requests for such meetings from interested persons.

E. *Importance of Participation in This Rulemaking*

If EPA does not develop a factual record which indicates convincingly that the use of PCB-containing electrical equipment should be permitted, EPA will permit the Court's stay of mandate to expire without issuing new rules. Consequently, the prohibitions of section 6(e) of TSCA would be in effect, and the uses of PCBs that are now permitted under the eighteen-month stay would become unlawful.

Dated: March 5, 1981.

Edwin H. Clark, II,

Acting Assistant Administrator for Pesticides and Toxic Substances.

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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
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