

federal register

Tuesday
July 28, 1981

Highlights

- 38551 Child Care Food Program** USDA/FNS adjusts payment rates for meals and administrative costs.
- 38553 School Lunch Program** USDA/FNS announces there will be no shortfall payments to States for cash in lieu of commodities for the National School Lunch Program for 1981 School Year.
- 38642, 38656 Air Rates and Fares** CAB takes action on investigation into competitive marketing of air transportation (retail pricing phase). (3 documents) (Part II of this issue)
- 38506 Income Tax** Treasury/IRS issues procedures for making available for public inspection certain information returns and reports filed by exempt organizations.
- 38664 Savings Bonds** Treasury/FS supplements rules on remittance of proceeds by organizations authorized to sell Series EE savings bonds. (Part IV of this issue)
- 38588 Loan Programs—Health Education** HHS/HSA announces maximum interest rates for quarter ending 9-30-81 for loans executed through the Health Education Assistance Loan Program.

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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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 - 38547 **Veterans** VA proposes policy change on increase in educational assistance allowance due to increase in dependents.
 - 38539 VA proposes rules on discontinuance of certain benefits for failure to file income and net worth question—raises.
 - 38540 VA proposes rules on confidentiality of certain records and documents relating to the Medical Quality Assurance Program.
 - 38548 VA withdraws proposal on standards of progress and conduct which accredited schools require veterans and eligible persons to meet.
 - 38564 **Computer Security** Commerce/NBS requests comments on proposed Federal Information Processing Standard.
 - 38494 **Banks and Banking** FRS revises interpretations of Regulation Y on sale of insurance by bank holding companies.
 - 38493 FRS amends Regulation Y to limit insurance agency activities of bank holding companies.
 - 38527 NCUA proposes to change minimum security devices and procedures regulations.
 - 38508 **Public Lands** Interior/BLM provides for segregation of State indemnity lands.
 - 38529 **Securities** SEC proposes amendments to certain disclosure and reporting requirements applicable to investment advisers.
 - 38496 SEC issues staff interpretations of certain investment adviser disclosure and reporting requirements.
 - 38509 **Radio** FCC allows use of certain frequency bands for one-way signalling on exclusive basis in Domestic Public Land Mobile Radio Service.
 - 38538 **Armed Forces—Civilian Health and Medical Program** DOD/Secy's issues criteria for determining when a hearing impairment will constitute a serious physical handicap.
 - 38589 **Privacy Act Document** HUD
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Rules and Regulations

Federal Register

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Tuesday, July 28, 1981

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Upward Adjustments for Districts 1 and 3

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Interim rule.

SUMMARY: This amendment to the rules and regulations permits the optional use of upward adjustments by handlers in Districts 1 and 3 of not to exceed 100 percent of their average weekly pick. This would allow such handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

DATES: Interim rule effective August 1, 1981, through October 15, 1981; comments which are received by August 27, 1981, will be considered prior to issuance of a final rule, effective October 16, 1981, through July 31, 1982.

ADDRESS: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. 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 not measurably affect costs for the directly regulated handlers.

This amendment to the rules and regulations was recommended by the Lemon Administrative Committee. The rules and regulations (Subpart—Rules and Regulations; 7 CFR 910.100–910.180) are effective pursuant to the applicable provisions of 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).

Under the order the prorate base of each handler is based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that the handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received. The order provides in § 910.53(h) that the percentage of adjustment, specified in §§ 910.53(f)(1) and 910.153(e)(3), may be changed. Provision for 100 percent upward adjustment of average weekly pick of handlers in Districts 1 and 3 is currently in effect through July 31, 1981. Unless extended, the maximum upward adjustment permitted is 50 percent. The committee recommended that the current provision be extended to permit the optional use of upward adjustments by handlers in Districts 1 and 3 of not to exceed 100 percent of their average weekly pick during the 1981–82 season. This would allow such handlers the continued option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

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) in that (1) the

recommendation of the committee was made at a public meeting at which interested parties were afforded an opportunity to present information and views, (2) the effective time hereof will not require of handlers any preparation that cannot be completed prior thereto, and (3) this amendment relieves restrictions on the handling of lemons grown in California and Arizona.

Information collection requirements (reporting or recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

This added flexibility would be provided by an amendment to § 910.153(e)(3) Subpart—Rules and Regulations (7 CFR Part 910.100–910.180). As amended, § 910.153(e)(3) would read as follows: (This amendment expires October 15, 1981, and will not be published in the annual code of Federal Regulations).

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided, however,* That during the period August 1, 1981, through October 15, 1981, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent.* * *

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

Dated: July 23, 1981.

D. S. Kuryloski,

*Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.*

[FR Doc. 81-21905 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

[Pear Regulation 11]

Fresh Pears, Plums, and Peaches Grown in California; Grade, Size, and Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation sets minimum grade, size, and container requirements for shipments of fresh California Bartlett, Max-Red Bartlett, and Red Bartlett varieties of pears. Such action is designed to promote orderly marketing of suitable quality and sizes of fresh California pears in the interest of producers and consumers.

DATES: Interim rule effective August 1, 1981, through October 15, 1981; comments which are received by August 27, 1981 will be considered prior to issuance of a final rule to become effective on October 16, 1981, and continued in effect until modified, suspended, or terminated.

ADDRESS: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. 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 not measurably affect costs for the directly regulated handlers.

This regulation is issued under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Pear Commodity Committee, established under the order, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

Grade and size requirements are designed to ensure the shipment of ample supplies of better grades and

more desirable sizes of fresh Bartlett pears in the interests of consumers and producers. The industry believes that should shipments, especially early shipments, of fresh pears include immature, poor quality, and excessively small fruit, the marketability of the entire crop would be adversely affected. This type of fruit arriving on the fresh market creates consumer resistance to pears, resulting in a decline of repeat purchases. The container requirements are designed to prevent deceptive packaging practices and to promote buyer confidence.

Production of pears for fresh consumption occurs primarily in 10 states while fresh Bartlett production is mainly in 3 states. California leads the nation in the production of pears (all varieties) accounting for 43.0 percent (last five-year average) of the total U.S. pear production, and California is first in Bartlett pear production producing 61.3 percent of the nation's Bartletts. California has averaged 51.1 percent of the total U.S. Bartlett shipments to fresh market. Washington and Oregon accounted for the remaining 48.5 percent of the fresh shipments. While all three states have basically the same shipping season, California begins its shipments slightly ahead of Washington and Oregon. Therefore, the establishment of good quality bears heavily not only on the financial returns and development of California Bartlett industry, but it also sets the tone of the market for the entire U.S. Bartlett industry and for the entire U.S. pear industry.

It is proposed that the regulations contained in the interim rule, effective for the period August 1, 1981, through October 15, 1981, would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Interested persons are invited to comment through August 27, 1981 with regard to the interim rule and proposed final regulation. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The proposed change to issue regulations which would continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, the proposed action could result in a reduction in operational costs to the committee and the government. Although the final regulation would be effective for an

indefinite period, the committee would continue to meet prior to and during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee would submit to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate committee recommendations and information submitted by the committee, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of California pears would tend to effectuate the declared policy of the act.

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), and good cause exists for making these regulatory provisions effective as specified in that (1) shipment of the current crop of pears is in progress and this regulation should be applicable to all shipments during the season; (2) the current California pear regulation (45 FR 51179) will expire August 1, 1981; (3) the California pear regulation was recommended by the committee following discussion at a public meeting; (4) California pear handlers have been apprised of these requirements and the effective date; and (5) the requirements are the same as those currently in effect, except a provision has been added pertaining to organically grown pears.

Information collection requirements (reporting or recordkeeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

Therefore, a new § 917.458 is added to read as follows: (§ 917.458 expires October 15, 1981, and will not be published in the annual Code of Federal Regulations).

§ 917.458 Pear Regulation 11.

(a) During the period August 1, 1981, through October 15, 1981, no handler shall ship:

(1) Bartlett or Max Red (Max Red Bartlett, Red Bartlett) varieties of pears

which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1: *Provided*, That organically grown pears may be damaged by russeting, but must be free from serious damage caused by russeting, as defined in the U.S. Standards for Summer and Fall Pears, if the following conditions and safeguards are met:

(i) The handler of such pears has registered and certified to the committee on a date prior to harvest the location of the orchard, the acreage and varieties of pears, and that sales of organically grown pears will be made only to natural food stores or handlers of organically grown food.

(ii) The handler of such pears files with the committee a report showing the names and address of all buyers of the pears, the dates on which shipments were made, and the number of packages in each shipment.

(iii) Each container of organically grown pears bears the words "organically grown" on one outside end of the container in plain letters.

(2) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, unless such box or container conforms to the requirement of standard pack, except that such pears may be fairly tightly packed;

(5) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in other than a closed container, unless such pears do not vary more than $\frac{3}{8}$ inch in their transverse diameter for counts 120 or less, and $\frac{1}{4}$ inch for counts 135 to 165, inclusive: *Provided*, That 10 percent of the containers in any lot may fail to meet the requirements of this paragraph; and

(6) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears in volume fill cartons (not packed in rows and not wrap packed) unless (i) such cartons are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each carton that will cover the fruit with no more than $\frac{1}{4}$ inch between the pad and any side or end of the carton;

and (iv) the top of the carton shall be securely fastened to the bottom: *Provided*, That 10 percent of the cartons in any lot may fail to meet the requirements of this paragraph.

(b) *Definitions*. (1) "Size known commercially as size 165" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of standard pack, with 165 pears and that one-half of the count size designated, representative of the size of the pears in the box or container, shall weigh at least 22 pounds.

(2) "Standard pear box" means the container so designated in § 1380.19 of the regulations of the California Department of Food and Agriculture.

(3) "U.S. No. 1", "U.S. Combination", and "standard pack" shall have the same meaning as when used in the U.S. Standards for Pears (summer and fall) 7 CFR 2851.1260-2851.1280.

(4) "Approved top pad" shall mean a pad of wood-type excelsior construction, fairly uniform in thickness, weighing at least 160 pounds per 1,000 square feet (e.g. an 11 inch by 17 inch pad will weigh at least 21 pounds per 100 pads) or an equivalent made of material other than wood excelsior approved by the committee.

(5) "Organically grown" pears means those pears which have been grown for market in accordance with Section 2659.11 of the California Health and Safety Code.

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

Dated: July 23, 1981, to become effective August 1, 1981.

D. S. Kuryloski,
*Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.*

[FR Doc. 81-22005 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0050]

Bank Holding Companies; Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted certain amendments to its Regulation Y ("Bank Holding Companies") that would limit the insurance agency activities authorized for bank holding companies. The first amendment would delete from the Board's regulations the authority for bank holding companies to act under section 4(c)(8) of the Bank Holding

Company Act as agent for the sale of insurance for themselves and their subsidiaries. This amendment reflects a court decision that acting as agent for the sale of insurance for the bank holding company and its nonbanking subsidiaries is not an activity permissible under the Bank Holding Company Act. It also reflects the decision that such activities may be conducted pursuant to other provisions of the Act. The second amendment deletes from the Board's regulations the authority for bank holding companies to act as agent for insurance sold as a matter of convenience to the public.

These amendments are required in order to conform the Board's regulations to an opinion of the United States Court of Appeals for the Fifth Circuit. That opinion found that the sale by bank holding companies of certain of the types of insurance described in connection with the first amendment was not an activity in which bank holding companies legally may engage pursuant to section 225.4(a)(9)(i) of the Board's Regulation Y. Further, the Court's opinion found that the part of the Board's regulation relating to the sale of "convenience" insurance also authorized the sale of insurance beyond the scope of the provisions of section 4(c)(8) of the Bank Holding Company Act and therefore impermissible.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT:

Robert E. Mannion, Deputy General Counsel (202/452-3274) or Richard M. Whiting, Senior Attorney (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) The Board previously published in the *Federal Register* (43 FR 14970) a notice of proposed rulemaking to amend section 225.4(a)(9) of Regulation Y (12 CFR 225.4(a)(9)). That section of Regulation Y enumerates those insurance agency activities that the Board has found to be so "closely related" to banking as to be a proper incident thereto under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. § 1843(c)(8) ("Act") and, therefore, permissible nonbanking activities for bank holding companies.

The United States Court of Appeals for the Fifth Circuit, in *Alabama Association of Insurance Agents v. Board of Governors of the Federal Reserve System*, 533 F.2d 224 (5th Cir. 1976); rehearing denied, 558 F.2d 729 (5th Cir. 1977); cert. denied, 435 U.S. 904 (1978), determined that certain portions of section 225.4(a)(9) of Regulation Y

authorized insurance agency activities for bank holding companies that were not "closely related" to banking within the meaning of section 4(c)(8) of the Act. In particular, the Court found that to the extent § 225.4(a)(9)(i) of Regulation Y authorized bank holding companies to act as agent for the sale of insurance for themselves and their nonbanking subsidiaries, that section permitted activities not "closely related" to banking. Thus, the Court invalidated § 225.4(a)(9)(i) of Regulation Y as to those activities. However, the Board has found that the authority for bank holding companies to engage in these activities as well as the activity of acting as agent for the sale of insurance to the banking subsidiaries of bank holding companies is contained in sections 4(c)(1)(C) and 4(a)(2)(A) of the Act. Accordingly, § 225.4(a)(9)(i) of Regulation Y, which originally was proposed to be revised in part, is deleted entirely by the final amendment adopted by the Board. Additionally, the Court found that § 225.4(a)(9)(ii)(c), which authorized bank holding companies, under certain circumstances, to sell insurance to meet the convenience of the public, also permitted nonbanking activities not "closely related" to banking. The Court also struck down this portion of the Board's Regulation Y. Finally, the Court found that § 225.4(a)(9)(iii) of Regulation Y, which authorized bank holding companies to sell insurance in communities of a population not exceeding 5,000 or having inadequate insurance agency facilities, was phrased in such a way as to permit nonbanking activities that are not "closely related" to banking as well as those that are "closely related." The Court remanded to the Board this section for further consideration, which was done on October 31, 1979. See 44 FR 6505 (1979). In order to implement the Court's decision that § 225.4(a)(9)(i) and (ii)(c) of Regulation Y were invalid, the Board issued the rulemaking proposal cited above. That part of the proposed rulemaking relating to § 225.4(a)(9)(iii) has been mooted by intervening Board action, as described above.

The Board now is adopting in final form substantially as proposed, amendments to § 225.4(a)(9) of Regulation Y that would limit, in conformance with the Court's opinion, the insurance agency activities of bank holding companies. In connection with this action, the Board has considered the comments received in response to its rulemaking proposal. Several commenters stated that the Board should not eliminate from the regulation the authority for bank holding

companies to sell certain of the kinds of insurance proposed to be deleted, such as insurance for the bank holding company, its nonbanking subsidiaries, convenience insurance and insurance in towns of population of less than 5,000. As those parts of Regulation Y authorizing the sale of the first two kinds of insurance specially were invalidated by the Court, the Board has concluded that it must delete from the regulation the authority for bank holding companies to sell such insurance. Further, as described above, the Board has adopted in a separate rulemaking proceeding a rule pertaining to the sale of insurance in towns of less than 5,000 population and that action moots the related portion of the proposal. Other commenters recommended that, in addition to the proposed deletions of authority to sell insurance, the Board should delete the authority for bank holding companies to sell property and casualty insurance. The Board believes such action would be inconsistent with the Court's opinion. Moreover, this recommendation is beyond the scope of this proposal. Finally, many commenters suggested that the Board add to the regulation the authority for bank holding companies to renew insurance sold by a bank holding company in connection with an extension of credit or provision of other financial service. This suggestion, too, is beyond the scope of the proposal. However, the Board will address this suggestion in the near future.

Some commenters stated that amended § 225.4(a)(9) of Regulation Y would be inconsistent with the Board's published interpretations relating to the sale of insurance by bank holding companies. The Board agrees that its action amending § 225.4(a)(9) of Regulation Y would require similar revision of the Board's interpretations. Accordingly, the Board has approved revisions of 12 CFR 225.128 in order to make that interpretation consistent with the Board's regulation.

Several commenters objected that the proposed regulation was too generalized and suggested that it be expanded to enumerate the specific lines of insurance authorized, and that the term "financial services" in § 225.4(a)(9)(ii) of Regulation Y be defined. The Board has rejected these suggestions because the term financial service is defined in 12 CFR 225.128 of the Board's published interpretations. Moreover, it believes that the general language of the regulation was approved by the Court and that good administrative practice dictates that the application of the law to all possible factual situations should

not be attempted, and cannot be achieved, by general regulation. In this regard, the public is advised that the Board and its staff will provide, upon request, interpretations of the law and the Board's regulations.

Finally, various comments were received relating to the provisions of § 225.4(a)(9)(ii) (a) and (b) of the regulation. Inasmuch as the sole purpose of the proposed amendments was to revise § 225.4(a)(9)(i) and delete § 225.4(a)(9)(ii)(c), as described above, the Board has determined that such comments are beyond the scope of the proposal.

(2) This action is taken pursuant to the Board's authority under section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1843(c)(8).

Effective as noted above, § 225.4(a)(9) of the Board's Regulation Y (12 CFR 225.4(a)(9)) is revised to read as follows:

§ 225.4 Nonbanking activities

(a) * * *

(9) Acting as insurance agent or broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) Any insurance that (A) is directly related to an extension of credit by a bank or bank-related firm of the kind described in this regulation, or (B) is directly related to the provision of other financial services by a bank or such a bank-related firm.

(ii) Any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), provided the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, July 15, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-21491 Filed 7-27-81; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 225

Bank Holding Companies; Nonbank Activities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretations.

SUMMARY: The Board has revised its interpretations of Regulation Y ("Bank Holding Companies") relating to the sale

of insurance by bank holding companies. These revisions are required to conform the interpretations to recently adopted amendments to Regulation Y, which was partially invalidated by a federal court.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Mannion, Deputy General Counsel (202/452-2374) or Richard M. Whiting, Senior Attorney (202/452-3779), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: As a result of a decision by the U.S. Court of Appeals for the Fifth Circuit, (*Alabama Association of Insurance Agents, Inc. v. Board of Governors of the Federal Reserve System*, 533 F.2d 224 (5th Cir. 1976); rehearing denied, 558 F.2d 729 (5th Cir. 1977); cert. denied, 435 U.S. 904 (1978)), the Board's regulation relating to permissible insurance agency activities in which bank holding companies may engage (12 CFR 225.4(a)(9)), pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1843(c)(8)) was upheld in part, invalidated in part, and remanded in part. To conform Regulation Y with the decision of the U.S. Court of Appeals for the Fifth Circuit, the Board has amended those portions of its regulation that were either revised or invalidated by the Court. In particular, the Board has eliminated § 225.4(a)(9)(i) of Regulation Y to delete the authority for bank holding companies to sell insurance to themselves, and their subsidiaries pursuant to section 4(c)(8) of the Act. Instead, bank holding companies may sell such insurance pursuant to the provisions of sections 4(a)(2)(A) and 4(c)(1)(C) of the Act. In addition, the Board has deleted § 225.4(a)(9)(ii)(c) of Regulation Y, which authorized bank holding companies to sell insurance as a matter of convenience to the public.

These amendments to Regulation Y require certain amendments to the Board's insurance agency interpretation to make it consistent with the Board's amended regulation. Also, certain portions of the interpretation have been redesignated.

§ 225.128 [Amended]

In accordance with the Board's amendments to § 225.4(a)(9)(i) and (ii)(c) of Regulation Y, the following changes have been made to the Board's insurance agency interpretation, 12 CFR 225.128:

(1) Paragraph (b) of § 225.128 has been removed.

(2) Present paragraph (c) has been redesignated paragraph (b) and the

reference in the first sentence of that paragraph to Regulation Y should be revised to refer to § 225.4(a)(9)(i)(a).

(3) Present paragraph (c)(3) is removed and present paragraph (c)(4) is redesignated paragraph (c)(3).

(4) Present paragraph (d) is redesignated paragraph (c) and the reference in the first sentence of that paragraph to Regulation Y should be revised to refer to § 225.4(a)(9)(i)(b).

(5) Present paragraph (e) is removed.

Board of Governors of the Federal Reserve System, July 15, 1981.

William W. Wiles,
Secretary of the Board.

[FR Doc. 81-21902 Filed 7-27-81; 8:45 am]

BILLING CODE 6210-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 296

[Economic Regulations Amendment No. 4 to Part 296; Docket 38470; Regulation ER-1234]

Air Freight Forwarders and Cooperative Shippers Associations; Permission for Cooperative Shippers Associations To Act as Agents of Direct Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is allowing cooperative shippers associations to act as agents of direct air carriers. This change puts cooperatives on a par with air freight forwarders, and enables them to serve their shipper members more effectively. This action is taken in response to a petition by the Air Freight Shippers Cooperative Association of California.

DATES: Adopted: July 16, 1981. Effective: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: EDR-416, 45 FR 85075, December 24, 1980, proposed to allow cooperative shippers associations to act as agents of direct air carriers. This rulemaking was in response to a petition by the Air Freight Shippers Cooperative Association of California (AFSAC). Under the current rule, both cooperatives and air freight forwarders may act as agents for shippers, but only air freight forwarders may act as agents of direct carriers (14 CFR Parts 296 and 297). There is no reason to continue this regulatory distinction, which puts cooperatives at a competitive disadvantage relative to the

forwarders. This amendment allows a U.S. or foreign cooperative to act as agent of an airline for shipments tendered to the airline. The shipper must be notified of the arrangement when the shipment is accepted for transportation by the cooperative.

As a result, cooperatives will have greater flexibility in handling shipments, especially those that are time-sensitive, for their members. The change will enhance competition in the air cargo industry, especially in foreign air transportation. It will permit the marketplace, and not Board regulations, to determine who will act as agent for direct air carriers.

Comments were filed by the International Air Transport Association (IATA), TRW, Inc., United Air Lines (United), Pan American Airlines (Pan Am), and the National Industrial Traffic League (NITL). A reply comment was filed by AFSAC. TRW and NITL supported the Board's proposal. IATA did not object to the proposal, but pointed out that even if the rule is adopted, cooperative shippers associations must still meet the requirements of the IATA Cargo Registration and Review Board before being accepted as IATA cargo agents.

Pan Am and United opposed the Board's proposal. Pan Am argued that if the rule were adopted, cooperatives might pass back commissions to shippers, so that the shipper would be receiving a rebate on the airline's freight rate in foreign air transportation, to the detriment of air freight forwarders. We reject that argument. If an airline chooses to accept a cooperative as an agent and to pay it in the form of a commission, we do not consider that to be rebating. For other situations that might arise, the Board has adequate investigatory and enforcement powers to take any action needed in this area.

Pan Am also argued that shippers cooperatives, unlike forwarders, do not provide sales development and promotion services to air carriers and therefore do not deserve a commission. The argument is without weight, however. This rule does not require carriers to use cooperatives as agents or to pay them commissions. It merely allows carriers and cooperatives to agree to an agency relationship if they so choose.

United argued that the differences in purpose, structure, and historic treatment by the government between shippers cooperatives and air freight forwarders justify continued regulatory distinctions. As we explained in EDR-416, however, we believe that the operating differences between

cooperatives and forwarders have largely disappeared in practice. We have begun a rulemaking to eliminate the few remaining regulatory distinctions. United's argument on those points will be addressed in that rulemaking.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 296, Airfreight Forwarders and Cooperative Shippers Associations, as follows:

1. The authority for Part 296 is:

Authority: Secs. 101(3), 102, 204, 407, 408, 416, Pub. L. 85-726, as amended; 72 Stat. 737, 740, 743, 786, 767, 771; 49 U.S.C. 1301, 1302, 1324, 1377, 1378, 1386.

2. Section 296.6 is retitled and revised to read as follows:

§ 296.6 Cooperative shippers association as agent.

A cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

3. The Table of Contents is amended, as follows:

Subpart A—General

Sec.
296.6 Cooperative shippers association as agent.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-22004 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 297

[Economic Regulations Amendment No. 1 to Part 297; Docket 38470; Regulation ER-1235]

Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations; Permission for Foreign Cooperative Shippers Associations To Act as Agents of Direct Carriers

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is allowing foreign cooperative shippers associations to act as agents of direct air carriers. This change puts cooperatives on par with air freight forwarders, and enables them to serve their shipper members more effectively. This action is taken in response to a petition by the Air Freight

Shippers Cooperative Association of California.

DATES: Adopted: July 16, 1981. Effective: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Joseph Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: A full discussion of this action is in ER-1234, issued today.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 297, Foreign Air Freight Forwarders and Foreign Cooperative Shippers Associations, as follows:

1. The authority for Part 297 is:

Authority: Sec. 204, 416, Pub. L. 85-726, as amended; 72 Stat. 743, 771; 49 U.S.C. 1324, 1386.

2. Section 297.6 is revised and retitled to read, as follows:

§ 297.6 Foreign cooperative shippers association as agent.

A foreign cooperative shippers association may act as agent of a shipper, or of a direct air carrier that has authorized such agency, if it expressly reserves the option to do so when the shipment is accepted. A cooperative shippers association shall not act as an agent of any direct air carrier with respect to shipments accepted in its capacity as an indirect air carrier.

3. The Table of Contents is amended as follows:

Subpart A—General

Sec.
§ 297.6 Foreign cooperative shippers association as agent.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-22003 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 276

[Release No. IA-767]

Staff Interpretations of Certain Investment Adviser Disclosure and Reporting Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Statement of staff interpretative positions regarding certain rules and forms.

SUMMARY: The Commission is publishing, in a question and answer format, certain interpretive positions of the staff of its Division of Investment Management regarding the recently adopted and revised disclosure and reporting requirements applicable to investment advisers under the Investment Advisers Act of 1940. These requirements consist principally of: (1) A rule which generally requires registered investment advisers to furnish their existing and prospective advisory clients with a written disclosure statement containing specified information regarding such advisers' backgrounds and business practices; (2) a substantially revised application for investment adviser registration; and (3) a new annual report for investment advisers. The purpose of this release is to assist affected persons in their understanding of, and compliance with, the foregoing requirements. In addition, the Commission, in a separate release issued today, has proposed certain amendments to these investment adviser disclosure and reporting requirements.

FOR FURTHER INFORMATION CONTACT:

Arthur E. Dinerman, Esq., Investment Advisers Study Group, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2079.

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 1979, the Commission issued Investment Advisers Act of 1940 Release No. 664 (44 FR 7870 (Feb. 7, 1979)), which adopted certain new and revised integrated disclosure and reporting requirements applicable to investment advisers subject to registration under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) ("Advisers Act"). These requirements principally consist of Rule 204-3 (the "Brochure Rule") (17 CFR 275.204-3); revisions to Form ADV (17 CFR 279.1), the registration form for investment advisers; new Form ADV-S (17 CFR 279.3), an annual report for investment advisers; and amended Rule 204-1 under the Advisers Act (17 CFR 275.204-1), which relates to the filing of required amendments to Form ADV. As stated in Advisers Act Release No. 664, the Commission's primary purposes in adopting those requirements were (i) to provide existing and prospective clients of registered investment advisers with information concerning the backgrounds and business practices of such advisers, and (ii) to provide the Commission with information regarding the basic

characteristics of the investment advisory industry for use in connection with the Commission's investment adviser regulatory program. The revised requirements became effective on July 31, 1979. Since the adoption of the requirements, the staff has received a number of comments and inquiries concerning specific provisions thereof. In order to assist affected persons in their understanding of, and compliance with, the revised requirements, the Commission has determined to publish, in a question and answer format, certain interpretive positions of its staff with respect to the requirements.¹ This interpretive guidance, which is set forth immediately below, is intended to supplement the explanation and analysis of the investment adviser disclosure and reporting requirements contained in Advisers Act Release No. 664.

II. Certain Staff Interpretive Positions Regarding the Integrated Investment Adviser Disclosure and Reporting Requirements

A. Rule 204-1

1. *Question:* Paragraphs (b) and (c) of Rule 204-1 (17 CFR 275.204-1 (b) and (c)) require that, within 90 days of the end of its fiscal year, a registered investment adviser make certain amendments to its Form ADV and file an annual report on Form ADV-S. For the purposes of these requirements, may an investment adviser treat as its fiscal year an accounting period other than a calendar year or the period used for reporting income taxes?

Response: Yes. An adviser may use any twelve month accounting period, provided that such period is fixed or determinable and consistently used by the adviser. The term "fiscal year" is not defined in the Advisers Act nor in the rules or forms thereunder, but, as commonly used, the term refers to a twelve month accounting period. For the purposes of paragraphs (b) and (c) of Rule 204-1, an investment adviser is not necessarily limited to a calendar year or the accounting period used for income tax purposes. For example, an investment adviser who is also registered with the Commission as a broker or dealer may elect to use the same accounting period utilized in connection with the filing of financial statements by such broker or dealer

¹ In a separate release issued today (Advisers Act Release No. 766 (July 21, 1981)), the Commission is proposing certain amendments to the investment adviser application for registration, the investment adviser annual report form, an investment adviser disclosure rule and the investment adviser reporting requirements.

pursuant to Rule 17a-5(d) (17 CFR 240.17a-5(d)) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) ("Exchange Act"), provided that it satisfies the conditions described above, even though a different accounting period might be used for income tax purposes.

2. *Question:* Paragraph (c) of Rule 204-1 requires a registered investment adviser to file an annual report on Form ADV-S within 90 days of the end of its fiscal year unless its registration has been withdrawn, cancelled or revoked prior to that date. Can Form ADV-S also be used to amend Form ADV?

Response: No. Form ADV-S is a separate form which must be filed independently of Form ADV or any amendments thereto. Amendments to Form ADV must be filed in accordance with the provisions of paragraph (b) of Rule 204-1. Even if an amendment to Form ADV is filed concurrently with the Form ADV-S filing, it must meet all the requirements applicable to amendments filed separately. Such amendments should not be attached to Form ADV-S.

B. The Brochure Rule

1. *Question:* Paragraph (a) of the Brochure Rule (17 CFR 275.204-3(a)) requires certain investment advisers subject to registration under the Advisers Act to furnish clients and prospective clients with a written disclosure statement, which may be either a copy of Part II of an adviser's Form ADV or a separate written document ("brochure") "containing at least the information * * * required by Part II of Form ADV." For purposes of Rule 204-3(a), if an investment adviser uses a separate brochure, rather than a copy of Part II of its Form ADV, may the adviser omit from the brochure (i) the cautionary legend on page 1 of Part II of Form ADV (which states that the Commission has not approved the information contained in Part II, nor has it approved the qualifications or business practices of the investment adviser) and (ii) negative responses to items in Part II?

Response: In the view of the staff, the cautionary legend on page 1 or Part II of Form ADV does not constitute "information * * * required" by that part within the meaning of paragraph (a) of the Brochure Rule and, therefore, is not required to be included in any brochure utilized by an adviser. However, consistent with its obligations under the antifraud provisions set forth in Section 206 (15 U.S.C. 80b-6) and the provisions of Section 208(a) (15 U.S.C.

80b-8(a)) of the Advisers Act,² an investment adviser should not make any representation, expressed or implied, that the Commission has approved either the information in the brochure or the investment adviser's qualifications or business practices.

Whether an investment adviser may omit from its brochure a negative response to any item in Part II of its Form ADV depends on the particular item and whether the "negative" response is material information which should be disclosed to an advisory client. For example, item 3 of Part II requires an investment adviser to indicate on a checklist whether or not it provides advice with respect to certain types of securities enumerated in that item. A separate brochure used by an adviser generally would not have to disclose the types of securities with respect to which the adviser does not provide advice, unless such disclosure was otherwise material. On the other hand, for example, a negative response to item 5 of Part II, which would indicate that the adviser does not require its associated persons to meet any general standards of education or business background, should be disclosed in a brochure.

2. *Question:* Pursuant to paragraph (b)(1)(ii) of the Brochure Rule (17 CFR 275.204-3(b)(1)(ii)), an investment adviser may delay delivery of its written disclosure statement to prospective clients until the time of entering into an advisory contract, if the advisory client has a right to terminate the contract "without penalty" within five business days. Does a fee charged by an adviser for advisory services provided to a client who terminates its advisory contract within the five business day period constitute a "penalty"?

Response: No. A pro-rata charge for bona fide advisory services actually rendered during this five day period would not be deemed to be a "penalty" for the purposes of the Brochure Rule. However, a separate charge for "start-up" expenses would normally be considered a penalty within the meaning of the Brochure Rule.

3. *Question:* Paragraph (c)(1) of the Brochure Rule (17 CFR 275.204-3(c)(1)) requires an investment adviser, annually, and without charge, either to deliver a written disclosure statement to

² Section 208(a) provides that "it shall be unlawful for any person registered under section 203 of (the Advisers Act) to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or any officer thereof."

its existing advisory clients or to offer, in writing, to deliver such a statement upon written request from the client. Must an adviser make the annual offer to deliver, or actual delivery, on the specific anniversary date of each individual advisory client's contract?

Response: No. Paragraph (c)(1) of the Brochure Rule does not prohibit an adviser from making the required delivery or offer to some or all of his clients simultaneously, regardless of the date on which the advisory contract became effective, provided that he offers to deliver, or actually delivers to his advisory clients, a then current written disclosure statement at least once every 12 months. An adviser might, for example, establish a practice of making the offer or delivery required by paragraph (c)(1) at the beginning of the calendar year. If this is going to be the only time during the year that such an offer or delivery will be made, then it should be made to every client, including those who initially contracted with the adviser during the preceding year.

C. Form ADV, Part I

1. *Question:* If an investment adviser changes its form of business organization (from a sole proprietorship to a corporation, for example) or its state of incorporation, must such an adviser file a new application for registration on Form ADV, or may the change in business organization merely be reflected as an amendment to the adviser's existing Form ADV?

Response: Section 203(g) of the Advisers Act (15 U.S.C. 80b-3(g)) provides that a successor to the business of an investment adviser registered under the Advisers Act shall be deemed likewise registered, if it files an application for registration within thirty days from the date it succeeded to the business of such adviser, unless and until the Commission denies, revokes or suspends the registration of the successor adviser. A change in the form of an investment adviser's business organization would generally involve the creation of a new legal entity and Section 203(g) would require the new entity to file a new or successor application for registration on Form ADV. However, the Commission has today proposed to amend Rule 203-1 under the Advisers Act to permit the filing of an amendment on Form ADV to an adviser's application, as opposed to the filing of a new application for registration to reflect such a succession.³ If this proposal is adopted, a succession caused by a change in the adviser's

state of incorporation or form of organization will not necessitate a complete new application for registration.

It should be noted, however, that the reorganization of an investment adviser's form of business would generally involve the "assignment" of advisory contracts to the successor adviser within the meaning of Section 205(2) of the Advisers Act (15 U.S.C. 80b-5(2)). That section, in effect, prohibits an investment adviser that is subject to registration under the Advisers Act from assigning an advisory contract without the consent of the other party to the contract. Accordingly, the consent of clients to the assignment of their advisory contracts to the successor adviser would be required.

2. *Question:* Section 203(g) of the Advisers Act authorizes a successor to the business of an investment adviser to file an application for registration as an investment adviser within 30 days after the succession. As an alternative, may a person who intends to succeed to the business of an investment adviser file a Form ADV prior to the time of the succession?

Response: Section 203(g) permits, but does not require, a successor adviser to file a Form ADV within 30 days after the time of the succession. Section 203(c) of the Advisers Act (15 U.S.C. 80b-3(c)) authorizes an investment adviser, or any person who presently contemplates becoming an investment adviser, to file an application for registration with the Commission. Accordingly, a person who intends to succeed to the business of an investment adviser, and who, therefore, presumably contemplates becoming an investment adviser, may file a Form ADV prior to the time of succession.

D. Form ADV, Part II

1. *Question:* Is an investment adviser whose contracts are exempted from the Brochure Rule's delivery requirements—for example, an investment adviser to an investment company or an investment adviser providing only impersonal advisory services—required to complete Part II of Form ADV?

Response: Yes. Although the Brochure Rule exempts investment advisers that provide certain types of services from the disclosure statement delivery requirements, the rule does not exempt investment advisers from the requirements of Section 203(c) under the Advisers Act and Rule 203-1 thereunder (17 CFR 275.203-1) regarding the requirements for filing Form ADV.

2. *Question:* In response to item 1 of Part II, may an investment adviser which charges for its services in accordance with a fee schedule, but

which also permits negotiation of such fees, simply set forth the fee schedule and state that its fees are negotiable, or must the adviser disclose the range within which fees can be negotiated?

Response: The extent of disclosure required by item 1 of Part II concerning the fees of an investment adviser will depend on the facts and circumstances. As a general matter, if an adviser's usual fees are negotiable, but only within a range, the adviser would have to disclose his fee schedule, as well as the range within which such fees can be negotiated. On the other hand, if fees are negotiable, but no particular range has been established either explicitly or by practice, a general statement that fees are negotiable, together with the inclusion of the fee schedule, generally would be adequate.

3. *Question:* If an investment adviser exercises discretion as to the commission rates at which securities transactions for client accounts are effected, must he, in response to item 1 of Part II, disclose the commission rates charged client accounts, as well as its advisory fees?

Response: An adviser exercising brokerage discretion for client accounts generally would not have to disclose, in response to item 1 of Part II, the commission rates at which securities transactions are effected for client accounts unless these charges form the basis, in whole or in part, for the adviser's compensation. Such an investment adviser, however, would have to describe in detail, in response to item 11 of Part II, its brokerage placement practices.

4. *Question:* If an applicant for registration is a person who has not previously engaged in the advisory business, must the applicant complete Part II of Form ADV, which requires information as to the background and business practices of an adviser?

Response: Yes. All applicants for registration as an investment adviser must complete fully Form ADV, including Parts I and II thereof. In the case of an applicant who is new to the advisory business, he should, to the extent possible, respond to the various items in Part II in light of the advisory services which he intends to provide, being careful to make clear the prospective nature of his advisory activities so as not to make any misleading statements.

5. *Question:* What is the difference between providing "investment supervisory services" as defined in item 1(a) of Part II and managing accounts under circumstances not involving

³ See note 1, *supra*.

investment supervisory services within the meaning of item 1(b) of Part II?

Response: "Investment supervisory services," as defined in item 1(a), means the giving of continuous advice to clients as to the investment of funds on the basis of the individual needs of each client.⁴ On the other hand, item 1(b) refers to the management of accounts where either the individual needs of the clients are not considered or where the management services are not continuous. An example of an advisory service which would be covered by item 1(b), and not by item 1(a), would be an account management service provided only with respect to a particular class of securities owned by a client (e.g., options) where it is understood that the adviser will not consider the individual needs of a particular client as distinct from the needs of any other client.

6. Question: Item 6 of Part II of Form ADV requires an investment adviser to set forth certain information concerning the background of each member of the investment adviser's investment committee or other persons who determine or approve what investment advice is rendered by the adviser. May an investment adviser make reference to Schedule D of Form ADV which requires, in part, the same information required by item 6, rather than setting forth that information in full in response to item 6 itself?

Response: Item 6 may be answered by reference to Schedule D. However, in furnishing this information to an advisory client or prospective advisory client pursuant to the Brochure Rule, a reference to Schedule D is adequate only if such schedule is furnished, together with a copy of Part II of the adviser's Form ADV, or is included as part of a brochure, and the presentation of the information in such a manner is not otherwise misleading.

7. Question: Item 8(a) of Part II requires an investment adviser to disclose whether it is registered as a broker or dealer. Is this item intended to encompass registrations as a broker or dealer in other jurisdictions, such as the states, as well as with the Commission?

Response: Yes. Item 8(a) covers broker or dealer registrations in other jurisdictions. Therefore, if an investment adviser is registered as a broker or dealer in a state jurisdiction but not registered as such under the Exchange Act, the adviser should respond affirmatively to item 8(a).

8. Question: For the purposes of item 8(b) of Part II, is an investment adviser

to an investment company "affiliated" with such investment company?

Response: Yes. The definition of "affiliated person" in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)) so provides. In this regard, the Commission is, in Advisers Act Release No. 766,⁵ proposing to amend item 8(b) by incorporating Section 2(a)(3) in its entirety.

9. Question: Item 9(b) of Part II asks whether the applicant "effects" securities transactions for compensation as a broker or agent for any (investment advisory) client. Certain investment advisers have discretionary authority to place orders with brokers to execute securities transactions for client accounts but do not receive any specific compensation or commission with respect to this function. However, they do receive an advisory fee for the services provided which include the exercise of such discretionary brokerage authority. Would such activity constitute "effecting" a transaction in securities?

Response: For the purposes of item 9(b), an adviser who is vested with brokerage placement discretion by its clients, but who does not execute transactions in securities for clients and does not receive any specific compensation in connection with securities transactions for clients would not, in the view of the staff, be deemed to be "effecting" securities transactions for client accounts solely by virtue of such activity. It should be noted that item 11 of Part II calls for disclosure about brokerage discretion.

10. Question: Does the account review process required to be described in response to item 12 of Part II refer only to internal review procedures used by an investment adviser, or does it also refer to an account review conducted by a third party?

Response: Item 12 is intended to cover all procedures, including internal and external ones, employed by an investment adviser in connection with the review and evaluation of client accounts.

E. Balance Sheet Requirements: Item 17 of Part I and Item 13 of Part II of Form ADV⁶

1. Question: Must the balance sheet filed pursuant to item 17 of Part I or item 13 of Part II be prepared on a cash basis

⁴ See note 1, *supra*.

⁵ In Advisers Act Release No. 766 (July 21, 1981), the Commission has proposed to delete the balance sheet requirement in item 17, applicable to certain advisers, and has proposed certain changes in the balance sheet requirement in item 13, applicable to other advisers. However, unless and until the Commission adopts these proposed amendments, registrants must comply with the existing requirements.

or on an accrual basis? if the balance sheet is required to be prepared on an accrual basis, must all of the adviser's internal books and records also be prepared on an accrual basis?

Response: As specified in item 17 of Part I and item 13 of Part II, respectively, the required balance sheet must be prepared in accordance with generally accepted accounting principles, which require that, among other things, the balance sheet be prepared on an accrual basis. An investment adviser's internal books and records may be maintained on either a cash or accrual basis, provided that the adviser maintains the books and records necessary to reconcile the adviser's cash accounts (as shown on its internal books and records) with the corresponding accounts on the balance sheet as restated and presented on an accrual basis.

2. Question: If the applicant is a newly-formed corporation or partnership, and is just commencing in business as an investment adviser, it will have no prior fiscal year end for which to file a balance sheet. If the applicant is such a company or if it is a sole proprietorship which has not previously engaged in business as an investment adviser, how should it respond to item 17 of Part I or item 13 of Part II of Form ADV?

Response: If an applicant has had no prior fiscal year end for which to file a balance sheet or is a sole proprietor who has not previously engaged in business as an investment adviser, no balance sheet is required to be filed. However, such an adviser is required to amend its Form ADV by filling a balance sheet in response to item 17 of Part I or item 13 of Part II within 90 days after the end of its first fiscal year, and each succeeding fiscal year thereafter, as required by paragraph(b)(2) of Rule 204-1.

3. Question: Item 13 requires the filing of an audited balance sheet if the adviser has custody or possession of clients' funds or securities or requires the prepayment of advisory fees six months or more in advance and in excess of \$500 per client. If an adviser has such custody or possession, or requires such prepayment of fees, with respect to only a few of his clients, must the adviser nonetheless file an audited balance sheet in response to Item 13 of Part II?

Response: Yes. However, the audited balance sheet may be omitted from a brochure provided to a client as to whom the adviser does not have custody or possession of client funds or securities or does not require prepayment of fees of more than \$500

⁶ This definition is incorporated from Section 202(a)(13) of the Advisers Act (15 U.S.C. 80b-2(a)(13)).

and for more than six months in advance.

4. *Question:* Can a wholly-owned investment adviser subsidiary satisfy the balance sheet requirements of item 17 of Part I or item 13 of Part II by filing its parent corporation's consolidated balance sheet?

Response: No. A balance sheet for the actual registrant must be filed.

5. *Question:* If an investment adviser is deemed to have custody or possession of clients' funds or securities because such funds or securities are held by an affiliate of the investment adviser, can such investment adviser satisfy the audited balance sheet requirement of item 13 of Part II by filing an audited balance sheet of the affiliate instead of an audited balance sheet for the investment adviser itself?

Response: No. The balance sheet required by item 13 of Part II is that of the registrant. However, it should be noted that custody by an affiliate of an investment adviser is not deemed to be custody by the investment adviser in all circumstances. Whether custody by an affiliate of the investment adviser will trigger the audited balance sheet requirement is a factual matter, based on the actual relationship between the investment adviser and the affiliate. See, Crocker Investment Management Corp. (avail. April 14, 1978).

F. Schedules to Form ADV

1. *Question:* In responding to question III of Schedule A, when must an applicant which is wholly or partially owned by a corporate parent provide information concerning shareholders of the parent, and how should such information be presented?

Response: As provided in the instructions to question III of Schedule A, the information required by that question must be provided for any person who, directly or indirectly, is (1) a beneficial owner of one percent or more of any class of equity security of the applicant if the applicant is not an issuer of a security registered pursuant to Section 12 of the Exchange Act (or the issuer of a security exempted pursuant to Subsections (g)(2)(B) or (g)(2)(G) thereof) (15 U.S.C. 78(j)(2)(B) or 78(j)(2)(G)); or (2) a beneficial owner of five percent or more of any class of equity security of an applicant if the applicant is the issuer of a security registered under Section 12 of the Exchange Act.

In order to determine whether information must be furnished for any shareholders of a corporate parent, it is necessary to calculate the direct and indirect beneficial ownership interests of such persons in the adviser. The term

"beneficial owner" is not defined in Form ADV, nor in any provision of the Advisers Act or rules thereunder. A determination of whether a person is a beneficial owner for purposes of Schedule A can be made only by evaluating all the pertinent facts and circumstances. In this regard, the provisions of Section 13 (15 U.S.C. 78m) and Section 16 (15 U.S.C. 78p) of the Exchange Act, and the rules and regulations thereunder, may be useful in identifying factors relevant to a determination as to whether such beneficial ownership exists.

The method for indicating on Schedule A an indirect ownership interest in an investment adviser is to list the corporate parent's name in the first column of question III of Schedule A and then to list immediately below that all of the parent's shareholders required to be so listed by virtue of their beneficial ownership of the adviser's equity securities. In the column designated "Ownership Code," the applicant should write "indirect" to indicate the indirect nature of the ownership interest for each listed shareholder. Any information provided in the column of question III designated "relationship" should relate only to a relationship with the investment adviser and not with the corporate parent.

2. *Question:* Question III of Schedule A requires an applicant to disclose the "beginning date" of the relationship with the applicant for each of the persons reported on in the schedule. What does "beginning date" refer to?

Response: "Beginning date" refers to the earliest date on which a relationship arose with the adviser which was required to be disclosed on Schedule A. For example, if John Smith joined XYZ Advisers, Inc. in June 1978 as a research assistant and subsequently was promoted to vice president in August 1979 and to president in July 1980, the first reportable event on Schedule A would have been Mr. Smith's promotion to vice president in August 1979, which date and relationship should have been disclosed on Schedule A to the Form ADV of XYZ Advisers, Inc. His subsequent promotion to president in July 1980 involves a change in relationship which was required to be disclosed on Schedule A, although the beginning date would have remained as August 1979.

3. *Question:* In answering question VI of Schedule D, must an applicant list each person's complete employment or affiliation history for the past ten years, including each position held with a particular employer, or may he provide only the identities of each person's employers?

Response: It is necessary to list on Schedule D all places of employment for the past ten years, for each person for whom a Schedule D is filed. However, it is not necessary to enumerate each position held at each place of employment. It is sufficient to provide the last position held with each employer, so long as the period that such position was, or has been, held is disclosed in the column headed "Exact Nature of Connection or Employment."

Regulatory Flexibility Act

The views of the Commission's Division of Investment Management concerning Rules 204-1 and 204-3 and Forms ADV and ADV-S are not rules and therefore are not subject to the Regulatory Flexibility Act (15 U.S.C. 600 et seq.)

Accordingly, Part 276 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding Investment Advisers Act Release No. 767, Statement of staff interpretive positions as to investment adviser disclosure and reporting requirements, thereto.

By the Commission.

Dated: July 21, 1981.

George A. Fitzsimmons,
Secretary.

[FR Doc. 81-21852 Filed 7-27-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 73 and 81

[Docket No. 81C-0023]

Caramel Color Additive for General Use in Cosmetics

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing caramel as a color additive for general use in cosmetics and exempting it from certification. As a result of this rule, caramel is removed from the provisional list of color additives.

DATES: Effective August 28, 1981; objections by August 27, 1981.

ADDRESS: Written objections 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: Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 27, 1981 (46 FR 18994), FDA proposed to amend the color additive regulations by terminating the provisional listing for caramel and permanently listing it for general use in cosmetics. The agency also proposed to exempt caramel from color additive certification requirements. This proposal responded to a petition for this use filed by the Cosmetic, Toiletry, and Fragrance Association, Inc. (CTFA).

The proposal pointed out that FDA regulations provide that a color additive is "safe" if there is "convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive" (21 CFR 70.3(f)). The proposal cited the following evidence of caramel's safety:

1. Caramel has been permanently listed since 1963 as a color additive for use in foods (21 CFR 73.85) and drugs (21 CFR 73.1085).

2. Caramel is one of the substances listed in Part 182 as generally recognized as safe (GRAS) for use as a flavor in foods (21 CFR 182.1235).

3. Toxicological data from an eye area study and a 90-day dermal test were submitted to FDA in 1978 by the CTFA. These data further support the safety of caramel.

The International Technical Caramel Association is conducting analytical studies on the chemical characterization of caramel for use in support of the GRAS affirmation of this substance. The agency receives biennial reports on this work. If, as a result of these studies, any safety problem with caramel becomes apparent, FDA will be notified and will institute appropriate action.

In response to the March 27, 1981 proposal, the agency received four comments, all supporting the proposed action. These comments, which are summarized below, were from two trade associations, a cosmetic manufacturer, and a private consultant:

1. One comment from a trade association agreed with each of the agency's conclusions and the rationale set forth in the preamble to the proposal and also agreed that caramel should be exempt from certification.

2. Another comment, from an association representing the industry concerned with production and processing of caramel, supported the proposed action. It cited the safety information referred to in the proposal and the technical information being

developed through the program of this association as providing an ample basis for the agency's action.

3. A comment from a cosmetic manufacturer agreed with the proposed action to permanently list caramel for use in coloring externally applied cosmetics without requiring any additional toxicological study. The comment asserted that there is already an adequate basis of safety.

4. A comment from a private consultant endorsed the proposed permanent listing of caramel for general cosmetic use and commended the agency for reviewing its files and recognizing the fact that a previously-mandated study would not contribute to the evaluation of the safety of caramel.

Having evaluated the comments as well as the available data, FDA concludes that caramel is safe for general use as a color additive in cosmetics and approves the petition to permanently list it for that use.

The proposal additionally stated that the agency had found that this action does not have a significant impact on the human environment, that it will not result in an adverse economic impact on small businesses, and that it is exempt from Executive Order 12291, which requires a Regulatory Impact Analysis. No information was submitted in response to the proposal to alter these findings.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Secs. 701(e), 706 (b), (c), and (d), 70 Stat. 919 as amended, 74 Stat. 399-403 (21 U.S.C. 371(e), 376 (b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Parts 73 and 81 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. Part 73 is amended in Subpart C by adding new § 73.2085 to read as follows:

§ 73.2085 Caramel.

(a) *Identity and specifications.* The color additive caramel shall conform in identity and specifications to the requirements of § 73.85(a)(1), (2), and (3) and (b).

(b) *Uses and restrictions.* Caramel is safe for use in coloring cosmetics generally, including cosmetics applied to the area of the eye, in amounts consistent with good manufacturing practice.

(c) *Labeling requirements.* The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(d) *Exemption from certification.* Certification of this color additive is not necessary for the protection of the public health, and therefore batches thereof are exempt from the certification requirement of section 706(c) of the act.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

2. Part 81 is amended:

***§ 81.1 [Amended]**

a. In § 81.1 *Provisional lists of color additives*, by removing "caramel" from the list in paragraph (g).

§ 81.27 [Amended]

b. In § 81.27 *Conditions of provisional listing*, by removing paragraphs (b) (1), (2), and (3) and by redesignating paragraph (d) as paragraph (b).

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 27, 1981, file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that hearing is held. Three copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this regulation. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective August 28, 1981, except as to any provisions that may be stayed by the filing of proper objections. Notice

of the filing of objections or lack thereof will be given by publication in the **Federal Register**.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376(b), (c), and (d)); sec. 203, Pub. L. 86-618, 74 Stat. 404-407 (21 U.S.C. 376, note))

Dated: July 22, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-21907 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of Caramel; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of caramel as a color additive for general use in cosmetics. A new closing date for caramel is being established to provide for receipt and evaluation of any objections submitted in response to the final regulation approving the petition for the permanent listing of caramel for this use. The regulation that permanently lists caramel is published elsewhere in this issue of the **Federal Register**. The new closing date is September 29, 1981.

EFFECTIVE DATE: Effective July 27, 1981, the new closing date for caramel will be September 29, 1981.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: The current closing date of July 27, 1981 for the provisional listing of caramel was established by a regulation published in the **Federal Register** of March 27, 1981 (46 FR 18958). This closing date for caramel was established to provide the agency with time to complete final action on the petition for the permanent listing of caramel for general use in cosmetics.

After reviewing and evaluating the data relevant to the color additive petition for the general use of caramel in cosmetics and the comments on the proposal, which are discussed in the preamble to the regulation permanently listing caramel, the agency has concluded that caramel is safe for that use. A regulation that permanently lists

caramel is published elsewhere in this issue of the **Federal Register**.

The regulation set forth below will postpone the closing date for the provisional listing of the color additive until September 29, 1981. This postponement will provide sufficient time for receipt and evaluation of any objections that may be submitted in response to the regulation that permanently lists caramel for general use in cosmetics.

Because of the shortness of time until the July 27, 1981 closing date, FDA concludes that notice and public procedure on this regulation are impracticable. Moreover, good cause exists for issuing this postponement as a final rule, because the agency has concluded that caramel is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until September 29, 1981. To prevent any interruption in the provisional listing of caramel, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on July 27, 1981.

Therefore, under the Transitional Provisions of the color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 81 is amended in § 81.1 *Provisional lists of color additives*, by revising the closing date for "caramel" in paragraph (g) to read "September 29, 1981".

Effective date. This regulation is effective July 27, 1981.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: July 22, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-21908 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of D&C Green No. 6; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Green No. 6 for use as a color

additive in externally applied drugs and cosmetics. The new closing date will be September 29, 1981. This brief postponement will provide time for the completion of FDA's review and evaluation of the data on D&C Green No. 6 and the publication in the **Federal Register** of a document concerning its use.

EFFECTIVE DATE: Effective July 27, 1981, the new closing date for D&C Green No. 6 will be September 29, 1981.

FOR FURTHER INFORMATION CONTACT:

Garnett R. Higginbotham, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: The current closing date of July 27, 1981 for the provisional listing of D&C Green No. 6 was established by a regulation published in the **Federal Register** of March 27, 1981 (46 FR 18958). This closing date for D&C Green No. 6 was established to provide time for completion of FDA's review and evaluation of the data concerning the external uses of D&C Green No. 6 and for publication of a regulation in the **Federal Register** regarding the final decision on the petition for the permanent listing of this color additive. The regulation set forth below will postpone the July 27, 1981 closing date for the provisional listing of the color additive until September 29, 1981.

The review and evaluation of the data relevant to the use of D&C Green No. 6 in externally applied drugs and cosmetics has required more time than initially anticipated. FDA concludes that the brief extension of the closing date to September 29, 1981 is necessary. The agency has also concluded that no harm to the public health will result from this extension.

Because of the shortness of time until the July 27, 1981 closing date, FDA concludes that notice and public procedure on this regulation are impracticable, and that good cause exists for issuing this postponement as a final rule.

This regulation will permit the uninterrupted use of the color additive until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation and is being made effective on July 27, 1981.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority

delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 81 is amended in § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Green No. 6" in paragraph (b) to read "September 29, 1981".

Effective date. This regulation is effective July 27, 1981.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: July 22, 1981.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-21947 Filed 7-27-81; 8:48 am]

BILLING CODE 4110-03-M

21 CFR Part 176

Diallyldiethylammonium Chloride Polymer

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 170 to 199, revised on April 1, 1981, in § 176.170, the three substances listed in the table for Diallyldiethylammonium Chloride Polymer are corrected to read as set forth below:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * *

DATES: Effective July 28, 1981; comments, notice of participation, and request for hearing by August 27, 1981; data, information, and analyses to justify a hearing by September 28, 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: Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of cephalothin sodium for injection manufactured by a new process which does not involve isolation of crystalline cephalothin sodium in the preparation of the finished drug product. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 442 (21 CFR Part 442) to provide for its certification.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 442 is amended in § 442.225c by revising paragraphs (a) (1) and (3) and (b)(1) and by adding paragraph (b) (7) and (8) to read as follows:

§ 442.225c Cephalothin sodium for injection.

(a) *Requirements for certification—(1) Standards of identity, strength, quality,*

List of substances

Limitations

Diallyldiethylammonium chloride polymer with acrylamide, and diallyldimethylammonium chloride, produced by copolymerizing acrylamide, diallyldiethylammonium chloride, and diallyldimethylammonium chloride respectively, in the following weight ratios and having viscosities determined at 22° C, by LVF-series Brookfield viscometer using a No. 1 spindle at 60 r.p.m. (or by other equivalent method) as follows:

1. Weight ratio: 50-2.5-47.5. The finished resin in a 1 percent by weight aqueous solution has a minimum viscosity of 22 centipoises.
2. Weight ratio: 25-2.5-72.5. The finished resin in a 0.20 percent by weight aqueous solution has a minimum viscosity of 20 centipoises.
3. Weight ratio: 80-2.5-17.5. The finished resin in a 0.30 percent by weight aqueous solution has a minimum viscosity of 50 centipoises.

Diallyldiethylammonium chloride polymer with acrylamide, potassium acrylate, and diallyldimethylammonium chloride. The polymer is produced by copolymerizing either: (1) acrylamide, diallyldiethylammonium chloride in a weight ratio of 50-2.5-47.5, respectively, with 4.4 percent of the acrylamide subsequently hydrolyzed to potassium acrylate, or (2) acrylamide, potassium acrylate (as acrylic acid), diallyldiethylammonium chloride in a weight ratio of 47.8-2.2-2.5-47.5, so that the finished resin in a 1 percent by weight aqueous solution has a minimum viscosity of 22 centipoises at 22° C, as determined by LVF-series Brookfield viscometer using a No. 1 spindle at 60 r.p.m. (or by other equivalent method).

Diallyldimethylammonium chloride polymer with acrylamide, reaction product with glyoxal, produced by copolymerizing not less than 90 weight percent of acrylamide and not more than 10 weight percent of diallyldimethylammonium chloride, which is then cross-linked with not more than 30 weight percent of glyoxal, such that a 10 percent aqueous solution has a minimum viscosity of 25 centipoises at 25° C as determined by Brookfield viscometer Model RVF, using a No. 1 spindle at 100 r.p.m.

For use only as a retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.05 percent by weight of the finished paper or paperboard.

For use only as a drainage and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.075 percent by weight of the finished paper and paperboard.

For use only as a drainage and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.075 percent by weight of the finished paper and paperboard.

For use only as a retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.05 percent by weight of the finished paper and paperboard.

For use only as a dry and wet strength agent employed prior to the sheet-forming operation in the manufacture of paper and paperboard in such an amount that the finished paper and paperboard will contain the additive at a level not in excess of 2 percent by weight of the dry fibers in the finished paper and paperboard.

BILLING CODE 1505-02-M

21 CFR Part 442

[Docket No. 81N-0218]

Antibiotic Drugs; Cephalothin Sodium for Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the certification of cephalothin sodium for injection produced by a new manufacturing process. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

and purity. Cephalothin sodium for injection is a dry mixture of cephalothin sodium with one or more suitable and harmless buffer substances. The cephalothin sodium may be isolated in the manufacture of cephalothin sodium for injection. Its cephalothin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of cephalothin that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. Its loss on drying is not more than 1.5 percent. When reconstituted as directed in the labeling, its pH is not less than 6.0 and not more than 8.5. If isolated, the cephalothin sodium used conforms to the standards prescribed by § 442.25a(a)(1). If the cephalothin sodium is not isolated: The potency of the dry mixture is not less than 850 micrograms of cephalothin per milligram on an anhydrous basis when corrected for sodium bicarbonate; the specific rotation of the dry mixture in an aqueous solution containing 50 milligrams of cephalothin per milliliter at 25° C is $+129^\circ \pm 5^\circ$; and the dry mixture gives a positive identity test.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(a) If isolated, the cephalothin sodium used in making the batch for potency, loss on drying, pH, specific rotation, identity, and crystallinity.

(b) The batch for potency, sterility, pyrogens, safety, loss on drying, and pH. In addition, if the cephalothin sodium is not isolated, results of tests and assays on the dry mixture for potency, specific rotation, and identity.

(ii) Samples required:

(a) For all tests except sterility: A minimum of 10 immediate containers, unless the cephalothin sodium is not isolated, a minimum of 15 immediate containers.

(b) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—(1) Content; potency—(i) Sample preparation.* Reconstitute as directed in the labeling. Then using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is

represented as a single dose container; or if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with 1.0 percent potassium phosphate buffer, pH 6.0 (solution 1), for the microbiological agar diffusion assay or distilled water for the hydroxylamine colorimetric assay to obtain a stock solution of convenient concentration. In addition, if the cephalothin sodium is not isolated, dissolve an accurately weighed sample in sufficient 1.0 percent potassium phosphate buffer, pH 6.0 (solution 1), for the microbiological agar diffusion assay or distilled water for the hydroxylamine colorimetric assay to obtain a stock solution of convenient concentration. Correct the potency, micrograms of cephalothin per milligram, for sodium bicarbonate content determined as described in paragraph (b)(7) of this section.

(ii) *Assay procedures.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(a) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, diluting an aliquot of the stock solution with solution 1 to the reference concentration of 1.0 microgram of cephalothin per milliliter (estimated).

(b) *Hydroxylamine colorimetric assay.* Proceed as directed in § 436.205 of this chapter.

(7) *Specific rotation.* Dilute an accurately weighed portion of the dry mixture with sufficient distilled water to give a concentration of approximately 50 milligrams per milliliter. Proceed as directed in § 436.210 of this chapter, using a 1.0-decimeter polarimeter tube. Calculate the specific rotation on an anhydrous basis and correct for sodium bicarbonate content. Determine the sodium bicarbonate content as follows: Dissolve an accurately weighed portion of the dry mixture, approximately 1.0 gram, with approximately 50 milliliters of distilled water. Titrate with 0.1N sulfuric acid. Determine the end-point potentiometrically using a glass calomel combination electrode. Each milliliter of 0.1N sulfuric acid is equivalent to 8.401 milligrams of sodium bicarbonate.

(8) *Identity.* Using a 0.0025-percent solution of the sample in water and a suitable spectrophotometer, record the

ultraviolet absorption spectrum from 220 to 310 nanometers. The spectrum compares qualitatively to that of the working standard similarly tested.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. In accordance with the conditions for certification in section 507 of the act, FDA permits the manufacturer to market this drug on a "release" status pending the regulation's becoming effective. Because this regulation is not controversial and because when effective it provides notice of accepted standards and permits earlier certification of regulated products, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The amendment, therefore, is effective upon the date of publication in the *Federal Register*. However, interested persons may, on or before, August 27, 1981, submit written comments on this rule to the Dockets Management Branch (address above). Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it, request a hearing, and show reasonable grounds for the hearing. Any person who decides to seek a hearing must file (1) on or before August 27, 1981, a written notice of participation and request for hearing, and (2) on or before September 28, 1981, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, The Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing.

making findings and conclusions and denying a hearing.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order must be filed in four copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall be effective July 28, 1981.

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: July 21, 1981.

Mary A. McEniry,

Assistant Director for Regulatory Affairs,
Bureau of Drugs.

[FR Doc. 81-21946 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Styrylpyridinium Chloride and Diethylcarbamazine Edible Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. providing for use of edible tablets containing styrylpyridinium and diethylcarbamazine as an aid in control of large roundworms and hookworms and in prevention of heartworm disease in dogs.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, filed an NADA (120-870) providing for use of edible tablets containing styrylpyridinium and diethylcarbamazine as a combination oral anthelmintic in dogs. The edible

tablets contain the equivalent of 50 milligrams styrylpyridinium chloride and 60 milligrams of diethylcarbamazine citrate administered per 20 pounds of body weight daily, or 125 milligrams of styrylpyridinium chloride and 150 milligrams of diethylcarbamazine citrate per 50 pounds, as an aid in the control of large roundworms and hookworms and in the prevention of heartworm disease. The tablets are new formulations of approved drugs which are currently codified as 21 CFR 520.2160 and 520.2162. The new formulations incorporate the same drugs, in similar amounts, at similar dosages, and for similar uses. The NADA for the edible formulation is supported by (1) data and information in a well-controlled critical artificial challenge study demonstrating effectiveness of control of large roundworms and hookworms and for prevention of heartworm disease, (2) copies of published scientific articles demonstrating effectiveness of the combination drugs and noninterference with each other, (3) a palatability study, and (4) in vitro bioequivalency studies. The agency has granted a waiver of the requirements of 21 CFR 514.111(a)(5)(ii) for further studies to provide substantial evidence of effectiveness.

The NADA is approved and the regulations are amended to reflect the approval. In addition, the regulation is revised editorially to delete the chemical names for these drugs and to reflect current warnings.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.111(e)(2)(ii) (21 CFR 514.111(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under

authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in §§ 520.2160 and 520.2162 by deleting paragraph (a) and renumbering the subsequent paragraphs, by redesignating §§ 520.2160 and 520.2162 as §§ 520.2160a and 520.2160b, and by adding new §§ 520.2160 and 520.2160c. The redesignated and new sections read as follows:

§ 520.2160 Styrylpyridinium, diethylcarbamazine oral dosage forms.

§ 520.2160a Styrylpyridinium, diethylcarbamazine tablets.

(a) **Specifications.** Each tablet contains 50 milligrams of styrylpyridinium chloride and 60 milligrams of diethylcarbamazine citrate, or 125 milligrams of styrylpyridinium chloride and 150 milligrams of diethylcarbamazine citrate.

(b) **Sponsor.** See No. 010042 in § 510.600(c) of this chapter.

(c) **Conditions of use.** (1) For oral administration to dogs as an aid in the control of large roundworms (*Toxocara canis*) and hookworms (*Ancylostoma caninum*) and in the prevention of heartworm disease (*Dirofilaria immitis*).

(2) Administer orally, intact or pulverized and mixed in feed, at one tablet (50- and 60-milligram dosage) per 20 pounds of body weight per day, or one tablet (125- and 150-milligram dosage) per 50 pounds of body weight per day.

(3) Dogs with established heartworm infections should not be treated until they have been converted to a negative status. Administration to heartworm infected dogs may cause adverse reactions due to pulmonary occlusion.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2160b Styrylpyridinium chloride, diethylcarbamazine (as base).

(a) **Specifications.** Each milliliter of the drug contains 50 milligrams of styrylpyridinium chloride and 30 milligrams of diethylcarbamazine (as base).

(b) **Sponsor.** See No. 010042 in § 510.600(c) of this chapter.

(c) **Conditions of use.** (1) For oral administration to dogs for the control of large roundworms (*Toxocara canis*) and hookworms (*Ancylostoma caninum*) and as an aid in the prevention of heartworm disease (*Dirofilaria immitis*).

(2) Administer the drug in food at 1 milliliter per 20 pounds of body weight

daily during periods of exposure to roundworm, hookworm, and/or heartworm infections.

(3) Periodic examinations for large roundworms and heartworms should be made to assure that medication is given properly. Dogs with established heartworm infections should not be treated until they have been converted to a negative status. Administration to heartworm infected dogs may cause adverse reactions due to pulmonary occlusion.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2160c Styrylpyridinium, diethylcarbamazine edible tablets.

(a) *Specifications.* Each edible tablet contains the equivalent of 50 milligrams of styrylpyridinium chloride and 60 milligrams of diethylcarbamazine citrate, or 125 milligrams of styrylpyridinium chloride and 150 milligrams of diethylcarbamazine citrate, adsorbed on an inert resin.

(b) *Sponsor.* See No. 010042 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) For oral administration to dogs as an aid in the control of large roundworms (*Toxocara canis*) and hookworms (*Ancylostoma caninum*) and in the prevention of heartworm disease (*Dirofilaria immitis*).

(2) Administer orally, intact or pulverized and mixed in feed, at one tablet (50- and 60-milligram dosage) per 20 pounds of body weight per day, or one tablet (125- and 150-milligram dosage) per 50 pounds of body weight per day.

(3) Dogs with established heartworm infections should not be treated until they have been converted to a negative status. Administration to heartworm infected dogs may cause adverse reactions due to pulmonary occlusion.

(4) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. July 28, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 20, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-21792 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Feed Specialties Co. providing for safe and effective use of 9.6- and 19.2-gram-per-pound pyrantel tartrate premixes for making complete swine feeds.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT:

Charles E. Haines, Bureau of Veterinary Medicine (HFV-138), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Feed Specialties Co., 1877 NE. 58th Ave., Des Moines, IA 50313, is sponsor of NADA 118-877 submitted on its behalf by Pfizer, Inc. The NADA provides for use of premixes containing 9.6 and 19.2 grams of pyrantel tartrate per pound for making complete swine feeds used as an aid in prevention of migration and establishment of large roundworm (*Ascaris suum*) infections, an aid in prevention of establishment of nodular worm (*Oesophagostomum*) infections, and for removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.

Approval of this application relies on safety and effectiveness data contained in Pfizer's approved NADA 43-290. Use of the data in NADA 43-290 to support this application has been authorized by Pfizer. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplement and did not require reevaluation of the safety and effectiveness data in NADA 43-290.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen

in 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, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.485 by adding new paragraph (a)(11) to read as follows:

558.485 Pyrantel tartrate.

(a) * * *

(11) To 017274: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3) of this section.

Effective date. This amendment is effective July 28, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 20, 1981.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 81-21793 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 7785; EE-160-78]

Income Tax; Procedures for Making Certain Information Returns and Reports Filed by Exempt Organizations Available for Public Inspection

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the procedures for making certain information returns and reports filed by exempt organizations available for public inspection. These regulations liberalize the procedures required to be followed by members of the public making requests to inspect certain annual information returns and reports filed by exempt organizations. The regulations also clarify which

returns are available for public inspection.

DATE: The regulations are effective July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Richard J. Wickersham of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202) 566-3430 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) and the Procedure and Administration Regulations (26 CFR Part 301) under sections 6033(a), 6056(d), and 6104 (b) and (c) of the Internal Revenue Code of 1954. These amendments are to liberalize and clarify the procedures for public inspection of annual returns filed by organizations exempt from taxation under section 501(a).

Because this Treasury decision constitutes a liberalization and clarification of existing regulations, it is being issued without notice and public procedure and is effective immediately.

Places for Public Inspection of Exempt Organization Returns

Section 301.6104-2(b) currently provides that certain annual information returns and reports shall be available for public inspection at the National Office, in the Office of the Director, Mid-Atlantic Regional Service Center, Philadelphia, Pa., and in the office of the district director of the district serving the principal place of business of the organization. Under the amendments made by this document, these returns and reports will now be available in the office of any district director, whether or not that district serves the principal place of business of the organization. At the same time, the Mid-Atlantic Regional Service Center will be eliminated as a place for public inspection of these documents because the office of the district director in Philadelphia will be providing the same service. The effect of these amendments is to significantly expand the locations where the public can inspect returns and reports under section 6104(b).

In addition, the place of inspection at the National Office is changed from the Public Affairs Division to the Freedom of Information Reading Room.

Section 301.6104-2(c)(1) currently provides that the public may specify the appropriate section of a microfilm file to obtain the returns and reports they wish to inspect. As this microfilm file no

longer exists this alternate request procedure is being deleted from the regulations.

Although walk-in public inspection is not being permitted at any Internal Revenue Service Center under the amendments to § 301.6104-2(c)(4) contained in this document, copies of returns and reports may be obtained upon written request to the director of any service center.

Private Foundation Excise Tax Return

New § 1.6033-2(a)(2)(ii)(j) clarifies that Form 4720 (relating to certain excise tax liabilities under Chapter 42), when filed by a private foundation, is part of the information return required under section 6033 as well as a tax return required under section 6011. This form has been required in the instructions to the annual return (Form 990-PF) and on the form itself and therefore was previously required under § 1.6033-2(a)(1). This change makes it clear that a Form 4720 filed by a private foundation is disclosable and a Form 4720 filed by a taxpayer other than a private foundation is not disclosable under section 6104. A joint filing will be disclosable. Therefore any taxpayer other than a private foundation should file separately rather than elect to file a joint return by signing the private foundation's return if the taxpayer does not wish his or her Form 4720 disclosed. Section 301.6104-2(a) had previously required that Form 4720 be disclosed. Redundant references to Form 4720 in §§ 1.6033-2(j), 1.6056-1(b), and 301.6104-2 (a) and (c) are being eliminated.

Drafting Information

The principal author of this regulation is Ellen A. Hennessy of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 301 are amended as follows:

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

Paragraph 1. Section 1.6033-2 is amended by removing “, and a copy of Form 4720, if any,” in paragraph (j) and by adding a new paragraph (a)(2)(ii)(j) as follows:

§ 1.6033-2 Returns by exempt organizations; taxable years beginning after December 31, 1969.

(a) *In general.*

(2) * * *

(ii) * * *

(j) In the case of a private foundation liable for tax imposed under Chapter 42, such information as is required by Form 4720.

§ 1.6056-1 [Amended]

Par. 2. Section 1.6056-1 is amended by removing “, and a copy of Form 4720, if any,” in the last sentence of paragraph (b)(3).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. Section 301.6104-2 is amended (1) by removing “and the information furnished on Form 4720” in paragraph (a)(1); (2) by removing “, the annual report required by section 6056 and the information furnished on Form 4720” in the second sentence of paragraph (c)(2) and substituting “and the annual report required by section 6056”; (3) by inserting “copies may also be obtained by written request to the director of any service center.” after the fourth sentence of paragraph (c)(4); and (4) by revising paragraphs (b) and (c)(1) to read as follows:

§ 301.6104-2 Publicity of information on certain information returns and annual reports.

(b) *Place of inspection.* Information furnished on the public portion of returns and annual reports (as described in paragraph (a) of this section) shall be made available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, and at the office of any district director.

(c) *Procedure for public inspection—*
(1) *Requests for inspection.* Information furnished on the public portion of returns and annual reports (as described in paragraph (a) of this section) shall be available for public inspection only upon request. Requests for public inspection must be in writing to or at any of the offices mentioned in paragraph (b) of this section. Persons submitting requests for inspection must provide the name and address of the organization that filed the return or report, the type of return or report, and the year for which the organization filed.

§ 301.6104-3 [Amended]

Par. 4. Section 301.6104-3 is amended by removing "section 6103(b)" in paragraph (b)(3)(ii) (a) and (c) and substituting "section 6103(d)" and by deleting "chapter 42" wherever it appears in paragraph (c) and substituting "chapter 41 or 42".

(Sec. 6033(a)(1), 6104(b), and 7805 of the Internal Revenue Code of 1954 (83 Stat. 519, 68A Stat. 755 as amended by 83 Stat. 530, and 68A Stat. 917; 26 U.S.C. 6033(a)(1), 6104(b), and 7805))

William E. Williams,

Acting Commissioner of Internal Revenue.

Approved: June 1, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 81-21026 Filed 7-27-81; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-4-FRL-1862-4]

North Carolina: Redesignation of Carteret and Forsyth Counties for Air Quality Planning Purposes

Correction

In FR Doc. 81-20706 appearing on page 36701 in the issue of Wednesday, July 15, 1981, make the following change:

On page 36701, in the chart entitled, "North Carolina-TSP", the "X" that appears twice under the column labelled "Cannot be classified", should be removed from that column and should instead appear twice under the column labelled, "Better than national standards".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

[Circular No. 2488]

Amendment To Provide Segregation for State Indemnity Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: The Department of the Interior, in close cooperation with the affected States, has developed a new State indemnity selection process that will expedite the selection by the States of their remaining in-lieu selection rights. This final rulemaking will amend

the existing regulations to provide for the segregation of lands applied for by a State as part of the indemnity selection process. This change will facilitate the expedited process.

EFFECTIVE DATE: August 27, 1981.

ADDRESS: Suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Keith Corrigan (202) 343-8693.

SUPPLEMENTARY INFORMATION: The proposed rulemaking was published in the *Federal Register* on April 29, 1981 (46 FR 24139). Comments were invited for 30 days ending on June 1, 1981. Comments were received from 3 different sources, 1 from a business interest, 1 from a Federal agency and 1 from a local government. The discussion of the comments will be in two parts, general and specific comments.

General Comments: One comment was concerned about the increase of Federal ownership in some counties. This amendment will not increase Federal ownership; in fact, the exercise of State in-lieu selection rights will decrease Federal ownership, while increasing State ownership. No change has been made in this rulemaking in response to this comment.

Another comment suggested that this rulemaking might effect a change in the statehood charter and could alter the relationship between the trust lands and school financing. The intent of the rulemaking is to expedite the in-lieu selection program through early segregation of lands desired by the State. This should in no way affect statehood charters or school financing. No change has been made in the final rulemaking in response to this comment.

Specific Comments: A couple of comments raised a question relating to the segregative effect or lack thereof on leasable minerals. Leasable minerals are under the discretionary authority of the Secretary; thus they need not be segregated from application and should remain open for application even after the lands have been segregated for State in-lieu selection. The rulemaking has been amended for clarity by including language expressly excluding the mineral leasing laws and the Geothermal Steam Act from the segregative effect.

One comment questioned why, if segregation took effect upon the filing of an application, notice of it had to be published in the *Federal Register*. Segregation upon application will preclude nuisance claims and publication in the *Federal Register* is the most expeditious means of notifying the

public of the filing of an application. No changes have been made in the final rulemaking as a result of this comment.

A final comment wanted to know why the rulemaking did not require the publication of a notice of the expiration of the 2-year segregation period in the *Federal Register*. Since the public is advised of the 2-year segregation at the beginning of the period of segregation, it was felt that publication at the expiration of the period was unnecessary. The final rulemaking has not been changed.

Editorial corrections and changes have been made as needed.

The principal authors of this rulemaking are Keith Corrigan, Branch of Land Resources, Division of Land Management, and Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354).

Under authority of sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), Subpart 2091, Part 2090, Group 2000, Subchapter B, Chapter II of the Code of Federal Regulations is amended as follows:

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 9, 1981.

A new § 2091.2-6 is added as follows:

§ 2091.2 Upon application for.

§ 2091.2-6 State indemnity selections.

The filing of an application for selection under the provisions of Subpart 2621 of this part shall segregate the lands described in the application from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or the Geothermal Steam Act. The authorized officer shall promptly publish in the *Federal Register* a notice of the filing of the selection application. Any other type of application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of the selection application on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the *Federal Register* of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the

selection application, whichever occurs first. However, where administrative appeal or review actions have been sought pursuant to Part 4 or Subpart 2450 of this title, the segregative period shall continue in effect until publication of a notice of termination of the segregation in the Federal Register.

[FR Doc. 81-21944 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 80-189; FCC 81-296]

Amendment of the Commission's Rules To Allow Certain Frequency Bands To Be Used for One-Way Signalling on an Exclusive Basis in the Domestic Public Land Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, by this action, amends its Rules to allow the 35 MHz and 43 MHz frequency bands to be used for one-way paging on an exclusive basis in the Domestic Public Land Mobile Radio Service. Section 22.501(a) provided ten frequency pairs for two-way mobile telephone service available to the wireline telephone companies. In making these frequencies available for one-way paging to all communications common carriers, the Commission imposed several technical restrictions on the use of these frequencies in order to protect existing co-channel two-way licensees. Use of these frequencies for two-way service has been declining and there is a growing demand for paging service.

EFFECTIVE DATE: September 11, 1981.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven A. Weiss, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION: In the matter of Amendment of § 22.501(a) of the Rules to allow the 35 MHz frequency band to be used for one-way signaling on an exclusive basis in the Domestic Public Land Mobile Radio Service, CC Docket No. 80-189. Report and Order—Proceeding Terminated.

Adopted: June 30, 1981.

Released: July 15, 1981.

By the Commission: Commissioners Fogarty and Jones absent.

Introduction

1. On April 24, 1980, the Commission adopted a *Memorandum Opinion and Order and Notice of Proposed Rule Making*, CC Docket 80-189, 78 FCC 2d 438, 45 FR 32025 (May 15, 1980) which proposed to amend § 22.501(a) of the rules (47 CFR 22.501(a)) to allow the 35 MHz frequencies to be used for one-way signaling on an exclusive basis in the Domestic Public Land Mobile Radio Service. Currently, pursuant to § 22.501(a) of the Rules, there are 10 frequency pairs available to the wireline telephone companies to provide two-way mobile telephone service. Base station transmitters operate on the 35 MHz frequencies and the mobile telephone transmitters operate on the 43 MHz frequencies. In the *Notice*, the Commission proposed to make the 35 MHz frequencies available for paging on an exclusive basis to all existing and proposed communications common carriers, both the wireline carriers and the miscellaneous common carriers (commonly known as radio common carriers or "RCCs"); to allow existing two-way stations to continue their operation on these frequencies; and to make these frequencies available without a geographic zone allocation plan.¹ The Commission did not propose to make the 43 MHz frequencies available for paging because of the potential problem of interference to TV reception (TVI) from base stations providing paging on 43 MHz.² Instead,

¹ The two-way frequencies were allocated in accordance with a zone allocation plan to minimize the possibility of skip interference. See note 4a, *infra*.

² In *Interim Procedures for One-Way Signaling Service*, 77 FCC 2d 94 (1980) (Interim Procedures I), the Commission acknowledged that it had been receiving a substantial number of complaints because of interference to TV reception (TVI) from base stations providing paging on frequencies 43.22 and 43.58 MHz, and it imposed a temporary freeze on new applications for these paging facilities in order to study the problem in more detail. The Commission's *Order* further provided that 43 MHz applications already on file (as well as applications filed on the future to expand existing 43 MHz facilities) would be granted only on a developmental basis. Recently, however, on reconsideration, the Commission lifted the freeze on new 43 MHz paging applications and reopened the 43 MHz frequencies for paging on a developmental basis. *Interim Procedures for One-Way Signaling Service*, FCC 81-127, released April 3, 1981 (Interim Procedures II). The Commission said it was lifting the freeze because the TVI situation was not as severe as originally anticipated, and because the TVI situation is currently under study as part of a general inquiry into radio frequency interference to electronic equipment. The Commission concluded that the 43 MHz TVI situation can be managed through a developmental grant policy. The terms of the developmental grant, pursuant to § 22.404(a) of the Rules, are for one year, and the grant is subject to cancellation without hearing by the Commission upon notice to the grantee of TVI problems. Developmental reports are required under

the Commission requested comments on alternative uses of the 43 MHz frequencies. The Commission also requested comments on various technical and policy issues, including the necessity for a zone allocation plan to minimize harmful skip interference, whether to allow new two-way systems on these frequencies, and alternatives to oral comparative hearings in the case of mutually exclusive applications. The Commission based its proposal on the declining use of the frequencies by the wireline telephone companies, and on the growing demand for one-way paging. The Commission also stated that its proposal was intended to provide spectral relief for existing licensees currently providing paging on frequencies 43.22 and 43.58 MHz that might need to transfer from these frequencies because of the TVI problem. See note 2, *supra*.

2. There were 11 Comments and 9 Reply Comments filed in this proceeding.³ All but one of the comments supported the Commission's proposal. Whidbey Telephone Company (Whidbey), the only commenter that opposed the Commission's proposal, was particularly opposed to the aspect of the Commission's proposal that proposed to allocate these frequencies without a zone allocation plan. The remaining comments, all of which supported the Commission's proposal, differed on various points relating to the implementation of the proposal. While all of the parties agreed that a separate allocation for the wireline carriers and the RCCs was not necessary,⁴ the responses varied on the need for a zone allocation plan, the need for other measures to combat skip interference, the need for interservice coordination with adjacent channel operations in the Special Industrial Radio Service (SIRS), the use of the 43 MHz frequencies, and alternatives to oral comparative proceedings.

§ 22.406(a)(1), including, but not necessarily limited to, surveys of the TV viewing public within a few miles of the base station to ascertain whether their viewing is being impaired substantially by the operation of the one-way station. In addition, grantees are required to work closely with field personnel in investigating and solving interference problems which may occur. The Commission concluded, therefore, that by using this developmental grant procedure, paging on this frequency band could continue while at the same time affording the Commission the necessary tools to respond quickly to any problems that might develop.

³ A list of the parties filing Comments and Reply Comments are contained in Appendix A.

⁴ Because of the consensus on this issue, and for the reasons previously discussed in the *Notice*, we are not making separate frequency allocations for the wireline telephone companies and the RCCs.

3. After carefully weighing the relative merits of the various options that the comments presented, we conclude that the public interest will best be served by allowing the 35 MHz and 43 MHz frequencies in § 22.501(a) of the Commission's rules to be used for one-way paging. The wireline telephone companies' use of these frequencies has been declining,⁴ and additional paging frequencies are urgently needed in order to meet the growing demand for paging services. However, in order to protect the remaining co-channel two-way stations, the 35 and 43 MHz frequencies will be available, subject to technical restrictions. We will not, however, allow any new two-way systems on these frequencies. The comments revealed very little interest in using these frequencies to provide new two-way service, especially as compared to the interest in providing paging services on these frequencies. While no new two-way stations will be allowed on these frequencies, we will permit existing two-way stations to continue in operation. In addition, existing two-way licensees will be allowed to modify their facilities as long as at least 50% of their proposed service area is already covered by their existing service area. Finally, we have decided to establish a streamlined comparative procedure, in which applicants establish their superiority through a paper proceeding. The comments in this proceeding and our conclusions are more fully discussed below.

Technical Issues

4. *Zone allocation plan.* The 10 frequency pairs in Section 22.501(a) are currently available for two-way service only in accordance with a geographic zone allocation plan to minimize harmful skip interference to co-channel stations.⁵ As a result, only one or two frequency pairs are available for two-way service within each state. The existing one-way paging frequencies in the 35-43 MHz frequency band (frequencies 35.22, 35.58, 43.22 and 43.58 MHz) are available, however, without a zone allocation plan and few, if any, complaints of skip interference from the

operators or customers of the systems have been received. For this reason, our *Notice* proposed to make the two-way low band frequencies available for paging without a zone allocation plan.

5. The commenters differed on their views as to the need to have a geographic zone allocation plan. Whidbey Telephone Company (Whidbey) and American Telephone and Telegraph Company (AT&T) argued that a zone allocation plan should be retained to protect their two-way operations on these frequencies from harmful skip interference. Susquehanna Mobile Communications, Inc. (Susquehanna) and Radio Broadcasting Company (RBC) also supported the retention of the zone allocation plan because of the skip interference they currently experience on their one-way operations in this frequency band. Telocator Network of America (Telocator), Airsignal International, Inc. (Airsignal), Mobile Communications Corporation of America (MCCA), All-Florida Communications Co. (All-Florida), and Jan David Jubon, P.E. (Jubon), all argued against a geographic zone allocation plan. These parties claimed that a zone plan would severely limit the availability of these frequencies. They acknowledged that their current paging operations occasionally experience false signaling of pagers due to skip interference but asserted that this has not caused an unacceptable grade of service. They recommended that full-power unmodulated carriers or idle-channel tones be authorized to prevent false pages.⁶ In its Reply, AT&T pointed out that the carriers that advocated that there be no zone allocation plan only addressed the effect of skip interference they experience on their existing one-way operations in this frequency band; they failed to address the effect of their recommendations on existing two-way operations. In addition, AT&T was particularly opposed to the use of unmodulated carriers or idle-channel tones, if the zone allocation plan was not retained. AT&T argued that, without any zone restrictions, these proposals would exacerbate the amount of skip interference that would be received by their two-way stations.

⁵ A carrier is a radio signal of constant amplitude, frequency, and phase which can be modulated (modified) to carry the information to be transmitted. An unmodulated carrier is an unaltered carrier signal. An idle-channel tone is a modulated carrier that transmits a tone continuously when the base station is not busy with traffic. False pages would be avoided by using these methods because paging receivers would lock onto the stronger idle-channel tone or unmodulated carrier rather than the weaker skip signal from the distant paging station.

6. We are concerned that allowing paging on these frequencies without any technical restrictions could cause significant harmful skip interference to existing two-way systems.⁶ However, we are also concerned that the current zone allocation plan would overly restrict the availability of these frequencies for paging. Consequently, we have decided to adopt engineering criteria which establish an annular (doughnut-shaped) region of protection for the existing two-way stations. See Appendix C. For applications in the 35 MHz frequency band, paging facilities will be granted only if there are no co-channel two-way stations located between 1200 kilometers (746 miles) to 2400 kilometers (1492 miles) from the proposed paging station.⁷ This approach provides for greater geographical reuse of these frequencies while still protecting the remaining two-way stations. As a result, there will be more frequencies available for assignment in many areas. In addition, the annular plan is more flexible than the current zone allocation plan. Under the zone plan, if all the two-way stations in a particular zone were discontinued, regulatory intervention would be necessary to remove the zone restrictions. However, under the annular plan, additional frequencies will become available for assignment within the "zone of protection" without any further action by the Commission. Finally, with respect to whether we should allow new two-way operations on these frequencies, we have decided that, in order to promote the usefulness of these frequencies for paging, no new two-way systems will be allowed on these frequencies. The comments revealed very little interest in using these frequencies to provide new two-way service, especially as compared to the interest in providing paging services on these frequencies. In addition, the commenters acknowledged that there are technical limitations with the use of these frequencies for two-way service, and that these limitations are less problematic when these frequencies are used for paging. Further, we have recently allocated frequencies in the 800 MHz frequency band for cellular communications systems. See Cellular

⁶ Although the use of these frequencies for two-way service is declining, there are still a substantial number of systems providing service on these frequencies.

⁷ As will be discussed in paragraph 12, *infra*, we are also making the 43 MHz frequencies available for paging. For applications in the 43 MHz frequency band, paging facilities will be granted only if there are no co-channel two-way stations located between 1500 kilometers (932 miles) and 2000 kilometers (1243 miles).

⁴ American Telephone and Telegraph Company (AT&T) indicated in its comments that their use of these frequencies has decreased over the past few years because these frequencies provide "very limited capacity for any given system", have poor propagation characteristics, and are susceptible to man-made noise, particularly automobile ignition noise. AT&T also indicated that the mobile telephone equipment available for these frequencies is awkward and inconvenient.

⁵ Skip interference is the interference caused by the portion of radio waves which reflect off the ionosphere back to the earth. The lower frequencies are more susceptible to skip interference.

Communications Systems, CC Docket No. 79-318, FCC 81-161, released May 4, 1981. This service should provide additional capacity to accommodate the need for new two-way service in most areas. However, existing two-way operations will be permitted to continue in operation. In addition, existing two-way licensees will be permitted to modify their facilities as long as at least 50% of their proposed service area is already covered by their existing service area.

7. We have also considered what, if any, restrictions are necessary to protect the paging systems from harmful skip interference. The existing paging operations in the 35-43 MHz frequency band are available without any restrictions to protect their operations from skip interference and few, if any, complaints of skip interference from the operators or customers of the systems have been received by the Commission. Most of the commenters indicated that while their current paging operations on this frequency band do occasionally experience false signaling of pagers due to skip interference, this has not caused an unacceptable grade of service. Because of the consensus that this has not been a problem, we will not impose any restrictions to protect paging stations from skip interference. In this regard, we have considered the suggestion of many commenters to allow paging facilities to use full-power unmodulated carriers or idle-channel tones to prevent false pages. Since we are adopting engineering methods to minimize the effect of harmful skip interference on existing two-way systems, AT&T's concern that these methods would exacerbate skip interference is not warranted. However, our past experience has shown that the use of an unmodulated carrier for paging will cause false paging to other licensees because of intermodulation.⁷ Therefore, we reject amending our rules to allow for unmodulated carriers in situations other than presently allowable, *i.e.*, temporary equipment tests. See Section 22.507(e) of the Rules. In contrast, our past experience with idle-channel tones indicates that this method will not cause harmful interference. Thus, since there are no present restrictions in our rules on the use of idle-channel tones, paging

⁷ Intermodulation occurs when two or more different frequencies combine to form a third frequency. An unmodulated carrier would cause false paging because the intermodulated product of an unmodulated carrier and a modulated carrier would result in a third carrier that contains the paging information of the modulated carrier. If a system on this third frequency uses the same signaling system as the modulated carrier, a false page would result.

licensees may use this method to combat the harmful effects of skip interference, if they wish.

8. *Adjacent Channel Interference.* As a result of the Commission's actions in Docket No. 19327,⁸ the Section 22.501(a) allocation for two-way service is interleaved with frequencies in the Special Industrial Radio Service (SIRS) and the Special Emergency Radio Service (SERS). The SIRS channels are allocated for two-way simplex service,⁹ while the SERS channels are allocated for paging. In Docket No. 19327, the Commission acknowledged that interservice adjacent channel interference⁹ may exist between private radio and common carrier stations, but it declined to adopt any standards in this regard. Instead, the Commission encouraged SIRSA,¹⁰ AT&T and the other parties to coordinate their stations to minimize adjacent channel interference problems. 35 FCC 2d at 493-494.

9. In its Comments to this proceeding, SIRSA argued that adjacent channel geographic separation criteria should be established between SIRS stations and the new paging stations. SIRSA explained that, following the conclusion of Docket No. 19327, it entered into an informal arrangement with AT&T whereby SIRSA agreed to refrain from recommending a frequency to SIRS applicants when the proposed SIRS station would be located within six miles of two-way base stations. SIRSA urged the Commission to adopt a similar geographic separation plan in this proceeding. SIRSA recommended that it be designated as the interservice frequency coordinator to enforce this geographic separation plan for adjacent channels. In its Reply, Telocator recognized that there may be adjacent channel interference due to the interleaving of paging and SIRS frequencies, but recommended that no specific rules on this subject be adopted. Instead, Telocator suggested that the parties themselves informally coordinate the use of these frequencies.

10. We have carefully considered this matter and we conclude that the public interest would best be served by following the same approach to this issue as we followed in Docket No.

⁸ *Allocation of Frequencies in the 35 MHz and 43 MHz bands*, Docket No. 19327, *First Report and Order*, 35 FCC 2d 492 (1972), *partial recon. pending*.

⁹ In simplex service, the mobile and base transmitters operate on the same frequency.

¹⁰ Adjacent channel interference occurs when the sidebands of radio transmissions degrade the performance of base stations receivers in adjacent channels.

¹¹ Special Industrial Radio Service Association, Inc. (SIRSA) is the frequency advisory committee for the SIRS.

19327—*i.e.*, we encourage common carrier and the private radio licensees to informally coordinate the selection of transmitter sites and frequencies to minimize adjacent channel interference. See 35 FCC 2d at 493-494. While we recognize that, without any geographic separation between the common carrier and private radio stations on adjacent channels, interference is possible, we decline at this time to adopt a specific rule to govern this situation because such a rule would be extremely burdensome on our licensees and would have an inordinate effect on our administrative resources. In addition, since the adoption of Docket No. 19327, SIRSA, AT&T, and the other wireline carriers have been informally coordinating the use of these frequencies and we are not aware of any complaints from licensees or subscribers concerning adjacent channel interference. We strongly encourage, therefore, applicants and licensees to cooperate in the coordination of their use of these frequencies. The informal arrangement that there be a six-mile separation between SIRS and common carrier licensees appears to have successfully minimized interservice adjacent channel interference. Therefore, we will make the presumption that this six-mile separation should continue to apply to the placement of transmitter sites for future stations by common carrier and SIRS licensees. Since common carrier applications appear on Public Notice when they are filed, SIRSA and SIRS licensees will have an opportunity to comment on the possibility of adjacent channel interference that is not resolved on an informal basis. If agreement is not reached before a construction permit is issued, the applicant for a station within six miles will have to overcome a presumption of harmful interference.

11. *43 MHz Frequencies.* In the *Notice*, the Commission solicited suggestions on alternative uses for the 43 MHz frequencies. The comments proposed various uses for these frequencies: All-Florida argued that the Commission should extend the allocation of 43 MHz for paging, absent actual TV interference; Telocator and MCCA suggested low-power control and repeater stations; Jubon proposed low-power "on-site" paging services; SIRSA recommended two-way simplex in the SIRS; and Susquehanna Mobile suggested common carrier two-way simplex.

12. We have reviewed the proposed uses for the 43 MHz frequencies. While many of the comments suggested uses that are technically acceptable for the 43

MHz frequencies, none of the alternatives demonstrated a substantial public need. In comparison, in the *Notice* we found that there was a substantial demand for paging. Nevertheless, we declined to propose paging for the 43 MHz frequencies because of the TVI problem. However, as discussed in note 2, *supra*, we recently concluded that the TVI situation was not as severe as originally anticipated and that, through a developmental grant policy, we could effectively manage the 43 MHz situation. See *Interim Procedures II, supra*. In view of this, and in view of the demand for paging, we conclude that the public interest would best be served by making the 43 MHz frequencies available for paging. However, in accordance with the policies established in *Interim Procedures II, supra*, the 43 MHz frequencies will only be available on a developmental basis. In addition, in order to protect the mobiles operating on 43 MHz from co-channel interference from new paging base stations, applicants for the 43 MHz frequencies will be required to submit an engineering study of the potential interference to co-channel two-way services within 201 km (125 miles). See Appendix D. Authority will be granted if the predicted undesired field strength at the existing base station antenna does not exceed 14 decibels above one microvolt per meter.

13. *Co-channel interference.* Finally, in accordance with Section 22.15(b)(2) of the Rules,¹⁰ applications for these frequencies are required to contain interference studies demonstrating that the proposed facility will not cause harmful interference to co-channel facilities. In this regard, for the purpose of co-channel interference protection, in accordance with § 22.504 of the Rules, a field strength contour of 31 decibels above 1 microvolt per meter will be regarded as determining the reliable service area of the existing two-way stations, and a field strength contour of 43 decibels above 1 microvolt per meter will be regarded as the reliable service area of the paging stations on these frequencies.

Comparative Consideration Of Mutually Exclusive Applications

14. In the *Notice* we invited comments on the feasibility and effectiveness of alternatives to oral comparative

¹⁰The Commission recently enacted Section 22.15(b)(2) of the Rules to make clear that applicants, at the time of filing applications for this service, must demonstrate interference-free operation. *Memorandum Opinion and Order*, Mimeo 27848, released July 30, 1980, *recon. denied*, FCC 81-126, released April 10, 1981.

hearings in cases of mutually exclusive applications. Many parties opposed the present examination of alternative comparative procedures in this proceeding because of the pendency of this issue in other proceedings and because of the questionable legality of these alternatives and the consequent delay. In addition, most of the commenters were opposed to the use of auctions and lotteries. The auction method was criticized because it might work to the disadvantage of minority and small businesses, and might present antitrust problems. The lottery alternative was criticized as being a form of gambling, inappropriate to the Commission's job of managing the spectrum to the best advantage to the public. However, a few commenters supported the use of "a properly designed" lottery in the situation when each applicant has been given an opportunity to demonstrate its superiority and no material superiority could be demonstrated by any applicant. Further, most of the commenters favored the use of paper record proceedings, when possible.

15. After carefully reviewing the comments, we conclude that the public interest will best be served by adopting the same "paper" hearing approach for this proceeding that we adopted in our recent decision in *Cellular Communications Systems*, CC Docket No. 79-318, FCC 81-161, released May 4, 1981. After applications are received by the Commission and reviewed in accordance with the basic qualifications requirements, competing applications will be designated for comparative consideration and the parties will be permitted to utilize normal discovery processes and submit briefs and appended evidence (under oath) to demonstrate superiority. The Administrative Law Judge would then review the pleadings and, based on the comparative issues designated, determine what disposition of the competing applications would best serve the public interest, convenience and necessity. We do not envision that substantial issues of fact requiring oral testimony will arise, except in unusual situations. We will, however, delegate to the Presiding Officer the authority to receive oral testimony, to provide for cross-examination of witnesses and to adopt other procedures not inconsistent with the Commission's Rules or the Act upon a substantial showing that a party will be prejudiced by the submission of all the evidence in written form. See 5 U.S.C. 556(d).

16. We believe our "paper" procedure is consistent with the Communications

Act, the Administrative Procedure Act, and the applicable case precedent dealing with comparative consideration. See *Cellular Communications Systems, supra*. This procedure permits applicants to demonstrate their superiority and provides the Presiding Officer with the authority to receive oral testimony if it is necessary. This streamlined procedure should expedite the hearing process while still protecting the procedural interests of the competing applicants. For the present time, we are declining to adopt the more controversial approaches for the selection of competing applicants, such as lotteries or auctions. These approaches will be examined more fully in our *900 MHz Paging* rulemaking.¹¹

17. *Miscellaneous matters.* Several parties commented on various other issues in this proceeding. Telocator suggested that Section 22.31(e) of the Rules be amended to explicitly indicate that a change of frequency pursuant to a settlement does not start a new 60-day cut-off period, and that the frequencies proposed in Docket No. 19327 be made available to the public. Jubon suggested the elimination of the separate frequency allocation plan for the wireline companies and the RCCs for the 150 MHz paging frequencies, and a simplified application procedure for fill-in base-station transmitters. Susquehanna argued that paging should be prohibited on a secondary basis on the two-way channels.

18. While these proposals may have merit, they are beyond the scope of this rulemaking proceeding. Therefore, we reject these proposals at this time. However, the parties may file petitions for rulemaking in the future asking that we initiate separate rulemaking proceedings to consider these proposals further.

Conclusion

19. Accordingly, it is ordered, that pursuant to the authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. 154(i), 303(r)), Part 22 of the Commission's Rules and Regulations is amended as specified in Appendix B. These amendments shall become effective 45 days after publication of this *Order* in the *Federal Register*. We will begin accepting applications filed pursuant to the new § 22.501(a)(1) as of the effective date of

¹¹*Notice of Proposed Rulemaking*, general docket No. 80-183, FCC 80-231, released May 8, 1980, *Supplemental Notice of Proposed Rulemaking*, FCC 80-510, released November 4, 1980 (900 MHz Paging).

these amendments. See § 1.427 of the Commission's Rules.

20. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1062, 1063; (47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Parties Filing Comments and Reply Comments

Comments

- Airsignal International, Inc.
- All-Florida Communications Company
- American Telephone and Telegraph Company (AT&T)
- Jan David Jubon, P.E.
- Lafourche Telephone Company, Inc.
- Mobile Communications Corporation of America (MCCA)
- Paging—Western Washington
- Special Industrial Radio Service Association, Inc. (SIRSA)
- Susquehanna Mobile Communications, Inc.
- Tel-Paging, Inc.
- Telocator Network of American (Telocator)

Reply Comments

- Airsignal International, Inc.
- AT&T
- LIN Broadcasting Corporation
- National Telecommunications and Information Administration (NTIA)
- Radio Broadcasting Company
- SIRSA
- Tel-Paging, Inc.
- Telocator
- Whidbey Telephone Company

Appendix B

Part 22, Title 47 of the Code of Federal Regulations is amended as follows:

(1) Section 22.32 is amended by the addition of paragraph (e)(6):

§ 22.32 Consideration of applications.

(e) * * *

(6) The application is filed pursuant to § 22.501(a)(1) and is entitled to comparative consideration (under § 22.31) with another application (or applications); in such cases the hearing shall conform to the comparative evaluation procedure described in § 22.36.

(2) Section 22.36 is added as follows.

§ 22.36 Comparative evaluation of mutually exclusive applications filed pursuant to § 22.501(a)(1).

(a) In order to expedite action on mutually exclusive applications filed pursuant to § 22.501(a)(1), comparison on all such applications shall be undertaken in accordance with the following procedures:

(1) All mutually exclusive applications that are acceptable for filing and meet

our basic qualifying criteria shall be designated for a comparative hearing. Applications involving basic qualifying issues shall additionally be designated for hearing on those issues on an expedited basis as described in paragraph (b) of this section.

(2) The comparative hearing shall be conducted by a presiding officer named in the designation order or in a subsequent order.

(3) Within 60 days of the date of designation of a presiding officer, all parties whose applications have been designated for further consideration shall submit briefs and written evidence in an attempt to present a showing that they are superior to all other competing applicants. Responsive pleadings may be filed within 15 days.

(4) Upon evaluation of the applications, the information submitted, and such other matters as may be officially noticed the presiding officer will issue a decision granting one proposal which it concludes would best serve the public interest, convenience and necessity. The decision will report briefly and concisely the reasons for the Commission's selection and will deny the other application(s). [This decision shall be considered final.]

(b) *Expedited hearing procedures.* In any hearing to which this section applies, the presiding officer shall establish a strict timetable for discovery, prehearing procedures, and reception of evidence. All testimony shall be in written form except upon order of the presiding officer. Such an order will be issued upon a substantial showing that a party will be prejudiced by the submission of all evidence in a written form. The presiding officer shall utilize such procedures as shall result in the expeditious resolution of all factual issues and otherwise serve the ends of justice.

(3) In § 22.501, paragraph (a) is revised to read as follows:

§ 22.501 Frequencies.

(a)(1) For assignment, subject to the limitations set in paragraphs (a)(2) through (a)(3), to stations of communication common carriers for use exclusively in providing a one-way signalling service to mobile receivers:

MHz		
35.26	35.54	43.42
35.30	35.62	43.46
35.34	35.66	43.50
35.38	43.26	43.54
35.42	43.30	43.62
35.46	43.34	43.66
35.50	43.38	

Note.—Prior to September 11, 1981 these frequencies were available for assignment for two-way services. Existing operations of this

nature on these frequencies will be permitted to continue. Applications to modify these existing facilities will be accepted as long as at least fifty percent (50%) of the proposed service area is already covered by the existing service area. No applications for new two-way facilities on these frequencies will be accepted.

(2) Applications requesting authority to establish a one-way signalling operation on a frequency of paragraph (a)(1) will not be granted if there is an existing station providing two-way services on this frequency located more than 1200 kilometers and less than 2400 kilometers from the proposed station for frequencies below 40 MHz. Above 40 MHz the exclusion extends from 1500 to 2000 kilometers.

(3) Applications requesting authority to establish a one-way signalling operation on a frequency of paragraph (a)(1) greater than 40 MHz must be accompanied by an engineering study of the potential interference to existing two-way services within 125 miles (201 km). Authority will be granted if the predicted undesired field strength at the existing base station antenna does not exceed 14 decibels above one microvolt per meter. The predicted value shall be calculated by the methods of Bullington (Kenneth Bullington, "Radio Propagation at frequencies above 30 Megacycles", *Proceedings of the I.R.E.*, October, 1947). The field strength of concern is that which would be found at the receiving antenna of the existing base station. However, it will be satisfactory to submit interference studies assuming this antenna height is the same as that of the base-transmitting antenna as filed with the Commission by the two-way station operator.

Note.—Appendix C will not appear in the CFR.

Appendix C.—Co-Channel Protection of Existing Two-Way Services From Skip Interference

The frequencies being made available for one-way signalling have previously been allocated for two-way communications, and their use has been partitioned in a system of zones designed for protection against skip¹ interference. The previous zoning restrictions are being removed so that greater geographical reuse of these frequencies can be obtained to satisfy the present demand for paging channels. Removing the zone restrictions appears to be in the best interest of the paging services.

¹ Skip refers to propagation over relatively long distances by means of reflection of radio waves from ionospheric layers.

The rules revised here still protect existing two-way stations from the effects of skip interference. This is done by establishing an annular region of protection extending from 1200 kilometers (746 miles) to 2400 kilometers (1492 miles) around each such station. The 35-MHz frequency used by that station may not be assigned to a one-way signaling applicant within this zone. The 43-MHz frequency used by that station may not be assigned in the range between 1500 kilometers (932 miles) and 2000 kilometers (1243 miles).

The nature and severity of skip interference in DPLMRS applications have been described in a Technical Memorandum of the Office of Science and Technology.² The memorandum identified two types of skip interference which can affect DPLMRS systems. One of these is due to reflections from the F2 ionospheric layer, a phenomenon most likely to occur in winter months during the peak of the 11-year sunspot cycle. However, since F2 skip distances may be from half-way to all the way across the United States, it is not considered feasible to prescribe a systematic protection scheme for this type of interference.

The annular protection regions are designed to minimize the potential for sporadic E interference. The quantitative considerations are as follows:

The signal requiring protection is assumed to be at a level of 20 decibels above 1 microvolt per meter or higher. This assumption is consistent with the protection criteria reflected in the rules regarding reliable service areas (section 22.504). The assumed value of 20 dB(uV/m) is specified in FCC Report R-6406³ as an estimation of the minimum requirement for commercially acceptable service for frequencies between 35 and 44 MHz.

The degree of protection deemed satisfactory is represented by a desired-to-undesired signal power ratio of 6 dB which is to prevail or be exceeded at least 95% of the time, May through August. We also assume that the effective radiated power of the potential interference source is 500 watts, the maximum permitted in the DPLMRS. With these assumptions CCIR curves⁴

can be used to determine appropriate distance separation.

The formula^{2,4} for use with the CCIR curves is

$$F = F_0 + P + G_1 - L_1 - \Gamma$$

where

F = predicted field strength in dB above 1 microvolt/meter, dB(uV/m)

F₀ = theoretical inverse distance field strength in dB(uV/m) for 1kW radiated power and isotropic antenna.

P = transmitter power in dB relative to 1 kW, dB(kW)

G₁ - L₁ = net gain (dB) of transmitting antenna system relative to isotropic radiation.

Γ = ionospheric attenuation from Figure 2 of Reference.⁴

The quantity P + G₁ - L₁ is the equivalent isotropically radiated power (EIRP) which we set equal to approximately -1 dB(kW) corresponding to 500 watts ERP. The quantity F must not exceed 20 dB(uV/m) minus the acceptance ratio of 6 dB, or 14 dB(uV/m). When these values are inserted, the resulting inequality is $15 < F_0 - \Gamma$.

and it is found from the referenced CCIR curves that this condition holds from about 1200 kilometers to 2400 kilometers from the transmitter for 35-MHz frequencies. At 43 MHz the condition holds from about 1500 to 2000 kilometers.

This ring of protection would be different under other assumptions. For example, there would be no protection ring necessary above about 40 MHz if computations were based on a 10%-of-the-time criterion in place of 5%. The greater degree of protection (5%) was chosen considering the fact that the propagation of interfering signals by sporadic E-layer reflections may last up to one or two hours and hence cause severe disruption of service.

Note.—Appendix D will not appear in the CFR.

Appendix D.—Co-Channel Protection Of Two-Way Base Receivers From 43-MHz Paging Transmissions

The 43-MHz frequencies being made available for paging were previously allocated for talk-back transmissions from mobiles of two-way systems. Now with paging permitted on these frequencies, there is a potential interference problem because the much greater height of the paging transmitter antennas gives them an undesired advantage over low mobile antennas. To minimize this potential for interference, the paging transmitter must be limited in

its combination of effective radiated power and antenna height to a degree dependent upon distance to existing two-way systems.

The new rules address this problem by requiring applicants for 43-MHz paging authorizations to submit interference analyses whenever there is an existing two-way system using the desired frequency within 125 miles. The interference analysis is to show that the predicted undesired field strength at the existing base station antenna does not exceed a certain maximum value which is set at 14 decibels above the level of 1 microvolt per meter. The methods of Bullington¹ are to be used for prediction.

The signal requiring protection is assumed to be at a level of 20 dB above 1 microvolt per meter or higher, and it is assumed to be adequately protected if the undesired signal is 6 dB less. The value 20 dB(uV/m) is found in FCC Report No. R-6406, the Carey Report,² as an estimate of the minimum requirement for commercially acceptable service for low VHF frequencies. The acceptance ratio of 6 dB is also found in R-6406. These numbers derive from tests conducted almost 30 years ago, and more recent data might provide a set of requirements more accurately reflecting the real conditions for interference. However, the old values are the basis for the definition of reliable service area contained in section 22.504 of the rules and for the interference studies required by section 22.15. We believe the historically accepted values lead to suitable criteria for minimizing the type of interference of concern here.

For the type of interference of concern here, however, the field strength prediction method required by section 22.15 of the rules is not a suitable method. That section of the rules and R-6406 apply to co-channel situations in which the systems being protected from one another are both two-way systems or in which they are both paging operations. The propagation paths involved in these situations are between mobile (or portable) and base station units. Hence one of the antennas involved is in a relatively disadvantaged location. The Bullington methods are better suited when both antennas are well sited and high.

Table 1 gives examples of the limitations in effective radiated power

¹ Kenneth Bullington, "Radio Propagation at frequencies above 30 Megacycles," *Proceedings of the IRE*, October, 1947, pp. 1122-1136.

² R. B. Carey, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Services," FCC Report No. R-6406, June 1964.

³ R. Eckert and J. Wang, "Investigation of the Effects of Skip Interference on Operations at 35 MHz in the Domestic Public Land Mobile Radio Service", Technical Memorandum No. 12, Research and Analysis Division, Office of Science and Technology, FCC, April 21, 1980.

⁴ R. B. Carey, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Services", FCC Report No. R-6406, June, 1964.

⁵ "Recommendation 534: Method for Calculating Sporadic-E Signal Strength", *Recommendations and*

Reports of the CCIR, 1978; 14th Plenary Assembly, Kyoto, 1978; Vol. VI, pp. 148-166, International Telecommunications Union, Geneva.

which the new rules impose on paging systems. The examples are cases in which the intervening terrain is relatively smooth, that is the horizons viewed from the two antennas are at about the same distances as would be calculated for a smooth earth. The refractive index assumed in developing

Table 1 is that corresponding to an effective earth radius of 4/3 times actual. We expect that interference studies submitted in accordance with these rules will usually assume a 4/3 earth. If another value is used, it should be explicitly justified.

mutual interference at still higher undesired signal levels.

Table 1.—Requirements for Minimizing Co-Channel Interference Potential Computed Using Bullington's Field Strength Prediction Methods¹

Distance between stations (miles)	Maximum permissible ERP in decibels (W) for indicated antenna height of proposed station					
	100 ft	200 ft	500 ft	1,000 ft	2,000 ft	5,000 ft
40	11.2	5.2	-0.9	-7.8	-15.3	-26.8
50	17.6	11.6	5.7	-1.1	-9.3	-23.4
60	23.6	17.6	12.2	5.1	-3.6	-19.6
70	² 27	23.3	18.0	10.7	1.7	-15.6
80	² 27	² 27	24.0	16.5	6.9	-11.6
90	² 27	² 27	² 27	22.0	12.5	-7.3
100	² 27	² 27	² 27	² 27	18.0	-1.8
110	² 27	² 27	² 27	² 27	23.8	4.0
120	² 27	² 27	² 27	² 27	² 27	10.5

¹ Assumptions: Freq = 43,000 MHz, Smooth Earth propagation conditions, Effective/true Earth radius ratio = 1.33, Field strength at protected receiver = 14.0 dB (uV/m) Max. Protected Base Receiver Antenna Height = 100.0 Feet

² Indicates maximum permitted in the DPLMRS.

Note.—Appendix E will not appear in the CFR.

Appendix E.—Suggested Approach for Adjacent Channel Protection From 35- and 43-MHz Paging Transmissions

Channels of the Private Radio Service are interleaved with DPLMRS channels in the 35- and 43-MHz band, and comments in this docket expressed concern over possibilities for adjacent channel interference. The possible problems of this type have been limited because there are relatively few DPLMRS systems operating in these bands. However, the expectation is that there will be many new DPLMRS applications submitted now that paging is permitted. Hence there is an increased need for coordinating the frequency choice and assignment procedure in these bands.

The interleaved structure in these bands is shown in Table 1. The allocation structure at 43 MHz is the same as shown in Table 1 for 35-MHz channels. Just add 8 MHz to the Table 1 frequencies.

The type of interference of concern here occurs when the sidebands of paging transmissions degrade the performance of base station receivers in adjacent channels. Mobile stations can be affected as well, and there is some possibility that DPLMRS receivers will be interference victims of private radio transmitters. However, the base-to-base radio interference path is much more likely to be a problem and we do not concern ourselves here with the other possibilities. Paging systems, then, are not so likely to be victims of interference because they do not involve

a vulnerable base station receiving antenna. The more severe problem is adjacent channel interference from paging transmitters to private radio base receivers.

The new rules do not incorporate specific technical requirements for minimizing the potential for adjacent channel interference. In place of such requirements, the Commission encourages applicants and licensees to cooperate in the coordination of their use of these frequencies. The informal arrangement that there be a six mile separation between SIRS licensees and those of the DPLMRS appears to have successfully minimized such interference and we presume that this separation rule will continue to be applied.

Although we are not establishing technical requirements relative to this type of interference, we describe here basic considerations which might be applied in the future in case interference problems need to be resolved or in case there is a need for spacing closer than 6 miles.

A suitable interference analysis would show that the predicted field strength at the existing base station antenna does not exceed 85 decibels above 1 microvolt per meter. This maximum can be determined as a combination of a protected signal strength of 20 dB(uV/m) and a desired-to-undesired acceptance ratio of -65 dB. While there is only a very limited amount of data to support the -65 dB desired-to-undesired ratio, it appears to be a conservative choice in the sense that in actuality adjacent channel land mobile transceivers can operate without

Table 1.—Interleaved Frequency Allocation Structure in 35-MHz Band

DPLMRS frequency (MHz)	Private radio service frequency (MHz)
35.20- ¹ 35.26	35.18 (Business Radio Service)
35.30	35.26 (SIRS)
35.34	35.32 (SIRS)
35.38	35.36 (SIRS)
35.42	35.40 (SIRS)
35.46	35.44 (SIRS)
35.50	35.48 (SIRS)
35.54- ² 35.62	35.52 (SIRS)
35.66	35.64 (SERS)
	35.68 (SERS)

¹ Block of 4 DPLMRS channels of which only one, 35.26 MHz, is affected by the present rulemaking.

² Block of 5 DPLMRS channels of which only two, 35.54 and 35.62, are affected by the present rulemaking.

SIRS = Special Industrial Radio Service
SERS = Special Emergency Radio Service. The SERS frequencies included in this table are allocated exclusively for paging, and adjacent channel interference between paging operations is not believed to be a problem.

Recommended to us in comments in this proceeding is a report by R. T. Buesing¹ which shows the ratio of -65 dB as applicable to high band VHF.

The choice of 20 dB(uV/m) as the signal level to be protected is most appropriate for urban areas where the level of man-made noise is high. These are also the areas which presumably require a relatively large number of paging channels, and the technical criteria suggested here for adjacent channel interference are balanced in favor of the requirements of urban areas.

Where man-made noise levels are lower, as in rural areas, private radio systems may be sensitive to lower signals so that the technical criteria suggested here may be insufficient for preventing interference of a perceptible degree. These technical criteria do, however, protect private radio systems in a reciprocal way, affording as much protection as DPLMRS two-way systems require among themselves. The value 20 dB(uV/m) is found in FCC Report No. R-6406, the Carey Report,² as an estimate of the minimum requirement for commercially acceptable service for low VHF frequencies.

Table 2 gives examples of the limitations in effective radiated power, antenna height and distance separation implied by the foregoing considerations.

¹ R. T. Buesing, "Modulation Methods and Channel Separation in the Land Mobile Service," *IEEE Trans. Vehicular Technology*, Vol. VT-19, May 1970. See Figure 1, page 188.

² R. B. Carey, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Services," FCC Report No. R-6406, June, 1964.

Table 2.—Requirements for Minimizing Adj-Channel Interference Potential Computed Using Bullington's Field Strength Prediction Methods¹

Distance between stations (miles)	Maximum permissible ERP in decibels (W) for indicated antenna height of proposed station					
	100 ft	200 ft	500 ft	1,000 ft	2,000 ft	5,000 ft
1.0	12.2	12.2	12.2	12.2	12.2	12.2
1.5	18.5	15.7	15.7	15.7	15.7	15.7
2.0	23.5	18.2	18.2	18.2	18.2	18.2
2.5	*27	21.3	20.2	20.2	20.2	20.2
3.0	*27	24.5	21.7	21.7	21.7	21.7
3.5	*27	*27	23.1	23.1	23.1	23.1
4.0	*27	*27	24.2	24.2	24.2	24.2
4.5	*27	*27	25.3	25.3	25.3	25.3
5.0	*27	*27	26.2	26.2	26.2	26.2
5.5	*27	*27	*27	*27	*27	*27

¹ Assumptions: Freq.—43,000 MHz. Plane Earth propagation conditions. Field strength at protected receiver—85.0 dB(μ V/m). Max. Protected base receiver antenna height—100.0 feet.
* Indicates maximum permitted in the DPLMRS.

[FR Doc. 81-21882 Filed 7-27-81; 8:48 am]

BILLING CODE 6712-01-M

47 CFR Part 68

Connection of Terminal Equipment to the Telephone Network; Editorial Amendment of the Commission's Rules To Specify Standard Plugs and Jacks for the Connection of Terminal Equipment to the National Telephone Network

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends § 68.502(e) of its rules on standard plugs and jacks for the connection of terminal equipment to the National Telephone Network to remove certain notes appearing in subsections (1), (2), (3) and (4) which are no longer applicable as the result of an amendment of Section 68.308.

EFFECTIVE DATE: July 14, 1981.

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

FOR FURTHER INFORMATION CONTACT: William H. von Alven, Common Carrier Bureau, (202) 632-6440.

Order

Adopted: July 14, 1981.

Released: July 15, 1981.

In the Matter of Editorial amendment of Part 68 of the Commission's Rules to specify Standard Plugs and Jacks for the connection of telephone equipment to the National Telephone Network.

§ 68.502 [Amended]

1. Part 68 of title 47 of the Code of Federal Regulations is amended by removing the *Notes* appearing in § 68.502 (e)(1), (e)(2), (e)(3), and (e)(4).

2. These deletions were inadvertently overlooked when § 68.308 was amended in Memorandum Opinion and Order, Docket 19528, FCC 77-396, released June 20, 1977.

(Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-21955 Filed 7-27-81; 8:48 am]

BILLING CODE 6712-01-M

47 CFR Part 67

[Docket No. 21263; FCC 81-312 and 81-313]

Jurisdictional Separations; Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the United States Mainland and Hawaii and Alaska

AGENCY: Federal Communications Commission.

ACTION: Final rule and granting of joint motions.

SUMMARY: In *Notice of Inquiry, Notice of Proposed Rulemaking*, Docket 21263, 64 F.C.C. 2d 1033 (1977), the Commission initiated a proceeding to determine what changes, if any, should be made in existing mainland jurisdictional separations procedures so that they could be made applicable to Alaska and Hawaii. Jurisdictional separations procedures are used to determine costs of providing local and interstate telephone calls and affect local and long distance rates. At the present time jurisdictional separations for mainland services are determined under the NARUC-FCC Separations Manual, incorporated by reference into part 67 of the Commission's Rules, 47 C.F.R. Part 67. In the present action the Commission has terminated Docket 21263 and concluded that the Separations Manual

should also be applicable to services for Alaska and Hawaii. This action was based on a recommended decision of the Federal-State Joint Board in Docket 21263. In a related decision, *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the United States Mainland and Alaska and Hawaii*, FCC 81-313, released July 8, 1981, the Commission approved settlement agreements reached by the American Telephone and Telegraph Co., Alascom, Inc., and the Hawaiian Telephone Co. in which they requested the Commission to conclude Docket 21263 by application of the NARUC-FCC Separations Manual to Alaska and Hawaii. The Commission's final order in Docket 21263, the decision of the Federal-State Joint Board and the related decision of the Commission are set forth below.

EFFECTIVE DATE: June 29, 1981.

FOR FURTHER INFORMATION CONTACT:

Patrick Donovan, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Adopted: June 29, 1981.

Released: July 8, 1981.

In the matter of *Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the United States Mainland and Hawaii and Alaska*, Docket No. 21263; W-P-C 649, et al.

Report and Order

By the Commission:

1. The Commission has under consideration the Memorandum Opinion and Order of the Federal-State Joint Board on separations procedures for Hawaii and Alaska, adopted June 29, 1981, which is attached hereto. We agree with the findings of the Joint Board.

2. Accordingly, it is ordered, That the attached Memorandum Opinion and Order of the Federal-State Joint Board IS ADOPTED as the Commission's Report and Order herein.

3. It is further ordered, That, pursuant to the provisions of Sections 4(i), 205, 213, 221(c), 221(d), and 403 of the Communications Act of 1934, as amended, the NARUC-FCC Separations Manual, which is incorporated by reference into Part 67 of the Commission's Rules and Regulations, SHALL APPLY to Hawaii and Alaska.

4. It is further ordered, That, § 67.1(e) of the Commission's Rules and

Regulations, 47 CFR 67.1(e), IS REVISED to read as follows:

§ 67.1 Separations Manual; incorporation by reference.

(e) These Separations Procedures apply to Puerto Rico, the United States Virgin Islands, Alaska, and Hawaii.

5. It is further ordered, That this proceeding is terminated.

(Secs. 4, 205, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Memorandum Opinion and Order

Adopted: June 29, 1981.

Released: July 6, 1981.

By the Federal-State Joint Board:

1. Before the Federal-State Joint Board are Joint Motions¹ requesting that we recommend to the Federal Communications Commission (the Commission) prescription of the NARUC-FCC Separations Manual for application to Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS) between the United States Mainland and Alaska and Hawaii. Comments have been filed by Southern Pacific Communications Company (SPCC), members of Congress from Alaska and Hawaii² and the Governors of Alaska and Hawaii. The American Telephone and Telegraph Company (AT&T) has filed an opposition and the Hawaiian Telephone Company (Hawtel) a motion to strike with respect to SPCC's comments.³ For the reasons indicated below, we will grant the Joint Motions.

Background

2. In light of its previous determination that the public interest required that interstate MTS and WATS rates between the United States mainland and Alaska and Hawaii should be integrated into the mainland domestic rate pattern,⁴ the Commission

¹ A "Joint Motion" filed April 25, 1980 by the American Telephone and Telegraph Company and Alascom, Inc. and a "Joint Motion" filed July 23, 1980 by the American Telephone and Telegraph Company and the Hawaiian Telephone Company. The respective agreements are attached hereto as Appendices A and B.

² From Alaska, United States Senators Ted Stevens and Mike Gravel and Congressman Don Young and from Hawaii, United States Senator Daniel K. Inouye and Congressmen Daniel K. Akaka and Cecil Heffelf.

³ We find that the public interest requires consideration of SPCC's comments and accordingly the motion to strike is denied.

⁴ See *Establishment of Domestic Communications—Satellite Facilities*, 35 FCC 2d 844 (1972) in which we determined that the public interest required that interstate MTS and WATS rates between the United States mainland and Hawaii and Alaska be integrated into the mainland domestic rate pattern; *Integration of Rates and Services*, 81 FCC 2d 380 (1976) in which we directed that such integration should be accompanied by cost-based settlements based on prescribed jurisdictional separations procedures. See also

initiated the present proceeding to determine what changes, if any, should be made in existing mainland jurisdictional separations procedures so that they could be made applicable to Alaska and Hawaii. *Notice of Inquiry, Notice of Proposed Rulemaking*, 64 FCC 1033 (1977). At the present time jurisdictional separations for mainland services are determined under the NARUC-FCC Separations Manual, incorporated by reference into Part 67 of the Commission's Rules, 47 CFR Part 67. In a separate proceeding the Commission has concluded that the Separations Manual should be applicable to MTS and WATS between the U.S. Mainland and Puerto Rico and the Virgin Islands. *Report and Order*, Docket No. 21264, 72 FCC 2d 699 (1979).

The Joint Motions and Agreements

3. As indicated, AT&T, Hawtel and Alascom have submitted Joint Motions accompanied by their respective agreements. Briefly stated, they request that we recommend to the Commission prescription of the Separations Manual, without modification, for application to interstate MTS and WATS between the United States mainland and Alaska and Hawaii. In their agreements, the carriers propose January 1, 1985 as the final date for rate integration. This would require modification by the Commission of the existing date which is ninety days after prescription of separation rules for Alaska and Hawaii.⁵ Pending the extended date for rate integration, the carriers propose an interim settlements procedure. The proposed settlements procedure is essentially the same for settlements between AT&T and Hawtel and between AT&T and Alascom, and provides that settlements will consist of a uniform cost-based portion calculated according to the existing Separations Manual plus a so-called transitional supplement. The transitional supplement is proposed to be based on a declining percentage of the cumulative total growth over 1979 in actual MTS and WATS interstate revenues.⁶ The declining percentages differ somewhat in each agreement. In addition, for the settlement for 1980 between Hawtel and AT&T, it is proposed that it be based on 78 percent of actual two-way interstate MTS and WATS revenues. As indicated, the interim settlement procedure will terminate on January 1, 1985 at which time full rate integration will take place. The agreement between Hawtel and AT&T also specifies that the Separations Manual be applied for allocation of exchange costs for international MTS, including use of the domestic interstate composite station rate ratio.

Memorandum Opinion and Order, FCC 78-803, released September 29, 1978 concerning the final date for rate integration.

⁵ See *Memorandum Opinion and Order*, FCC 78-803, released September 29, 1978.

⁶ For example, the agreement between Hawaiian Telephone Company and the American Telephone and Telegraph Company provides that the applicable percentage for 1982 will be 60%. This means that 60% of the revenues in excess of 1979 revenues will be paid by AT&T to Hawtel as the transitional supplement. In 1983 the percentage is 35%, in 1984 20%.

Contentions of the Parties

4. The members of Congress and the Governors of the States of Alaska and Hawaii support the agreements of the carriers and urge their acceptance and approval. SPCC addresses only the agreement between Hawtel and AT&T. It states that it does not object to the agreement in general but only to the structure of the proposed transitional supplement. Specifically, it objects to the fact that the transitional supplement will be based on a percentage of total revenue growth of MTS and WATS. It claims that this will give Hawtel the incentive to resist introduction of competitive MTS and WATS-type services⁷ and notes that Hawtel has filed a petition to deny SPCC's application for authorization to provide its SPRINT service in Hawaii. SPCC urges that as an alternative we prescribe that the transitional supplement portion of the proposed interim settlements procedure consist of a lump sum payment to Hawtel.

5. In its opposition to SPCC's comments, AT&T states that the agreements should be accepted and approved because SPCC's contentions are speculative, because the time period until rate integration is relatively short, because the declining percentages called for in the agreements will minimize over time the effect of any diverted revenue growth and because a lump sum payment would inhibit Hawtel's incentive to encourage growth in services, which would be contrary to the public interest.

Discussion

6. The Joint Motions and accompanying agreements provide for a method of jurisdictional separations and for full rate integration of MTS and WATS services between the United States mainland and Alaska and Hawaii. As such, these agreements achieve the fundamental purposes of Docket No. 21263 and of related proceedings looking toward rate integration.⁸ Accordingly, we find compelling public interest reasons for their acceptance and approval as requested by the parties.

7. We are aware that the agreements require deferral of the date for final rate integration until January 1, 1985 and this must be considered an undesirable aspect of the agreements since it is in the public interest that this be achieved at the earliest possible date. However, the carriers' agreements are expressly contingent on this deferral and we must balance the delay in full rate integration against the delay that would inevitably result if the agreements fail and further proceedings in Docket No. 21263 become necessary. These further proceedings could potentially be of indefinite duration. For this reason, and because rate modifications consistent with the agreements will diminish the disparity of rates between mainland and offshore points, we conclude that the deferral requested by the carriers is not contrary to the public interest such that rejection of the proposed agreements is warranted.

⁷ Presumably this is because Hawtel would resist competition in order to maximize supplemental payments.

⁸ See Note 4, supra.

8. We find little reason to object to the proposed interim settlements procedure. In view of the fact, as indicated, that the agreements are the vehicles for the achievement of major, long-standing Commission policy objectives, any concerns about the interim settlement procedures are secondary unless the interim proposals are egregiously unreasonable. In this connection, we note that the interim settlement procedures have been forged in the context of negotiations between the parties and appear to represent compromise positions between the carriers. As such, although they do not necessarily reflect optimum settlement procedures, nothing in them appears clearly unreasonable. Specifically, the use of decreasing percentages each year to calculate the transitional supplement appears to be a reasonable phased-in approach to final rate integration.

9. SPCC's objections do not change this conclusion. Although it claims that the method of calculating the transitional supplement will provide an incentive for Hawtel to engage in anticompetitive conduct, we do not believe that the slight effect that SPCC competition might have on payments to Hawtel under the interim settlements procedure would be likely to affect Hawtel in its dealings with SPCC. AT&T will continue to carry the vast preponderance of traffic under any reasonable scenario. If at a later date SPCC encounters difficulty in obtaining any needed interconnection from Hawtel, it can make its problems known to the Commission. We also note that these are interim proposals, and the basis for any objections will be eliminated when final rate integration is achieved. Finally, we find that SPCC's objections are insufficient because it has not supported its claim that a lump sum payment would be preferable. In particular, it has provided no suggestions as to how such a payment would be calculated.

10. Except for the objections to the interim settlements procedure offered by SPCC, the carriers' request that the Separations Manual be applicable without modification to MTS and WATS between the U.S. Mainland and Alaska and Hawaii is unopposed. However, we are mindful of the allegedly unique and difficult problems associated with serving Alaska and Hawaii which have been brought to our attention in the extensive and carefully compiled record before us. We believe that many of the cost problems associated with serving rural communities in Alaska and elsewhere in the United States, and the extent to which the public interest requires that ratepayers nationwide should bear the costs of service to these communities, may need further examination. Ideally, this inquiry would be conducted in a policy-making proceeding devoted solely to this issue, perhaps including legislative initiatives, rather than in the context of a proceeding to determine cost-based separations. For the present, however, we note that application of the Separations Manual to Alaska will result in the assignment to the interstate jurisdiction of substantial portions of the cost of serving remote communities.⁸ Thus, many of the

concerns which motivated the proposals for supplemental Alaska payments will be addressed by application of the Separations Manual. Nevertheless, the Commission must continue to discharge its obligation under the Act to make available to all the people of the United States, in so far as possible, a rapid, efficient, wire and radio communications service at reasonable cost.⁹ We urge the Commission to reexamine in the future the costs of serving rural communities, if warranted.

11. We have carefully evaluated the Joint Motions, the supporting agreements and the parties' comments thereon and we find that the public interest, convenience, and necessity would be served by granting the Joint Motions and approving and accepting the attached agreements.

12. Accordingly, it is ordered, That the "Joint Motion" submitted by the American Telephone and Telegraph Company and Alascom, Inc. on April 25, 1980 and the "Joint Motion" submitted by the American Telephone and Telegraph Company and the Hawaiian Telephone Company on July 23, 1980, are granted.

13. In addition, it is recommended, That the Federal Communications Commission amend its rules so that the NARUC-FCC Separations Manual be applicable without modification to Alaska and Hawaii.

14. It is further recommended, That the Federal Communications Commission ACCEPT AND APPROVE the Agreements submitted by the American Telephone and Telegraph Company and Alascom, Inc. and the American Telephone and Telegraph Company and the Hawaiian Telephone Company, Inc. on April 25, 1980 and July 23, 1980, respectively.

The Federal-State Joint Board.

Robert E. Lee,
Chairman.

Memorandum Opinion and Order

Adopted: June 29, 1981.

Released: July 8, 1981.

By the Commission:

1. Before the Commission are Joint Motions¹ seeking approval of agreements implementing rate integration for Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS) between the United States Mainland and Alaska and Hawaii. Comments have been filed by Southern Pacific Communications Company (SPCC), members of Congress from Alaska and Hawaii² and

where it argues that at least 71% of such costs under the Separations Manual would be allocated to interstate.

⁸ See 47 U.S.C. § 151.

¹ A "Joint Motion to Approve Agreement" filed April 25, 1980 by the American Telephone and Telegraph Company and Alascom, Inc. and a "Joint Motion to Approve Agreement" filed July 23, 1980 by the American Telephone and Telegraph Company and the Hawaiian Telephone Company. The respective agreements are attached hereto as Appendices A and B.

² From Alaska, United States Senators Ted Stevens and Mike Gravel and Congressman Don Young and from Hawaii, United States Senator Daniel K. Inouye and Congressmen Daniel K. Akaka and Cecil Heftel.

Governors of Alaska and Hawaii. The American Telephone and Telegraph Company (AT & T) has filed an opposition and the Hawaiian Telephone Company (Hawtel) a motion to strike with respect to SPCC's comments.³ For the reasons indicated below, we will accept and approve the Joint Motions.

Background

2. In an order adopted this same date, the Commission has concluded Docket 21263 by accepting and adopting as its own opinion the recommended decision of the Federal State Joint Board in that proceeding. Docket 21263 concerned what modifications should be made in existing separations procedures in order to achieve rate integration for MTS and WATS service between the United States Mainland and Alaska and Hawaii. Stated briefly, the Commission prescribed that the existing Separations Manual incorporated by reference in the Commission's rules, 47 C.F.R. § 67.1, would be fully applicable without modification to determine jurisdictional separations and cost-based settlements in Alaska and Hawaii. However, the carriers have requested a deferral of the final date for rate integration and have proposed interim settlement procedures pending full rate integration. It is these proposals which are the subject of the Joint Motions and to which we now turn.

The Joint Motions and Agreements

3. The carriers request that we specify January 1, 1985 as the effective date for final rate integration for MTS and WATS service between the United States mainland and Alaska and Hawaii. This will require modification of the existing specified date which is ninety days after the prescription of separations rules for Alaska and Hawaii.⁴ Since we have today prescribed separations rules for Alaska and Hawaii, final rate integration is now scheduled for ninety days from today. The carriers further request that we prescribe the existing Separations Manual as applicable to Alaska and Hawaii. The Joint Motion by AT&T and Hawtel requests that we approve the Separations Manual for allocation of exchange costs for international MTS, including use of the domestic interstate composite station rate ratio.

4. In their agreements, the carriers propose an interim settlement procedure pending the final date for rate integration of January 1, 1985. The proposed settlement procedures are essentially the same for settlements between AT&T and Hawtel and between AT&T and Alascom, and provide that settlements will consist of a uniform cost-based portion calculated according to the existing Separations Manual plus a so-called transitional supplement. The transitional supplement is proposed to be based on a declining percentage of the cumulative total growth over 1979 in actual MTS and WATS interstate revenues.⁵ The declining

³ We find that the public interest requires consideration of SPCC's comments and accordingly the motion to strike is denied.

⁴ See *Memorandum Opinion and Order*, FCC 78-693, released September 29, 1978.

⁵ For example, the agreement between Hawaiian Telephone Company and the American Telephone

⁸ See AT&T's response to supplemental information request No. 2, filed November 26, 1979.

percentages differ somewhat in each agreement. In addition, for the settlement for 1980 between Hawtel and AT&T, it is proposed that it be based on 78% of actual of actual two-way interstate MTS and WATS revenues. As indicated, the interim settlement procedure will terminate on January 1, 1985 at which time full rate integration will take place.

Contentions of the Parties

5. The members of Congress and the Governors of the States of Alaska and Hawaii support the agreements of the carriers and urge their acceptance and approval. SPCC addresses only the agreement between Hawtel and AT&T. It states that it does not object to the agreement in general but only to the structure of the proposed transitional supplement. Specifically, it objects to the fact that the transitional supplement will be based on a percentage of total revenue growth of MTS and WATS services. It claims that this will give Hawtel the incentive to resist introduction of competitive MTS and WATS services⁶ and notes that Hawtel has filed a petition to deny SPCC's application for authorization to provide SPRINT service in Hawaii. SPCC urges that as an alternative we prescribe that the transitional supplement portion of the proposed interim settlements procedure consist of a lump sum payment to Hawtel.

6. In its opposition to SPCC's comments, AT&T states that the agreements should be accepted and approved because SPCC's contentions are speculative, because the time period until rate integration is relatively short, because the declining percentages called for in the agreements will minimize over time the effect of any diverted revenue growth and because a lump sum payment would inhibit Hawtel's incentive to encourage growth in services, which would be contrary to the public interest.

Discussion

7. The Joint Motions urge our acceptance and approval of agreements which provide for a method of jurisdictional separations and for full rate integration of MTS and WATS services between the United States mainland and Alaska and Hawaii. As such, these agreements achieve the fundamental purposes of Docket 21263 and of related proceedings looking toward rate integration.⁷

and Telegraph Company provides that the applicable percentage for 1982 will be 60%. This means that 60% of the revenues in excess of 1979 revenues will be paid by AT&T to Hawtel as the transitional supplement. In 1983 the percentage is 35%, in 1984 20%.

⁶Presumably this is because Hawtel would resist competition in order to maximize supplemental payments.

⁷See *Establishment of Domestic Communications—Satellite Facilities*, 35 FCC 2d 844 (1972) in which we determined that the public interest required that interstate MTS and WATS rates between the United States mainland and Hawaii and Alaska be integrated into the mainland domestic rate pattern; *Integration of Rates and Services*, 61 FCC 2d 380 (1976) in which we directed that such integration should be accomplished by phased reduction in three steps; and *Integration of Rates and Services*, 61 FCC 2d 380 (1976) reconsideration, 65 FCC 2d 324 (1977) in which we

8. We are aware that approval of these agreements will require deferral of the date for final rate integration until January 1, 1985 and this must be considered an undesirable aspect of the agreements since it is in the public interest that this be achieved at the earliest possible date. However, the carriers' agreements are expressly contingent on this deferral and we must balance the delay in full rate integration against the delay that would inevitably result if the agreements fail and further proceedings in Docket 21263 become necessary. These further proceedings could potentially be of indefinite duration. For this reason, and because rate modifications consistent with the agreements will diminish the disparity of rates between mainland and offshore points, we conclude that the deferral requested by the carriers is not so contrary to the public interest such that rejection of the proposed agreements is warranted.

9. We find little reasons to object to the proposed interim settlements procedures. In view of the fact, as indicated, that the agreements are the vehicles for the achievement of major, long-standing Commission policy objectives, any concerns about the interim settlement procedures are secondary unless the interim proposals are egregiously unreasonable. In this connection, we note that interim settlement procedures have been forged in the context of negotiations between the parties and appear to represent compromise positions between the carriers. As such, although they do not necessarily reflect optimum settlement procedures, nothing in them appears clearly unreasonable. More particularly, the use of decreasing percentages each year to calculate the transitional supplement appears to be a reasonable phased-in approach to final rate integration. Accordingly, we find no reason to reject the interim settlement procedures.

10. SPCC's objections do not change this conclusion. Although it claims that the method of calculating the transitional supplement will provide an incentive for Hawtel to engage in anticompetitive conduct, we do not believe that the slight effect that SPCC competition might have on payments to Hawtel under the interim settlement procedure would be likely to affect Hawtel in its dealings with SPCC. AT&T will continue to carry the vast preponderance of traffic under any reasonable scenario. If at a later date SPCC encounters difficulty in obtaining any needed interconnection from Hawtel, it can make its problems known to the Commission. We also note that these are interim proposals, and any objections will be eliminated when final rate integration is achieved. Finally, we find that SPCC's objections are insufficient because it has not supported its claim that a lump sum payment would be preferable. Thus, it has provided no suggestions as to how such a payment would be calculated.

11. We have carefully evaluated the Joint Motions, the supporting agreements and the

determined that such integration should be accompanied by cost-based settlements based on prescribed jurisdictional separations procedures. See also *Memorandum Opinion and Order*, FCC 78-693, released September 29, 1978 concerning the final date for rate integration.

parties' comments thereon and we find that the public interest, convenience, and necessity will be served by granting the Joint Motions and approving and accepting the attached agreements.

12. Accordingly, it is ordered, That the "Joint Motion to Approve Agreement" submitted by the American Telephone and Telegraph Company and Alascom, Inc. on April 25, 1980 and the "Joint Motion to Approve Agreement" submitted by the American Telephone and Telegraph Company and the Hawaiian Telephone Company on July 23, 1980, are granted and the agreements with respect thereto are accepted and approved.

13. It is further ordered, That the final date for rate integration for MTS and WATS services between the United States mainland and Hawaii and Alaska is extended until January 1, 1985.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 81-21983 Filed 7-27-81; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1121

[Ex Parte No. 274 (Sub-No. 2)]

Abandonment of Railroad Lines and Discontinuance of Service; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction of final rule.

SUMMARY: At 45 FR 18008, March 20, 1980, the Commission published a revision 49 CFR 1121.30(a)(1) and (2). New material regarding service of material by first class mail was added as subparagraph (2) without redesignating existing subparagraphs (2) and (3) as subparagraphs (3) and (4). As a result, the existing material in subparagraph (2) which dealt with prefiling notice posting requirements was omitted from Title 49 of the Code of Federal Regulations revised as of October 1, 1980. This notice corrects the March, 1980, notice by setting forth § 1121.30 in its corrected entirety.

DATE: This regulation will be effective on July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson (202) 275-7245.

SUPPLEMENTARY INFORMATION: We have taken no action to eliminate the prefiling posting of notice requirement in abandonment cases. The governing statute, 49 U.S.C. 10904(a)(3)(B), requires posting of a notice prior to filing an abandonment application. The following section includes the posting

requirement, and is substituted for 49 CFR 1121.30 as it exists in the 1980 revision of the Code of Federal Regulations.

As corrected, § 1121.30 reads as follows:

§ 1121.30 Notice of intent to abandon line or discontinue service.

(a) The applicant shall give notice of its intent to file an abandonment or discontinuance application by (1) serving notice on the Commission by certified letter concurrently with newspaper publication of the Notice or service upon those shippers who are significant users (as defined in § 1121.11(m)) on the line proposed to be abandoned or discontinued, whichever first occurs, (2) serving notice by first class mail (unless otherwise noted) on (i) the Governor (by certified mail), (ii) Public Service Commission (or equivalent agency), (iii) designated State agency, and (iv) State Cooperative

Extension Service, of each State in which all or part of the line of railroad sought to be abandoned, or over which service is proposed to be discontinued, is situated; (v) the Department of Transportation (Federal Railroad Administration), (vi) the Department of Defense (Military Traffic Management Command), (vii) The Department of Interior (Bureau of Outdoor Recreation), (viii) the Railroad Retirement Board, (ix) the Office of the Special Counsel, (x) the National Railroad Passenger Corporation (where a line it operates over is proposed for abandonment), and (xi) the headquarters of the Railroad Labor Executives' Association, at the time the notice is served on the Commission, (3) posting the notice in a conspicuous place at each agency station and terminal on the line proposed to be abandoned or discontinued (if there is no agency station on the line, the notice shall be

posted at any agency station through which business for the line is received or forwarded, and (4) publishing the notice at least once during each of three consecutive weeks in a newspaper of general circulation in each county in which any part of the line of railroad proposed to be abandoned or discontinued is situated.

(b) The posting and publication requirements of paragraph (a) of this section must be completed within the thirty-day period prior to the actual filing of the application. Service must be completed at least fifteen days prior to the actual filing date.

Dated: July 20, 1981.

By the Commission, Chairman Taylor, Commissioners Gresham, Clapp, Trantum, and Gilliam.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-21917 Filed 7-27-81; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register

Vol. 46, No. 144

Tuesday, July 28, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 451

Incentive Awards

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management proposes to amend its regulations implementing the Government Employees' Incentive Awards Act of 1954 to exclude members of the Senior Executive Service (SES) from eligibility for lump sum cash awards for sustained superior job performance. Performance bonuses for career members of the Senior Executive Service authorized by the Civil Service Reform Act of 1978 are duplicative of these awards in that both are based upon sustained superior job performance, as measured by a performance appraisal system, and award amounts correspond to the quality of performance. Excluding SES members from eligibility for lump sum cash awards for sustained superior job performance under the incentive awards program will remove this duplication.

COMMENT DATE: Comments must be received on or before September 28, 1981.

ADDRESSES: Send or deliver written comments to Chief, Incentive Awards Branch, WED, Room 6-H-34, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Richard P. Brengel or Edith Stringer 202-632-4596.

SUPPLEMENTARY INFORMATION: The Government Employees' Incentive Awards Program, authorized by title 5 Chapter 45, United States Code, is designed to improve Government operations and services. Its purpose is to motivate employees to increase productivity and creativity by rewarding those whose job performance and

adopted ideas benefit the Government and are substantially above normal job requirements and performance standards. This revision removes the possibility for authority delegated to agencies under this program to be used to circumvent the intent of Congressional restrictions on the number of SES members who may receive performance awards during any fiscal year under authority of title 5 Chapter 53, United States Code.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule for the purposes of E.O. 12291, Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Director, Office of Personnel Management, certifies that this regulation will not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

Office of Personnel Management.

Beverly McCain Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management proposes to revise Part 451, Subpart B. § 451.207 to read as follows:

§ 451.207 Eligibility.

- (a) Except as provided in 451.207(b), an award may be granted when the suggestion, invention, superior accomplishment or other personal effort:
- (1) Benefits the Government as described in 5 USC 4503 and 4504;
 - (2) Was made while the contributor was a Government employee;
 - (3) Has been described in writing; and
 - (4) Has been approved by the benefiting organization at a management level higher than the

individual who recommended the award.

(b) Members of the Senior Executive Service are ineligible for cash awards for sustained superior performance of assigned job responsibilities.

(5 U.S.C. 4506)

[FR Doc. 81-22010 Filed 7-27-81; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

Irish Potatoes Grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed continuing regulation would require fresh market shipments of potatoes grown in Modoc and Siskiyou Counties in California and all counties in Oregon except Malheur County to be inspected and meet minimum grade, size, cleanness, pack and maturity requirements. The regulation should promote orderly marketing of such potatoes and keep less desirable sizes and qualities from being shipped to consumers.

DATE: Comments due August 27, 1981.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250, (202) 447-2615. Copies of the marketing policy and the Department's impact analysis will be available from him.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been classified "not significant" and not a major rule.

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 not measurably affect costs for the directly regulated 47 handlers.

Marketing Agreement No. 114 and Order No. 947, both as amended, regulate the handling of potatoes grown in designated counties of Oregon and California. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Oregon-California Potato Committee, established under the order, is responsible for its local administration.

This notice is based upon recommendations made by the committee at its public meeting in Lincoln City, Oregon, on June 23, 1981.

The grade, size, maturity, pack, cleanness and inspection requirements recommended herein are generally similar to those issued during the last season. They are necessary to prevent potatoes of low quality or undesirable sizes from being distributed to fresh market outlets. These specific proposals would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area, thereby promoting orderly marketing and would tend to effectuate the declared policy of the act.

The committee recommends that all varieties be at least U.S. No. 2 grade. Minimum sizes would be: For export—1½ inches in diameter; Districts No. 1-4, 1¾ inches for all varieties; and District No. 5—2 inches or 4 ounces for all varieties.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Inspection requirements would be modified for certain handlers whose facilities are located far enough from major production areas to cause a substantial financial burden in maintaining a full-time Federal-State inspector.

A specified quantity of potatoes would be exempt from maturity requirements in order to permit growers to make test diggings without loss of the potatoes so harvested.

Shipments would be permitted to certain special purpose outlets without regard to minimum grade, size, cleanness, maturity, pack and inspection requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Certified seed would be so exempt, subject to the safeguard provisions only when shipped outside the district where grown.

Shipments for use as livestock feed within the production area or to specified adjacent areas would likewise be exempt; a limit to the destinations of such shipments would be provided so that their use for the purpose specified would be reasonably assured.

Shipments of potatoes between Districts 2 and 4 for planting, grading, and storing would be exempt from requirements because these two areas are homogenous and have no natural division. Other districts are more clearly separated and do not have this problem. For the same reason, potatoes grown in District 5 may be shipped without regard to the aforesaid requirements to the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, and Malheur County, Oregon, for grading and storing. Since no purpose would be served by regulating potatoes used for charity purposes, such potatoes are exempt. Also potatoes for most processing uses are exempt under the legislative authority for this part.

Requirements for export shipments differ from those for domestic markets. While the standard quality requirements are desired in foreign markets, smaller sizes are more acceptable. Therefore, different requirements for export shipments are proposed.

It is proposed that requirements contained in this proposed handling regulation, effective October 16, 1981, would continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary. Interested persons are invited to comment through (insert 30 days after publication in the Federal Register) with regard to the proposed handling regulation. Heretofore, regulations issued under the marketing order were made effective for a single marketing season. The proposed change to issue regulations which would continue in effect from marketing season to marketing season reflects the fact that regulations change infrequently from season to season and it is believed unnecessary to issue them for only a single season. In addition, the proposed action could result in a reduction in operational costs to the committee and the government. Although the final regulation would be effective for an indefinite period, the committee would continue to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the regulation. Prior to making any such recommendations, the committee

would submit to the Secretary a marketing policy for the season in accordance with Section 947.50 of the order, including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings or may file comments with the Hearing Clerk before June 1 each year. The Department will evaluate committee recommendations and information submitted by the committee, comments filed, and other available information, and determine whether modification, suspension, or termination of the regulations on shipments of Oregon-California potatoes would tend to effectuate the declared policy of the act.

Information collection requirements (reporting or record keeping) under this part are subject to clearance by the Office of Management and Budget and are in the process of review. These information requirements shall not become effective until such time as clearance by the OMB has been obtained.

It is proposed that § 947.339 (45 FR 60404, September 12, 1980) be removed and a new § 947.340 be added as follows:

§ 947.339 [Removed]

§ 947.340 Handling regulation.

On and after October 16, 1981, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a) through (f) of this section or unless such potatoes are handled in accordance with paragraphs (g) and (h), or (i) of this section.

(a) *Grade requirements.* All varieties—U.S. No. 2, or better grade.

(b) *Minimum size requirements.* (1) For Export: All varieties—1½ inches in diameter.

(2) For Districts No. 1 through 4: All varieties—1¾ inches in diameter.

(3) For District No. 5: All varieties—2 inches in diameter or 4 ounces in weight.

(c) *Cleanness requirements.* All varieties and grades—As required in the United States Standards for Grades of Potatoes, except that U.S. Commercial may be no more than "slightly dirty."

(d) *Maturity (skinning) requirements.* (1) Round and White Rose varieties: not more than "moderately skinned."

(2) Other Long Varieties (including but not limited to Russet Burbank and Norgold): not more than "slightly skinned."

(3) Not to exceed a total of 100 hundredweight of potatoes may be

handled during any seven day period without meeting these maturity requirements. Prior to shipment of potatoes exempt from the above maturity requirements, the handler shall obtain from the committee a Certificate of Privilege.

(e) *Pack.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, as identified by USDA Color Photograph 123 [Internal Discoloration—U.S. No. 1—Maximum Allowed], USDA Visual Aid POT-L-1, January 1981, or not more than 5 percent serious damage by internal defects.

(f) *Inspection.* (1) Except when relieved by paragraphs (g) and (h), or (i) of this section and subparagraph (2) of this paragraph, no person shall handle potatoes without first obtaining inspection from an authorized representative of the Federal-State Inspection Service.

(2) Handlers making shipments from facilities located in an area where inspection costs would otherwise exceed one and one-half times the current per-hundredweight inspection fee, are exempt from on-site inspection provided such handler has made application to the committee for inspection exemption on forms supplied by the committee, and provided further than such handler signs an agreement with the committee to report each shipment on a daily basis and pay the committee a sum equal to the current inspection fee.

(3) For the purpose of operation under this part each required inspection certificate is hereby determined, pursuant to § 947.60(c) to be valid for a period of not to exceed 14 days following completion of inspection as shown on the certificate. The validity period of an inspection certificate covering inspected and certified potatoes that are stored in mechanically refrigerated storage within 14 days of the inspection shall be 14 days plus the number of days that the potatoes were held in refrigerated storage.

(4) Any lot of potatoes previously inspected pursuant to § 947.60 and certified as meeting the requirements of this part is not required to have additional inspection under § 947.60(b) after regrading, resorting, or repacking such potatoes, if the inspection certificate is valid at the time of regrading, resorting, or repacking of the potatoes.

(g) *Special purpose shipments.* The minimum grade, size, cleanness, maturity, pack and inspection requirements set forth in paragraphs (a) through (f) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(1) Certified seed, subject to applicable safeguard requirements of paragraph (h) of this section.

(2) Livestock feed: However, potatoes may not be handled for such purposes if destined to points outside of the production area, except that shipments to the counties of Benton, Franklin and Walla Walla in the State of Washington and to Malheur County, Oregon, may be made, subject to the safeguard provisions of paragraph (h) of this section.

(3) Planting in the district where grown: Further, potatoes for this purpose grown in District No. 2 or District No. 4 may be shipped between those two districts.

(4) Grading or storing under the following provisions:

(i) Between districts within the production area for grading or storing if such shipments meet the safeguard requirements of paragraph (h) of this section.

(ii) Potatoes grown in District No. 2 or District No. 4 may be shipped for grading or storing between those two districts without regard to the safeguard requirements of paragraph (h) of this section.

(iii) Potatoes grown in District No. 5 may be shipped for grading and storing to points in the counties of Adams, Benton, Franklin and Walla Walla in the State of Washington, or to Malheur County, Oregon, without regard to the safeguard provisions of paragraph (h) of this section.

(5) Charity: Except that shipments for charity may not be resold if they do not meet the requirements of the marketing order, and that shipments in excess of 5 hundredweight per charitable organization shall be subject to the safeguard provisions of paragraph (h) of this section.

(6) Starch manufacture.

(7) Canning, freezing, prepeeling, and "other processing" (except starch manufacturing), as hereinafter defined (including storage for such purposes).

(h) *Safeguard.* (1) Each handler making shipments of certified seed outside the district where grown pursuant to paragraph (g) of this section shall obtain from the committee a Certificate of Privilege, and shall furnish a report of shipments to the committee on forms provided by it.

(2) Each handler making shipments of potatoes pursuant to subparagraphs (2),

(4)(i), and (5) of paragraph (g) of this section shall obtain a Certificate of Privilege from the committee, and shall report shipments at such intervals as the committee may prescribe in its administrative rules.

(3) Each handler making shipments pursuant to subparagraph (7) of paragraph (g) of this section may ship such potatoes only to persons or firms designated as manufacturers of potato products by the committee, in accordance with its administrative rules.

(i) *Minimum quantity exemption.* Any person may handle not more than 19 hundredweight of potatoes on any day without regard to the inspection requirements of § 947.60 and to the assessment requirements of § 947.41 of this part except no potatoes may be handled pursuant to this exemption which do not meet the requirements of paragraphs (a), (b), (c), (d) and (e) of this section. This exemption shall not apply to any part of a shipment which exceeds 19 hundredweight.

(j) *Definitions.* (1) The terms "U.S. No. 1," "U.S. Commercial," "U.S. No. 2," "moderately skinned" and "slightly skinned" shall have the same meaning as when used in the U.S. Standards for Grades of Potatoes (7 CFR 2851.1540-2851.1566) including the tolerances set forth therein.

(2) The term "slightly dirty" means potatoes that are not damaged by dirt.

(3) The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 United States Standards for Grades of Peeled Potatoes (7 CFR 2852.2421-2852.2433).

(4) The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, or starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing."

(5) Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 114, as amended, and this part.

Dated: July 23, 1981.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 81-22006 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1125 and 1133

Milk in the Puget Sound, Washington, and Inland Empire Marketing Areas; Rescheduling of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of hearing on proposed rules.

SUMMARY: This notice reschedules the date when a public hearing will be held to consider a proposal to merge the Puget Sound, Washington and Inland Empire marketing areas under one Federal milk marketing order. The hearing, which was initially scheduled to begin on July 7, 1981 was postponed at the request of a cooperative association to complete a series of membership meetings on the possible merger of certain cooperative associations.

DATES: The hearing is rescheduled to begin on September 15, 1981 in Seattle, Washington, with a session also scheduled on September 21, 1981 in Spokane, Washington.

ADDRESSES: September 15, 1981: Vance Airport Inn at Sea-Tac, 12880 Pacific Highway South, Seattle, Washington.

September 21, 1981: Ramada Inn, Spokane International Airport, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing: Issued June 11, 1981; published June 16, 1981 (46 FR 31424). Notice of Postponement of Hearing: Issued June 30, 1981; published July 6, 1981 (46 FR 34805).

A notice was issued on June 11, 1981, (46 FR 31424) giving notice of a public hearing to be held beginning July 7, 1981, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the Puget Sound, Washington and Inland Empire marketing areas.

A second notice was issued on June 30, 1981 (46 FR 34805) postponing the hearing until a date to be announced at a later time.

Notice is hereby given pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that said hearing is rescheduled to be held at the Vance Airport Inn at Sea-Tac, 18820 Pacific Highway South, Seattle, Washington, beginning at 9:30 a.m. on September 15, 1981, with an additional session also to be held at the Ramada Inn, Spokane International Airport, Spokane, Washington, beginning at 9:30 a.m. on September 21, 1981.

Signed at Washington, D.C., on: July 23, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-22004 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 52

Dourine in Horses and Asses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The regulation in 9 CFR Part 52, governing appraisal of and compensation for animals, to prevent the spread of and to aid in the eradication of dourine, has been reviewed in accordance with the Agency's plan to periodically review existing regulations. In accordance with that review, the Agency is proposing to remove Part 52 from the regulations because 9 CFR Part 53 could be used to appraise animals and compensate the owner for destruction of the animals in order to prevent the spread of dourine.

DATE: Comments must be received on or before September 28, 1981.

ADDRESS: Written comments to the Deputy Administrator, USDA, APHIS, VS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. C. G. Mason, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action should not have any annual effect on the economy for the reasons discussed below; that this action will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; and that this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action would remove the regulations which provide a means by which owners of animals infected with dourine can receive compensation from the Department on account of the destruction of said animals. The United States has been free of dourine since 1946 and import requirements have proven adequate to prevent the introduction of the disease.

Additionally, if an animal becomes infected with dourine, appraisal of and compensation to the owner for the discharge of all claims the owner may have against the Department on account of the destruction of the animals, could be made pursuant to 9 CFR Part 53.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 3, 23 Stat. 32, as amended, sec. 2, 32 Stat. 792, as amended, sec. 11, 58 Stat. 734, as amended; 21 U.S.C. 111, 114, 114a; 28 FR 5935, June 13, 1963; 36 FR 24928, Dec. 24, 1971, the Animal and Plant Health Inspection Service is considering removing Part 52, from Title 9, Code of Federal Regulations, (9 CFR Part 52).

Part 52, 9 CFR, presently provides that the fact of infection with dourine shall be determined in the complement-fixation test applied in the laboratory of Veterinary Services. The animal is required to be appraised at its actual value by a Veterinary Services inspector and the State veterinarian or an assistant State veterinarian of the State in which the animal is located, or, when provided by State law, assessed value as shown by the assessor's books will be accepted in lieu of appraisal. The Department pays one-half of the appraised or assessed value of the animal, provided such payment shall in no case exceed \$100 and the owner signs an agreement to accept such sum as compensation in full for the discharge of all claims he may have against the Department on account of the destruction of the animal in question.

The United States has been free of dourine since 1946. Further, the

regulations in § 92.11(d) (9 CFR 92.11(d)), governing the importation of horses into the United States, require all horses, except horses from Canada, to be negative to an official test for dourine. Canada, which is also free of dourine, has import test requirements similar to those of the United States. Additionally, appraisal of and compensation to the owners for the destruction of animals infected with dourine could be made under 9 CFR Part 53. Specifically, Part 53 provides that after the Department has entered into an agreement with the applicable State for the control and eradication of certain communicable diseases of livestock or poultry (which would include dourine), the Department may pay 50 percent of expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being infected with dourine. Further, if the animals were exposed to disease prior to or during interstate movement and are not eligible to receive indemnity from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals and materials required to be destroyed.

Since test procedures have proven adequate to prevent the entry of dourine, since the United States has been free of dourine for 34 years, and since 9 CFR Part 53 can be used to provide for appraisal of and compensation to the owners of horses infected with dourine that are destroyed by the Department, the Department is proposing to remove Part 52 from Title 9, Code of Federal Regulations.

PART 52—DOURINE IN HORSES AND ASSES [REMOVED AND RESERVED]

Accordingly, Title 9, Code of Federal Regulations, would be amended by removing Part 52, and Part 52 would be reserved.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 870, Hyattsville, Maryland 20782, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted would bear a reference to the date and page number of this issue in the *Federal Register*.

Done at Washington, D.C., this 22nd day of July 1981.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 81-21906 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Inspection Service¹

9 CFR Parts 317 and 381

[Docket No. 78-736P]

Official Establishment Numbers on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) proposes to amend the Federal meat and poultry products inspection regulations to provide consistency and flexibility in the placement of official establishment numbers on immediate containers of meat food products and poultry products. The current meat and poultry regulations, which now differ considerably, would be revised to provide identical, simplified requirements for both meat and poultry processors. This would provide processors greater flexibility in the design and use of labeling materials, while preserving the ability of consumers and health officials to determine the identity of the establishments.

DATE: Comments must be received on or before September 28, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, Policy and Program Planning, U.S. Department of Agriculture, Washington, DC 20250. Oral comments concerning the proposed amendments to the poultry products inspection regulations to: Mr. Robert G. Hibbert, (202) 447-6042. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Director, Meat and Poultry Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made an initial determination that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or

¹ Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1030-1, issued June 19, 1981, the Food Safety and Quality Service has become the Food Safety and Inspection Service. A notice detailing the Agency's reorganization is now being drafted for later publication.

more; a major increase in costs or prices for consumers individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

Donald L. Houston, Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, P. L. 96-354 (5 U.S.C. 601). If promulgated, it is anticipated that the economic impact would be minimal on small entities since existing stocks of labeling could still be used and labeling changes would likely be made in connection with normal reordering of materials.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Regulations Coordination Division. Comments should bear reference to the docket number located in the heading of this document. Any person desiring opportunity for oral presentation of views concerning the proposed amendments to the poultry products inspection regulation must make such request to Mr. Hibbert so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this proposal will be made available for public inspection in the Regulations Coordination Division between 8:00 a.m. and 4:30 p.m., Monday through Friday.

Background

In accordance with the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), the Federal meat and poultry products inspection regulations prescribe the form of the official inspection legend denoting a federally "inspected and passed" product. The official establishment number, which is assigned by the Administrator to each individual establishment, identifies the specific establishment that processed the labeled product and is usually placed within the circle enclosing the official inspection legend. The official

establishment number is important to consumers, public health officials, and the Administrator for determining the source of any adulterated or misbranded products.

Present Regulations

Presently, the Federal meat inspection regulations and the poultry products inspection regulations are inconsistent regarding the placement of the official establishment number on product containers. Present Federal meat inspection regulations require, with a few exceptions, that the official establishment number be part of the official inspection legend. However, the poultry products inspection regulations permit the official establishment number to be omitted from the official inspection legend when it is in close proximity to the legend and is clearly visible elsewhere on the exterior of the container. Thus, meat processors have less flexibility in utilizing product labels than do poultry processors.

The exceptions to the general rules under both the meat inspection regulations and the poultry products inspection regulations are also inconsistent. For example, with respect to canned products, the meat inspection regulations require the number to be on both the can lid and any paper label, while the poultry products inspection regulations require the number to be on either the can lid or the paper label. A processor producing a canned meat product and a canned poultry product in the same establishment is, thus, required to place the official establishment number twice on the canned meat product, but only once on the canned poultry product. This regulation also forces the meat processor operating multiple establishments to maintain a separate inventory of labels for each establishment, while a similar poultry processor may need only one inventory of labels for all establishments.

The reason for the many inconsistencies appears to be largely historical. The meat inspection program and the poultry inspection program were at one time administered by separate divisions within the Department. Variations in labeling practices almost inevitably resulted. In addition, changes in these particular regulations have been largely accomplished in a piecemeal manner. Thus, while each particular change may have been an improvement over the prior requirement, it also served to increase the general inconsistency of these regulations. Today, the many inconsistencies appear to create confusion and unnecessary expenses for the public, the industry,

and the Department, while serving no useful purpose.

Furthermore, FSIS has received a petition from the National Food Processors Association requesting that the Federal meat inspection regulations be amended to allow the official establishment number to be omitted from the official inspection legend printed on the paper labels of canned products whenever the establishment number is embossed or printed on the lid of the container. The petition states that such an amendment would provide for better control of label inventories and permit flexibility in production schedules for companies with multiple establishments.

Proposed Regulations

In view of the above, the Administrator is proposing to revise § 317.2(i) of the Federal meat inspection regulations (9 CFR 317.2(i)) and § 381.123 of the poultry products inspection regulations (9 CFR 381.123) concerning the placement of official establishment numbers on immediate containers of meat food products and poultry products. The requirement in both regulations, as proposed, would provide three options. The official establishment number might be placed: (1) within the official inspection legend, (2) outside the official inspection legend on the same container panel and in close proximity to the official inspection legend, or (3) elsewhere on the container, its closure clip, or the packaging or labeling material within the container, when a statement of its location is printed contiguous to the official inspection legend, such as "Est. No. on Lid."

The proposed regulations would permit placement of the official establishment number outside the official inspection legend on all meat and poultry products. This would eliminate the inconsistencies that now exist between the labeling of meat products and poultry products and various types of both meat and poultry products. Thus, for all products, the establishment number, or directions to locate it, could be found near the inspection legend.

If the proposal is adopted, and all meat and poultry processors may choose any of the three options, most will not need to make any change in their existing labels. However, those currently exercising options for poultry products or certain specified meat products and simply placing the number on the exterior of the container, will at least be required to place a statement of location (such as "Est. No. on Lid") on their labels. This will not create problems for the processor with multiple

plants since the general statement of location could be placed on labels used in a number of different establishments.

The Administrator also recognizes that small processors may have a large supply of labels designed and approved under current regulations. Therefore, to insure that small processors and others would not suffer a financial loss due to labeling that would be rendered obsolete under the proposal, if adopted, FSIS would allow ample time for existing supplies of labels to be used.

The Administrator believes the proposed changes would permit processors to use labeling inventories more efficiently, would improve the legibility of the official inspection legend and the official establishment number, and would provide meat and poultry processors with uniform requirements of greater flexibility.

In addition, the cross reference in section 317.2(d)(2)(ii) at the end of the present subdivision reading "as provided in paragraphs (f)(3), (g)(2), and (i)(8) and (9)" would be deleted as unnecessary and inconsistent with a similar cross reference in § 381.116(b)(2)(ii) of the poultry products inspection regulations.

Accordingly, the Administrator proposes to amend Part 317 of the Federal meat inspection regulations (9 CFR Part 317) and Part 381 of the poultry products inspection regulations (9 CFR Part 381) as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466-466k.

§ 317.2 [Amended]

2. Section 317.2(d)(2)(ii) of the Federal meat inspection regulations would be amended by deleting that portion of the present text at the end of the subdivision reading "as provided in paragraphs (f)(3), (g)(2), and (i)(8) and (9)" and inserting a period after the last reference to "panel".

3. Section 317.2(i) of the Federal meat inspection regulations would be revised to read as follows:

§ 317.2 Labels: definition; required features.

(i) The official establishment number of the official establishment in which the product was processed under inspection may be placed as follows:

(1) Within the official inspection legend in the form required by Part 312 of this subchapter; or

(2) Outside the official inspection legend on the same container panel and in close proximity to the official inspection legend; or

(3) Elsewhere on the container, its closure clip, or the packaging or labeling material within the container, when a statement of its location is printed contiguous to the official inspection legend (such as, "Est. No. on Lid", "Est. No. on Clip", "Est. No. on Pan").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for Part 381 reads as follows:

Authority: Section 14 of the Poultry Products Inspection Act, as amended by the Wholesome Poultry Products Act (21 U.S.C. 451 *et seq.*); the Talmadge-Aiken Act of September 28, 1962, (7 U.S.C. 450); and subsection 21(b) of the Federal Water Pollution Control Act, as amended by Public Law 91-224 and by other laws (33 U.S.C. 1171(b)).

5. Section 381.123 of the poultry products inspection regulations (9 CFR 381.123) would be revised to read as follows:

§ 381.123 Official inspection mark; official establishment number.

The immediate container of every inspected and passed poultry product shall bear:

(a) The official inspection legend; and
(b) The official establishment number of the official establishment in which the product was processed under inspection and placed as follows:

(1) Within the official inspection legend in the form required by Subpart M of this subchapter; or

(2) Outside the official inspection legend on the same container panel and in close proximity to the official inspection legend; or

(3) Elsewhere on the container, its closure clip, or the packaging or labeling material within the container, when a statement of its location is printed contiguous to the official inspection legend (such as, "Est. No. on Lid", "Est. No. on Bag Clip", "Est. No. on Pan").

Done at Washington, DC, on June 29, 1981.
Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 81-22007 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-DM-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Minimum Security Devices and Procedures

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule will revise, update and simplify the existing Part 748 of the NCUA Rules and Regulations and will allow for public comments on NCUA's policies on security devices and procedures.

DATE: Comments must be received on or before September 25, 1981.

ADDRESS: Send comments to Regulatory Development Coordinator, Robert Monheit, National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Thomas Straslicka, Chief, Supervision Branch, Office of Examination and Insurance, Telephone: (202) 357-1065.

SUPPLEMENTARY INFORMATION:

1. Background

The Bank Protection Act (12 U.S.C. Sections 1881-1884) of 1968 required that the supervisory agencies for insured banks and savings and loan associations promulgate rules for the installation and operation of security devices and procedures, and established the penalties which the agencies could impose for noncompliance. However, the law did not apply to credit unions.

Title II of the Federal Credit Union Act was passed by Congress to establish the National Credit Union Share Insurance Fund (NCUSIF), and provide authority to NCUA to enforce the safety and soundness of insured credit unions in order to protect the Share Insurance Fund. Section 205(e) of the Federal Credit Union Act, which repeats almost verbatim parts (2) and (4) of the Bank Protection Act of 1968, required NCUA to develop rules for the installation, maintenance and operation of security devices and procedures for insured credit unions. In response to this requirement, NCUA issued Part 748 of the Rules and Regulations.

Part 748 was modeled after the "Minimum Security Devices and Procedures" regulations of the Federal Reserve Board, Federal Deposit Insurance Corporation, and Federal Home Loan Bank Board. There are few differences between Part 748 and the parallel rules of the other agencies. The major differences are:

a. Part 748 acknowledged that credit unions differ in size and complexity and that the level of compliance required will vary depending on an insured credit union's circumstances.

b. Part 748 made the installation and operation of a burglar alarm dependent on whether such a device is appropriate.

c. Part 748 required that several procedures be considered or included in the security program which were not mentioned in the security regulations of the other agencies.

d. Part 748 required the storage of vital records in fire-resistant containers.

A review of the legislative intent of Section 205(e) of the Federal Credit Union Act reveals that in establishing the minimum security standards and procedures NCUA was expected to:

a. Consider those factors necessary to make the standards responsive to circumstances of individual credit unions;

b. Consider the factors of size and number of personnel (as well as factors already listed in the present Part 748.3(b));

c. Apply standards uniformly to credit unions whose situations are comparable; and

d. Not expect small credit unions to expend as much for protective equipment as larger credit unions.¹

The intent of rewriting this Rule is to clarify, simplify and reduce the regulatory burden while at the same time preserving the safety and soundness of the federally insured credit union system. This has been done by eliminating procedures which cannot and should not be uniformly imposed on all credit unions, and by recognizing certain situations which make even the minimum standards not applicable or counterproductive. In general, credit unions of smaller size and less complex operation will benefit most from these changes.

The NCUA Board specifically requests public comment on whether small federally insured credit unions (those with assets of less than \$1,000,000) should be allowed to seek a waiver from any of the required security devices and procedures set forth in this proposed Rule. Additionally, the NCUA Board requests comments on its proposal to eliminate from the existing rule the minimum standards for security devices and the requirements pertaining to proper employee conduct during and after a robbery.

¹From the United States Code Congressional and Administrative News, 1970, page 4171.

2. Section-by-Section Analysis of Proposed Changes

748.0 Scope

The essential content of the present Section 748.0 has been captured in a new Section 748.0 with greater economy of words. A more formal "scope" or introduction has been eliminated.

748.1 Definitions

This section has been eliminated. The term *Branch* is already defined in the Federal Credit Union Act and the other definitions are understandable terms.

748.2 Security Officer

This section was deleted. Each credit union's board of directors is responsible for determining the need for security devices and procedures. For some credit unions, a security officer may not be necessary or appropriate. Appointment of a security officer should be a management prerogative and not required by regulation.

748.3 Security Devices and 748.4 Security Procedures

The introduction of Section 748.4 was placed into the proposed Section 748.0. The remaining items of Sections 748.3 and 748.4 have been combined into the proposed Section 748.1, although much has been deleted. Many of the items in the present Rule are not really requirements, since they do not apply to all credit unions and are only to be used "when practical" or "if feasible."

In the interest of simplifying the regulation so that it will be easily understood by federally insured credit unions, the minimum security devices and procedures are enumerated in proposed Section 748.1(a). Even these minimums are subject to some qualifications. For example, a credit union's vault need only be illuminated if visible from outside the office. Tamper-resistant locks do not have to be installed if the building owner (sponsor) will not permit installation. Bait money is not required if the credit union has no change fund. The FBI decal need not be displayed if such display would be counterproductive (attract attention when it would not be apparent otherwise that the office housed a financial institution). The requirement that vital records be stored in fire-resistant containers has been retained.

Other security devices (burglary and robbery alarms, and surveillance equipment) are necessary only when the credit union's circumstance makes them appropriate. The listing of factors contained in the present Section 748.3(b) to determine "appropriateness" has been retained, and a seventh factor, the size of the credit union and number of

its employees, has been added. These factors of appropriateness parallel factors enumerated in the legislative history dealing with Section 205 of the Federal Credit Union Act. These appropriateness factors will be used to evaluate the adequacy of security programs in larger, more complex credit unions.

748.5 Filing of Reports

This section has been inserted in the proposed Section 784.2. The annual statement of compliance has been retained because Section 205(e)(2) of the Federal Credit Union Act states that NCUA "shall require the submission of periodic reports with respect to the installation, maintenance and operation of security devices and procedures." The compliance report will now be the only report, and the submittal of the written security program is no longer required. This statement of compliance will not place an additional burden on credit unions because it is contained on the Report of Officials which is required to be submitted each year after the election of officials.

The Federal Financial Institutions Examination Council (FFIEC) is currently reviewing the usefulness of the Crime and Catastrophic Act Report. The report requirement which has been retained in Section 748.2(b)(1) of the proposed Rule is consistent with the reporting requirement being considered by the FFIEC.

748.6 Corrective Action

This section has been eliminated because the administrative remedies available to effect corrective actions are cited separately in the Federal Credit Union Act.

748.7 Storage of Vital Records

This section has been included as one of the minimum devices and procedures and listed in the proposed subsection 748.1(a)(2). It is proposed that the specific standards for fire-resistant vaults and containers which were previously required by this regulation be eliminated. In lieu of specific requirements NCUA would provide guidance in this area in an appropriate NCUA manual.

748.8 Penalty Provision

This section has been eliminated since the penalty for noncompliance with this Regulation is clearly stated in Section 205(e)(3) of the Federal Credit Union Act.

748.9 Minimum Standards for Security Devices and 748.10 Proper Employee Conduct During and After a Robbery

The NCUA Board proposes to remove the requirements of these sections from the Regulation. In lieu of specific requirements NCUA would provide guidance in this area in an appropriate NCUA manual. The Board would like to point out that these actions should not be construed as a de-emphasis of the importance of maintaining adequate security measures to protect lives of credit union employees and the assets of credit union members. Rather, the NCUA Board believes that as a part of the normal course of business, credit union officials would develop with the company providing their surety bond appropriate security measures and employee training.

3. Summary

The proposed regulation contains the six minimum standards for security devices and procedures that can be applied uniformly to all credit unions; and all of these, with the exception of storage of vital records in fire-resistant containers, have some qualifiers. In addition, the proposed regulation lists seven factors to be used in determining whether additional security devices and procedures are appropriate. It is expected that credit union officials will continue consulting with law enforcement officers and specialists in the security field when implementing or revising security programs. These programs must be reduced to writing and must be retained on file by credit unions. Examiner staff will continue to review security programs for adequacy during examinations.

4. Regulatory Flexibility Analysis

The proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions (less than \$1 million in assets) because the proposed Rule lessens the burden for these credit unions in a number of areas, e.g., bait money. Therefore, a Regulatory Flexibility Analysis is not required, 5 U.S.C. 605(b).

Beatrix D. Fields,

Acting Secretary, NCUA Board.

July 23, 1981.

1. Accordingly, Part 748 is proposed to be revised to read as follows:

PART 748—MINIMUM SECURITY DEVICES AND PROCEDURES

Sec.

748.0 Security program.

748.1 Security devices and procedures.

448.2 Filing of reports.

Authority: 12 U.S.C. Section 1785.

§ 748.0 Security program.

(a) Each federally insured credit union will develop a written security program in compliance with this Regulation within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries and larcenies, to prevent destruction of vital records as defined in the Accounting Manual for Federal Credit Unions, and to assist in the identification of persons who commit or attempt such crimes.

(c) The circumstance of each credit union will be reviewed on its own merit in determining compliance with this regulation, since the sizes, complexities, and office facilities of credit unions vary.

§ 748.1 Security devices and procedures.

(a) The following security devices and procedures are required for a federally insured credit union unless otherwise stated in these subsections:

(1) Tamper-resistant locks will be installed on functional exterior doors and windows in all credit-union-owned buildings. This requirement also applies to all credit union offices not owned by the credit union unless the building owner objects to the installation of these devices;

(2) Vital records, as defined in the Accounting Manual for Federal Credit Unions, must be stored in a fire-resistant vault or container prior to the closing of the office or building each day;

(3) A decal will be displayed in a conspicuous place which states that the Federal Bureau of Investigation has jurisdiction to investigate felonies committed against a federally insured credit union, unless the credit union's board of directors determines that display of the decal would identify a credit union office which otherwise is undistinguished from its surroundings;

(4) All currency and negotiable securities will be placed in a locked safe or vault at times other than regular business hours. If a credit union cannot afford to purchase a vault or safe, or if the construction of the building or office will not support a safe or vault, then funds and negotiable securities in excess of \$500 will be deposited daily in an authorized depository;

(5) The area around a vault or safe will be illuminated at night if the vault or safe is visible from outside the office; and

(6) If a credit union has a change fund, the currency at each teller's window, or place where funds are disbursed or received, will include bait money. Bait money is defined as Federal Reserve Notes, of which the denominations, the

banks of issue, serial numbers and series year are recorded on paper, verified by a second employee or officer, and kept in a safe place apart from the bait money and any other cash.

(b) Additional security devices and procedures, such as robbery and/or burglary alarms, and surveillance equipment, are required to be used when appropriate for the circumstances of the credit union based on the following factors:

(1) The incidence of crime in the area in which the office is located;

(2) The location of the nearest law enforcement offices, guards, or security personnel and the time required for such personnel to arrive at the office;

(3) The amount of currency or other valuables exposed to robbery, burglary or larceny;

(4) The cost of security devices;

(5) Other security measures in effect at the office or within the area, such as the office being located on the premises of a business with security, within the compound of a military installation, etc.;

(6) The physical characteristics of the office structure and its surroundings; and

(7) The size of the credit union and number of its employees.

(c) Any federally insured credit union with assets of less than \$1,000,000 may request in writing a waiver of any of the required security devices and procedures set forth in this Rule. Such waiver requests will be acted upon by the appropriate NCUA Regional Director.

§ 748.2 Filing of reports.

(a) *Compliance report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this Part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of the federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *External Crime and Catastrophic Act Report.*

(1) *Records of external crime.* Each time a robbery, burglary or non-employee larceny is committed or attempted at an office operated by a federally insured credit union, the credit union shall, within a reasonable time,

prepare a report and file it in a central location at the main office of the credit union. Each such report shall include: the name of the office at which the crime or attempted crime occurred, the type of crime, the date and time of the crime and the amount of the loss, if any. Each report shall also note any operational or mechanical deficiencies which might have contributed to the crime and state what has been done or is planned to be done to correct the deficiency(ies).

(2) *Records of internal crime or catastrophic act.* Each federally insured credit union will notify the regional director within 5 business days of any internal crime or catastrophic act that occurs at its office(s). Additionally, the credit union shall, within a reasonable time, prepare a report and file it in a central location at the main office of the credit union. Each such report shall include: the name of the office at which the catastrophic act, crime or attempted crime occurred, the type of crime (if applicable), the date and time of the catastrophic act or crime and the amount of the loss, if any. Each report shall also note any operational or mechanical deficiencies which might have contributed to the crime and state what has been done or is planned to be done to correct the deficiency(ies).

Appendix [Amended]

2. It is proposed to amend the Appendix to Part 748 of the NCUA Rules and Regulations by deleting the "Report of Crime or Catastrophic Act."

[FR Doc. 81-22008 Filed 7-27-81; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 275 and 279**

[Release No. IA-766, File No. S7-892]

Proposed Amendments to Investment Adviser Requirements Concerning Disclosure, Application for Registration and Annual Report

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules and forms.

SUMMARY: The Commission is requesting public comments on proposed amendments to certain disclosure and reporting requirements applicable to investment advisers under the Investment Advisers Act of 1940. The amendments would make certain changes, both substantive and technical, in the investment adviser application for

registration, the investment adviser annual report form, an investment adviser disclosure rule and the investment adviser reporting requirements. In addition, the Commission is publishing, in a separate release issued today, certain interpretive positions, in a question and answer format, of its Division of Investment Management regarding the foregoing requirements.

DATE: Comments should be received on or before September 30, 1981.

ADDRESSES: Comments should be submitted in triplicate to: George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-892. All comments received will be available for public inspection and copying in the Commission's public reference room, 1100 L St., NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Arthur E. Dinerman, Esq., Investment Advisers Study Group, Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2079.

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 1979, the Commission issued Investment Advisers Act of 1940 Release No. 664 [44 FR 7870 (Feb. 7, 1979)], which adopted certain new and revised integrated disclosure and reporting requirements applicable to investment advisers subject to registration under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.] ("Advisers Act"). These requirements principally consist of Rule 204-3 (the "Brochure Rule") [17 CFR 275.204-3]; revisions to Form ADV [17 CFR 279.1], the registration form for investment advisers; new Form ADV-S [17 CFR 279.3], an annual report for investment advisers; and amended Rule 204-1 under the Advisers Act [17 CFR 275.204-1], which relates to the filing of required amendments to Form ADV. As stated in Advisers Act Release No. 664, the Commission's primary purposes in adopting these new and revised investment adviser disclosure requirements were (i) to provide existing and prospective clients of registered investment advisers with information concerning the backgrounds and business practices of such advisers, and (ii) to provide the Commission with information regarding the basic characteristics of the investment advisory industry for use in connection with the Commission's investment adviser regulatory program. The new

and revised requirements, which became effective on July 31, 1979, are described below.

The Brochure Rule in general requires any investment adviser which is subject to registration under the Advisers Act (i) to deliver to advisory clients, at the time of entering into an advisory contract (other than a contract with a registered investment company or one relating solely to the provision of impersonal advisory services),¹ a written disclosure statement which contains specified information concerning the background and business practices of the adviser; (ii) annually to deliver, or offer in writing to deliver, without charge, a current written disclosure statement to existing advisory clients (unless such client is a registered investment company or is receiving impersonal advisory services solely); and (iii) to deliver, or offer in writing to deliver, to advisory clients a written disclosure statement at the time of entering into a contract which provides for impersonal advisory services requiring a payment of \$200 or more.

Form ADV was revised by changing the information required and by reorganizing the form into two parts. Part I requests information relating to the basic characteristics of investment advisers, including certain information authorized by the Securities Acts Amendments of 1975 [Pub. L. No. 94-29 (June 4, 1975)]. This information is intended to enable the Commission's investment adviser regulatory program, particularly its investment adviser inspection program, to operate more effectively. Part II, which requests information regarding the general background and business practices of advisers, sets forth the minimum information that investment advisers are required to disclose to their clients and prospective clients pursuant to the Brochure Rule.

Form ADV-S is a two-page report required to be filed annually by registered investment advisers. That form is intended (i) to advise the Commission whether an investment adviser is still engaged in the advisory business and whether the adviser's address has changed, (ii) to remind an adviser of his responsibility to file required amendments to his Form ADV,

¹ Rule 204-3(f)(1) under the Advisers Act [17 CFR 275.204-3(f)(1)] defines a "contract for impersonal advisory services" as "any contract relating solely to the provision of investment advisory services (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (iii) any combination of the foregoing services."

and (iii) to provide the Commission with copies of all written disclosure statements (other than those in the form of Part II of Form ADV) delivered, or offered to be delivered, by an adviser during the preceding fiscal year.

Revised Rule 204-1 sets forth, among other things, the requirements concerning necessary amendments to Form ADV. Under Rule 204-1, a registered investment adviser must amend individual items in Parts I and II of Form ADV on the following bases: (i) promptly after the information becomes inaccurate (Part I, items 2, 4, 6, 10, 12 (a) and (b) and 14); (ii) promptly after the information becomes materially inaccurate (Part I, items 5, 7, 8, 9 and 11 and Part II, all items except item 13 (the balance sheet)); and (iii) annually for all other changes.

Since the adoption of the above described requirements, the Commission staff has received a number of inquiries and comments which indicate that it may be appropriate to amend the requirements in certain respects. The amendments being proposed are described below. In addition, the Commission is publishing, in a separate release,² certain interpretive positions, in a question and answer format, of its Division of Investment Management relating to the disclosure and reporting requirements under the Advisers Act.

II. Proposed Amendment to the Brochure Rule

In adopting the Brochure Rule, the Commission contemplated that investment advisers would have substantial latitude in terms of the format and content of the written disclosure documents required to be furnished to clients and prospective clients. For example, paragraph (a) of the Brochure Rule provides that an adviser may satisfy the delivery requirements of that rule by furnishing clients and prospective clients a copy of Part II of its Form ADV or, as an alternative, by providing a separate written disclosure statement ("brochure") containing at least the information required by Part II. The information contained in an adviser's brochure need not follow the same format as Part II of Form ADV, provided that it fairly presents the information required by Part II.

Similarly, paragraph (d) of the Brochure Rule permits an adviser to omit from a brochure certain items of information which are not applicable to the particular client or prospective client to whom the brochure will be furnished.

² Advisers Act Release No. 767 [July 21, 1981].

The information which currently may be omitted is that required by items (4) through (6) of Part II of Form ADV, relating to methods of analysis, sources of information, investment strategies, and education and business standards and backgrounds; and items (10) through (13) of Part II, relating to conditions for managing accounts, investment or brokerage discretion, review of accounts, and the filing of an audited balance sheet. Information called for by some other items, however, must, under the present rule, be included in the brochures furnished to all clients and prospective clients, whether or not the information is apposite to the services those clients receive. Specifically, all brochures must contain complete responses to items (1) through (3) of Part II, which relate to advisory services and fees, types of clients and types of securities for which advice is provided; and items (7) through (9) of Part II, which relate to other business activities of the adviser, other securities industry activities or affiliations, and participation or interest in securities transactions of clients.

On the basis of its experience in administering the Brochure Rule, the Commission now believes that little purpose is served by requiring investment advisers to disclose to clients and prospective clients information which is not relevant to the types of advisory services which such clients receive or will receive. In fact, it could be argued that the mandatory inclusion of such information may in some cases obscure relevant information and thus detract from the brochure as an effective disclosure document. Therefore, the Commission is proposing to amend paragraph (d) of the Brochure Rule to permit an investment adviser who renders substantially different types of advisory services to different advisory clients to omit from a brochure furnished to a particular client or prospective client any information required by Part II of Form ADV where the information omitted is not applicable to the client or prospective client receiving the brochure. Thus, for example, if an adviser provided only an advisory newsletter service to some of his clients, and provided only investment management services to other clients, he could, under the proposed amendment, prepare separate brochures for each class of client and omit from each brochure any information required by Part II of Form ADV which was inapplicable to the advisory service offered by the particular brochure.³

³Under existing paragraph (c) of Rule 204-3, the adviser in any event would not have to supply a

brochure to the clients receiving only the newsletter service if the cost of that service to the client was less than \$200.

Advisers are reminded, however, that the Brochure Rule, including paragraph (d) as proposed to be amended, does not relieve an investment adviser from any other disclosure obligations which the adviser may have under any other provision of the Advisers Act, such as the antifraud provisions set forth in Section 206 [15 U.S.C. 80b-6], any rules under the Advisers Act, or any other federal or state law.⁴

The Commission believes that the proposed amendment to paragraph (d) of the Brochure Rule would provide advisers with increased latitude in developing brochures "tailored" for different classes of advisory clients. This should help enable advisers to provide disclosure which is more readable and effective and is of greater utility to advisory clients.

III. Proposed Amendments to Form ADV Balance Sheet Requirements and Rule 204-1(b)(2)

The revised Form ADV includes, in item 17 of Part I and item 13 of Part II, requirements concerning the filing with the Commission of unaudited and audited balance sheets by investment advisers.⁵ Specifically, advisers who have custody or possession of clients' funds or securities, or who require clients to pre-pay advisory fees six months or more in advance and in excess of \$500 per client, must file, pursuant to item 13 of Part II of Form ADV, an audited balance sheet. That audited balance sheet must be furnished to clients and prospective clients, pursuant to the Brochure Rule, as part of the information contained in Part II of Form ADV. Advisers who are not required to file an audited balance sheet with the Commission must file an unaudited balance sheet, in accordance with item 17 of Part I of Form ADV. This unaudited balance sheet is not required to be provided to clients and prospective clients pursuant to the Brochure Rule. An investment adviser must update at least annually whichever balance sheet it is required to file.

The Commission adopted these balance sheet requirements to elicit information which, it was expected, would be generally useful in its

brochure to the clients receiving only the newsletter service if the cost of that service to the client was less than \$200.

⁴Rule 204-3(e).

⁵Section 203(c)(1)(D) of the Advisers Act permits the Commission to require, as part of Form ADV, "a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified)

investment adviser regulatory program and would also assist the Commissioner's staff in its investment adviser inspection and enforcement programs. In addition, certain types of investment advisers were required to provide audited balance sheets since their clients were believed to need more reliable financial information.

Since the revised Form ADV became effective on July 31, 1979, the Commission has collected considerable financial data relating to the operations of investment advisers. This data is expected to be useful to the Commission in the administration of its investment adviser regulatory program. However, the Commission has found that unaudited balance sheets filed pursuant to item 17 of Part I have proven not to be essential to its inspection and enforcement programs. Accordingly, the continuation of the item 17 filing requirement for the purpose of collecting additional data does not seem warranted, in view of the costs and burdens to investment advisers of complying with this requirement. Therefore, the Commission is proposing to delete item 17 of Part I of Form ADV.⁶ The Commission is not proposing at this time any change in the requirement that investment advisers subject to item 13 of Part II include an audited balance sheet, since a client of an investment adviser subject to item 13 has an ongoing need for reliable information about his investment adviser's financial condition.

Item 13 of Part II states that balance sheets shall be prepared in accordance with generally accepted accounting principles and shall "show assets and liabilities related to the advisory business separately from other business assets and liabilities." Although the form does not specifically so state, this segregation requirement is intended to apply only to investment advisers doing business as sole proprietors. To make clear that the requirement does not apply to other investment advisers, the Commission is proposing to amend item 13 of Part II of Form ADV by deleting the statement in that item that balance sheets "shall show assets and liabilities related to the advisory business

⁶The Commission also proposes to amend the following provisions to reflect the deletion of item 17 of Part I: (i) instruction 12 of Form ADV by deleting the reference to question 17 of Part I of Form ADV in the last sentence of the first paragraph; (ii) instruction 24 of Form ADV by deleting the reference to item 17 of Part I of Form ADV; (iii) instruction 8 of Form ADV-S by deleting the reference to item 17 of Part I of Form ADV; (iv) item 4 of Form ADV-S by eliminating the reference to item 17 of Part I of Form ADV; and (v) Schedule G of Form ADV by deleting the reference to item 17 of Part I of Form ADV in the description of the form.

separately from other business and personal assets and liabilities." In substitution for that statement, a special instruction relating solely to the balance sheet required of sole proprietor investment advisers would be added to the form.

The proposed new instruction is also intended to indicate more clearly the required content of sole proprietor's balance sheets. Pursuant to the amended balance sheet requirement, a sole proprietor investment adviser would have to show assets and liabilities related to his advisory business separately from other business and personal assets and liabilities, but he generally would not be required to present details of other business and personal assets and liabilities except where a deficiency of assets existed in his overall financial position as of the date of the balance sheet. If such a deficit existed, the sole proprietor would have to present full details of the other business and personal assets and liabilities on the balance sheet, or include them in a note referred to on the balance sheet. Otherwise, appropriate aggregation of the adviser's other assets and liabilities would be sufficient to meet the requirement.

Further, the Commission proposes to add language to item 13 of Part II to specify that the report accompanying the balance sheet called for in that item and the qualifications of an independent accountant making such report shall conform with the requirements of Article 2 of Regulation S-X [17 CFR 210.2-01 et seq.]. This addition will help assure adequate qualifications and independence of accountants reporting on such balance sheets. This change should add no significant burden to the filing requirements of investment advisers.

IV. Proposed Amendments to Item 3 of Part I of Form ADV and Rule 204-1(b)(3)

The Commission is proposing to amend item 3 of Part I of Form ADV and Rule 204-1(b)(3) to correct an unintended variance which exists between the item and the rule regarding the disclosure and updating of information with respect to the registration of investment advisers in other jurisdictions. An investment adviser, in response to item 3(a) of Part I of Form ADV, must indicate whether it has applied for, or received, a registration or license as an investment adviser in any of the fifty states, the District of Columbia, or Puerto Rico by inserting an appropriate code number next to the jurisdictions enumerated in such item. In addition, if any such

registration or license is of a "restricted nature" or has been "suspended or involuntarily terminated, or withdrawn or voluntarily terminated," item 3(b) of Part I requires the adviser to explain such action on Schedule E, the answer continuation sheet for Part I of Form ADV.

An investment adviser is required, pursuant to Rule 204-1(b)(3) and instruction 12 to Form ADV, to amend any response to item 3 which becomes inaccurate. While such an amendment generally must be filed within 90 days after the end of the adviser's fiscal year, paragraph (b)(3) of Rule 204-1 and instruction 12 to Form ADV specify that an adviser must promptly amend item 3 if its "license" in another jurisdiction has been "withdrawn or involuntarily terminated." However, unlike item 3 of Part I, Rule 204-1(b)(3) and instruction 12 to Form ADV currently make no reference to actions taken with respect to an adviser's "registration" in another jurisdiction, nor do they require a prompt amendment if such license has been "suspended," "voluntarily terminated," or "restricted."

In order to clarify, and make consistent, the requirements of item 3 and Rule 204-1(b)(3), the Commission is proposing the following amendments to such item and rule. First, the Commission proposes to restate the existing requirements of item 3(b) of Part I to require an adviser to explain in its Form ADV (on Schedule E) whether any license or registration as an investment adviser in any of the jurisdictions enumerated in item 3(a) "is of a restricted nature or has been suspended, terminated (either voluntarily or involuntarily) or withdrawn." This proposed amendment is intended to clarify but not alter the requirement. Second, the Commission proposes to amend the last sentence of paragraph (b)(3) of Rule 204-1 to conform the requirements of the rule to those of item 3(b) of Part I of the form. Specifically, the amendment would require an adviser to amend item 3 of Part I promptly if in any jurisdiction its license or registration as an investment adviser becomes restricted in nature or has been suspended, terminated (either voluntarily or involuntarily) or withdrawn. In addition, instruction 12 to Form ADV is proposed to be amended to reflect this amendment to Rule 204-1(b)(3) described above. Advisers would continue to make other amendments to item 3 within 90 days after the end of their fiscal year.

V. Proposed New Item 17 of Part I of Form ADV

The Commission is proposing to add a new item 17 to Part I of Form ADV⁷ which would ask investment advisers who prepare periodic publications on a subscription basis how many subscribers they had at the end of their most recent fiscal year. This information, which is comparable to information account managers already provide in response to items 15 and 16 of Part I, will generally assist the Commission by providing additional data concerning the advisory industry. Having this information will also assist the Commission's staff in deciding which advisers to inspect by enabling investment adviser inspection personnel to judge the level of a registrant's activity, something which is very difficult based on the information currently in Form ADV. This requirement should not be burdensome since registrants typically have such data readily available.

VI. Proposed Amendments to Rule 203-1

When a registered investment adviser changes its state of incorporation or its form of organization (from a sole proprietorship to a corporation, for example), generally a new legal entity is technically created which succeeds to the business of the predecessor entity. In such cases, the successor would usually wish to avail itself of the provisions of Section 203(g) of the Advisers Act [15 U.S.C. 80b-3(g)] which provide that a successor shall be deemed to be registered if it files an application for registration within thirty days from the date of the succession. In those cases in which the succession results solely from a change in the state of incorporation or a change in the adviser's form of organization, the Commission believes that it would be appropriate to treat a filing in the form of an amendment to its application on Form ADV, reflecting the change, as an application for registration of the successor rather than to require a complete application to be prepared by the successor.

Accordingly, the Commission is proposing to amend Rule 203-1 [17 CFR 275.203-1] under the Advisers Act to permit a registered investment adviser which changes its state of incorporation or its form of organization to report such change by making a filing in the form of an amendment to its Form ADV rather than by filing a complete new application. Under the proposed

⁷The Commission is proposing to delete current item 17. See Section III, *supra*.

amendment, such filing shall be treated as a new application even though it is in the form of an amendment, if it is filed solely to reflect a change in its state of incorporation or its form of organization.⁸

VII. Certain Minor Amendments to Forms ADV and ADV-S

In addition to the proposed amendments described above, the Commission is also proposing certain other amendments to particular items in, and instructions to, Forms ADV and ADV-S. These proposed amendments, which are mainly of a technical or clarifying nature, are described below:

A. Form ADV

1. *Instruction 15.* This instruction is currently technically inaccurate, since certain of the jurisdictions referred to are not states. Accordingly, the instruction is proposed to be amended by deleting the word "State" in the first line thereof.

2. *Item 10(i) of Part I.* To correct a technical error, this item is proposed to be amended by deleting the comma between the words "desist" and "and" in the first line thereof.

3. *Items 15 and 16 of Part I.* To provide a more complete breakdown of the numbers and sizes of accounts for which the applicant generally provides (a) discretionary account management (item 15(iii)) or (b) account management or supervision on other than a discretionary basis (item 16(iii)), it is proposed to expand these items by changing the (f) category from "\$1,000,000 or more" to "\$1,000,000—less than \$5,000,000" and by adding a new category (g) "\$5,000,000 or more." These amendments will assist the Commission in the administration of its regulatory programs.

4. *Items 6(a) and (b) of Part II.* These items are proposed to be amended by deleting the word "age" in the first line of Item 6(a) and in the second line of Item 6(b) and substituting therefor the words "year of birth." These proposed amendments will obviate annual amendments to these items due solely to a change in the age of a person previously listed in response to the items.

5. *Item 8(b) of Part II.* As a matter of clarification, this item is proposed to be amended to include the complete, rather than a partial, definition of the term "affiliated person" as contained in Section 2(a)(3) of the Investment

Company Act of 1940 [15 U.S.C. 80a-2(a)(3)].

6. *Item 9(c) of Part II.* In order to clarify this item, the Commission proposes to amend it by adding the parenthetical phrase "(investment advisory)" immediately after the word "from" in the second line thereof.

7. *Item 9(d) of Part II.* Similarly, the Commission proposes to amend this item by adding the parenthetical phrase "(investment advisory)" immediately after the word "prospective" in the first line thereof.

8. *Schedule D, page 2.* In order to avoid any confusion as to the identity of the person whose education and business background are described on this page, an amendment is being proposed to request the name and social security number of the person for whom the schedule is being completed.

B. Form ADV-S

1. *Instruction 2.* A note is proposed to be added at the end of this instruction to clarify the distinction between the requirements relating to the filing of the annual report on Form ADV-S and those relating to the filing of amendments to Form ADV. This note would read as follows:

Note.—The filing of Form ADV-S does not relieve a registrant of any requirement of Rule 204-1 under the Act to amend its Form ADV. Failure to amend Form ADV, as required by Rule 204-1, could result in enforcement action by the Commission. Any amendment to registrant's Form ADV, which is made at the time registrant's Form ADV-S is filed, may be filed with the Commission concurrently with the filing of Form ADV-S. However, any amendments to Form ADV so filed should not be attached to Form ADV-S and should include a properly completed execution page and page one of Part I of Form ADV.

2. *Instruction 5.* For clarification, this instruction, which relates to item 3, is proposed to be amended by deleting the second and third sentences thereof and substituting therefor the following:

Any registrant which provides an affirmative answer to item 3(a) should file the required amendment(s) with the Commission on Form ADV, pursuant to the instructions thereto, and indicate in item 3(b) whether such amendment(s) have been filed together with the filing of Form ADV-S.

This instruction is also proposed to be amended by deleting the second note thereto, which note would become unnecessary if the note to instruction 2 described above was included.

3. *Instruction 6.* To conform this instruction to the proposed amendments to item 4 described below, the

Commission proposes to amend it by deleting from the first line thereof the words "is to remind registrant to file" and substituting therefor the words "requires a registrant to indicate whether it has filed." The instruction also is proposed to be amended by adding immediately after the words "Form ADV" in the first line thereof the words ", as an amendment to Form ADV," to make it clear that the registrant is required to file a balance sheet as an amendment to Form ADV, rather than as a part of Form ADV-S. Further, the instruction is proposed to be amended by deleting from the second sentence the words "Item 17 of Part I or" to reflect the proposed elimination of Item 17 of Part I of Form ADV.

4. *Item 4.* This item is proposed to be amended by deleting the entire text of such item and substituting therefor the following:

(a) Is the registrant subject to the filing requirements of item 13 of Part II of Form ADV? (Pursuant to item 13 of Part II of Form ADV, every applicant who has custody or possession of clients' funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant and shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically. The qualifications and any report of an independent accountant which accompanies a balance sheet shall conform with the requirements of Article 2 of Regulation S-X [17 CFR 210.2-01 et seq.]) Yes No

(b) If the answer to item 4(a) is yes, has the registrant, pursuant to Rule 204-1(b)(2) and item 13 of Part II of Form ADV, filed with the Commission on Schedule G of Form ADV a balance sheet as of the end of registrant's most recent fiscal year? Yes No

This amendment is proposed to be made, in conjunction with the proposed amendment to instruction 6, to make clear that registrants must file a balance sheet as an amendment to Form ADV, rather than as a part of Form ADV-S, and to reflect the proposed deletion of

⁸Since this filing will be treated as an application, the provisions of Rule 203-3(a) under the Advisers Act [17 CFR 275.203-3(a)] will apply, requiring the payment of a \$150 fee with the filing.

item 17 of Part I of Form ADV, as discussed above.

Regulatory Flexibility Act

The Chairman of the Commission has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

Statutory Authority

The Commission hereby (i) proposes to amend Rules 204-1 and 204-3 and Form ADV-S pursuant to the authority contained in Sections 204, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b-4, 80b-6(4) and 80b-11(a)] and (ii) proposes to amend Form ADV pursuant to the authority contained in Sections 203 [15 U.S.C. 80b-3], 204, 206(4) and 211(a) of the Act.

Commission Action

I. It is proposed to amend Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. By adding paragraphs (c) and (d) to § 275.203-1 to read as follows:

§ 275.203-1 Application for registration of investment adviser.

(c) A Form ADV filed by an investment adviser corporation which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even through designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

(d) A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship or other entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

2. By revising paragraphs (b)(2) and (b)(3) of § 275.204-1 to read as follows:

§ 275.204-1 Amendments to application for registration.

(b) * * *

(2) If the information contained in response to questions 5, 7, 8, 9 and 11 of Part I, or any question in Part II (except question 13), of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate but not in a material manner, or the information contained in response to questions 12(c), 13, 15 and 16 of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, the investment adviser shall file an amendment on Form ADV (§ 279.1 of this chapter) correcting such information within 90 days of the end of its fiscal year. In addition, a balance sheet, as required by question 13 of Part II, shall be filed within 90 days of the end of applicant's fiscal year.

(3) If the information contained in response to question 3 of Part I becomes inaccurate, the investment adviser shall file an amendment on Form ADV correcting such information within 90 days of the end of the applicant's fiscal year. However, if the investment adviser's registration or license in another jurisdiction has been restricted, suspended, terminated (either voluntarily or involuntarily) or withdrawn, the investment adviser shall promptly file an amendment.

3. By revising paragraph (d) of § 275.204-3 to read as follows:

§ 275.204-3 Written disclosure statements.

(d) *Omission of inapplicable information.* If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

II. It is proposed to amend Part 279 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

1. By amending Form ADV of § 279.1 as follows:

§ 279.1 Form ADV, for application for registration of investment adviser, and for amendments to such registration statement.

(i) Instruction 12—by deleting the last sentence from the first paragraph thereof and substituting the following:

In addition, a balance sheet as required by question 13 of Part II shall be filed no later than 90 days after the end of applicant's fiscal year.

Instruction 12—by deleting the last sentence of the second paragraph thereof and substituting therefor the following:

However, if the investment adviser's license or registration has been restricted, suspended, terminated (either voluntarily or involuntarily), or withdrawn, the investment adviser shall promptly file an amendment.

(ii) Instruction 15—by deleting the word "State" in the first line thereof.

(iii) Instruction 24—by deleting the phrase "Item 17 of Part I and."

(iv) Item 3(b) of Part I—by deleting the words "or involuntarily terminated or withdrawn or voluntarily terminated" in the second line thereof and substituting therefor the words "terminated (either voluntarily or involuntarily), or withdrawn."

(v) Item 10(i) of Part I—by deleting the comma between the words "desist" and "and" in the first line thereof.

(vi) Item 15(iii) of Part I—by deleting from subsection (f) thereof the words "or more" and adding the words "— less than \$5,000,000" and by adding a new subsection (g) with the words "\$5,000,000 or more."

(vii) Item 16(iii) of Part I—by deleting from subsection (f) thereof the words "or more" and adding the words "— less than \$5,000,000" and by adding a new subsection (g) with the words "\$5,000,000 or more."

(viii) Item 17 of Part I—by deleting the current text of such item in its entirety and substituting therefor a new item 17 to read as follows:

If applicant issues periodic publications relating to securities on a subscription basis, state the number of subscribers to such publications as of the end of the last fiscal year.

(ix) Items 6(a) and 6(b) of Part II—by deleting the word "age" in the first line of item 6(a) and in the second line of item 6(b) and substituting therefor the words "year of birth."

(x) The unnumbered note to item 8(b) of Part II—by revising it to read in its entirety as follows:

Note.—Pursuant to Section 202(a)(12) of the Act [15 U.S.C. 80b-2(a)(12)], the term "affiliated person" has the same meaning as

in Section 2(a)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(3)], which provides that an "affiliated person" of another person means: (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(xi) Item 9(c) of Part II—by adding the parenthetical phrase "(investment advisory)" immediately after the word "from" in the second line thereof.

(xii) Item 9(d) of Part II—by adding the parenthetical phrase "(investment advisory)" immediately after the word "prospective" in the first line thereof.

(xiii) Item 13 of Part II—by deleting the text of such item in its entirety and substituting therefor the following:

Balance Sheet. Every applicant who has custody or possession of clients' funds or securities, or requires prepayment of advisory fees six months or more in advance and in excess of \$500 per client, shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant and shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically. The qualifications and any report of an independent accountant which accompanies a balance sheet shall conform with the requirements of Article 2 of Regulation S-X [17 CFR 210.2-01 et seq.].

A sole proprietor investment adviser must show assets and liabilities related to his advisory business separately from his other business and personal assets and liabilities. However, appropriate aggregation of the other business and personal assets and liabilities is permitted except where a deficiency of assets exists in his overall financial position, in which case full details of the

other business and personal assets and liabilities shall be presented on the balance sheet or included in a note referred to on the balance sheet.

Has applicant provided a balance sheet on Schedule G pursuant to this Item? Yes No

(xiv) Schedule D, page 2—by adding a request for the name and social security number of the person for whom the schedule is being completed.

(xv) Schedule G—by deleting the phrase "Item 17 of Part I or" from the description of the form.

(A copy of Form ADV, as proposed to be amended, has been filed with the Office of the Federal Register as part of the original document.)

2. By amending Form ADV-S of § 279.3 as follows:

§ 279.3 Form ADV-S, annual report of registered investment advisers.

(i) Instruction 2—by adding after the last sentence thereof the following:

Note.—The filing Form ADV-S does not relieve a registrant of any requirement of Rule 204-1 under the Act to amend its Form ADV. Failure to amend Form ADV, as required by Rule 204-1, could result in enforcement action by the Commission. Any amendment to registrant's Form ADV which is made at the time registrant's Form ADV-S is filed may be filed with the Commission concurrently with the filing of ADV-S. However, any amendments to Form ADV so filed should not be attached to Form ADV-S and should include a properly completed execution page and page one of Part I of Form ADV.

(ii) Instruction 5—by deleting the second and third sentences thereof and substituting therefor the following:

Any registrant which provides an affirmative answer to item 3(a) should file the required amendment(s) with the Commission on Form ADV, pursuant to the instructions thereto, and indicate in item 3(b) whether such amendment(s) have been filed concurrently with the filing of Form ADV-S.

Instruction 5—by deleting in its entirety the second note to that instruction.

(iii) Instruction 6—by deleting from the first line thereof the words "is to remain registrant to file" and substituting therefor the words "requires a registrant to indicate whether it has filed"; further, by adding the words ", as an amendment to Form ADV," immediately after the words "Form ADV" in the first line thereof; further, by adding the words ", if applicable" immediately after the word "year" in the first sentence; and further, by deleting the words "Item 17 of Part I or" from the second sentence.

(iv) Item 4—by deleting the text of such item in its entirety and substituting therefor the following:

(a) Is the registrant subject to the filing requirements of item 13 of Part II of Form ADV? (Pursuant to item 13 of Part II of Form ADV, every applicant who has custody or possession of clients' funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall provide on Schedule G a balance sheet as of the end of applicant's most recent fiscal year. The balance sheet shall be audited by an independent public accountant and shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall be accompanied by a note stating the accounting principles and practices followed in its preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statement. If securities are included at cost, their market or fair value shall be shown parenthetically. The qualifications and any report of an independent accountant which accompanies a balance sheet shall conform with the requirements of Article 2 of Regulation S-X [17 CFR 210.2-01 et seq.]). Yes No

(b) If the answer to item 4(a) is yes, has the registrant, pursuant to Rule 204-1(b)(2) and item 13 of Part II of Form ADV filed with the Commission on Schedule G of Form ADV, a balance sheet as of the end of registrant's most recent fiscal year? Yes No

(A copy of Form ADV-S, as proposed to be amended, has been filed with the Office of the Federal Register as part of the original document.)

By the Commission.
George A. Fitzsimmons,
Secretary.
July 21, 1981.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form ADV, form of application for registration as an investment adviser or to amend such an application under the Investment Advisers Act of 1940 [17 CFR 279.1]; Rule 204-3, written disclosure statements [17 CFR 275.204-3]; Form ADV-S, annual supplement for investment advisers registered under the Investment Advisers Act of 1940 [17 CFR 279.3]; Rule 204-1, amendments to applications for registration [17 CFR 275.204-1]; and Rule 203-1, application for registration of investment adviser [17 CFR 275.203-1] set forth in Advisers Act Release No. 766, if promulgated, will not have a significant economic impact on a substantial number of small entities. The

reason for this certification is that the amendments reduce, have no effect on, or add no significant burden to the reporting requirements of any entity subject to these provisions.

Dated: July 17, 1981.

John S. R. Shad,
Chairman.

[FR Doc. 81-21998 Filed 7-27-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 79N-0459]

Erythromycin Estolate; Extension of Comment Period on Proposal To Revoke Provisions for Certification of Adult Dosage Forms

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) announces an extension of the comment period on its proposal to revoke regulations for the certification of adult dosage forms of erythromycin estolate. It is taking the action to provide a three-week comment period on the report of the Ad Hoc Advisory Committee on Erythromycin Estolate.

DATE: Written comments may be submitted by August 18, 1981.

ADDRESS: Written comments may be submitted to the Dockets Management Branch (formerly the Hearing Clerk's Office) (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Shea, Bureau of Drugs (HFD-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of December 4, 1979 (44 FR 69670), FDA proposed to revoke regulations that provide for the certification of adult dosage forms (tablets and capsules) of erythromycin estolate (21 CFR 452.115a, 452.115b). FDA proposed the revocation because of new information on the safety of erythromycin estolate which it believes might change the risk/benefit ratio of erythromycin estolate compared to other available erythromycins. If adopted in final form, the effect of the proposed revocation would be to remove the drug products from the market.

Erythromycin estolate tablets and capsules are currently manufactured by two firms:

1. Dista Products Co., Division of Eli Lilly & Co., P.O. Box 1407, Indianapolis, IN 46706.

2. Danbury Pharmacal, Inc., 131 West St., P.O. Box 296, Danbury, CT 06810.

In a notice published in the *Federal Register* of June 10, 1980 (45 FR 39340), the Commissioner chartered the Ad Hoc Advisory Committee on Erythromycin Estolate to advise the agency in its determination of the risk/benefit ratio of erythromycin estolate.

In a notice published in the *Federal Register* of February 27, 1981, the Commissioner announced that a public hearing before the Committee would be held on April 16 and 17, 1981. The notice requested that the Bureau of Drugs, manufacturers, and other interested persons submit written information pertinent to the risk/benefit determination and prepare to present their views orally at the hearing. The notice also stated that the Committee was to submit its conclusions in writing to the Commissioner by April 27, 1981, and that written comments would be accepted until three weeks after that, i.e., until May 18, 1981.

Because the Committee was unable to submit its report by April 27, 1981, on May 13, 1981, Eli Lilly & Co. requested that the comment period be extended to permit public comment on the Committee's report.

The report has now been submitted and placed in the Dockets Management Branch under Docket No. 79N-0459. It is available there for public review Monday through Friday, 9 a.m. to 4 p.m. The Committee's executive secretary sent a copy of the report to each hearing participant.

The comment period is hereby extended to permit interested persons three weeks to comment on the Committee's report as set forth in the February 27, 1981 notice. Accordingly, interested persons may submit written comments, identified with Docket No. 79N-0459 to the Dockets Management Branch, on or before August 18, 1981.

Dated: July 23, 1981.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 81-22011 Filed 7-24-81; 10:20 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 376]

Cienega Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in San Benito County, California, to be known as "Cienega Valley." This proposal is the result of a petition from an industry member in the area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labelling and advertising will help consumers better identify wines they purchase.

DATE: Written comments must be received by October 26, 1981.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Notice No. 376).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e) (1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on the features which can be found on the United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in San Benito County, California, as a viticultural area to be known as "Cienega Valley." The proposed area is located at the base of the Gabilan Mountain Range which rises to 3,274 feet and forms a boundary line between San Benito and Monterey Counties. The Pescadero Creek runs through the vineyards and the San Andreas earthquake fault line borders the northeast edge. Cienega Valley lies approximately five miles south, overland, from the town of Hollister. On the east is the Paicines Vineyards. The Cienega Valley area is planted with hundreds of acres of vineyards consisting of numerous varieties of grapes.

Geographical/Viticultural Features

The petitioner claims that the proposed viticultural area is distinguished from surrounding areas by climatic variances and by differences in the soil. The petitioner bases these claims on the following:

(a) Cienega Valley lies northeast of the Salinas Valley which is known as a cooler area and is often blanketed with fog. Salinas Valley strongly influences the micro-climate of the Cienega Valley by sending cooler air and fog into the Cienega grape-growing region.

(b) The terrain is extremely hilly to mountainous and the elevation ranges from approximately 930 feet to well over 1,500 feet. The average elevation in the Cienega Valley area is higher than much of the surrounding area including Paicines.

(c) Due to the closeness of the Cienega Valley area to the Gabilan Mountain Range, Cienega Valley often has more rain than the surrounding area, thus creating different micro-climatic conditions. Rainfall average 15.29 inches per year based on 53 years of records. There is some dry farming around the winery. However, water coming down out of the Gabilan Mountains into the Pescadero Creek is used for irrigation of a portion of the vineyards.

(d) The Cienega Valley area is in a wind tunnel of cool ocean air flowing to the San Joaquin Valley. Trees growing adjacent to the vineyard area help protect the area from the wind. Also, Cienega Valley is protected from the wind due to the location of its east/west canyons. Cienega Valley gets more evening fog than much of the surrounding area because of its location at the foot of the Gabilan Mountains. This fog usually burns off by early morning.

(e) The average temperature in the last four years is 2861 degree-days.

(f) The soil is loamy, generally well drained, and often underlain by weathered granite. The main soil associations of the flood plains and alluvial fans are Sorrento-Yolo-Mocho and Clear Lake-Pacheco-Williams. The soil associations on the uplands are the San Benito-Gazos-Linne association and the Sheridan-Cineba-Auberry association. In general there is good water holding capacity and the root depth ranges from medium to quite deep.

(g) The adjacent mountain range and the cool ocean air that comes into the Cienega Valley each day help create an ideal micro-climate for the growing of fine, distinguished quality grapes.

Historical Background

History in the county of San Benito dates back to the 1700's with the advent of the Spanish Padres and the dedication of the Missions. Cienega, in San Benito County, was planted with vines by Theophile Vache in the early 1850's. The vineyard was sold in 1883 and the new owner planted more acreage. Historical data indicate a winery was built in 1854 and later enlarged.

The quality of the wines from this growing region won a reputation by winning prizes from as far away as France and Italy. The petitioner states

that during Prohibition the grape vines were not pulled and in 1935, when it became legal, wine was made by Mr. Valiant who had acquired the winery. According to the petitioner, both the winery and vineyards were taken over by the Taylor Company in 1943 and later sold to Almaden Vineyards.

Proposed Boundaries

The boundaries of the proposed Cienega Valley viticultural area may be found on four U.S.G.S. 7.5 minute quadrangle maps ("Hollister Quadrangle, California", "Tres Pinos Quadrangle, California", "Mt. Harlan Quadrangle, California", and "Paicines Quadrangle, California"). The specific description of the boundaries of the proposed viticultural area is found in the proposed regulations.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Cienega Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 60-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

Part 9—American Viticultural Areas

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.38. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

9.38 Cienega Valley.

Par. 2. Subpart C is amended by adding § 9.38. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas**§ 9.38 Cienega Valley.**

(a) *Name.* The name of the viticultural area described in this section is "Cienega Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of Cienega Valley viticultural area are four U.S.G.S. maps. They are titled:

- (1) "Hollister Quadrangle, California," 7.5 minute series;
- (2) "Tres Pinos Quadrangle, California," 7.5 minute series;
- (3) "Mt. Harlan Quadrangle, California," 7.5 minute series; and
- (4) "Paicines Quadrangle, California," 7.5 minute series.

(c) *Boundaries.* The Cienega Valley viticultural area is located in San Benito County, California. The beginning point is the Gaging Station, located on U.S.G.S. map "Paicines Quadrangle" at the southeast edge of Township 14 South, Range 6 East, Section 21, the southeast corner.

(1) From the beginning point, the boundary follows the Pescadero Creek Bed southeast about 100 feet to the unimproved road and continues south southwest on the unimproved road .5 mile to where it intersects with the south border of Township 14 South, Range 6 East, Section 21;

(2) Thence continuing along the south border of Township 14 South, Range 6 East, Section 20; thence along the west border of Township 14 South, Range 6 East, Section 20; thence along the west border of Township 14 South, Range 6 East, Section 17 to where it intersects with the 1200-foot contour line;

(3) Thence following the 1200-foot contour line in a generally northwestern direction to where it intersects with the north boundary of Township 14 South, Range 5 East, Section 10; then following this boundary line in a northwest direction to where this boundary intersects with the 1600-foot contour line; thence following the 1600-foot contour line in a generally northern direction to where it intersects with the unimproved road;

(4) Thence looping southward and continuing on in an easterly direction to the designated "Spring" and continuing on the unimproved road in a northeast direction parallel with the gulch to the Vineyard School on Cienega Road; then continuing southeast on Cienega Road .4 mile to where the unimproved road intersects; thence traveling north and following the unimproved road northwest about .5 mile; then looping in an easterly direction .75 mile to the

intersection of the unimproved road and branching in a southeast direction;

(5) Thence crossing Township 13 South to Township 14 South and following the unimproved road to the intersection of the western border of Township 14 South, Range 5 East, Section 6; thence south to the northwest corner of Section 7;

(6) Thence continuing in a diagonal line of the southeast corner of Township 14 South, Range 6 East, Section 7; thence from the corner of Section 7 .25 mile west to where it intersects with an unimproved road;

(7) Thence following this unimproved road in a southeast direction to the Gaging Station, the point of beginning.

Signed: June 9, 1981.

G. R. Dickerson,
Director.

Approved: July 12, 1981.

John P. Simpson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 81-21880 Filed 7-27-81; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[DOD Regulation 6010.8-R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services; Amendment

AGENCY: Office of the Secretary, DOD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule amends the comprehensive CHAMPUS Regulation 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services. It sets forth revised criteria for determining when a hearing impairment will be considered to constitute a serious physical handicap.

DATES: Written public comments must be received on or before September 1, 1981. If adopted, this amendment would become effective on October 1, 1981.

ADDRESS: Office of the Secretary of Defense (Health Affairs), Room 3E339, The Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Lorraine F. Carpenter, Special Assistant for CHAMPUS, telephone (202) 697-5185.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense

published the Regulation, DOD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)." Section 199.11 contains provisions concerning the CHAMPUS Program for the Handicapped, a program of financial assistance for military personnel on active duty whose spouses or children may be moderately or severely mentally retarded or seriously physically handicapped and in need of specialized institutional care, training, or rehabilitation and the required services are not available from public institutions or agencies. The term "seriously physically handicapped" is defined to mean a medical condition of the body which is expected to result in death or which has lasted, or with reasonable certainty is expected to last, for a minimum period of twelve (12) months and the condition is of such severity as to preclude the individual from engaging in substantially basic productive activities of daily living expected of unimpaired persons of the same age group. For example, (1) persons older than high school age must be generally unable to engage in gainful pursuits because of the handicap; and (2) persons of school age, up to and through high school age, must be unable to be provided an education through the public school system because of the handicap. The current provision concerning Program for the Handicapped eligibility criteria based on hearing impairments is as follows:

§ 199.11(e)(2) (iii) and (iv):

(iii) Deafness: Age seven (7) and over. Deafness will be evaluated in terms of the person's ability to hear and distinguish speech. The degree of functional hearing loss is that loss of hearing and discrimination for speech which is not restorable by a hearing aid. A hearing impairment will be considered serious in those cases where the hearing impairment (not correctable by a hearing aid) is manifested by:

(a) Absence of air and bone conduction in both ears (auditory perception of not more than pure tone at high volume will be considered as absence of air and bone conduction);

(b) No more than 40 percent discrimination for speech (i.e., ability to hear and understand no more than 40 out of 100 words of special test lists of words using a speech audiometer or hearing aid); and

(c) Which have reached a point where the individual requires assistance to support the essentials of daily living.

(iv) Deafness: Under age seven (7). A hearing impairment in children under 6 years of age will be considered serious (even if correctable by a hearing aid) in those cases where the hearing impairment is manifested by a 30 decibel or more air conduction hearing loss in at least one ear.

Based on Program experience in applying these criteria since implementation of the Regulation in June 1977, combined with comments received from beneficiaries, providers and other professional experts, it was determined to undertake a review of the existing criteria. To accomplish this, the Department of Defense established a panel of civilian and military professionals in the field of hearing impairments. Based on current thinking regarding the handicapping effect of hearing impairments and evolving sophisticated technology in the hearing field, the panel recommended revision of the criteria.

This amendment is being published for proposed rule-making at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, and with other interested agencies.

Accordingly, it is proposed to amend 32 CFR, Chapter I, Part 199, by revising § 199.11(e)(2) (iii) and (iv) as follows:

§ 199.11 Program for the handicapped.

(e) *Serious Physical Handicap.* * * *

(2) *Examples of conditions which may cause serious physical handicap.* * * *

(iii) *Hearing Impairment: Testable Patients.* A hearing impairment will be considered to constitute a serious physical handicap when it is manifested by:

(A) A 45 decibel Hearing Threshold Level (HL) or poorer in either ear tested at 1,000; 2,000; or 3,000 Hz frequencies; or

(B) A 30 decibel HL or poorer in *each* ear tested at 1,000; 2,000; or 3,000 Hz frequencies; or

(C) Speech discrimination of 60% or poorer with *either* ear.

(iv) *Nontestable Patients.* Where pure tone audiometry or speech discrimination testing is not available or not reliable because of the patient's age or condition, the attending physician must submit documentation which demonstrates that the patient is unable to engage in substantially basic productive activities of daily living expected of unimpaired persons of the same age group. An example of acceptable documentation might be results of electrophysiological tests of hearing such as auditory evoked potential testing or a behavioral assessment which establishes that an infant will not be able to develop normal language due to a hearing impairment,

without intervention. Each such case will be reviewed on its own merits.

* * * * *

M. S. Healy,

OSD Federal Register Liaison, Washington Headquarters Services, Department of Defense.

July 23, 1981.

[FR Doc. 81-21982 Filed 7-27-81; 8:45 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Income and Net Worth Questionnaires

AGENCY: Veterans Administration.

ACTION: Proposed regulation change.

SUMMARY: The Veterans Administration is proposing to amend its regulation governing discontinuance of improved pension and dependency and indemnity compensation (DIC) for failure to file an income questionnaire. This amendment would permit the Veterans Administration to discontinue these benefits for failure to file an income questionnaire on the first day of the year for which income was to be reported.

DATE: Comments must be received on or before August 26, 1981. The Veterans Administration proposes to make this change effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue N.W., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until September 8, 1981.

FOR FURTHER INFORMATION CONTACT:

T. H. Spindle, Jr. 202-389-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 3.660(a)(2) reduction or discontinuance of a running award of improved pension or DIC by reason of an increase in income is effective the end of the month in which the increase occurred. Under § 3.661(b) discontinuance of pension or DIC for failure to file an income questionnaire is effective the end of the year for which income was to be reported. Section 3.661(b) permits a person in receipt of improved pension or DIC who fails to report an increase in income (as the person is required to do under § 3.660(a)(1)) to continue to receive benefits for the balance of the year and escape detection by simply not filing the income questionnaire.

To remedy this situation we are proposing to amend § 3.661(b) to provide that discontinuance of improved pension or DIC for failure to file an income questionnaire shall be effective the first day of the year for which income was to be reported. This will enable us to consider an improved pensioner or DIC beneficiary who fails to file an income questionnaire overpaid for the entire year until the income questionnaire is filed.

Discontinuance of section 306 and old-law pension for failure to file an income questionnaire shall continue to be effective the end of the year for which income is to be reported. This is because reduction or discontinuance of these benefits by reason of increased income is effective the end of the year in which the increased income was received. 38 CFR 3.660(a)(2).

The Administrator hereby certifies that this proposed rule will not, if promulgated have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that it applies only to individual veterans and their dependents. It will therefore have no significant direct on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions.)

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until September 8, 1981. Any person visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: July 9, 1981.

D. Custis,
Acting Administrator.

The Veterans Administration proposes to amend Part 3 as follows:

In § 3.661, paragraph (b) is revised to read as follows:

§ 3.661 Income and net worth questionnaires.

(b) *Failure to return questionnaire.* (1) *Section 306 and old-law pension—*(i) *Discontinuance.* Discontinuance of old-law or section 306 pension shall be effective the last day of the year for which income (and net worth in a section 306 pension case) was to be reported.

(ii) *Resumption of benefits.* Payment of old-law or section 306 pension may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the year following the year for which income (and net worth in a section 306 pension case) was to be reported; otherwise pension may not be paid for any period prior to the date of receipt of a new claim.

(2) *Improved pension and dependency and indemnity compensation—*(i) *Discontinuance.* Discontinuance of dependency and indemnity compensation (DIC) or improved pension shall be effective the first day of the year for which income (and net worth in an improved pension case) was to be reported or the effective date of the award, whichever is the later date.

(ii) *Adjustment of overpayment.* If evidence of entitlement to improved pension or DIC for any period for which payment of improved pension or DIC was discontinued for failure to file an income questionnaire is received at any time, payment of improved pension or DIC shall be awarded for the period of entitlement for which benefits were discontinued for failure to file an income questionnaire.

(iii) *Resumption of benefits.* Payment of improved pension and DIC may be resumed, if otherwise in order, from the date of last payment if evidence of entitlement is received within the year following the year for which income (and net worth in an improved pension case) was to be reported; otherwise pension or DIC may not be paid for any period prior to receipt of a new claim.

(38 U.S.C. 210(c))

[FR Doc. 81-21925 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 17

Health Services Review Organization

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration (VA) proposes to implement legislation which provides a privilege and confidentiality regarding certain records and documents relating to the Veterans Administration Medical Quality Assurance Program. Health Services Review Organization—Systematic Internal Review and Systematic External Review Program (HSRO-SIR and SERP) has been the VA's Medical Quality Assurance Program since 1975. The legislation requires that the Administrator prescribe regulations to carry out this legislation after October 7, 1980.

DATE: Comments must be received before August 27, 1981. It is proposed to make these regulations effective upon final publication in the Federal Register.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Comments will be available for inspection at the above address during normal business hours until September 8, 1981.

FOR FURTHER INFORMATION CONTACT: Carl Tribble Jr., 703-235-3014.

SUPPLEMENTARY INFORMATION: The Veterans' Disability Compensation and Housing Benefits Amendments of 1980, Pub. L. 96-385 was signed by President Carter on October 7, 1980. Section 505 of this act adds a new section 3305 to title 38, United States Code and provides for confidentiality of VA Medical Quality Assurance records and documents. This legislation concerns a controversial subject which deals with fundamental ethical canons of most health care professions.

Part of those canons require that a physician, dentist, nurse or other health care professional must identify and report on peers who are performing at a substandard level and endangering (potentially or actually) the health of patients. This is an affirmative duty. Thus, peer review by systematic procedures, using committees or teams, to establish measurable criteria and then to objectively compare the performance of health care providers against those criteria has become a long-standing practice. The VA is committed to systematic internal review, a continuous review at the hospital level, which permits peers and multi-disciplinary health care provider

committees to assess other providers' performance and utilize peer, professional and managerial constraints to improve the performance of the poor or mediocre performer in such ways as, closer supervision, education, curtailment of privileges, or even removal.

Since health care providers need to assess their peers' work and have their own individual as well as group performance assessed by peers, 38 U.S.C. 3305 is intended to provide some limited protection against inappropriate disclosure of information generated by this process and thereby encourage health care providers to conduct candid, reliable, valid and objective review activities. There is always a danger that confidentiality may be abused by unethical individual(s) to conceal a consistent pattern of poor or even negligent or harmful care. An attempt has been made to build in certain provisions to prevent or detect this sort of misuse. We believe these evaluative activities do improve care both by deterring poor performance by some providers and by assisting many others to aspire to higher performance standards.

The primary thrust and intent of HSRO-SIR at the local level is to integrate evaluation with education—thus where care is below acceptable standards, this new "objective" knowledge is fed back to the providers and with peer pressure and educational interchange will, we believe, provide for a more general and cost effective improvement of quality of care than any comparable evaluation model. The crux of 38 U.S.C. § 3305 is that by providing confidentiality we are requiring and enabling each VA Medical Facility health care staff to internally monitor and improve the care they provide.

The VA has determined that these proposed regulations are nonmajor in accordance with the requirements of Executive Order 12291, Federal Regulation. It has also been determined as required by the Regulatory Flexibility Act (Pub. L. 96-354) that it poses no compliance costs or reporting burdens upon the public and has no effect on businesses or State and local governments.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration Central Office, 810 Vermont Avenue, N.W., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address

only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until Sept. 8, 1981. Any person visiting the Veterans Administration Central Office in Washington, D.C. for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and will be furnished the address and the room number.

Approved: July 8, 1981.

D. Custis,
Acting Administrator.

It is proposed to amend 38 CFR Part 17 by adding §§ 17.500 through 17.540 to read as follows:

PART 17—MEDICAL

* * * * *

Health Services Review Organization (HSRO)

Sec.

- 17.500 General.
- 17.501 Departmental responsibility.
- 17.502 [Reserved]
- 17.503 Individual facility responsibility.
- 17.504 Conduct and evaluations.
- 17.505 Mandatory HSRO-SIR elements and continuous monitors.
- 17.506 HSRO plan.
- 17.507 Description of utilization review and continuous monitors.
- 17.508 Descriptions of health care monitors.
- 17.509 Patient quality of care satisfaction surveys.
- 17.510 Patient injury control (PIC) review and analysis.
- 17.511 [Reserved]
- 17.512 Problem-focused health care evaluation (HCE).
- 17.513-17.514 [Reserved]
- 17.515 Clinical credentialing and delineation of privileges.
- 17.516 [Reserved]
- 17.517 HSRO records and documents generally.
- 17.518 HSRO-SIR records and documents.
- 17.519 HSRO-SERP records and documents.
- 17.520 Improper disclosure.
- 17.521 Disclosure methods.
- 17.522 Non-Veterans Administration requests.
- 17.523 Director's authority.
- 17.524 Appeal of Director's decision.
- 17.525 Facility responsibilities.
- 17.526 Training.
- 17.527 Access to HSRO data.
- 17.528-17.533 [Reserved]
- 17.534 Authorized disclosure; non-Veterans Administration requests.
- 17.535-17.539 [Reserved]
- 17.540 Penalties for violations.

Authority: 38 U.S.C. 3305.

Health Services Review Organization (HSRO)

§ 17.500 General.

(a) Health Services Review Organization (HSRO), the Veterans Administration's Quality Assurance Program, is an organized continuous systematic effort by all VA Medical Facility services and personnel to review and identify opportunities for potential improvements and to implement improvements in order to achieve excellence in the delivery of health care and services provided. The HSRO program is an ongoing, efficient, flexible, integrated health care monitoring and improvement system. HSRO's shall review:

- (1) The quality of patient care and services provided,
- (2) Utilization of resources (i.e., appropriateness and efficiency of care and services rendered),
- (3) Safety of patients, visitors, and personnel.

(b) Health Services Review Organization—Systematic Internal Review (HSRO-SIR) is internal to the VA Medical Facility and is an integration of all relevant quality assurance functions, activities, programs, and services. Health Services Review Organization—Systematic External Review Program (HSRO-SERP) is an external monitoring program that evaluates the effectiveness, efficiency, and integrity of each SIR program to assist health care providers and health care managers at all levels to improve the quality of care provided Veterans Administration beneficiaries.

(c) For all opportunities for improvement identified by a SIR or SERP review, appropriate action, such as developing education/training programs or creating feedback systems and monitors, must be taken to eliminate or reduce to an acceptable level the identified problem. Actions shall be constructive and will be developed and implemented at the lowest possible organizational unit.

(d) The term "VA Medical Facility or Facilities" throughout these HSRO regulations includes VA Medical Centers, Independent Outpatient Clinics and Independent Domiciliaries. 38 U.S.C. 3305.

§ 17.501 Departmental responsibility.

(a) The Chief Medical Director is responsible for the implementation, maintenance, and enforcement of these HSRO regulations, and will ensure that each VA Medical Facility maintains an effective and efficient HSRO-SIR program.

(b) To assist the Chief Medical Director the HSRO Advisory Council will be established under the Chairmanship of the Associate Deputy Chief Medical Director. This council will include such individual membership as the Chief Medical Director considers appropriate but will be composed of Federal employees. It will meet quarterly and provide guidance, oversight, and recommendations to the CMD concerning the status, efficiency and the need to improve the HSRO program. 38 U.S.C. 3305.

§ 17.502 [Reserved]

§ 17.503 Individual facility responsibility.

(a) Each VA Medical Facility Director is fully responsible for the HSRO-SIR program within his/her institution. The authority for coordinating, training, providing technical support, and conducting day-to-day supervision of SIR activities is delegated to the HSRO Coordinator, but the full executive responsibility for SIR rests solely with the Director and shall not be delegated. Supervision of the HSRO Coordinator may be by either the Director, the Assistant Director, or Chief of Staff as determined by the VA Medical Facility Director.

(b) The Chief of Staff and Assistant Medical Facility Director are responsible for assuring that services under their supervision adequately support and participate in the SIR program.

(c) Each Service Chief at a VA Medical Facility is responsible for planning and implementing SIR for his/her service and ensuring that SIR activities or functions of his/her service are integrated with and supportive of the VA Medical Facility SIR program and meet the intent of the HSRO-SIR policy statement of the VA Medical Facility.

(d) The VA Medical Facility Director will utilize an existing committee(s) or establish a committee(s), either of which must be composed of Federal employees, for integrating and coordinating HSRO activities appropriate to the specific needs of the individual medical facility. 38 U.S.C. 3305.

§ 17.504 Conduct and evaluations.

(a) Any VA health care provider or evaluator participating in HSRO evaluation activities will exercise prudent and diligent care and act in good faith while gathering and analyzing factual data prior to making any judgments which may reflect adversely on another provider(s). The reviewer or evaluator must act reasonably to ensure

that relevant, factual data is objectively collected and analyzed and that such data is complete and sufficient for the judgment or decision being made.

(b) Only those employees in supervisory, executive, or HSRO capacities, who have sufficient job-related need to study or otherwise utilize the data, should have access to patient or provider identification data or to the confidential code system key. 38 U.S.C. 3305.

§ 17.505 Mandatory HSRO-SIR elements and continuous monitors.

Each VA Medical Facility will establish a written HSRO policy statement and develop a plan which defines and assigns responsibilities and describes procedures and mechanisms necessary to maintain an effective HSRO program. The policy will be reviewed at least annually as part of the evaluation of the HSRO program, and updated according to need. The plan will include continuous monitoring of the following mandatory elements and such additional review functions or activities as the VA Medical Facility Director considers appropriate.

- (a) *Utilization Review.*
- (1) Medical Records.
 - (2) Surgical Case (Tissue) Review
 - (3) Blood Services.
 - (4) Therapeutic Agents.
 - (5) Autopsy Review.
 - (6) Laboratory Utilization.
 - (7) Radiology and Nuclear Medicine Review.
 - (8) Infection Control.
 - (9) Psychiatric Inpatient and Outpatient Program Reviews.
 - (10) Clinical Utilization Review Studies.
- (b) *Patient Quality of Care Satisfaction Surveys.*
- (c) *Patient Injury Control Review and Analysis.*
- (1) Surgical Complications and Anesthesiology Analysis Review.
 - (2) Adverse Drug Reaction Analysis.
 - (3) Mortality and Morbidity Review.
 - (4) Suicides and Suicidal Attempt/Threat Analysis.
 - (5) Restraint Usage Analysis.
 - (6) Seclusion Usage Analysis.
 - (7) Commitment Usage Analysis.
 - (8) Unexpected Deaths and Deaths within 24 hours of Admission.
 - (9) Falls, Assaults and Patient Abuse Incidents.
- (d) *Problem-Focused Health Care Evaluation Studies.* This includes special audits of specific programs performed at the Director's or Central Office's direction.

(e) *Clinical Credentialing and Delineation of Privileges.* 38 U.S.C. 3305.

§ 17.506 HSRO plan.

Each VA Medical Facility HSRO plan will address itself to the following subjects:

(a) *Philosophy and objective of the HSRO program* (As described in § 17.500).

(b) *Responsibilities for:*

(1) Program operation.

(i) Annual evaluation of the HSRO program

(ii) Development and revision of the HSRO plan.

(iii) Staff education regarding HSRO.

(iv) Integrating/coordinating data and evaluations and monitoring activities.

(v) Eliminating duplication and nonproductive review activities.

(2) Internal Review.

(i) Problem-focused studies.

(A) Problem identification.

(B) Priority setting and topic selection.

(C) Criteria development and approval.

(D) Problem assessment.

(E) Assuring objectivity of assessment and data generated.

(F) Corrective planning, approvals, and implementation.

(G) Follow-up and reporting.

(H) Frequency requirements for services.

(I) Assuring impact on patient care.

(ii) Continuous monitors.

(A) Criteria setting and approval.

(B) Corrective action planning, approval, and implementation.

(C) Reporting frequency requirements for each monitor.

(iii) External Reviews—SERP (and others).

(A) Corrective action planning, approval, and implementation.

(B) Follow-up.

The plan will be combined with other facility policies on, and plans for, the control of the quality of patient care, to constitute the facility's comprehensive HSRO program. 38 U.S.C. 3305.

§ 17.507 Description of utilization review and continuous monitors.

(a) Utilization Review includes a variety of screening techniques, studies, and continuous monitors to assure that each patient receives the appropriate resources at the appropriate time in the appropriate manner and with the appropriate skill and compassion which best meets the patient's individual health care needs. Utilization Review is concerned with all aspects of care; overutilization, underutilization, and misutilization.

(b) Screening surveys (random sample surveys) may be part of some or all of the continuous monitors but will include occasional surveys to both verify the

adequacy and reliability of the continuous monitors and to determine the presence or absence of other problems.

(c)(1)(i) A continuous monitor is a process which allows facility personnel to review and to objectively assess those clinical areas which are key indicators of the quality, utilization and safety of health care or services provided. These clinical areas must be evaluated on a regular and recurring basis. These reviews may be conducted daily, monthly, quarterly, or semiannually at the Director's discretion or as prescribed by Veterans Administration policy. Monitors may document areas where problems do not exist, or identify areas with problems needing either limited or problem-focused evaluation.

(ii) If problem-focused evaluation of a particular problem is not warranted, action will be taken at the earliest possible moment to eliminate or reduce the problem to an acceptable level.

(2) All HSRO monitors, reviews, studies or surveys shall use an objective sampling procedure to ensure that patients have an equal opportunity to have their medical care evaluated. This does not, require 100 percent review of all patients.

(3) A continuous monitor process is different from day-to-day management because it utilizes either implicit or explicit criteria, or both, to collect data over a specified period of time and evaluates that data on a regular and recurring basis to determine what patterns occur.

(4) Monitors may be performed by a committee or be the responsibility of a service, program, or individual, and may be combined with other monitors as considered appropriate by the VA Medical Facility Director. 38 U.S.C. 3305.

§ 17.508 Descriptions of health care monitors.

(a) *Medical records monitor.* The monitor of medical records (inpatient, outpatient, domiciliaries, extended care, Nursing Home care, Hospital Based Home Care, Personal Care Home, and all other VA patient records) includes at least quarterly reviews to ensure that records are readily available, complete, secure, and provide appropriate documentation for all health care providers to be able to determine what the patient's needs were, what services were provided and the outcome of each episode of care. The monitor should also identify the provider(s) responsible for the care and treatment of each patient.

(b) *Surgical case (tissue) review.* Tissue review includes monthly assessment of surgery (whether a

specimen is or is not removed) to assure the appropriateness and necessity of the surgery. This review also includes an evaluation of all cases in which there is a discrepancy between the preoperative, postoperative, and pathologic diagnoses.

(c) *Blood services.* This function includes regular and frequent monitoring to ensure that all aspects of blood services are handled in a safe, appropriate and therapeutic manner. Thus, the monitor will determine whether blood and blood products are safety stored, ordered, cross-matched, and delivered in a timely and reliable manner. This monitor also helps detect overuse and underuse of blood and blood products and analyzes transfusion reactions.

(d) *Therapeutic agents monitor.* Included in a therapeutic agents monitor is a requirement for the assessment of all chemicals including antibiotics, narcotics, neuropsychotropics, and other drugs used in diagnostic and therapeutic procedures to determine that appropriate medications, drugs, or other chemicals were used in a manner, amount, and timeliness appropriate to the patient's care requirements. This monitor also includes a review of clinicians' prescribing practices and the administration of chemical agents by nurses and other health care providers. It also provides for the assessment of the effectiveness of the prescribed drugs.

(e) *Autopsy review.* (1) This monitor includes assuring that autopsy services are appropriately provided and requires summary data to be collected on a cumulative basis to include:

(i) The number of deaths in the hospital.

(ii) The number of autopsies performed including:

(A) The number of cases with no major diagnostic disagreements,

(B) The number of cases with major diagnostic changes,

(C) The number of cases in which the clinical diagnosis is clarified.

(2) The ratio of autopsies to deaths should conform to Veterans Administration policy in order to ensure that representative pathology monitoring occurs annually.

(f) *Laboratory utilization.* This monitor includes the review of a wide variety of laboratory service tests and procedures to ensure that such tests are properly utilized in relation to individual patient care needs. The monitor also determines if the quality control, i.e., accuracy, reliability, and validity of test reports is satisfactory and whether the response time between the request for laboratory tests and the response to the

requesting clinician meets established timeliness standards.

(g) *Radiology and nuclear medicine review.* This monitor includes the surveillance of all Radiology and Nuclear Medicine diagnostic and therapeutic procedures to ensure they are necessary and appropriate for the individual patient's needs. This monitor also includes an evaluation of the timeliness of responses to requests for these procedures, and an assessment of the quality of the professional service provided (i.e., a review of the validity, reliability, and accuracy of radiographic analyses and the appropriate utilization of radiology, nuclear medicine, and related services in maintaining the high quality of patient care and efficiently using resources).

(h) *Infection Control.* Infection Control includes a recurring review by facility personnel to determine the trend and extent of nosocomial infections and to propose corrective actions to control or reduce deviations from accepted norms for nosocomial infections.

(i) *Psychiatric inpatient and outpatient program reviews.* Program evaluation includes monitoring on a recurring basis to help ensure that each program is meeting its treatment goals and is providing high quality patient care.

(j) *Clinical Utilization Review studies.* Included are reviews with generic, problem or disease specific or patient-need specific topics to determine whether certain problems in health care utilization are occurring. Frequently, problem-focused Utilization Review studies will concentrate on problems detected by these continuous monitors. Clinical Utilization Review studies should periodically assess:

(1) Appropriateness of admission(s), continuance of stay(s), and rate of use of support services.

(2) The numbers of patients in hospital over 15 days.

(3) Discharge planning efficacy.

(4) Productivity/utilization of special medical programs.

(5) Timeliness of admission and outpatient processing.

(6) Analysis of morning chart review of applicants who were found to not require hospitalization or care. 38 U.S.C. 3305.

§ 17.509 Patient quality of care satisfaction surveys.

(a) Surveys and questionnaires will be used from time to time to determine if patients are satisfied with factors directly related to quality of care and to help verify the quality of services being

provided to inpatients, outpatients, and applicants not admitted.

(b) These surveys will include: (1) review of waiting time; (2) patient's understanding of diagnosis and medications; (3) patient's understanding of preventive or therapeutic action (e.g., life style change necessary on the patient's part to improve or halt or retard progression of disease process); and (4) other areas of concern to health care providers that can only or best be assessed by monitoring patient's perceptions. 38 U.S.C. 3305.

§ 17.510 Patient Injury Control (PIC) review and analysis.

(a) Patient Injury Control will include the monitoring of all those disabilities (or injuries) which patients incur during the course of their medical management including those which are a natural consequence of their disease, or which are a recognized measurable risk of medical intervention or any iatrogenic disease or illness resulting from either omissions or commissions by health care providers during the course of both inpatient and outpatient care. This monitor includes a review of determinations not to admit.

(b) The Department of Medicine and Surgery will use VA Form 10-2633, "Report of Special Incident Involving a Beneficiary" for reporting incidents of patient injury. The Department will also make training available to ensure that all patient incidents or injuries which meet specified criteria are reported, through the HSRO-SIR program, to the HSRO Coordinator. The Coordinator will forward to the Chief of Staff any incident report which suggests or indicates the need for a further investigation of the circumstances surrounding the incident. Incident reports will be maintained by the HSRO Coordinator for profile analyses and for targeting areas that require attention or study by Utilization Review or other SIR committees or teams.

(c) The criteria to guide VA Medical Facility personnel in determining when a VA Form 10-2633 is required will be designed to protect the patient's interests and will permit the development of additional criteria considered useful by the VA Medical Facility Director.

(d) When the Chief of Staff determines that further investigation is indicated, the VA Medical Facility Director will appoint an investigating team of qualified professionals who will promptly collect all relevant information by interviews, record reviews and other means and will provide a summary of findings, analysis and recommendations to the Director concerning the incident.

In addition, the investigation committee report will include a determination of any culpability by the staff of the institution and a judgment as to whether the incident is significant in relationship to the patient's outcome.

(e) Where the patient has been injured or harmed the Director will authorize and document appropriate corrective or therapeutic measures necessary to prevent the recurrence and improve or otherwise support the patient's condition to the maximum extent feasible. However, in the event of a determination of apparent staff culpability, the Director will contact the District Counsel to request his/her review of the case to determine any potential tort liability on the part of the Federal government.

(f) Patient Injury Control will also include monitoring of the following:

(1) Surgical complications and anesthesiology analysis which requires the study over time of type, location, severity and other aspects of surgical/anesthesiology complications to ensure high quality of care for surgical patients.

(2) Adverse drug reaction or medical error review which requires the reporting and analyzing of all suspected or verified drug reactions in order to ensure that proper preventive measures designed to control or prevent patient risk from medication reactions and errors have been implemented.

(3) Mortality and morbidity review which requires the routine collection and analysis of data monthly, quarterly, and annually to determine if the mortality and/or morbidity ratio meets accepted professional standards and expectations.

(4) Suicide threats and attempts (as well as suicides) which will always be reported, studied, and analyzed individually and by aggregate data to assist in detecting trends or patterns which require changes in the care of an individual or a class of psychiatric patients to safeguard them from harm.

(5) Restraint usage which is a monitor intended to protect patients from inappropriate or harmful restraint while assuring that, where necessary, restraints are safely and humanely applied.

(6) Seclusion usage which provides a regular review to ensure that seclusion is used appropriately in all cases.

(7) Commitment usage which requires thorough analysis on a recurring basis in order to ensure that patients who are committed have been legally and appropriately committed and continue to require commitment.

(8) All unexpected deaths and deaths within 24 hours of admission which must be reviewed immediately, and the

monitoring of data collected over time to determine whether certain procedures or practices are contributing to deaths.

(9) Falls, assaults and patient abuse which include injuries to patients by accidental falls, related physical injuries, or assaults on or abuse of patients by other patients or staff. This category also includes suspected abuse, verbal or physical. 38 U.S.C. 3305.

§ 17.511 [Reserved]

§ 17.512 Problem-focused health care evaluation (HCE).

(a) Health Care Evaluation is an ongoing system of evaluative studies which deals with high priority problems related to patient care processes and outcomes. Each clinical service will participate in a reasonable number of problem-focused patient care evaluation studies, on an annual basis, to ensure that a representative portion of patients treated are monitored and to further ensure that the care provided is of satisfactory or higher quality, and, where appropriate, that any deviations from acceptable standards of care are corrected in order to maintain a high quality of care.

(b) Health Care Evaluations (HCE) are usually, but not always, multidisciplinary and may be disease-specific or generic and may be specific to any portion or unit or subset of health care provided by the VA Medical Facility. The necessity of conducting a Health Care Evaluation may be identified from problems detected through utilization review or the monitors, or other sources, or from the Patient Injury Control component.

(c) A VA Medical Facility Director may, in an individual case, request a special audit or study of a certain program or process of care, e.g., cardiac surgery by external peer evaluators, either Veterans Administration or non-Veterans Administration reviewers from outside the facility to assure objectivity. These special audits are then included as Problem-Focused Health Care Evaluations. 38 U.S.C. 3305.

§ 17.513-17.514 [Reserved]

§ 17.515 Clinical credentialing and delineation of privileges.

(a) Credentialing and authorizing privileges is the systematic process of monitoring the qualifications, performances, skills, and professional competence of health care providers to assure they have—and continue to have—the professional capability required of their discipline and that their capabilities are commensurate with the diagnostic and therapeutic procedures

for which they are responsible in the care of patients. Credentialing assures that physicians, dentists, nurses, and other health care providers perform only those medical, dental and surgical, nursing and other diagnostic or therapeutic procedures at which they are competent, as judged by their professional peers.

(b) Credentialing requires documentation of the general and special or specific clinical privileges of the provider. The Facility Director will appoint a Credentialing Committee chaired by the Chief of Staff. Such committee will review, at least annually, each provider's clinical performance compared to standards of expected and required performance. When appropriate, the Committee will recommend reduction or expansion of clinical privileges or, if necessary, will recommend appropriate action to the Professional Standards Board or Physical Standards Board.

(c) All data which is collected during the HSRO-SIR process from Utilization Review, Patient Care Evaluation, and other sources which is provider specific will be available to the Credentialing Committee through the HSRO Coordinator. 38 U.S.C. 3305.

§ 17.516 [Reserved]

§ 17.517 HSRO records and documents generally.

Section 3305, title 38, United States Code was enacted to protect the integrity of the Veterans Administration's medical quality assurance program (HSRO) by making confidential those records and documents generated by the HSRO-SIR program which reflect the evaluation of a medical professional's performance by other health care professionals. It is believed that without such confidentiality, health care professionals will be unwilling to participate in quality assurance activities where they are asked to review and criticize the work of other health care providers. Additionally, 38 U.S.C. 3305 is intended to completely protect the confidentiality of all of the Veterans Administration's HSRO-SERP program records and documents. Disclosure of those HSRO records and documents not made confidential by 38 U.S.C. 3305 and these HSRO regulations is governed by §§ 1.500 through 1.504 of this chapter. Disclosure of those HSRO records and documents protected by 38 U.S.C. 3305 and these HSRO regulations is not within the scope of the Privacy Act and therefore, records and documents may not be filed in a manner so that they

may be retrieved by reference to an individual identifier. 38 U.S.C. 3305.

§ 17.518 HSRO-SIR records and documents.

(a) For the purposes of 38 U.S.C. 3305, the only HSRO-SIR records and documents considered confidential and privileged are those which involve the review of the performance of specific individuals, identified by name or other identifier, or by implication. Such records and documents are confidential and privileged even if the identifier may be deleted. Records and documents which are summarizations or aggregations of data from quality assurance studies and reviews, and which do not identify, even by implication, individual health care providers or reviewers of health care providers, are not privileged or confidential. Only those records and documents which pertain to mandatory HSRO-SIR review elements, functions, or activities, as provided in § 17.505 may be considered privileged and confidential.

(b) Utilization Review and continuous monitor functions generate committee or study team minutes, reports and memoranda that contain the deliberations of healthcare evaluators. Such minutes, records and documents are confidential in their entirety. Other memoranda and study documents prepared for review by committees are confidential only if they reveal the results or outcomes of performance by professional health care providers.

Individual utilization review documents comparing a patient's treatment with objective criteria or norms would be such a confidential utilization review document. Summary documents which only identify Utilization Review study topics, the period of time covered by the study, criteria, norms, interpretive comments and major overall findings, but which do not identify health care providers, even by implication, are not considered confidential.

(c) Patient Quality of Care Satisfaction Survey records and documents are excluded from 38 U.S.C. 3305 and are not privileged and confidential.

(d) Patient Injury Control records include screening records and patient incident documents; these records plus any investigation records related to a specific or series of incident reports will be confidential. Memoranda or study team minutes or similar conference or group minutes that contain the professional deliberations of health care evaluators are also confidential.

(e) Problem-Focused Health Care Evaluation functions generate committee or study team minutes, reports and memoranda that contain the deliberations of health care evaluators. Such minutes, records and documents are confidential in their entirety. Audit documents revealing actual results or outcomes of individual patient care and treatment as compared with objective criteria or norms, are confidential. Summary documents which only identify audit topics, the period of time covered by an audit or study, criteria, norms, interpretive comments and major overall findings, but which do not identify health care providers, even by implication, are not considered confidential.

(f) The clinical credentialing and delineation of privileges process generates numerous records and documents, most of which are maintained in personnel files or similar files which are subject to the provisions of the Privacy Act, 5 U.S.C. 552a. Such documents are not made confidential by 38 U.S.C. section 3305, Title 38, United States Code makes confidential the minutes and other memoranda pertaining to a health care professional's credentials and privileges that reflect the deliberations of the credentialing committee when it reviews the individual's performance for the purpose of reviewing his or her privileges and credentials. Such documents must not be filed in a manner by which they can be retrieved by reference to an individual identifier. 38 U.S.C. 3305.

§ 17.519 HSRO-SERP records and documents.

(a) HSRO-SERP records and documents are defined for the purpose of confidentiality provided by 38 U.S.C. 3305 as follows:

- (1) Standards, Criteria, Evaluative Algorithms, and Measuring Instruments (SCEM) worksheets.
- (2) Working notes, dictation and other records or documents prepared by individual SERP surveyors and team leaders.
- (3) SERP reports, both in draft form and final form.
- (4) Presurvey data provided SERP teams.
- (5) Responses by VA Medical Facility Directors and Veterans Administration Central Office staff related to a SERP report.
- (6) Confidential memos covering items related to but not necessarily contained in the SERP report.
- (7) Special audits of a VA Medical Facility special medical or health care program, conducted by Veterans

Administration or non-Veterans Administration reviewers (or a combination) external to the VA Medical Facility, at the request of the Central Office program director. This includes audits of multiple VA Medical Facilities where the study concerns the same program, e.g., cardiac surgery.

(b) All SERP records and documents are confidential. 38 U.S.C. 3305.

§ 17.520 Improper disclosure.

(a) Improper disclosure is disclosure of confidential HSRO information, as defined in § 17.518, to any person who is not authorized access to the information or to any person who is not bound by these HSRO regulations without obtaining appropriate approval for such disclosure.

(b) "Disclosure" means to communicate, transmit, or in any way convey any HSRO data or information to any individual or organization in any written or oral form. 38 U.S. 3305.

§ 17.521 Disclosure methods.

(a) Disclosure outside the Veterans Administration will always be by copies, abstracts, summaries, or similar records or documents prepared by the Veterans Administration and released to the requestor, or authorized individuals may visit and view the original documents and abstract the date as authorized. The original HSRO records and documents will not be removed from the VA Medical Facility by any person, VA employee or otherwise except in accordance with § 17.527(g) or unless authorized by the VA Medical Facility Director.

(b) Written disclosure of confidential information shall bear the following statement: "The protection of the confidentiality of information contained herein is required under 38 U.S.C. 3305 and §§ 17.500 through 17.540, which provide certain penalties for any violation. This material shall not be transmitted to anyone without proper consent or other authorization as provided for by law or regulation." 38 U.S.C. 3305.

§ 17.522 Non-Veterans Administration requests.

Requests for HSRO Information from organizations or individuals outside the Veterans Administration must be in writing and signed and must specify the nature and content of the information requested, to what person the information should be transmitted or disclosed, and, in the case of confidential HSRO records the purpose for which the information requested will be used. In addition, the requestor will specify the beginning and final dates of

the period for which disclosure or access is requested. 38 U.S.C. 3305.

§ 17.523 Director's authority.

The VA Medical Facility Director is authorized to make disclosure of any confidential information to other agencies, organizations, or individuals where these HSRO regulations expressly provide for disclosure. 38 U.S.C. 3305.

§ 17.524 Appeal of Director's decision.

When a request for information subject to these HSRO regulations is denied by the Facility Director, he or she will notify the requestor of the right to appeal this decision to the Administrator of Veterans Affairs within 60 days.

The Administrator's decision is the agency's final decision. 38 U.S.C. 3305.

§ 17.525 Facility responsibilities.

(a) Each VA Medical Facility will have written policies regulating access or release of, transmittal and destruction of HSRO information.

(b) Each VA Medical Facility Director will designate the HSRO Coordinator as the HSRO Confidentiality Officer and the responsible Veterans Administration official for ensuring confidentiality of HSRO information. This official will coordinate disclosure with the Freedom of Information Act Officer.

(c) VA Medical Facility Directors, service chiefs, and supervisors shall ensure that all persons in their employ or under their supervision are aware of their responsibilities to maintain confidentiality of HSRO information and the existence of penalties for any violation of 38 U.S.C. 3305 and these HSRO implementing regulations.

(d) Every Veterans Administration employee, student, trainee, resident/intern, volunteer, and all other employees (including contract personnel) will treat the findings, views, and actions of colleagues relating to HSRO in a confidential manner.

(e) Employees, upon voluntary or involuntary termination of Veterans Administration employment for any reason, will not disclose any HSRO information which is designated as confidential to any source. 38 U.S.C. 3305.

§ 17.526 Training.

No individual shall be permitted physical access to HSRO information which identifies particular individuals or organizations unless such individual has received proper training and has been informed of the penalties for unauthorized disclosure. Any misuse of HSRO information shall be reported

through the HSRO Confidentiality Officer to the VA Medical Facility Director. 38 U.S.C. 3305.

§ 17.527 Access to HSRO data.

(a) Access to HSRO information shall be limited to those persons who have a need for such information and who are authorized by the VA Medical Facility Director or these HSRO regulations.

(b) A list should be maintained of those VA Medical Facility employees who are authorized access to HSRO confidential data. Each authorized employee will sign a statement that he/she is aware of the requirements for confidentiality and will not divulge any information in any way to any source or person except in accordance with these HSRO regulations.

(c) Any Veterans Administration employee or other individual, not on this List of Authorization, who is granted disclosure of or access to HSRO confidential data, must sign a statement that he or she is aware of the regulations and penalties relevant to HSRO and agree to hold the data confidential. These signed statements will be maintained in a file with copies of their individual requests for HSRO confidential data and a record of what data was released or disclosed.

(d) In cases of oral disclosure, the person disclosing the confidential information shall inform the recipient that such information is confidential under the provisions of 38 U.S.C. 3305.

(e) HSRO-SIR data shall be maintained in secure filing cabinets and locked when not under personal supervision. A security system for manual data will be developed and will include procedures to identify individuals who have had access to the data and when. Each VA Medical Facility will make provisions for the periodic review of HSRO confidential information and determine whether these provisions remain appropriate and whether data shall be retained. In general, HSRO confidential data will be retained no less than 3 years and may be held longer if it is needed for HSRO research studies or related activities.

(f) Those SERP records and documents defined as part of HSRO-SERP will be available to Central Office executives and personnel working in HSRO functions and to Veterans Administration Central Office service and staff office Directors and Associate Chief Medical Directors.

(g) Any HSRO record or document, whether confidential or not, will be provided to a District Counsel or his/her designee or to a Department of Justice attorney working on a case on behalf of

the Veterans Administration. Such a record or document may be removed from the VA Medical Facility site, where the District Counsel (designee) is conducting an investigation or study requiring access to any or all HSR0 confidential data.

(h) Nothing in these HSR0 regulations shall be construed as barring disclosure to the Office of Inspector General pursuant to the Inspector General Act of 1976, Pub. L. 95-452, 38 U.S.C. 3305.

§§ 17.528-17.533 [Reserved]

§ 17.534 Authorized disclosure: non-Veterans Administration requests.

(a) (1) Disclosure shall be made to approved Federal agencies for the purpose of participating in health care programs, evaluation research, planning, or related activities. Any Federal agency may apply to the Chief Medical Director for approval. Upon approval, the agency will enter into an agreement with the Veterans Administration to ensure that such non-Veterans Administration agency or organization and its staff will ensure that confidentiality is protected for any records or information shared with such agency or organization.

(2) The criteria on which the Chief Medical Director may base approval or nonapproval are as follows:

- (i) Participation by the Veterans Administration will benefit patient care.
- (ii) Participation will enhance health care research.
- (iii) Participation will enhance evaluation research.
- (iv) Participation will enhance health care planning or program development activities.

(b) Qualified persons or organizations engaged in health care delivery, including academic institutions, shall have access to confidential information where needed for such research provided that no records or documents are removed from the VA Medical Facility which prepared them. Under this condition, the research plan shall first be submitted to, and approved by, an appropriate research and development review committee and by the Director of the VA Medical Facility. The VA Facility staff together with the person conducting the research shall be responsible for the preservation of the anonymity of the patients, clients and providers and shall not disseminate any data which identifies such individuals. This applies to the handling of information as well as reporting or publication of findings.

(c) Confidential HSR0 records shall be disclosed to a civil or criminal law enforcement governmental agency if a written request for such records is

received from an official of such an organization. The request must state a purpose authorized by law for which the records will be used. This includes disclosure of credentialing records pertaining to a specific individual provider to State licensing and disciplinary agencies or boards.

(d) (1) Federal and national agencies or organizations charged with protecting the public's health and welfare by various monitoring and quality control activities, such as certification of accreditation agencies, agencies responsible for licensure of individual health care facilities or programs, or similar organizations shall be provided HSR0 confidential information. The Director will determine the extent of information disclosable and the circumstances under which release is appropriate, so long as the information requested is to assist the requesting agency or organization to carry out its licensing mandate or mission.

(2) However, in general, Systematic External Review Program (SERP) and Joint Commission on Accreditation of Hospitals (JCAH) survey teams and similar national accreditation agencies or boards, are entitled to full disclosure of any and all HSR0-SIR records with the following qualifications:

(i) Evaluation agencies which are charged with facility-wide monitoring, i.e., all aspects of patient care, may have access to all HSR0-SIR records and documents.

(ii) Evaluation agencies charged with more narrowly focused monitoring (e.g., College of American Pathologists, American Association of Blood Banks, Nuclear Regulatory Commission, etc.) may have access only to HSR0-SIR records and documents relevant to their respective focus, such as, tissue review, blood services, radiology safety, etc.

(e) Release to Congressional Committees or subcommittees and to the General Accounting Office is authorized.

(f) The name of and other identifying information regarding any individual Veterans Administration patient or employee, or any other individual associated with the Veterans Administration for purposes of the HSR0 program, contained in a record or document described in these HSR0 regulations shall be deleted from any record or document before any disclosure made under these HSR0 regulations if disclosure of such name and identifying information would constitute a clearly unwarranted invasion of personal privacy. 38 U.S.C. 3305.

§§ 17.535-17.539 [Reserved]

§ 17.540 Penalties for violations.

Any person who knowing that a document or record is a document or record described herein and willfully discloses such record or document except as authorized by these HSR0 regulations shall be fined not more than \$5,000 in the case of a first offense and not more than \$20,000 in the case of each subsequent offense. 38 U.S.C. 3305.

[FR Doc. 81-21911 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Educational Benefits; Effective Date for Increase in Educational Assistance Allowance

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The proposed regulation brings the effective date for an increase in educational assistance allowance due to an increase in dependents into closer conformance with similar increases in disability compensation. The law requires that effective dates relating to awards of educational assistance must, to the extent feasible, correspond to effective dates relating to awards of disability compensation. The current Veterans Administration policy concerning increases in educational allowance due to increases in dependents has been criticized as being more restrictive than the policy regarding similar increases in disability compensation. This proposal is designed to overcome this criticism.

DATE: Comments must be received on or before August 26, 1981. It is proposed to make this proposal effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until September 8, 1981.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4131 is amended to allow a veteran to receive an increase for dependents effective the first date of entrance or

reentrance into a program of education even though the dependents were acquired before that date, and the veteran does not claim them until after that date.

The Administrator hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule applies only to individual veterans. It will therefore have no significant direct impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until September 8, 1981. Any person visiting the Veterans Administration Central Office in Washington, DC for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office, and furnished the address and the above room number.

Approved: July 9, 1981.

D. Custis,

Acting Administrator.

It is proposed to amend 38 CFR Part 21 as follows:

In § 21.4131, paragraph (e) is revised to read as follows:

§ 21.4131 Commencing dates.

The commencing date of an award or increased award of educational assistance allowance will be determined under this section.

(e) Increase for dependent; chapter 34.

(1) The veteran may acquire one or more dependents before he or she enters

or reenters a program of education. When this occurs, the following rules apply:

(k) The effective date of the increase will be the date of entrance or reentrance if—

(A) The Veterans Administration receives the claim for the increase within 1 year of the date of entrance or reentrance, and

(B) The Veterans Administration receives any necessary evidence within 1 year of its request.

(ii) The effective date of the increase will be the date the Veterans Administration received notice of the dependent's existence if—

(A) The Veterans Administration receives the claim for the increase more than 1 year after the date of entrance or reentrance, and

(B) The Veterans Administration receives any necessary evidence within 1 year of its request.

(iii) The effective date will be the date the Veterans Administration receives all necessary evidence, if that evidence is received more than 1 year from the date the Veterans Administration requested it.

(2) If the veteran acquires a dependent after he or she enters or reenters a program of education, the increase will be effective on the latest of the following dates:

(i) Date of claim. This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year of the event.

(B) Date notice is received of the dependent's existence if evidence is received within 1 year of the Veterans Administration request.

(C) Date the Veterans Administration receives evidence if this date is more than 1 year after the Veterans Administration request.

(ii) Date dependency arises.

(iii) Date the law permits benefits for dependents generally.

(38 U.S.C. 3010(f)(n))

(See § 3.667 of this chapter as to effective dates with regard to children 18 years of age and older who are attending school.)

[FR Doc. 81-21904 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

Education Benefits; Standards of Progress and Conduct

AGENCY: Veterans Administration.

ACTION: Withdrawal of proposed regulation.

SUMMARY: The Veterans Administration is withdrawing a proposal regarding standards of progress and conduct which accredited schools require veterans and eligible persons to meet.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: On page 803 of the Federal Register of January 3, 1980, there was published a proposal to amend part 21 concerning standards of progress.

Interested persons were given 30 days to submit suggestions, comments or objections. The Veterans Administration received five letters containing numerous comments and suggestions. Two of the letter writers supported the proposal. Three opposed it.

In the course of reviewing this proposal the Veterans Administration decided that it was unnecessary. Section 21.4253(d), Title 38, Code of Federal Regulations, states that a school must submit a copy of its catalog or bulletin to a State approving agency. The school must certify that the catalog or bulletin is true and correct as to content and policy. The catalog must contain institution policy and regulations relative to standards of progress. The regulation goes on to state that a school must enforce a policy relative to progress required of the student.

It would follow that if a school correctly certified that its catalog is true and correct, and the catalog contains regulations concerning standards of progress, the school should be enforcing those standards. To further amend § 21.4253 to restate this is an unnecessary reiteration. Therefore, the Veterans Administration has decided to withdraw the proposal.

Approved: July 16, 1981.

Robert P. Nimmo,
Administrator.

[FR Doc. 81-21981 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

Notices

Federal Register

Vol. 46, No. 144

Tuesday, July 28, 1981

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.

ADVISORY COMMITTEE ON FEDERAL PAY

Adjustment in Federal Pay for October 1981, Public Discussions

The Advisory Committee on Federal pay announces that public discussions of the adjustment in Federal pay for October 1981 have been scheduled for Thursday, August 20, in Room 205, 1730 K Street, N.W. They will start at 2:00 p.m.

These discussions are intended to give organizations representing Federal employees or any interested Government officials an opportunity to express their views regarding the Pay Agent's proposals. Those wishing to discuss the Agent's proposals with the Committee should notify the Committee by Friday, August 14. The telephone number is 653-6193. Written comments should also reach the Committee by August 14—Suite 205, 1730 K Street, N.W., Washington, D.C. 20006. Both written submissions and requests for an opportunity to discuss the issues should include a telephone number where the organization or official can be reached.

The Advisory Committee on Federal Pay, established as an independent establishment by Section 5306 of Title 5, United States Code (Pub. L. 91-656, the Federal Pay Comparability Act), is charged with assisting the President in carrying out the policies of Section 5301 of Title 5, United States Code. The Committee's fundamental obligation is to afford the President an independent judgment respecting Federal pay. Section 5306 of Title 5 requires the Committee to make findings and recommendations to the President with respect to the annual adjustment in Federal pay, after considering the written views of employee organizations, the President's Agent, other officials of the Government of the

United States, and such experts as the Committee may consult.

Jerome M. Rosow,

Chairman, Advisory Committee on Federal Pay.

[FR Doc. 81-22000 Filed 7-27-81; 6:45 am]

BILLING CODE 6820-43-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1982 Crop Extra Long Staple Cotton; Proposed Determinations Regarding National Marketing Quota, National Acreage Allotment, and Other Related Operating Provisions for 1982

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed determinations regarding the 1982 crop of extra long staple (ELS) cotton.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1982 crop of extra long staple cotton (referred to as "ELS cotton"):

- (1) National marketing quota.
- (2) National acreage allotment.
- (3) Apportionment of the national acreage allotment to State and counties.
- (4) Date or period for conducting the national marketing quota referendum.

The above determinations are required to be made by the Secretary in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended.

This notice invites written comments on these proposed determinations.

DATE: Comments must be received on or before September 28, 1981.

ADDRESS: Mail comments to Mr. Grant Buntrock, Director, Production Adjustment Division, ASCS, USDA, Room 3830, South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7873. The Draft Impact Analysis describing the options considered in developing these proposed determinations is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been

reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and have been classified as not "major." These proposed determinations have been classified as not "major" since they will not have an annual effect on the economy of \$100 million or more.

These determinations relating to the national marketing quota, national acreage allotment, the apportionment of such allotment to States and counties, and the date for conducting the national marketing quota referendum, are required to be made for each crop of extra long staple cotton pursuant to Sections 343, 344, and 347 of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act").

The title and number of the federal assistance program that this notice applies to are: Title—Cotton Production Stabilization; Number 10.052, as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Proposed determinations

The following determinations are to be made with respect to the 1982 crop of ELS cotton:

(a) *National marketing quota.* Section 347(b)(1) of the Act requires the Secretary to proclaim the amount of the national marketing quota for the 1982 crop of ELS cotton by October 15, 1981. Such marketing quota shall be the number of standard bales of ELS cotton equal to the sum of the estimated domestic consumption and estimated exports, less estimated imports, for the 1982-83 marketing year beginning August 1, 1982, plus such additional number of bales, if any, as the Secretary determines necessary to assure adequate working stocks in trade channels until ELS cotton from the 1983 crop becomes readily available without resort to Commodity Credit Corporation (CCC) stocks. At present, CCC stocks are insignificant. Domestic consumption and exports for the 1982-83 marketing year are estimated to range from 63,000 bales to 68,000 bales and 15,000 bales to 40,000 bales, respectively. Imports in

1982-83 are estimated to be 5,000 bales. The Secretary may reduce the quota so determined for the purpose of reducing surplus stocks, but not below the minimum quota of 82,481 standard bales prescribed under section 347(b)(2) of the Act. The range being considered for the 1982 national marketing quota is 150,000 to 209,000 bales.

(b) *National acreage allotment.*

Section 344(a) of the Act provides that the national acreage allotment for the 1982 crop of ELS cotton shall be that acreage determined by multiplying the national marketing quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield per acre of ELS cotton for the four calendar years 1977, 1978, 1979, and 1980. The national average yield per planted acre during this four-year period was 627 pounds. The range being considered for the 1982 national acreage allotment is 114,833 to 160,000 acres.

(c) *Apportionment of the national acreage allotment to States and counties.* Sections 344 (b) and (e) of the Act provide that the national acreage allotment for the 1982 crop of ELS cotton shall be apportioned to States and counties on the basis of the acreage planted to ELS cotton (including acreage regarded as having been planted) during the five calendar years 1976, 1977, 1978, 1979, and 1980, adjusted for abnormal weather conditions during such period. Section 344(e) provides that the State committee may reserve not to exceed 10 percent of its State allotment to adjust county allotments for trends in acreage, for counties adversely affected by abnormal conditions affecting plantings, or for small or new farms, or to correct inequities in farm allotments and to prevent hardship.

(d) *Date or period for conducting the national marketing quota referendum.* Section 343 of the Act requires the Secretary to conduct a referendum by secret ballot of the farmers engaged in the production of ELS cotton during 1981 by December 15, 1981, to determine whether such farmers are in favor of or opposed to the quota. If more than one-third of the farmers voting in the referendum oppose the national marketing quota, such quota shall become ineffective upon proclamation of the results of the referendum. Section 343 further requires the Secretary to proclaim the results of the referendum within 30 days after the date of such referendum.

Pursuant to section 343, the Secretary proposes that said referendum be held during the period December 7-11, 1981, inclusive.

Accordingly, comments are requested with respect to the amounts of the

national marketing quota, national acreage allotment, apportionment of the national acreage allotment to States and counties, and dates for conducting the national marketing quota referendum, in accordance with the provisions of the Act.

Comments will be made available for public inspection at the Office of the Director during regular business hours (8:15 a.m. to 4:45 p.m.).

Signed at Washington, D.C., on July 22, 1981.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-21895 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-05-M

Federal Grain Inspection Service

Official Designation of the Southern Illinois Inspection Service and Assignment of Geographic Area; Amendments to Assigned Geographic Areas of Three Official Agencies in Illinois

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the selection of the Southern Illinois Inspection Service, owned by Holger C. Danielsen, for designation as the official agency to replace the Illinois Department of Agriculture (State) and also announces assignment of its geographic area which includes most of the area previously assigned to the State. This notice also announces amendments to the assigned geographic areas of Cairo Grain Inspection Agency, Paris Illinois Grain Inspection, and Quincy Grain Inspection and Weighing Service, to include those remaining portions of the geographic area previously assigned to the State.

EFFECTIVE DATE: July 20, 1981, for Cairo Grain Inspection Agency, Paris Illinois Grain Inspection, and Quincy Grain Inspection and Weighing Service, August 10, 1981, for Southern Illinois Inspection Service.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250; (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291; therefore, the Executive Order does not apply to this action.

The May 6, 1981, issue of the *Federal Register* (46 FR 25329) contained a notice from the Federal Grain Inspection Service (FGIS) requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the area being serviced by the Illinois Department of Agriculture, Springfield, Illinois. Applications were to be postmarked by May 21, 1981. Eleven applicants requested to be designated as an official agency in all or a portion of the geographic area assigned to the State.

The following persons proposed to establish a new official agency and applied for designation:

James W. Barton, a licensed inspector previously with the Illinois Department of Agriculture, Marion, Illinois;
Holger Danielsen, Division Director of the Missouri Department of Agriculture, Jefferson City, Missouri;
Charles L. Harl, a licensed inspector previously with the Illinois Department of Agriculture, Mt. Vernon, Illinois; and
Howard K. Saylor, a licensed inspector with the Missouri Department of Agriculture, St. Louis, Missouri.

The following existing official agencies also applied for designation (If designated, this action would result in an amendment to their presently assigned geographic area in accordance with section 800.207 of the regulations under the Act):

Alton Grain Inspection Department, Alton, Illinois, Owner and Chief Inspector: Thomas P. Russell;
Cairo Grain Inspection Agency, Cairo, Illinois, Owner and Chief Inspector: Robert P. Fronabarger;
Champaign-Danville Grain Inspection Departments, Inc., Danville, Illinois, Sole Stockholders and Chief Inspectors: Charles H. Cratz and Thomas C. King;
Eastern Iowa Grain Inspection and Weighing Service, Inc., Blue Grass, Iowa, President and Chief Inspector: Joseph L. Slater;
Evansville Grain Inspection, Evansville, Indiana, Owner and Chief Inspector: James L. Goodge, Sr.;
Paris Illinois Grain Inspection, Paris, Illinois, Owner and Chief Inspector: Robert R. Beals; and
Quincy Grain Inspection and Weighing Service, Quincy, Illinois, Owner and Chief Inspector: Anthony L. Marquardt.

FGIS announced the names of all of these applicants and requested comments on them in the June 11, 1981, issue of the *Federal Register* (46 FR 30840). A total of 40 comments were received concerning the applicants for designation in the southern Illinois area. Of these, 11 commentators recommended James W. Barton; 14, Holger C. Danielsen; 1, Charles L. Harl; 1, Howard K. Saylor; 1, Charles H. Cratz,

Champaign-Danville Grain Inspection Department; 1, Anthony L. Marquardt, Quincy Grain Inspection and Weighing Service; and 10, Thomas P. Russell, Alton Grain Inspection Department. One commentator recommended either Barton or Harl.

After considering all available information in relation to the criteria for designation in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), it has been determined that Southern Illinois Inspection Service is better able than any other applicant to provide official inspection services in the portion of the geographic area in southern Illinois for which it has been selected. The assignment of geographic area to Southern Illinois Inspection Service is as follows. This area represents most of the geographic area previously assigned to the State. The area shall be:

Bounded: on the East by the eastern Lawrence, Wabash, Edwards, White, and Gallatin County lines;

Bounded: on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River;

Bounded: on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern and eastern Macoupin County lines; and

Bounded: on the North by a straight line from the junction of State Route 111 and the Macoupin County line southeast to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately one mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines; the northern and eastern Jasper County lines south to State Route 33; State Route 33 east-southeast to U.S. Route 50; U.S. Route 50 east to the eastern Lawrence County line.

In addition, the following location which is outside of the foregoing contiguous geographic area is considered as part of this geographic area: Sigel Elevator Company, Inc., Sigel, Illinois, in Shelby County.

An exception to the described geographic area is the following location situated inside this contiguous geographic area which has been and will continue to be serviced by

Springfield Grain Inspection Department, Springfield, Illinois: OK Grain Company, Litchfield, Illinois, in Montgomery County.

It has also been determined that the Cairo Grain Inspector Agency (Cairo), Paris Illinois Grain Inspection (Paris), and Quincy Grain Inspection and Weighing Service (Quincy) are also better able than any other applicants to provide official inspection services in the portions of the remaining geographic area for which they have been selected and which was previously assigned to the State. As a result, the geographic areas previously assigned to the subject agencies are amended as follows.

The assigned geographic area of the Cairo Agency, published in the *Federal Register* on November 5, 1980 (45 FR 73529), is amended to include Hardin and Pope Counties and the following locations situated inside the Cairo Agency's contiguous geographic area: Twin County Service at Jacob and Jones Ridge, Illinois, in Jackson County.

The assigned geographic area of the Paris Agency, published in the *Federal Register* on September 5, 1980 (45 FR 59126), is amended to include the following location situated inside the Paris Agency's contiguous geographic area: Huisinga Grain, Inc., Casey, Illinois, in Clark County.

The assigned geographic area of the Quincy Agency, published in the *Federal Register* on September 5, 1980 (same citation as Paris), is amended to include Greene and Pike Counties, and the portion of Macoupin County southwest of a straight line from the junction of State Route 111 and the Macoupin County line southeast to the junction of Interstate 55 and State Route 16. An exception to this described geographic area is the following location which will be situated inside Quincy's area which has been and will continue to be serviced by Springfield Grain Inspection Department: Pillsbury Co., Florence, Illinois, in Pike County.

The geographic areas designated to the applicants and described in this Notice constitutes the entire geographic area, which was previously assigned to the Illinois Department of Agriculture, as originally stated in the May 6, 1981, *Federal Register* Notice. Effective August 10, 1981, the responsibility for providing official inspection services in its assigned geographic area as described above will be furnished by the Southern Illinois Inspection Service. The Agency's designation will terminate September 30, 1984. The other three official agencies will begin to provide service to their respective assigned geographic areas effective July 20, 1981. The terms of the designations including

their amended geographic area for these areas will run concurrently with the original designations granted to each.

A specified service point for the purpose of this Notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official inspection services not requiring a licensed inspector to all other areas within their geographic area.

Interested persons may obtain a list of the specified service points and a map of the assigned geographic area by contacting the individual agencies at the following addresses:

Southern Illinois Inspection Agency, c/o USDA/FGIS, 1114 Market Street, 1001, St. Louis, MO 63101

Cairo Grain Inspection Agency, 4007 Sycamore Street, Cairo, IL 62914

Paris Illinois Grain Inspection, 1020 North Central Avenue, Paris, IL 61944
Quincy Grain Inspection and Weighing Service, 902 South 6th Street, Quincy, IL 62301

Interested persons may also contact the Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington D.C. 20250; (202) 447-8525, to obtain this information.

(Sec. 8, Pub. L. 94-582, Stat. 2870 (7 U.S.C. 79))

Done in Washington, D.C. on July 24, 1981.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 81-22176 Filed 7-27-81; 12:11 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates and Day Care Home Food Service Payment Rates (July 1-December 31, 1981); and Home Sponsoring Organization Administrative Payment Rates (July 1, 1981-June 30, 1982)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the national average payment rates for meals served in centers, the food service payment rates for meals served in day care homes, and the administrative payment rates for sponsoring organizations of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to all of these

rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Program.

FOR FURTHER INFORMATION CONTACT:

Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6509.

EFFECTIVE DATE: July 1, 1981.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 11 and 17 of the National School Lunch Act (NSLA), Section 4 of the Child Nutrition Act (CNA), and § 228.4, § 228.13, and § 228.14 of the regulations governing the Child Care Food Program (7 CFR Part 228), notice is hereby given of the new payment rates for participating institutions. The national average payment rates for meals served to children attending centers and the food service payment rates for meals served to children attending day care homes shall be in effect during the period July 1-December 31, 1981. The administrative payment rates for administrative costs of sponsoring organizations with day care homes shall be in effect during the period July 1, 1981-June 30, 1982. In previous years, the reimbursement rates for all types of child care facilities were adjusted semiannually on January 1 and July 1 to reflect changes in the Consumer Price Index. However, Pub. L. 96-499, *The Omnibus Reconciliation Act of 1980*, mandated that reimbursement rates for supplements served in child care centers and outside-school-hours care centers be adjusted only once during Fiscal Year 1981, on July 1. Since day care homes were excluded from this statutory provision, reimbursement rates for homes were adjusted, effective January 1, 1981, but rates for centers were not. The legislative mandate applies only to Fiscal Year 1981.

This notice has been reviewed for compliance with the requirements of Pub. L. 96-345. G. William Hoagland, Administrator of the Food and Nutrition Service, has determined that this notice will not have a significant economic impact on a substantial number of small entities. This notice merely complies with a Congressional mandate to adjust reimbursement rates in the Child Care Food Program to allow for changes in the Consumer Price Index, thereby maintaining constancy in the Program.

This notice has been submitted to the Office of Management and Budget for review in accordance with the provisions of Executive Order 12291.

In all States except Alaska and Hawaii, the new rates are as follows:

Meals served in centers—Per meal payment rates in cents

Breakfasts:	
Paid	16.25
Free	40.75 + paid = 57.00
Reduced	30.50 + paid = 46.75
Lunches and suppers:	
Paid	120.25
Free	91.50 + paid = 111.75
Reduced	111.75 - 20.00 = 91.75

Supplements:	
Paid	5.50
Free	30.50
Reduced	22.25

Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 25 day care homes	53.00
Next 50 day care homes	41.00
Additional day care homes	35.00

Meals Served in Day Care Homes—Per Meal Payment Rates in Cents

Breakfasts	53.00
Lunches and Suppers	104.00
Supplements	31.00

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the *Federal Register*.

² These rates reflect the three-cent reduction in the payment rates for supplements served in centers which was mandated by Public Law 96-499, enacted on December 5, 1980. Three cents were subtracted from each of the paid, free, and reduced price rates after the adjustment to reflect changes in the Consumer Price Index had been computed.

Pursuant to Section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska—Meals Served in Centers—Per Meal Payment Rates in Cents

Breakfasts:	
Paid	25.25
Free	55.75 + paid = 92.00
Reduced	49.25 + paid = 75.50
Lunches and suppers:	
Paid	133.00
Free	148.00 + paid = 181.00
Reduced	181.00 - 20.00 = 161.00
Supplements:	
Paid	10.75
Free	51.25
Reduced	38.00

Alaska—Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 25 day care homes	86.00
Next 50 day care homes	57.00
Additional day care homes	57.00

Alaska—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents

Breakfasts	86.00
Lunches and Suppers	168.00
Supplements	50.00

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the *Federal Register*.

² These rates reflect the three-cent reduction in the payment rates for supplements served in centers which was mandated by Public Law 96-499, enacted on December 5, 1980. Three cents were subtracted from each of the paid, free, and reduced price rates after the adjustment to reflect changes in the Consumer Price Index and the 62 percent upward adjustment for higher food service costs in Alaska had been computed.

The new payment rates for Hawaii are as follows:

Hawaii—Meals Served in Centers—Per Meal Payment Rates in Cents

Breakfasts:	
Paid	19.00
Free	47.50 + paid = 66.50
Reduced	35.75 + paid = 54.75
Lunches and suppers:	
Paid	123.75
Free	107.00 + paid = 130.75
Reduced	130.75 - 20.00 = 110.75
Supplements:	
Paid	7.00
Free	36.25
Reduced	26.75

Hawaii—Administrative Payment Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates in Dollars

Initial 25 day care homes	62.00
Next 50 day care homes	48.00
Additional day care homes	42.00

Hawaii—Meals Served in Day Care Homes—Per Meal Payment Rates in Cents

Breakfasts	62.00
Lunches and Suppers	121.00
Supplements	36.00

¹ These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the *Federal Register*.

² These rates reflect the three-cent reduction in the payment rates for supplements served in centers which was mandated by Public Law 96-499, enacted on December 5, 1980. Three cents were subtracted from each of the paid, free, and reduced price rates after the adjustment to reflect changes in the Consumer Price Index and the 17 percent upward adjustment for higher food service costs in Hawaii had been computed.

The changes in the national average payment rates reflect a 9.3 percent increase in the rates prescribed for the period July 1, 1980-June 30, 1981. This represents the percentage of increase during the 12 month period May 1980 to May 1981 (from 264.6 in May 1980 to 289.3 in May 1981) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The changes in the food service payment rates reflect a 5.1 percent increase in the rates prescribed for the period January 1-June 30, 1981. This represents the percentage of increase during the six month period November 1980 to May 1981 (from 275.3 in November to 289.3 in May) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The changes in the administrative payment rates reflect a 9.8 percent increase in the rates prescribed for the period July 1, 1980-June 30, 1981. This represents the percentage of increase during the 12 month period May 1980 to May 1981 (from 244.9 in May 1980 to 269.0 in May 1981) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating

in the Program is based on the rates contained in this notice.

Definitions: The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published on January 22, 1980 at 45 FR 4960.

(Catalog of Federal Domestic Assistance Program No. 10.558)

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603, 42 U.S.C. 1766; Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623, 42 U.S.C. 1760)

Dated: July 21, 1981.

G. William Hoagland,

Administrator, Food and Nutrition Service.

(FR Doc. 81-21934 Filed 7-27-81; 8:45 am)

BILLING CODE 3410-30-M

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1981

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that there will be no shortfall payments to States for cash in lieu of commodities for the National School Lunch Program for School Year 1981 because the Secretary of Agriculture has determined that the annually programmed level of assistance will be met in food donations by June 30, 1981.

FOR FURTHER INFORMATION CONTACT:

Gwena Kay Tibbits, Chief, Program Monitoring and Policy Development Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-8386.

SUPPLEMENTARY INFORMATION: Section 6(b) of the National School Lunch Act (Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of commodities (7 CFR Part 240) require the Secretary of Agriculture to make an estimate not later than May 15 of each school year of the value of agricultural commodities and other foods that will be delivered to States during the school year under the food distribution regulations (7 CFR Part 250) for use in lunch programs by schools participating in the National School Lunch Program. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required to pay to each State administering agency, not later than June 15 of that year, an amount of funds equal to the difference between the value of such deliveries as then programmed for each State and the total level of assistance authorized for such State.

For the school year ending June 30, 1981, the adjusted minimum national average value per lunch in donated foods or payment of cash in lieu thereof was established under section 6(e) at 15.50 cents. However, in accordance with section 202(a) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), the mandated level of assistance per lunch was reduced by 2 cents, resulting in a new level of assistance of 13.50 cents for the period of January 1, 1981 through June 30, 1981. This reduction was announced on January 16, 1981 (46 FR 3847).

In accordance with these requirements, a new national entitlement of \$615,070,190 in commodities was established for School Year 1981. The Secretary has determined that at least that amount of commodities will be delivered nationally by June 30, 1981 to meet the mandated level of assistance. Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1981.

(Catalog of Federal Domestic Assistance Nos. 10.555.)

Effective Date: This notice shall become effective as of July 1, 1981.

Dated: July 22, 1981

G. William Hoagland,

Administrator, Food and Nutrition Service.

(FR Doc. 81-21970 Filed 7-27-81; 8:45 am)

BILLING CODE 3410-30-M

Food Safety and Inspection Service¹

(Docket No. 81-007N)

Inplant Review Procedures

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Policy Statement, Inplant Review Procedures.

SUMMARY: This notice revises the Agency's inplant review policy which provided for the identification of "problem plants" and "chronic problem plants" and the issuance of press releases announcing to the public the names of those plants designated as "chronic problem plants." That policy is no longer in effect.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT:

Carol M. Seymour, Director, Review and Evaluation Staff, Food Safety and Inspection Service, U.S. Department of

¹ Pursuant to the reorganizational plans outlined in USDA Secretary's Memo 1000-1, issued June 17, 1981, the Food Safety and Quality Service has become the Food Safety and Inspection Service. A notice detailing the Agency's reorganization is now being drafted for later publication.

Agriculture, Washington, D.C. 20250, (202) 447-2394.

SUPPLEMENTARY INFORMATION:

Inplant Review Procedures

General

The Food Safety and Inspection Service (FSIS) (formerly the Food Safety and Quality Service (FSQS)) is responsible for inspecting meat and poultry food products at more than 7,000 federally inspected plants. In addition to regular in-the-plant inspection, FSIS conducts systematic oversight reviews.

On March 17, 1978, the Agency published a notice in the *Federal Register* (43 FR 11244) setting forth a new policy for identifying, reviewing, and making known to the public the names of chronically deficient federally inspected meat and poultry establishments. This notice was supplemented by a second notice (43 FR 19897) published on May 9, 1978.

In these notices, criteria were established for designating those plants deemed to be "problem plants" and "chronic problem plants." The notices also established procedures for the issuance of press releases announcing to the public the names of those plants designated as "chronic problem plants."

This notice revises the Agency's policy of identifying "problem plants" and "chronic problem plants" and making known such designations to the public through press releases. Hereafter, the Agency will not make such designations. The Agency has determined that such designations are unnecessary to gain industry compliance with the Agency's regulations, and that other enforcement actions available under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), including inplant actions by the inspectors and withdrawal of inspection service in appropriate circumstances, are sufficient to enforce the regulations. Under this policy, the Agency will undertake legal proceedings on a sound basis in those instances when compliance can no longer be achieved through application of the full range of controls available to assigned inspectors.

Purpose and Nature of Inplant Reviews

Primary responsibility for in-the-plant enforcement lies with regularly assigned FSIS inspection personnel.

FSIS conducts internal reviews of certain critical elements to assess the overall effectiveness and uniformity of inspection programs nationwide. Inplant reviews supplement rather than replace

the frequent indepth reviews made by the regularly assigned FSIS personnel.

Basis for Instituting Formal Withdrawal of Inspection

FSIS inspectors are assigned to all plants which operate under Federal inspection. They and their supervisors ensure correction of sanitation and other deficiencies as they occur, through retention and condemnation of products, rejection of equipment and facilities, and temporary suspension of inspection service. Although most meat and poultry plants operate in compliance with the Federal meat and poultry products inspection acts and the regulations issued thereunder, a few develop a history of sustained non-compliance normally disclosed by FSIS records. Those plants which fail to maintain sanitary conditions and take actions which the Administrator deems necessary to eliminate unsanitary conditions will be subject to formal withdrawal of inspection service under sections 8 and 401 of the Federal Meat Inspection Act (21 U.S.C. 608 and 671) and/or sections 7 and 18(b) of the Poultry Products Inspection Act (21 U.S.C. 456 and 467(b)), respectively.²

Done at Washington, D.C. on July 15, 1981.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 81-21969 Filed 7-27-81; 8:45 am]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

[Order 81-7-112; Docket 39642]

Air Wisconsin Additional Points Proceeding; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order To Show Cause (81-7-112).

SUMMARY: The Board is instituting the *Air Wisconsin Additional Points Proceeding* and is proposing to grant unrestricted authority to Air Wisconsin at Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Mosinee and Oshkosh under expedited procedures of Subpart Q of its Procedural Regulations. The tentative findings and conclusions will become final if no objections are filed.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing the

² Formal proceedings for withdrawal of services are conducted in accordance with departmental Rules of Practice (7 CFR 1.130 *et seq.*, 9 CFR 335.13, and 9 CFR 381.234).

proposed authority shall file, and serve on all persons listed below, no later than August 11, 1981, a statement of objections, together with a summary of the testimony, statistical data and other material expected to be relied upon to support the stated-objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 39642, which we have entitled the *Air Wisconsin Additional Points Proceeding*. They should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served upon Air Wisconsin; Wisconsin Department of Transportation, Division of Aeronautics; and the mayors and airport authorities at Eau Claire, Green Bay, La Crosse, Madison, Milwaukee, Mosinee and Oshkosh.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5384.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-7-112 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 81-7-112 to that address.

By the Bureau of Domestic Aviation: July 22, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-21967 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-7-117]

Fitness Determination of Britt Airways, Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 81-7-117, Order to Show Cause.

SUMMARY: The Board is proposing to find that Britt Airways, Inc., is fit, willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended; that it is capable of providing reliable essential air service; that it is fit, willing and able to provide scheduled air transportation under its existing 401(d)(5) dormant route certificates; and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 11, 1981, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Essential Air Services Division, Room 921, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of Order 81-7-117.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Forde, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5350.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-7-117 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81-7-117 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 23, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-21958 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

[Order 81-7-118]

Fitness Determination of Cen-Tex Airlines, Inc.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 81-7-118, Order to Show Cause.

SUMMARY: The Board is proposing to find that Cen-Tex Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than August 11, 1981, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with Special

Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A of Order 81-7-118.

FOR FURTHER INFORMATION CONTACT: Mr. J. Kevin Kennedy, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5918.

SUPPLEMENTARY INFORMATION: The complete text of Order 81-7-118 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 81-7-118 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 23, 1981.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-21059 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping; Unrefined Montan Wax From the German Democratic Republic; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Final Determination of Sales at Less Than Fair Value.

SUMMARY: We have determined that unrefined montan wax from the German Democratic Republic (GDR) is being sold in the United States at a weighted-average dumping margin of 6.58 percent. The U.S. International Trade Commission is determining currently whether these imports are materially injuring or threatening material injury to a U.S. industry.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230 (202-377-3003).

SUPPLEMENTARY INFORMATION:

Procedural Background

On September 5, 1980, we received an antidumping petition from the American Lignite Products Company (ALPCO) of Ione, California. The petition alleged that unrefined montan wax from the GDR is being, or is likely to be, sold in the United States at less than fair value

within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) ("the Act"), thereby materially injuring a U.S. industry and presenting "critical circumstances". Because the petition contained sufficient grounds to warrant an investigation, on September 24, 1980, we initiated an antidumping investigation and informed the U.S. International Trade Commission ("ITC") of our action (45 FR 64611).

On the basis of information the ITC developed during its preliminary investigation, it determined on October 23, 1980, that there is a reasonable indication that these imports are materially injuring or are threatening to materially injure a U.S. industry (45 FR 73921-26).

On January 30, 1981, we announced a postponement of our preliminary determination (46 FR 9982). We found in our preliminary determination that unrefined montan wax from the GDR was, or was likely to be, sold in the United States at less than fair value on March 12, 1981 (46 FR 16287). The preliminary determination of critical circumstances was negative. On April 29, 1981, we amended the preliminary determination to correct an error that had been made in the calculation of thermal energy costs (46 FR 23963).

Scope of the Investigation

Currently classifiable under item 494.20 of the Tariff Schedules of the United States, unrefined montan wax is a nonoxidized mineral wax extracted from lignite, not advanced beyond extraction or cleansing by solvent. This product is primarily used in the United States as a flow agent in one-time carbon ink formulas. It is also used for producing polishes, as a mold release agent, and for casting.

The investigative period is April through September 1980. We used sales to the United States shipped during this period for comparison. As Chemie-Export-Import of Berlin, GDR, sold all of the unrefined montan wax to the United States from the GDR, we limited the investigation to sales from Chemie.

Methodology

U.S. Price

We used purchase price as defined in section 772(b) of the Act, because the price to the unrelated customer was agreed to before the montan wax was imported. We calculated the purchase price by deducting the cost of inland freight within the GDR (as valued in the Federal Republic of Germany ("FRG")) and within the FRG and the cost of harbor charges from the f.o.b. Hamburg

price to arrive at a packed price ex-factory Roblingen, GDR.

Foreign Market Value

We have decided that the economy of the GDR is state controlled to the extent that we are unable to determine the foreign market value of unrefined montan wax by normal standards. As a result, we are required by section 773(c) of the Act to use the prices, or the constructed value, of such or similar merchandise in a non-state-controlled country or countries. Our regulations establish a clear preference for a foreign market value based upon sales prices and stipulate that, to the extent possible, sales prices or constructed value should be determined on the basis of prices or costs in a non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country.

An important difficulty in this case is the limited worldwide production of unrefined montan wax. The wax is produced in the FRG, but is used for further processing. We were not able to obtain a price or constructed value for wax produced in the FRG.

We then attempted to find other products produced in non-state-controlled economy countries in order to determine if a "such or similar" product existed which could be used to establish the fair value of montan wax from the GDR. We received information on a variety of products both natural and synthetic but we determined that none could be considered such or similar within the meaning of the antidumping law. The natural vegetable waxes were ruled out as commercial substitutes because of the instability of the market for them. The various synthetic products either had not been sold during the period under investigation, had not been used by carbon paper or ink manufacturers, were derived from montan wax imported from the GDR, or had very limited use in the carbon paper industry.

Since there is no commercial production of unrefined montan wax in a non-state-controlled-economy country (other than the United States) and no such or similar merchandise, we constructed a value based on specific components or factors of production in the GDR, valued on the basis of prices in a non-state-controlled-economy country "reasonably comparable" in economic development to the GDR. Counsel for the importer maintains that for purposes of valuing GDR production factors we should use United Kingdom ("U.K."), Canadian, or a combination of U.K. and Canadian prices.

However, we have concluded that to construct a value for montan wax based on a non-state-controlled-economy valuation of the GDR factors of production, we should select values in the Federal Republic of Germany—not the U.K. and/or Canada. Essentially, we found that, of the industrialized countries, the FRG is more comparable to the GDR for purposes of this case than is the U.K. or Canada.

Counsel for the importer contends that if the FRG is chosen as a surrogate then the surrogate values should be adjusted to reflect differences between the GDR and the FRG in per capita GNP and wages in the manufacturing sector. We feel, however, that once a reasonably comparable surrogate is chosen, then no adjustments are to be made under section 353.8(c) of the Commerce Regulations.

Both the exporter and counsel for the importer contend that montan wax is a by-product of the production of energy in the form of mined lignite, fuel briquettes, and electricity. As such they would value only those factors that relate to the extraction of the wax directly. They do not believe that any of the pre-extraction costs, such as crushing and drying the lignite, should be allocated to the wax. They cite as arguments the fact that the wax is extracted at a facility which is under the direction of the Coal and Energy Ministry; therefore, the main purpose of the facility is to produce energy. They also argue that the wax represents less than one percent of the total volume, by weight of total production of the Roblingen facility.

We do not feel that these arguments are convincing. Even though the complex, under the direction of the Coal and Energy Ministry, produces energy and related items, a significant investment has been made in a sizable plant to extract and market montan wax. The extraction of montan wax is not essential to the production of energy from lignite. Montan wax has a very high value in relation to the products and the sales are an important part of the economic activity of the facility, a much greater share than the weight of the wax alone would indicate. In addition, great care is taken to segregate the waxy lignite from regular lignite during all phases of mining and processing. For these reasons, we feel that part of the common processing costs in the facility should be allocated to montan wax. Therefore, we have allocated a portion of the costs of transporting lignite from the mine to the plant, as well as a portion of the crushing and drying costs. Because of

the differences in value of the resulting products that share these processes, lignite briquettes, montan wax, and electricity, and because the resulting products are not measured in the same units (tons and kilowatt hours) we have allocated the processing costs on the basis of the ratio of the weighted value of the various products. This was done on the basis of the product split of only the high wax lignite that flows through the wax extraction process.

Currency conversions for the surrogate values were made on the date the importer placed an order for each monthly shipment during the investigatory period.

Sales were made pursuant to a purchase agreement dated November 1979 between Chemie-Export-Import and the sole U.S. importer, Strohmeyer and Arpe ("S & A") of Millburn, New Jersey (unrelated parties).

However, an analysis of the shipment documents indicates that the quantities of different types of wax vary month to month and that the overall contractual amount for the year was increased in June 1980. Therefore, we believe that the terms of sale were fixed when S & A submitted a monthly order to ship a specified quantity of the various grades of wax.

Verification

On June 29, 30, 1981, we verified production factor information provided by the respondent at the plant and offices of VEB Braunkohlekombinat Gustav Sobottka, Roblingen, GDR. Types of documents examined included purchase orders, inventory receipt records, production records, shift logs, laboratory reports, various measurement recordings and personnel records. In addition, we obtained shipping documents describing inland freight and f.o.b. charges at the port of Hamburg, FRG. These documents are included as exhibits in our verification report.

Values in the surrogate country, the FRG, were verified through a variety of methods. Data concerning factor valuations were gathered from two sources, submissions from independent consultants used by counsel for S & A and the Foreign Commercial Service ("FSC"). We relied primarily on data which was available from published sources. However, where no documented source was available we used the information supplied by the FSC as the best information available.

Final Determination

Based on the preceding criteria, and in accordance with section 353.44 of the Commerce Regulations, we have determined that exports or unrefined

montan wax from the German Democratic Republic are being sold at less than fair value within the meaning of section 731 of the Act. Margins were found on 75 percent of the merchandise sold to the unrelated U.S. purchaser during the period, and they ranged from 5.23 to 13.3 percent. The weighted average margin over all sales was 6.58 percent. We have provided interested parties with an opportunity to present oral views in accordance with 19 CFR 353.47 and written views in accordance with 19 CFR 353.46(a).

Negative Determination of Critical Circumstances

The petitioner asserts that "critical circumstances" exist with respect to imports of unrefined montan wax from the GDR. To determine that critical circumstances exist, we must find that (1) there is a history of dumping of montan wax in the United States or elsewhere, or the importers knew or should have known that the exporter was selling montan wax at less than fair value, and (2) there have been massive imports of montan wax over a relatively short period.

We are unaware of any antidumping order concerning montan wax from the GDR. That the petitioner has alleged massive imports of montan wax from 1977 through 1979 does not establish a history of dumping by the foreign manufacturer. Consequently, the petitioner's information does not offer a reasonable basis to believe that importers knew, or should have known, that the GDR exporter was selling montan wax in the United States at less than fair value. Therefore, we have concluded that critical circumstances do not exist. Accordingly, we will not suspend liquidations retroactively.

Continuation of Suspension of Liquidation

The liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended. The Customs Service will require posting of a cash deposit, bond, or other security in the amount of 6.58 percent of the ex-factory value of unrefined montan wax from the GDR for all entries, or withdrawals from warehouse, for consumption on or after the date of publication of this notice. The cash deposits, bonds or other security on merchandise entered since the preliminary determination will remain in effect.

ITC Notification

We have referred this case to the ITC so that it may determine whether these

imports are materially injuring a U.S. industry. That determination is due within 45 days of the publication of this notice.

As section 735(c)(1)(A) of the Act requires, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC rules that material injury does not exist, this case will be terminated, and all securities posted as a result of the liquidation will be refunded or cancelled. If, however, the ITC rules that such injury does exist, within 7 days we will issue an antidumping order, directing customs officers to assess an antidumping duty on all montan wax from the GDR, entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

July 22, 1981.

[FR Doc. 81-21966 Filed 7-22-81; 8:48 am]

BILLING CODE 3510-25-M

[Order No. 41-2; D.O.O. Reference 10-3, 40-1]

Deputy Under Secretary for International Trade; Organization and Function Order

Effective date: June 19, 1981.

PART I. EFFECT ON OTHER ORDERS

This order supersedes ITA Organization and Function Order 41-2 of April 28, 1980, as amended (45 FR 38427).

PART II. PURPOSE

This order delegates authority to the Director of Administration for the International Trade Administration and prescribes the organization and assignment of functions within the organizational elements reporting to the Deputy Under Secretary for International Trade (the "Deputy Under Secretary"). This revision of the order transfers responsibility for the ITA Equal Employment Opportunity Program from the Director of Administration to the Office of Personnel, revises the organization and function statements for the Office of Personnel and the Office of

Budget, and reflects the revised reporting relationships of the Director General of the Foreign Commercial Service.

PART III. ORGANIZATION, LINE OF AUTHORITY, AND PRINCIPAL FUNCTIONS

Section 1. Organization and Line of Authority

The internal organization structure and line of authority for functions prescribed in this order shall be as depicted in the attached chart.¹ The Deputy Under Secretary for International Trade shall report and be responsible to the Under Secretary for International Trade.

Section 2. Principal Functions

.01 The *Deputy Under Secretary for International Trade* shall serve as the principal deputy to the Under Secretary, perform such duties as the Under Secretary shall assign and perform the functions of the Under Secretary in the latter's absence. The Deputy Under Secretary shall provide advice and assistance to the Under Secretary and congressional liaison for ITA in coordination with the Assistant Secretary for Congressional Affairs. The Deputy Under Secretary shall be responsible for day-to-day management of ITA.

.02 The Deputy Under Secretary shall direct the activities of:

- a. The Congressional Relations Staff
- b. The Director of Administration

.03 The *Congressional Relations Staff* shall be headed by a *Director* who shall report to the Deputy Under Secretary and who shall be responsible for coordinating congressional matters within ITA, and serve as liaison with counterpart staff of the Assistant Secretary for Congressional Affairs. The Congressional Relations Staff shall provide timely and effective reporting on Congressional activities (committee hearings, markup sessions, conferences, etc.), and serve as the ITA focal point for coordinating requests for testimony, Congressional inquiries and correspondence, legislative initiatives and related support. The Staff shall provide support to the individual ITA organizations.

PART IV. DIRECTOR OF ADMINISTRATION

Section 1. Delegation of Authority

.01 Subject to such policies, directives, and delegations of authority as may be issued by the Secretary, the Under Secretary for International Trade,

and by the Deputy Under Secretary for International Trade, and in accordance with applicable Department Organization Orders and Department Administrative Orders, the Director of Administration for the International Trade Administration is hereby delegated the authorities of the Deputy Under Secretary as necessary to provide for all administrative management and public affairs activities and direct such activities for all organizational elements in ITA.

.02 The Director of Administration may redelegate authority to any employee subject to such conditions in the exercise of such authority as may be prescribed.

Section 2. Organization and Function

.01 The *Director of Administration* shall be the principal advisor to the Deputy Under Secretary for International Trade on administrative and management policy, and shall coordinate ITA administrative matters with the Assistant Secretary for Administration and other Department officials.

.02 The Director of Administration shall direct the following offices:

- a. Office of Personnel
- b. Office of Management and Systems
- c. Office of Administrative Support
- d. Office of Budget
- e. Office of Public Affairs

Section 3. Office of Personnel

.01 The *Office of Personnel* shall be headed by a *Director* who shall be the ITA Personnel Officer and who shall plan, coordinate and conduct the Personnel Management Program for ITA; interpret personnel policies and procedures established by higher authority; and act as liaison with the Department's Office of Personnel.

a. The immediate office of the Director includes the *Special Programs Staff* which shall develop the policies, directives, and operating instructions necessary to implement personnel management activities in ITA; provide technical guidance and assistance to program areas and to other units within the Office of Personnel regarding the interpretation or impact of Federal personnel statutes, regulations and Comptroller General decisions; and provide technical guidance and assistance to the Personnel Management Division on position classification and employee relations issues of unusual complexity. The Staff shall have responsibility for planning and implementing special employment programs, including employment of the handicapped, cooperative education,

¹ Filed as part of the original document.

affirmative action, equal employment opportunity complaints, and upward mobility; process financial disclosure statements required under the Ethics in Government Act and other conflict-of-interest regulations; and in coordination with the Personnel Management Division, administer reductions-in-force. The Staff shall serve as liaison between the ITA Office of Personnel and the Department's Office of Personnel on matters pertaining to Senior Executive Service and Schedule C positions; and in coordination with the Personnel Management Division, be responsible for the position classification survey program.

b. The immediate office of the Director includes the *Information Systems Staff* which shall plan and coordinate matters relating to the development of ITA-wide personnel management information systems and procedures, including records and reports. The Staff shall process all personnel actions, ensure proper documentation for legality and propriety and maintain control over the content and disposition of Official Personnel Folders; coordinate with ADP personnel and officials concerning processing and records documentation, improvements, or needs relating to personnel management and administration; and provide ADP input necessary to generate SF-113 reports and a variety of statistical, personnel and employee information reports. The Staff shall provide advice and assistance to service organizations concerning employment benefits and entitlements, such as health plans and insurance programs; and arrange for National Agency checks by the Office of Personnel Management and process employee security clearances.

c. The Director shall direct the following organizational components:

.02 The *Personnel Management Division*, organized into teams corresponding to the major organizational elements of ITA, shall provide a full range of services in the areas of recruitment, staffing, merit promotion, position management and classification, and pay determinations; and advise and provide assistance regarding reorganizations, reductions-in-force, employee utilization, employee relations, adverse actions, appeals and grievances. The Division shall provide retirement counseling and services involving workers' compensation claims; and serve as liaison and primary point of contact between program areas and other units of the Office of Personnel on matters involving training, awards, and special employment programs.

.03 The *Career Development Division* shall be responsible for a comprehensive employee development, training and awards program encompassing supervisory, management, and executive development and the identification of training and orientation needs for employees at all grade levels. The Division shall manage the incentive awards program, which includes both monetary and honorary recognition; and administer systems for employee appraisals, performance and career counseling. Implementation of these programs shall be closely coordinated with the appropriate team leader of the Personnel Management Division. The Division shall provide administrative and technical support to the Executive Resource and Performance Review Boards; and administer the Intergovernmental Personnel Act and various other programs such as the President's Executive Interchange Program.

Section 4. Office of Management and Systems

.01 The *Office of Management and Systems* shall be headed by a *Director* who shall plan, coordinate and direct all management and systems programs for ITA and act as liaison with the Department's Office of Information Management and the Office of Organization and Management Systems. The Director shall direct the following organizational components:

.02 The *Systems Management Division* shall coordinate and direct the planning and evaluation of ITA systems; coordinate feasibility studies of proposed automated information management systems; and provide management coordination and control and technical guidance to all ITA elements with regard to systems, data communications, data processing and data retrieval. The Division shall be responsible for coordinating the establishment of production schedules for and maintenance of operational automated systems, and for the maintenance of systems documentation and support for all new and existing automated systems; coordinate the preparation and submission of ADP planning, budgeting and evaluation information for automated systems; and implement the policies and procedures of ITA, the Department and other Federal agencies, and be the point-of-contact within ITA for all information management technology questions, administrative reports and consultations.

.03 The *Management Analysis Division* shall conduct studies and

surveys of effect improved management practices, manpower distribution, organization alignments, procedures and work methods; review and coordinate all proposed organizational changes; administer the forms management and reports management programs; perform correspondence management including training in correspondence procedures; provide committee management and records management services; in cooperation with ITA's Office of Personnel and Office of Budget, operate the position management program; maintain a system for the issuance of all Announcements, Administrative Instructions, Organization and Function Orders, Delegations of Authority and other issuances prepared for the administration of ITA; coordinate the administration of the Freedom of Information Act and the Privacy Act; maintain boycott reports for public inspection; conduct or coordinate feasibility studies of microform applications and equipment needs and usage; review, evaluate, approve and coordinate the acquisition and use of word processing and microform equipment and support services; operate a centralized word processing system for ITA; and provide liaison for GAO and Inspector General audit reports, surveys and inquiries.

Section 5. Office of Administrative Support

.01 The *Office of Administrative Support* shall be headed by a *Director* who shall plan and direct all administrative support services for ITA. The Director shall maintain liaison with and be responsible for monitoring the quantity and quality of services provided through the working capital fund by the Department's Office of Administrative Services, Office of Publications, Office of Investigations and Security and the Office of Acquisition and Grants Management. The Director shall direct the following organizational components:

.02 The *Property Management Division* shall receive and process all procurement requests for furniture, furnishings office equipment, office supplies, subscriptions, publications and printing; arrange for the repair and renovation of office equipment and furniture; voucher all transactions to insure that the terms of purchases and contracts are fully met; maintain current inventories of office equipment and other property, as appropriate; and monitor the use of office equipment and furniture, insure that its use is maximized and review requests for procurement of new items to insure that

items are not otherwise available. The Division shall maintain a current inventory of ITA assigned office and special-use space; monitor GSA SLUC billings to insure that charges are accurate and inaccuracies are corrected; perform ongoing review and analysis of office space utilization to insure conformity to Department and GSA guidelines; develop short and long range plans for space assignments in anticipation of increases and decreases in the requirements of ITA organizational elements; prepare work specifications for renovations, alteration and telephone and electrical services within ITA; monitor all contract work to insure that standards of quality are met, work is performed within agreed timeframes, and costs do not exceed estimates; provide within the capability of the Division, office design services for ITA organizations and monitor, as contracting office, all office design and layout work performed by private design firms; conduct reviews of office space and recommend approaches to improving the physical surroundings and work environment of ITA employees; and perform the safety function including review and evaluation of physical working conditions within ITA and necessary actions to correct conditions that are or may be injurious to the health and safety of employees.

.03 *The Support Services Division* shall provide mail management, secretariat, travel services, time and attendance reporting, and security services for ITA organizational elements. The Division shall receive, sort and distribute correspondence; receive, post, control and distribute classified and registered documents; provide for the distribution of bulk materials and special messenger service; monitor ITA mailing practices to insure that appropriate laws, rules, regulations and guidelines are adhered to; receive, review and assign for appropriate action all Secretarial, White House and Congressional correspondence directed to ITA, and follow-up to insure timely response; provide assistance on established correspondence procedures; and review all replies for proper format and compliance with established procedures. The Division shall provide comprehensive travel services including itinerary plans, modes of travel, reservations for transportation, security clearances, tickets, travel advances, passports and visas, and hotel accommodations for international travel. The Division shall conduct the ITA security program; provide physical and document security orientation for employees and security briefings;

maintain NATO sub-registry for Commerce; control credentials, buildings passes and keys; and advise and assist ITA personnel on matters pertaining to payroll and provide paymaster services.

Section 6. Office of Budget

.01 *The Office of Budget* shall be headed by a *Director* who shall be the ITA Budget Officer and who shall plan, coordinate and direct all budget functions for ITA. The Director shall serve as ITA's principal contact with the Department, OMB, the Budget and Appropriations Committees of the Congress, and other government agencies on budget and related matters. ITA organizational elements shall work through the Office for all contacts with OMB, the Committees or Members of the Committees on these matters. The Director shall direct the following organizational components:

.02 *The Budget Operations Division* shall focus on program specific issues and analysis as follows:

a. Coordinate the development of advance program guidance and plans for resource allocation in accordance with policy goals of ITA and recommend new or revised policy positions which are associated with program development and budgeting;

b. Examine and analyze all budget proposals in terms of effective allocation of ITA resources, conformance to policies, adequacy of justification and appropriation language, existence of statutory authorization, feasibility and economy of operations, and conformity with instructions governing submission of budget estimates, out-year plans, and impacts;

c. Participate in the development of selective legislative proposals affecting ITA's plans and programs, review all legislative proposals to assess budgetary impact, review and comment on proposed testimony of officials of ITA on plans and programs, and review and comment on Congressional and other requests for ITA's positions and pending or draft legislation concerning plans and programs;

d. Provide technical assistance, continuous liaison and be the point of contact between ITA officials and the Office on all budget matters;

e. Participate in the identification of major issues and problems to be addressed in program proposals and budget requests;

f. Prepare Preview Estimates and the Secretarial, OMB, and Congressional budget justifications;

g. Prepare witnesses to testify on budget requests and complete materials for hearing transcripts;

h. Analyze fiscal and program plans and reprogramming proposals for conformance to ITA and Departmental policies and commitments, and maintain a continuous review of the status of obligations, expenditures and program progress by organization and budget structure;

i. Review and evaluate ITA program budget structure and recommend modifications as necessary;

j. Prepare overseas direct project budget authorizations and advice of funds availability;

k. Negotiate and prepare reimbursable agreements;

l. Assist program managers in developing operating budgets; and

m. Prepare special reports of briefings for the Under Secretary and other Secretarial Officers on significant fiscal, budget and program issues, incorporating material furnished by the Financial Management Division.

.03 *The Financial Management Division* shall focus on appropriation and account level issues and analysis as follows:

a. Establish standards, criteria and procedures for preparing budget estimates and justifications and develop standards, procedures and operational instructions for resource allocation systems in ITA;

b. Prepare technical and other supporting schedules and review such schedules for consistency with budget justifications and Departmental and OMB instructions governing submission of budget estimates;

c. Maintain information on the status of Congressional actions on ITA's appropriation;

d. Prepare budget summaries and analyses;

e. Maintain ITA's budget history;

f. Maintain liaison, as appropriate, with OMB staff and with staffs of Budget and Appropriations Committees on technical budget matters as necessary to carry out the Division's responsibilities;

g. Coordinate the establishment of reporting requirements on program accomplishments and operating budgets, including monthly and quarterly plans and reports, and analyze, consolidate or otherwise treat the reports as will best meet the needs of the Under Secretary, other Secretarial Officers, Departmental Office of Budget and Congress, incorporating material furnished by the Budget Operations Division;

h. Prepare special reports or briefings for the Under Secretary and other Secretarial Officers on significant fiscal, budget and program issues.

incorporating material furnished by the Budget Operations Division.

- i. Examine and recommend appropriate action on apportionment requests;
- j. Maintain control numbers on outlay estimates and employment ceilings, including Monitoring Overseas Direct Employment (MODE) ceiling;
- k. Assure administrative control over the obligation and expenditure of ITA appropriations and other funds;
- l. Maintain multi-year plans, ceilings, and estimates;
- m. Represent ITA on the Foreign Affairs Administrative Support (FAAS) Council Working Group at the Department of State;
- n. Represent ITA on the Department's Working Capital Fund Advisory Group;
- o. Maintain ITA Reimbursable, Gifts and Bequest, Domestic Hospitality, and Special Foreign Currency Accounts;
- p. Maintain ITA Centralized Services Program;
- q. Maintain Full-Time Equivalency ceiling control system;
- r. Maintain up-to-date listing of appropriate statutory authorizations and appropriation language code citations, including explanation of such code citations;
- s. Prepare consolidated reports as necessary, such as Federal Domestic Assistance and Legislative, Authorization, Budget and Program Information Systems (LAPIS) reports; and
- t. Maintain liaison with the Department's Office of Financial Operations and Office of Financial Management on all accounting matters.

Section 7. Office of Public Affairs

.01 The Office of Public Affairs shall be headed by a Director who shall be responsible for furnishing public information and publications services to ITA elements. The immediate office of the Director includes the *Business America Staff* which shall prepare and publish *Business America*. The Director shall direct the following organizational components:

.02 The Public Information Division shall develop long-range plans, programs and goals; develop, prepare, clear and release press releases; develop and produce audio visual information material intended for public consumption including slide presentations, motion pictures, and television production, audio (cassette) presentation, exhibit displays, advertising material (radio-TV-print), and scripts and record material for distribution; draft speeches, public statements, and messages for the President, the Secretary of Commerce

and ITA officials; write articles, for signature by Department officials, for publication in national press and journals; develop questions and answers and briefing and background papers for Presidential and Secretarial news conferences and other purposes; arrange news conferences for Departmental officials; develop speaking forums for ITA officials designed to support Departmental and Administration objectives; write and distribute a newsletter for ITA District Offices; perform editorial services including research and editorial assistance in the preparation and publication of technical articles; maintain mailing lists, biographical data, business information and other reference material; and review the speeches of all ITA officials for public affairs purposes, primarily the generation of publicity.

.03 The Publications Division shall assist in the development of ITA publications for internal as well as public consumption, including gathering of material, writing, editing and preparation for printing; promote ITA publications; prepare and arrange for placement of display and advertising for ITA promotional events in the U.S. and abroad; and maintain liaison with the Department's Office of Publications and the Government Printing Office and with other Government agencies concerned with ITA reports and publications. The Division Director serves as publications clearance officer for ITA.

PART V. ADMINISTRATIVE, PUBLIC AFFAIRS, AND PROGRAM SUPPORT

Management, data processing, budget, personnel, public affairs, and administrative support services will be provided by Offices reporting to the Director of Administration. Field support will be provided by the U.S. Commercial Service or Foreign Commercial Service, as appropriate. Program support relating to industry information and analysis will be provided by the Department's Bureau of Industrial Economics.

Lionel H. Olmer,

Under Secretary for International Trade.

[FR Doc. 81-21868 Filed 7-27-81; 9:45 am]

BILLING CODE 3510-25-M

Discrete Semiconductor Device Subcommittee of the Semiconductor Technical Advisory Committee; Notice of Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and

rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Discrete Semiconductor Device Subcommittee was formed to study transistor, diode, photoconductive, and thyristor semiconductor devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: August 11, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Conference Room B, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

AGENDA: General Session

- (1) Opening remarks by the Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Presentation on civil application of image intensifiers and other photo tubes.
- (4) Presentation on lasers and related products.

Executive Session

- (5) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: 202-377-2582.

Dated: July 23, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-21940 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-25-M

Lamb Meat From Australia; Preliminary Affirmative Countervailing Duty Determination

July 23, 1981.

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determination.

SUMMARY: We have preliminarily determined that the government of Australia is giving its producers, processors, and exporters of lamb meat benefits that are bounties or grants within the meaning of the countervailing duty law. Therefore, we are directing the U.S. Customs Service to temporarily suspend the final determination of duties on U.S. entries of this merchandise and to require a cash deposit, bond, or other security equal to the estimated net subsidy. We will make our final determination by September 30, 1981.

EFFECTIVE DATE: July 28, 1981.

FOR FURTHER INFORMATION CONTACT: Miguel Pardo de Zela, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 (202-377-5050).

Preliminary Determination

Based on our investigation and in accordance with section 303 of the Tariff Act of 1930, as amended, we have preliminarily determined that there is reason to believe or suspect that the government of Australia gives its producers, processors, and exporters of lamb meat certain subsidies that are bounties or grants within the meaning of section 303 of the Act. We estimate the net subsidy to be 6.81 percent of the f.o.b. value of Australia's lamb meat exports to the United States. We will make our final determination by September 30, 1981.

Case History

On April 23, 1981, we received a petition in proper form from the

National Wool Growers Association of Salt Lake City, Utah, filed on behalf of the U.S. industry producing lamb meat. They were joined in this petition by the National Lamb Feeders Association on May 12, 1981. The petition alleged that the Australian government grants subsidies to its producers and exporters of lamb meat.

Because Australia is not a "country under the Agreement" within the meaning of section of 701(b) of the Tariff Act (93 Stat. 151, 19 U.S.C. 1671(b)), Section 303 of the Act applies to this investigation. Under that section cases relating to dutiable exports are not referred to the United States International Trade Commission (ITC) for an injury determination. Since lamb meat is dutiable, the Department of Commerce has not, therefore, referred this case to the United States International Trade Commission (ITC) for a preliminary determination of material injury to a domestic industry.

After reviewing the petition, we decided that it contained sufficient grounds to initiate a countervailing duty investigation.

Therefore, on May 13, 1981, we announced the initiation (46 FR 27151).

Scope of the Investigation

The merchandise covered by this investigation is lamb meat provided for in item number 106.30 of the Tariff Schedules of the United States. Lamb meat comes from a sheep that is usually less than a year old, that weighs about 110 pounds, and that has not cut its permanent incisors.

We presented a questionnaire concerning the allegations in the petition to the government of Australia and to the Australian Meat and Livestock Corporation (AMLC). We received and analyzed the responses to the questionnaire. We examined recent annual reports of the AMLC, the Export Development Grants Board, and the Australian Meat Research Committee. We visited the New York City office of the AMLC. We reviewed data about lamb meat production, including slaughterhouses, freezing works, and shipping operations.

Programs Not Utilized or Believed Not to be Subsidies

The petition listed certain benefits that Australian producers, processors and exporters of lamb meat either do not receive or which do not constitute subsidies. We have found that the lamb industry at present is not eligible to utilize export expansion grants and that export finance and insurance and funds from the Australian Meat Research Committee are not subsidies.

Export Expansion Grants. This program currently gives grants to exporters of machinery or other capital goods who have increased their total export earnings according to a designated criteria. Exports of sheep and cattle meat have not benefited from the EEG program since July 1, 1979.

Export Finance and Insurance Corporation (EFIC). The Export Finance and Insurance Corporation offers exporters two benefits: loans and loan guarantees, and export insurance against nonpayment for business or political reasons. The loans and loan guarantees are unavailable to lamb meat exporters, but insurance against nonpayment does apply to lamb. The fact that a government contributes capital to and participates in the ownership of a financial corporation is not, as such, a bounty or grant. What is significant is whether the corporation receives assistance from the government to compensate for operating deficits. The annual report for 1980 of the Export Insurance Finance Corporation reveals that receipts exceeded claims for the period 1979 to 1980. Further, we have no evidence that the government of Australia defrays any operating losses by the EFIC. Therefore, we determine that the government's ownership of the EFIC does not in itself confer a bounty or grant on that corporation.

Funds from the Australian Meat Research Committee. This Committee allocates funds to finance scientific, economic, and technical research and to train research scientists that assist developing meat-producing industries. The research serves the industry as a whole, and dissemination of the results of the research is not restricted to producers or processors of lamb meat, and would appear to be of some utility to producers and processors abroad. Because the funded work does not specifically benefit any one producer or single category of producers, and because the written reports are not proprietary information, we have determined that the activities of the Australian Meat Research Committee do not constitute a subsidy.

Programs Believed to Be Subsidies

We have preliminarily determined that the following benefits available to Australian producers, processors and exporters of lamb meat qualify as subsidies: funds from the Australian Meat and Livestock Corporation, Export Market development Grants, preferential shipping rates, the public ownership of certain slaughterhouses, overseas trade promotion funded by the Department of Trade and Resources.

Funds from the Australian Meat and Livestock Corporation (AMLC). The AMLC is an Australian statutory corporation empowered by an act of the Australian parliament to perform regulatory and promotional functions on behalf of Australia's meat and livestock industry. This industry includes lamb, sheep, goats, cattle, calves, and buffaloes.

The AMLC is an administrative and regulatory body. Many of its objectives are those normally regulated by sovereign governments. It is empowered, among other things, to oversee the granting of export licenses, allocate quantities of export meat, and state the terms and conditions relating to export prices.

The government of Australia has urged the Department to accept their position that the AMLC is not an integral part of the government and, therefore, that funds expended by the AMLC do not constitute a subsidy. Since we determine that the AMLC is an integral part of the government of Australia, it is unnecessary to consider the issue of whether a private subsidy exists.

The AMLC is governed by a board of directors, all of whom are appointed by the Australian Minister of Primary Industry. The act creating the AMLC provides a link between the corporation and the Australian government by requiring that the Minister approve or be involved in most of the AMLC's decisions.

The AMLC's activities are funded by levies on the slaughter and the exportation of livestock. These levies are collected by the government and transferred to the AMLC. It also receives certain government grants and earns income from security investments.

We have some data describing AMLC expenditures. From that data, we were able to isolate promotional, legal, salary and administrative expenses for the New York City office of the AMLC. The New York office services all western hemisphere markets for meat exports from Australia. We were able to segregate out some expenditures for activities of the New York City office involving sales outside of the United States. However, we are unable at this time to fully distinguish between expenditures specifically for lamb meat and for other products.

In determining the dollar benefit, we attempted to identify, with as much specificity as possible from the data available, which expenditures benefited the exportation of lamb. Depending upon the nature of these expenditures, we calculated the ad valorem benefit using (1) the value of lamb exports to the

United States, (2) the value of lamb exports to the world markets, or (3) total meat production in Australia. We estimated the ad valorem benefit to be 6.16 percent of the f.o.b. value of lamb meat exported to the United States.

Export Market Development Grants. These grants are payable to exporters who incur certain expenditures in developing export markets, such as advertising, free samples, market research, and promotional travel. Lamb producers, processors, and exporters are eligible for these grants.

From information provided by the government of Australia we have identified grant recipients who exported lamb meat to the United States. In the absence of clarifying information, we have assumed that all of the grant money was expended on the promotion of lamb meat sales in the United States. Using 1978-79 data, the last complete year for which information is available, we have determined the benefit rate of this program to be 0.65 percent.

There are three more potential subsidies cited by the petitioner for which we have insufficient information at this time to calculate a benefit rate. They are (1) negotiated shipping rates, which the petitioner claims support sales of lamb meat to the United States; (2) the public ownership of certain slaughterhouses; and (3) overseas trade promotion, including a matching fund program made available by the Overseas Trade Publicity Committee. To resolve these issues, we will request additional information from the government of Australia.

Assumptions and calculating methodology adopted for the purposes of this preliminary determination were based upon the best information available to the Commerce Department of this time. This methodology will be reviewed as appropriate taking into account any supplemental information which we anticipate receiving from the government of Australia and the AMLC prior to making a final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service "to suspend liquidation of" all entries for consumption or withdrawals from warehouse for consumption of the subject merchandise on or after the date of this notice's publication. We are also directing Customs to require a cash deposit, bond, or other security in the amount of 6.81 percent and valorem to be posted on this merchandise. Until further notice, this suspension will remain in effect.

Public Comment

As described in § 355.35 of the Commerce Department Regulation, we will hold a public hearing to afford interested parties an opportunity to comment orally on this preliminary determination. If requested, this hearing is scheduled to be held at 10:00 a.m. on August 26, 1981, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. All requests for hearing must be submitted within 10 days of this notice's publication, to the Deputy Assistant Secretary for Import Administration, Room 2800, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. They should contain (1) the party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by August 19, 1981. Oral presentations will be limited to the issues raised in the briefs.

All written views must be filed on or before August 27, 1981; in accordance with § 355.43 at the above address and in at least 10 copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-21939 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-25-M

Microcircuit Subcommittee of the Semiconductor Technical Advisory Committee; Notice of Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Microcircuit Subcommittee was formed to study microcircuit and acoustic wave devices with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

TIME AND PLACE: August 11, 1981, at 8:30 a.m. The meeting will take place at the Main Commerce Building, Room 5611, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The

Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: 202-377-2583.

Dated: July 23, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-21942 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Manufacturing Materials and Equipment Subcommittee of the Semiconductor Technical Advisory Committee; Notice of Close Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act. The Subcommittee was approved for continuation on September 19, 1980 pursuant to the charter of the Committee.

The Semiconductor Manufacturing Materials and Equipment Subcommittee was formed to study the technical and strategic value of semiconductor device production equipment and materials for

the purpose of maintaining a continuous review of the export control technical parameters, and to formulate recommendations to the Commerce Department for parameter updating as appropriate for reasons of national security.

TIME AND PLACE: August 11, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret A. Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: 202-377-2583.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Telephone: 202-377-4217.

Dated: July 23, 1981.

Saul Padwo,

Director of Licensing, Office of Export Administration.

[FR Doc. 81-21941 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee; Notice of Partially Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on August 29, 1980 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to semiconductors, or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States established or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: August 12, 1981, at 9:30 a.m. The meeting will take place at the Main Commerce Building, Room 6802, 14th Street and Constitution Ave., N.W., Washington, D.C.

AGENDA: General Session

- (1) Opening remarks by the Chairman.
- (2) Presentation of papers of comments by the public.
- (3) Committee preparation for the next list review.
- (4) Subcommittee reports:
 - a. Discrete Semiconductor Device,
 - b. Microcircuits, and
 - c. Semiconductor Manufacturing Materials and Equipment.
- (5) New Business; Executive Session.
- (6) Discussion of matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

PUBLIC PARTICIPATION: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is

available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: 202-377-4217.

FOR FURTHER INFORMATION OR COPIES OF THE MINUTES CONTACT: Mrs.

Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: 202-377-2583.

Dated: July 23, 1981.

Saul Padwo,

Director of Licensing.

[FR Doc. 81-21943 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Password Usage; Proposed Federal Information Processing Standard

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce (Secretary) is authorized to establish uniform Federal automatic data processing standards. The draft standard included in this announcement is being proposed as a Federal Information Processing Standard. The proposed standard specifies certain criteria for the design, implementation and use of password systems which control access to computer facilities, resources and data.

In order to ensure that all parties have an opportunity to present their views, the National Bureau of Standards (NBS) is soliciting comments on the proposed standard. Interested parties may submit comments in writing to the Standards Administration Office, Institute for Computer Sciences and Technology, Technology B64, Washington, DC 20234. To be considered, comments on this proposed standard must be received on or before September 28, 1981.

Written comments received in response to this notice plus written comments obtained from Federal departments and agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, DC 20230. Persons desiring more information about this proposed standard may contact Dr. Dennis K. Branstad, (301) 921-3861.

Dated: July 23, 1981.

Ernest Ambler,
Director.

Federal Information Processing Standards Publication

(Date) _____

Announcing the Standard for Password Usage

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15, Code of Federal Regulations (CFR).

1. Name of Standard. Password Usage Standard.

2. Category of Standard. Operations, computer security.

3. Explanation. A password is a sequence of characters or symbols that may be used for several authentication purposes. They are now commonly used to authenticate the identity of a person and to grant or deny access of a person to an ADP system in the following instances:

a. When authenticating the identity of an individual requesting access to the resources of a computer system, e.g., during a "login" process or submission of a program to be executed.

b. When authorizing access of a person to private data or shared data requiring protection.

The uses of a password in an ADP system thus include authenticating the identity of a person and authorizing access of a person to the computer's resources and data. A password used for personal identification will be called a personal password and a password used for authorizing access will be called an access password. This standard establishes the minimum criteria for the design, implementation and use of a password system used for these purposes.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Bureau of Standards, Institute for Computer Sciences and Technology.

6. Cross Index.

a. Federal Information Processing Standards Publication (FIPS PUB) 1-1, Code for Information Interchange (ASCII).

b. Federal Information Processing Standards Publication (FIPS PUB) 15, Subsets of the Standard Code for Information Interchange.

c. Federal Information Processing Standards Publication (FIPS PUB) 31, Guidelines for Automatic Data Processing Physical Security and Risk Management.

d. Federal Information Processing Standards Publication (FIPS PUB) 39, Glossary for Computer Systems Security.

e. Federal Information Processing Standards Publication (FIPS PUB) 41, Computer Security Guidelines for Implementing the Privacy Act of 1974.

f. Federal Information Processing Standards Publication (FIPS PUB) 46, Data Encryption Standard (DES).

g. Federal Information Processing Standards Publication (FIPS PUB) 48, Guidelines on Evaluation of Techniques for Automated Personal Identification.

h. Federal Information Processing Standards Publication (FIPS PUB) 65, Guideline for Automatic Data Processing Risk Analysis.

i. Federal Information Processing Standards Publication (FIPS PUB) 73, Guidelines for Security of Computer Applications.

j. Federal Information Processing Standards Publication (FIPS PUB) 74, Guidelines for Implementing and Using the Data Encryption Standard.

k. Federal Information Processing Standards Publication (FIPS PUB) 81, Modes of Operation of the Data Encryption Standard.

l. Federal Information Processing Standards Publication (FIPS PUB) 83, Guideline on User Authentication Techniques for Computer Network Access Control.

m. Federal Information Processing Standards Publication (FIPS PUB) 87, Guidelines for ADP Contingency Planning.

n. NBS Special Publication 500-9, The Use of Passwords for Controlled Access to Computer Resources, Helen M. Wood.

7. Applicability. This standard shall be used by all Federal departments and agencies in all computer systems owned and leased, which control access to computing resources and data through the use of passwords. The standard may be adopted by any other organization desiring to use it.

8. Specifications. Federal Information Processing Standard (FIPS—) Password Usage Standard (affixed).

9. Qualifications. This standard specifies ten factors which shall be considered in the design, implementation and use of access control systems using passwords. It also specifies certain procedures to be used in the generation, distribution, use, storage, protection and replacement of passwords. The standard is intended to

provide a common foundation for automated access control systems that are based on passwords and to specify minimum security criteria for the use of such systems. The standard should not be interpreted as satisfying all security requirements in all applications. The Federal official that is designated in accordance with OMB Circular A-71, Transmittal Memorandum Number 1 (July 27, 1978) as being responsible for the security of each computer system (herein called the Security Officer) shall specify any additional security provisions deemed necessary over and above the specifications of this standard. For each computer system which includes a password system the Security Officer shall prepare a document which specifies all the criteria which must be met for all the factors for that system. This document shall include the rationale for the criteria specified for each of the ten factors for that system.

10. Implementation Schedule. This standard becomes effective six months following the date of the Federal Register announcing the approval of this standard by the Secretary of Commerce.

11. Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and when the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must specify anticipated performance and cost advantages in the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, DC 20230, and labeled as a Request for a Waiver to Federal Information Processing Standard Publication—. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. When ordering, refer to Federal Information Processing Standards Publication— (FIPS PUB—) and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, or deposit account.

Federal Information Processing Standards Publication—

(Date) _____

Specifications of the Standard for Password Usage

1. Terms and Conventions. The following terms or conventions and associated descriptions are used in the standard.

1.1 Authentication process: The actions involving (1) obtaining an identifier and an associated password from an individual; (2) comparing that password with a stored, valid password that has been issued to the individual associated with that identifier; and (3) granting or denying access to that individual.

1.2 Authentication system: A password system consisting of password storage, password entry equipment, password transmission equipment, password authentication processes and related management procedures.

1.3 Compromise (Verb): Disclosing full or partial knowledge of a password to someone not authorized to have or use the password.

1.4 Data: The programs, data files or other information stored in, or processed by, a computer system.

1.5 Data Encrypting Key: An encryption key used for encrypting data and also for decrypting data when using the DES for two-way encryption.

1.6 Encryption: The process of transforming data to an unintelligible form in such a way that the original data either cannot be obtained (one-way encryption) or cannot be obtained without using the inverse process (two-way encryption).

1.7 Encryption Key: A parameter used by a general encryption process that makes the process completely defined and usable only by those having the key.

1.8 Identifier: A data item that is associated with an individual in a computer system and that represents the identity to the individual.

1.9 Key Encrypting Key: An encryption key used in the encryption and decryption of data encrypting keys or other key encrypting keys.

1.10 Password System: An access control system that uses a secret word, number or string of symbols to verify a person's identity or to authorize a person's access privileges.

1.11 Personal Password: A password that is known by only one person and is used to verify that person's identity.

1.12 Resource: The processing capability of a computer or a computer program.

1.13 Replace: To destroy (erase) a password or to change an old password to a completely new different password.

1.14 Security Officer: The automatic data processing official as described in OMB Circular A-71, Transmittal Memorandum 1 (July 27, 1978), who has the designated responsibility for the security of a computer system.

1.15 System Manger: The automatic data processing official who is responsible for the operation of a computer system.

1.16 Valid Password: A personal password that when presented to the authentication system will be accepted as verifying the identity of the individual or an access password that when presented to the authentication system will allow the requested access.

2. Factors. The following ten factors shall be considered in the design, implementation, and use of a password system used to control access to computer resources and data. The factors are:

2.1 Composition: Composition is the acceptable set of characters or symbols which comprises a valid password.

2.2 Length: Length is the acceptable range of the number of characters or symbols in a valid password.

2.3 Lifetime: Lifetime is the acceptable maximum period of time for which a particular password is valid.

2.4 Source: Source is the entity which creates or selects a valid password from among all acceptable passwords.

2.5 Ownership: Ownership is the acceptable set of individuals who are authorized to use a particular password.

2.6 Distribution: Distribution is the set of acceptable methods of transporting a new password to its owner and to all places where it will be needed in performing the authentication process.

2.7 Storage: Storage is the set of acceptable methods of storing a valid password during its lifetime.

2.8 Entry: Entry is the set of acceptable methods by which a valid password may be entered during an authentication process.

2.9 Transmission: Transmission is the set of acceptable methods of transporting a password from its point of entry to its point of authentication.

2.10 Authentication Frequency: Authentication frequency is the acceptable maximum period between any initial authentication process and subsequent reauthentication processes during a single terminal session or during the period data is being accessed.

3. Minimum Acceptable Criteria: All of the following criteria shall be

considered to be minimally acceptable for the factors specified in Section 2.

3.1 Composition.

3.1.1 Passwords shall be composed of a subset selected by the System Manager from the set of ninety seven characters and symbols consisting of the 95-character graphics set specified in FIPS PUB 15 and the control characters defined for backspace and horizontal tab.

3.1.2 The subset selected by the System Manager shall not consist of less than ten characters or symbols.

3.2 Length.

3.2.1 Passwords shall have a length of at least four (4) and no more than sixteen (16) characters or symbols.

3.2.2 The length of the password shall be such that there are at least 10^4 possible passwords and no more than 2^{64} possible passwords.

3.2.3 The length of the password shall be selected by the Security Officer to provide a level of protection commensurate to the value or sensitivity of the resources or data it protects.

3.3 Lifetime.

3.3.1 Passwords shall have a maximum lifetime of one year.

3.3.2 Passwords shall have the shortest lifetime set by the Security Officer in conjunction with the Systems Manager which optimizes between the protection needed and the cost of password replacement.

3.3.3 Passwords shall be replaced within one working day if compromise of the password is suspected or confirmed.

3.3.4 Passwords shall be replaced within one working day when the owner or any one of the set of owners is no longer authorized access.

3.3.5 Passwords forgotten by their owner shall be replaced, not reissued.

3.4 Source.

3.4.1 The source of passwords shall be one or more of the following and selected by the System Manager in conjunction with the Security Officer: user, Security Officer, or automated password generator.

3.4.2 Passwords created by users or the Security Officer shall be tested by the authentication system as meeting the minimum specifications of composition and length before being accepted as valid passwords.

3.5 Ownership.

3.5.1 Personal passwords used to authenticate personal identity shall be owned only by the individual having that identity.

3.5.2 Access passwords used to protect private data shall be owned only by the individual responsible for that private data.

3.5.3 Access passwords used to protect shared data shall be owned by the set of individuals authorized access to that data.

3.6 Distribution.

3.6.1 Personal passwords shall be distributed in a way that only the intended owner may see or obtain the password.

3.6.2 Passwords shall be distributed in a way that an audit record can be made available to the Security Officer.

3.6.3 Passwords shall be distributed in such a way that no permanent record of the password is kept except in the memory of the owner and in protected storage.

3.7 Storage.

3.7.1 Passwords shall be stored in such a way that no unauthorized, undetected access can be made to a password stored as plain text (i.e., unencrypted) which can be directly associated with the entity it protects.

3.7.2 Passwords that are encrypted and stored shall be encrypted in such a manner that they cannot be decrypted (i.e., one-way encryption shall be used).

3.8 Entry

3.8.1 Passwords shall be entered by the owner into the authentication system in such a manner that the password will not be revealed to anyone observing the entry process.

3.9 Transmission.

3.9.1 Passwords shall be transmitted between the point of entry and the point of authentication in such a way that they are protected to the degree specified by the Security Officer and that is at least equivalent to the security required for the entity the password is protecting.

3.9.2 Passwords shall be encrypted during transmission if data that the password is protecting are encrypted during transmission.

3.9.3 Passwords that are used as personal encryption keys shall not be transmitted, shall be selected at random from the set of 2^{64} encryption keys used by the DES and shall be used either as Data Encrypting Keys or Key Encrypting Keys, but not both.

3.10 Authentication Frequency.

3.10.1 Personal Passwords shall be authenticated each time a claim of identity is made, e.g., when "logging onto" an interactive system, and access passwords shall be authenticated during the initial request for access to the protected data.

3.10.2 Passwords shall be reauthenticated at a frequency commensurate with the degree of protection dictated by the Security Officer.

Note:—The Appendix to this proposed standard contains background information,

examples of password systems and guidance for selecting the parameters of a password system based on increasing security requirements. Draft copies of the Appendix, which is not a part of the standard but will be published in the same document as the standard, are available from the Standards Administration Office, Technology B64, National Bureau of Standards, Washington, DC 20234.

[FR Doc. 81-21935 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

50 CFR PART 296

Fishermen's Contingency Fund; Recommendation of Payment of Claim

AGENCY: National Oceanic and Atmospheric Administration/Department of Commerce.

ACTION: Notice of agency recommendation on claims filed under Title IV, Outer Continental Shelf Lands Act Amendments of 1978 (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the cases, that the following claims be approved for payment from the Fishermen's Contingency Fund:

Claim Numbers and Approved Amounts

FCF-06-79—\$2,135.78 (Actual damage: \$1,815.44; Economic loss: \$321.34).
 FCF-17-79—\$2,331.64 (Actual damage).
 FCF-18-79—\$580.03 (Actual damage: \$481.11; Economic loss: \$98.92).
 FCF-22-79—\$3,589.54 (Actual damage: \$3,513.28; Economic loss: \$76.26).
 FCF-47-79—\$2,101.40 (Actual damage: \$2,001.40; Attorneys fees: \$100.00).
 FCF-50-79—\$79.50 (Actual damage: \$33.00; Economic loss: \$46.50).
 FCF-54-79—\$495.60 (Actual damage: \$348.05; Economic loss: \$147.55).
 FCF-02-80—\$3,527.93 (Actual damage: \$2,600.00; Economic loss: \$927.93).
 FCF-10-80—\$1,036.34 (Actual damage).
 FCF-17-80—\$1,844.18 (Actual damage).
 FCF-18-80—\$1,501.99 (Actual damage).
 FCF-30-80—\$3,573.34 (Actual damage: \$3,433.25; Economic loss: \$140.09).

Interested persons have 15 days to request that the Administrative Law judge (ALJ) conduct an oral hearing concerning the claims or to request to be admitted as parties to any hearing on the claims.

DATE: Requests for oral hearing or to be admitted as a party must be received by August 14, 1981.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001

Wisconsin Avenue, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or Harry Feehan (address above). Telephone: (202) 254-8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 U.S.C. 1641, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil and gas activities on the Outer Continental Shelf.

Claim No. FCF-06-79 was filed on January 29, 1979, and seeks compensation in the amount of \$9,134.14 for damage to fishing gear (\$1,815.44) and lost profits (\$7,318.70) caused by Claimant's catching his gear on an underwater oil pipeline on January 20, 1979, at coordinates 28°46.5' N. and 91°35.2' W.

Claim No. FCF-17-79 was filed on February 9, 1981, and seeks compensation of \$2,331.64 for damage to fishing gear caused by Claimant's hanging his gear on an underwater obstruction on March 1, 1979, at coordinates 28°52.7' N. and 91°14.7' W.

Claim No. FCF-18-79 was filed on January 6, 1981, and seeks compensation in the amount of \$1,401.11 for damages to fishing gear (\$481.11) and lost profits (\$920.00) caused by Claimant's hanging his gear on the underwater obstruction on December 12, 1978, at coordinates 28°53.8' N. and 90°00.9' W.

Claim No. FCF-22-79 was filed on January 6, 1981, and seeks compensation in the amount of \$6,982.03 for damages to fishing gear (\$3,652.03) and lost profits (\$3,330.00) caused by Claimant's hanging his gear on the underwater obstruction on February 18, 1979, at coordinates 28°47.9' N. and 90°38.0' W.

Claim No. FCF-47-79 was filed on February 16, 1979, and seeks compensation in the amount of \$2,001.40 for damage to fishing gear (\$2,001.40) and attorneys fees (\$400.00) caused by Claimant's hanging his gear on an underwater obstruction on February 15, 1979, at coordinates 28°51' N. and 90°14.7' W.

Claim No. FCF-50-79 was filed on January 6, 1981, and seeks compensation in the amount of \$923.00 for damage to fishing gear (\$33.00) and lost profits (\$390.00) caused by Claimant's hanging his gear on an underwater obstruction on May 25, 1979, at coordinates 29°07.1' N. and 89°59.8' W.

Claim No. FCF-54-79 was filed on January 6, 1981, and seeks compensation in the amount of \$765.00 for damage to fishing gear (\$375.00) and lost profits (\$390.00) caused by Claimant's hanging

his gear on an underwater obstruction on May 31, 1979, at coordinates 29°13.5' W. and 92°04.1' W.

Claim No. FCF-02-80 was filed on January 4, 1980, and seeks compensation in the amount of \$4,106.00 for damage to fishing gear (\$2,600.00) and lost profits (\$1,500.00) caused by Claimant's hanging his gear on an underwater obstruction on November 12, 1979, at coordinates 28°43.0' N. and 80°43.5' W.

Claim No. FCF-10-80 was filed on January 18, 1980, and seeks compensation of \$1,036.34 for damage to fishing gear caused by Claimant's hanging his gear on an underwater obstruction on January 14, 1980, at coordinates 29°40.8' N. and 93°24.7' W.

Claim No. FCF-17-80 was filed on February 24, 1980, and seeks compensation of \$1,844.18 for damages to fishing gear caused by Claimant's hanging his gear on an underwater obstruction on February 19, 1980, at coordinates 28°34.9' N. and 91°29.1' W.

Claim No. FCF-18-80 was filed on March 7, 1980, and seeks compensation of \$1,501.99 for damage to fishing gear caused by Claimant's hanging his gear on an underwater obstruction on January 15, 1980, at coordinates 28°37.3' N. and 91°16.7' W.

Claim No. FCF-30-80 was filed on May 16, 1980, and seeks compensation in the amount of \$8,509.26 for damage to fishing gear (\$4,859.10) and lost profits (\$3,650.16) caused by Claimant's hanging his gear on an underwater obstruction on April 26, 1980, at coordinates 28°43.3' N. and 91°24.1' W.

Claim No. FCF-17-79, 18-79, 22-79, 50-79 and 54-79 were filed more than 60 days following the incidents to which they related pursuant to Pub. L. 96-561 (December 22, 1980) which authorized, for the period December 22, 1980-February 19, 1981, the filing or renewed filing of all claims theretofore unfiled or incomplete as filed.

As required by the 50 CFR Part 296 regulations implementing Title IV, notice claim FCF-06-79 was published in the Federal Register on April 28, 1980; notice of claims FCF-17-79, FCF-18-79, and FCF-50-79 was published in the Federal Register on July 21, 1980 (45 FR 48881); notice of claims FCF-22-79 and FCF-54-79 was published in the Federal Register on June 16, 1980 (45 FR 40631, 40632); notice of claims FCF-47-79, FCF-02-80, FCF-10-80, FCF-17-80, FCF-18-80 and FCF-30-80 was published in the Federal Register on September 2, 1980 (45 FR 58176, 58179, 58180). These notices gave interested persons, as defined in 50 CFR 296.2, 30 days to advise the Chief of the National Marine Fisheries Service's Financial Services Division (FSD) that they wished to submit evidence

concerning the claims or be admitted as parties at any hearings held in respect to the claims. The following responses were received. The Exxon Pipeline Co. stated that it wished to submit evidence at any hearing held in connection with Claims Nos. FCF-17-79, 18-79, 50-79 and 02-80. The Shell Oil Co. stated that it wished to be admitted as a party with regard to Claims Nos. FCF-17-79, 02-80, 17-80, and 30-80.

These notices also advised that FSD may negotiate with the claimants proposed settlements of their claims. As indicated in the "Approved Amount" column set out earlier in this notice, FSD has either approved the claims as submitted or negotiated settlements.

As provided by 50 CFR 296.8(d)(3), notice is given that NOAA General Counsel has determined that the proposed settlements set out above will be the official agency recommendations in these cases. Any interested person or a claimant who objects to any of these recommendations may request that the ALJ who will be assigned to a case conduct an oral hearing concerning the claim. Any interested person may also request to be admitted as a party to any hearing concerning any claim. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The ALJ will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the claim as are disclosable by law by writing General Counsel at the above address.

No sooner than the close of the 15-day period referred to at the beginning of this notice, General Counsel will refer the claims, together with the agency recommendations and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for adjudication. It is the present intention of General Counsel to request the ALJ to decide these claims without oral hearing.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980, (45 FR 44912).

Signed at Washington, D.C. this 23rd day of July 1981.

Robert K. Crowell,
Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-22023 Filed 7-27-81; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Transportation of Chemical Munitions

AGENCY: Department of the Army, DOD.
ACTION: Notice of availability of Record of Decision regarding movement of chemical munitions from Rocky Mountain Arsenal, Colorado, to Tooele Army Depot, Utah.

On July 17, 1981, the Under Secretary of Defense for Research and Engineering decided that the Department of Defense will move all chemical munitions currently stored at Rocky Mountain Arsenal, Colorado, to Tooele Army Depot, Utah, for safe and secure long-term storage.

The movement and its potential environmental impacts have been discussed previously in environmental documentation filed by the Department of the Army with the Environmental Protection Agency. These documents include the Final Environmental Impact Statement (FEIS) for Operation RMT (notice of availability in the November 15, 1977, *Federal Register*, 42 FR 59099), the First Supplement to the FEIS for Operation RMT (notice of availability in the October 23, 1978, *Federal Register*, 43 FR 49360), and the Second Supplement to the FEIS for Operation RMT (notice of availability in the June 12, 1981, *Federal Register*, 46 FR 31051).

The Department of Defense has prepared a record of this decision available to members of the public using Council on Environmental Quality Regulations, 40 CFR Part 1505 (1980), as a guide. This Record of Decision includes a concise discussion of the alternatives considered in making the decision, the basis for the decision, and whether practicable means to mitigate consequences were adopted.

Interested organizations or individuals may obtain copies of the Record of Decision from The Environmental Office, Office of the Assistant Chief of Engineers, ATTN: DAEN-ZCE, Washington, D.C. 20310 (Telephone (202) 694-3434).

Dated: July 22, 1981.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 81-21807 Filed 7-27-81; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Notice of Intent to refile a Draft Environmental Impact Statement

In June 1977 the Navy published a Draft Environmental Impact Statement

for "Ammunition Port Facility, Mariana Island, Orote Point, Guam." The Statement was subsequently withdrawn as the proposal was withdrawn from Military Construction consideration. The Navy now is preparing to refile the Draft Statement with some adjustments in project scope.

The proposed wharf is expected to be 400 feet in length and designed to handle a total net explosive weight of 3 million pounds of high explosives. The Draft Statement will evaluate two sites; one at the north shore of Orote Peninsula adjacent to Adotgan Point and the other at the Glass Breakwater.

The previous proposal consisted of an 800-foot wharf sited at Orote Point and designed for handling a total net explosive weight of 9 million pounds of high explosives.

The Navy point of contact for further information is: Commander, Pacific Division, Naval Facilities Engineering Command, (Code 09p), Pearl Harbor, HI 96860, Telephone number (808) 471-3088.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

July 24, 1981.

[FR Doc. 81-22128 Filed 7-27-81; 9:42 am]

BILLING CODE 3610-AE-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Bellville Point Navigation Study, McIntosh County, Georgia

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. Proposed Action: The primary objective of the Bellville Point Navigation Study is to improve navigation for shrimping vessels operating in the port. The most reasonable solution is channel modification by dredging. Currently, a channel length of 6.4 miles will need to be dredged. A hydraulic dredge would be used and approximately 280,000 cubic yards of material would need to be disposed of. Three upland disposal sites are presently being considered. The primary disposal site (B1), located near the harbor, is approximately 80 acres. Approximately 1/2 to 1/3 of this area would be used if it is chosen.

2. Alternatives: The other alternatives are no-action and overboard disposal.

3. Scoping Process: Public involvement on the Bellville Point Navigation Study has included a

planning coordination meeting and site inspection with the Georgia department of Natural Resources and the U.S. Fish and Wildlife Service on May 6, 1981. Two public meetings were held concerning Bellville along with two other proposed projects, Cedar Point and Valona. The first meeting was held December 20, 1976 at Darien, Georgia. The second meeting was held July 25, 1978, also as Darien.

4. DEIS Preparation: The DEIS is scheduled to be available to the public in December 1981.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: Jeff Hall, Biologist, U.S. Army Corps of Engineers, P.O. Box 889, Savannah, Georgia 31402; Telephone (912) 944-5834.

Dated: July 20, 1981.

Charles E. Dominy,

Colonel, Corps of Engineers, Commander and District Engineer.

[FR Doc. 81-21937 Filed 7-27-81; 8:45 am]

BILLING CODE 3710-HP-M

Office of the Secretary

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

The DOD Advisory Group on Electron Devices (AGED) will meet in closed session on September 24, 1981, at the Palisades Institute for Research Services, Inc. 1925 North Lynn Street, Arlington, Va 22209.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of Electron Devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with 5 U.S.C. App. 1 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(c)

(1978), 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.*

July 22, 1981.

[FR Doc. 81-21912 Filed 7-27-81; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. PP-75]

Application for Presidential Permit by the Comision Federal de Electricidad—Coahuila, Mexico

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application from the Comision Federal de Electricidad for a Presidential Permit for a 7.2 Kilovolt International Transmission Line.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received an application from the Comision Federal de Electricidad, Departamento de Operacion, Zona Piedras Negras, Coahuila, Republic of Mexico to construct a 7.2 kilovolt (kV) distribution line from the United States to Mexico across the Rio Grande River near Comstock, Texas. This facility will be used to deliver a maximum of 150 kilowatts to the ranch of Ing. Manuel Diego Ainslie located in Mexico on the United States/Mexico border.

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3825.

Lise Courtney M. Howe, Office of General Counsel, Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: On June 5, 1981, DOE received an application from the Comision Federal de Electricidad (CFE) for authority to construct a 7.2 kV transmission line across the Rio Grande River near Comstock, Texas. The transmission line will be used to deliver a maximum of 150 kilowatts from the Rio Grande Electric Cooperative to the ranch of Ing. Manuel Diego Ainslie in Mexico.

An application for a Presidential Permit (PP-73) originally was submitted by Ing. Manuel Diego Ainslie on August

25, 1980. Notice of the application and an opportunity to comment were given on September 15, 1980 (45 FR 61012). A copy of the application and a request for comments also were submitted to appropriate Government agencies and other interested parties. Comments were received from the Army Corps of Engineers, the Rural Electrification Administration and the Public Utilities Commission of Texas advising the DOE that there were no objections to the application. No comments were received from the general public. On January 2, 1981, the DOE Assistant Secretary for Environment advised the ERA that the application did not require an Environmental Impact Statement.

On April 10, 1981, the CFE notified the DOE that it, rather than Ing. Diego, would become the applicant for the Presidential Permit. The DOE has reviewed the material contained in both applications and has determined that in this instance, the data contained in Mr. Diego's application of August 25, 1980, may be utilized in this application because the amount of electric energy to be exported, the location and type of interconnection, and the parties to the Agreement are the same as in the application by CFE.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with sections 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petition or protest should be filed on or before July 31, 1981. Protests will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the DOE and, upon request, will be made available for public inspection and copying at the DOE Docket Room, Room B-2110, 2000 M Street, N.W., Washington, D.C., and at the System Reliability and Emergency Response Branch, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461.

Dated: July 23, 1981.

Barton R. House,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-21979 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 4550-000]

Belgrade Development Corp.; Application for Preliminary Permit

July 23, 1981.

Take notice that Belgrade Development Corporation (Applicant) filed on April 20, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4550-000 known as the Belgrade Project located on Green Pond, Long Pond and Ellis Pond in the towns of Belgrade and Mount Vernon, Kennebec County, Maine. The application is on file with the Commission, and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas E. Blackburn, President, Belgrade Development Corporation, P.O. Box 180, Mechanic Falls, Maine 04256.

Project Description—The project, owned by the Applicant, would consist of three developments: (1) Ellis Pond Development consisting of: (a) an existing 10-foot high, 100-foot long concrete dam; (b) a reservoir with a usable storage capacity of 2,410 acre-feet used to provide storage only; (2) Great Pond Development consisting of: (a) an existing 10-foot high concrete dam in two sections, one 102 feet in length with a 35-foot long spillway and the other 39 feet in length containing two Taintor gates; (b) a reservoir with a usable storage capacity of 32,140 acre-feet; (c) a new powerhouse containing one or two turbine-generators with a total rated capacity of the 150 kW; and (3) Long Pond Development consisting of: (a) an existing 200-foot long, 2-foot high, rock-filled, timber crib dam; (b) two 7×7 foot vertical head gates; (c) a reservoir with a usable storage capacity of 5,380 acre-feet; (d) a powerhouse containing a single turbine-generator with a total rated capacity of 50 kW; and (e) appurtenant facilities. The project could produce up to 1,150,000 kWh annually. Energy produced at the project would be sold to Central Maine Power Company.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The work proposed under this preliminary permit would include economic evaluation, engineering plans, and an environmental assessment. 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 work to be performed

under this preliminary permit would cost \$14,400.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before September 25, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than November 24, 1981.

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies only directly from the Applicant.) 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 may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petition to intervene must be received on or before September 25, 1981.

Filing and Service of Responsive Documents—Any filings 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, and the Project Number of this notice. Any of the above named documents 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 RB at the above address. 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. 81-21990 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP80-499-004]

Cities Service Gas Co.; Petition To Amend

July 24, 1981.

Take notice that on July 2, 1981, Cities Service Gas Company (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP80-499-004 a petition to amend the order issued December 22, 1980, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase to 200 billion Btu per day in the average daily quantity of gas to be sold by Petitioner to El Paso Natural Gas Company (El Paso), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued December 22, 1980, Petitioner was authorized to construct and operate facilities and to sell natural gas to El Paso for a term expiring December 31, 1982. It is further stated that pursuant to the terms of a limited-term gas sales agreement dated August 28, 1980, between Petitioner and El Paso the sale volumes were to average 150 billion Btu per day during the first contract year and 100 billion Btu per day during the second contract year on a best-efforts basis.

Petitioner proposes herein to increase the sales volume to an average of 200 billion Btu per day in accordance with Petitioner's amendment to the sales agreement with El Paso dated May 29, 1981. Petitioner states that El Paso has a continued need for additional supplies of gas to alleviate curtailment on its system and Petitioner has a gas surplus available due to substantially increased gas supplies and from significantly reduced demand for gas on its system.

Petitioner further proposes to extend to the increased sales volume the rate treatment currently in effect in regard to the revenues and costs relating to the El Paso sale as approved by the December 22, 1980, order. It is stated that Petitioner would refund any revenue from the El Paso sale which exceed the out-of-pocket costs including purchased gas costs and the unit fixed cost included in Petitioner's rates as set forth in Article IX of the Stipulation and Agreement in Docket No. RP79-76. It is further stated that the entire El Paso volumes would be

used in determining the level of SRO refunds.

It is stated that on June 22, 1981, Petitioner filed a rate increase application in Docket No. RP81-78-000 proposing that its rates be changed on July 23, 1981. Petitioner proposes to handle this transaction in the manner proposed in the filing in such rate increase application on the effective date of the rates filed in that case and thereafter.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 17, 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.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-21991 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 4294-000]

Desert Water Agency; Application for Exemption From Licensing of a Small Hydroelectric Power Project

July 23, 1981.

Take notice that on March 4, 1981, the Desert Water Agency (Applicant) filed an application for exemption for its Whitewater Hydro Project No. 4294 from requirements of Part 1 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 Colorado River Aqueduct at the Whitewater River in Riverside County, California. Correspondence with the Applicant should be directed to: Paul G. Payne, General Manager, Desert Water Agency, 1200 South Bogie Road, P.O. Drawer 1707, Palm Springs, California 92263.

¹ Pub. Law 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 2706).

Project Description—The proposed project would consist of: (1) a 500-foot long, 60-inch diameter penstock connection to an existing Colorado River Aqueduct service connection; (2) a powerhouse containing a single generating unit rated at 400 kW; and (3) associated electrical and transmission equipment. Applicant estimates that the average annual energy output would be 2,375 MWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemptions from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Competing Applications—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before September 4, 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 the time specified in § 4.33(c). 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).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) 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 may submit comments, a protest, or a petition to intervene in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before September 4, 1981.

Filing and Service of Responsive Documents—Any filings 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, and the Project Number of this notice. Any of the above named documents 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, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. 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. 81-21992 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Docket Nos. CP66-112-004, CP70-20, CP71-223, CP79-169]

Great Lakes Transmission Co. and Michigan Wisconsin Pipe Line Co.; Petition To Amend

July 24, 1981.

Take notice that on June 22, 1981, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP66-112-004 *et al.*, and Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-169 a joint petition to amend the orders issued September 25, 1979, and October 31, 1980, pursuant to Section 7(c) of the Natural Gas Act to authorize Great Lakes to sell to Midwestern Gas Transmission company (Midwestern) on an interruptible basis the remainder of the 18,000,000 Mcf of natural gas previously authorized to be sold by October 31, 1981, to continue to transport such volumes and certain additional volumes of gas to be imported by Midwestern for an additional term ending October 31, 1982, and further to authorize a one-year extension of Mich Wis' transportation service for Natural Gas Pipeline Company of America (Natural) and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners submit that by orders issued September 25, 1979, and October

3, 1980, Great Lakes received authorization for the following:

(1) The sale to Midwestern at the Emerson interconnection pursuant to a gas purchase contract dated November 17, 1978, as amended June 19, 1980, of 18,000,000 Mcf of gas to be imported by Great Lakes;

(2) The transportation of up to 132,000,000 Mcf of gas (18,000,000 Mcf to be sold by Great Lakes to Midwestern and 114,000,000 Mcf of Midwestern's own imports) for Midwestern's account from the Emerson interconnection to the interconnection of Great Lake's facilities with those of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), at Carlton, Minnesota, and with those of Mich Wis at Fortune Lake, Michigan, and Farwell, Michigan, all pursuant to a transportation service contract dated November 17, 1978, as amended June 19, 1980;

(3) The sale by Midwestern to Northern, Natural and Tennessee of up to 132,000,000 Mcf of gas; and

(4) Transportation service by Mich Wis for the account of Natural and Tennessee incident to the sale by Midwestern pursuant to transportation agreements dated January 9, 1979, and January 23, 1979, both as amended June 17, 1980, between Mich Wis and Tennessee and Natural, respectively.

Petitioners state that since the September 25, 1979, order Great Lakes has imported and sold to Midwestern a total of approximately 8,600,000 Mcf of the 18,000,000 Mcf authorized. Similarly, it is stated, Midwestern has to date imported approximately 57,500,000 Mcf of the 114,000,000 Mcf total authorized.

Petitioners assert that the remaining 65,900,000 Mcf of the total volumes authorized cannot be imported by the authorized termination date of October 31, 1981.

It is stated that the term of all of the contracts between Great Lakes and Mich Wis related to the above-described importation, sales and transportation of natural gas has been extended for a one-year period ending October 31, 1982. Petitioners further submit that Mich Wis' above-mentioned transportation agreements with Tennessee and Natural have been amended so as to provide for deliveries of volumes by Mich Wis to Tennessee and Natural on a best-efforts interruptible basis. Further, it is asserted that an existing interconnection between the facilities of Midwestern and Mich Wis in Spencer County, Indiana, has been included as a new delivery point in the contract between Mich Wis and Tennessee.

Petitioners assert that the natural gas would only be imported when needed in

United States markets and that such gas would be transported through the use of existing facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 17, 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.

Kenneth F. Plumb,
Secretary.

[FR Doc. 81-21993 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 4314-000]

Henwood Associates, Inc.; Application From Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

July 23, 1981.

Take notice that the Henwood Associates, Inc. filed with the Federal Energy Regulatory Commission on March 10, 1981, an application for exemption from the Dynamo Pond Project No. 4314-000 from all or part 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 Green Creek in Mono County, California. Correspondence with the Applicant should be directed to: Dr. Kenneth Henwood, Henwood Associates, Inc., P.O. Box 7, Smartville, California 95977.

Project Description—The proposed project would consist of: (1) the existing 30-foot high timber-crib dam with a spillway that would be modified to allow for the installation of 3-foot high flashboards; (2) the existing 4-acre Dynamo Pond reservoir; (3) a 9,500-foot long and 22-inch diameter steel penstock; (4) a concrete-block powerhouse containing one generating

unit rated at 700 kW; (5) a 7,500-foot long 55-kV transmission line; and (6) appurtenant facilities. The project would be operated on a run-of-the-river basis during irrigation season and would be operated using regulated storage during the rest of the year.

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 requests for comments will be made. 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—This application was filed as a competing application to Joseph M. Keating's preliminary permit application for Project No. 3252-000 filed on July 11, 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 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 September 8, 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. 4314. 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, 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, 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. 81-21994 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 4809-000]

Hollingsworth and Vose Co.; Application for Preliminary Permit

July 23, 1981.

Take notice that Hollingsworth and Vose Company (Applicant) filed on June 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4809 to be known as the Townsend Harbor Project located on Squannacook River in the town of Townsend, Middlesex County, Massachusetts. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: William J. Kenney, Esquire, Perito, Durek, Carlson and Pinco, 1140 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

Project Description—The proposed project owned by the Applicant, would consist of: (1) an existing 92.2-foot long, 8.3-foot high, stone masonry spillway dam; (2) a 197-acre reservoir with a storage capacity of 273 acre-feet at a maximum elevation of 267 feet; (3) an existing 17.6-foot wide, 200-foot long canal; (4) a new powerhouse located at the end of the canal adjacent to the existing control structure containing a single turbine-generator unit with a total rated capacity of 250 kW; and (5) appurtenant facilities. The project would generate up to 2,200,000 kWh annually. Energy produced at the project would be

¹ Pub. L. 96-294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 406 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2705 and 2708).

sold to Fitchburg Gas and Electric Light Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. 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. The Applicant has estimated that the cost of studies under the preliminary permit would be \$59,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before September 28, 1981, either the competing application itself [See 18 CFR 4.33 (a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33 (b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) 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 may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 28, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "PETITION TO INTERVENE," an applicable, and the Project Number of this notice. Any of the above named documents 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 RB at the above address. 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. 81-21995 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-05-M

[Project No. 2695-001]

**Hydro Development Group, Inc.;
Application for Exemption From
Licensing of a Small Hydroelectric
Project of 5 Megawatts or Less**

July 23, 1981.

Take notice that the Hydro Development Group, Inc. filed with the Federal Energy Regulatory Commission on May 11, 1981, an application for exemption for its Dexter Project No. 2695 from all or part of Part I of the Federal Power Act pursuant to 18 CFR Part 4 subpart K (1980) implementing in part Section 48 of the Energy Security Act of 1980.¹ The proposed project would be located on the Black River in Jefferson County, New York. Correspondence with the Applicant should be directed to: Mr. Mark E. Quallen, Hydro Development Group, Inc., P.O. Box 58, Dexter, New York 13634.

Project Description—The expanded run-of-river project would consist of: (1) three reinforced concrete gravity type dams, one 12 feet high and 141.5 feet long, one 8 feet high and 145 feet long, and one 12 feet high and 433 feet long, each surmounted by 30-inch flashboards; (2) an impoundment covering 120 acres at elevation 282 feet m.s.l. and having a storage capacity of 120 acre-feet; (3) three existing powerhouses containing four existing turbine/generating units with a total capacity of 1820 kW and two proposed units with a total capacity of 500 kW, all operating under head of 14 feet; (4) a new 2.3-kV, 450-foot long transmission line and (5) appurtenant 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 requests for comments will be made. 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 September 2, 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 December 31, 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 must conform with the requirements of 18 C.F.R. § 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 September 8, 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

¹ Pub. Law 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).

these filings must also state that it is made in response to this notice of application for exemption for Project No. 2695. Any comments, notice 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. 81-21996 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 4894-000]

B. Stevens Kleinschmidt; Application for Preliminary Permit

July 23, 1981.

Take notice that B. Stevens Kleinschmidt (Applicant) filed on June 16, 1981 an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 4894-000 known as the Green Lake Project located on Green Lake in the towns of Ellsworth and Dedham, Hancock County, Maine. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Fred J. Ayer III, Kleinschmidt and Dutting, 75 Main Street, Pittsfield, Maine 04967.

Project Description—The proposed project would consist of: (1) an existing 7.5-foot high, 270-foot long dam of stone construction having a 22-foot long gate section with two gates and a 90-foot long overflow spillway section; (2) Green Lake Reservoir with a surface area of 2,989 acres and an available storage capacity of 13,000 acre-feet at elevation 161 feet (U.S.G.S. Datum); (3) a new intake gate structure; (4) a new 2100-foot long, 4-foot diameter, wood-stave penstock; (5) a new powerhouse containing a single turbine-generator with a total rate capacity of 300 kW; (6) a ¼-mile long transmission line; and (7) appurtenant facilities. The dam is presently owned by Bangor Hydro-Electric Company.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. 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 \$65,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before September 28, 1981, either the competing application itself [See 18 CFR 4.33(a) and (d) (1980)] or a notice of intent [See 18 CFR 4.33(b) and (c) (1980)] to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than the time specified in § 4.333(c).

Agency Comments—Federal, State, and local agencies are invited to submit comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) 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 may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or petition to intervene must be received on or before September 28, 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. 4894-000. 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, N.E., 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. 81-21997 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER81-499-000, ER79-559 and ER79-560]

Niagara Mohawk Power Corp.; Order Accepting for Filing and Suspending Proposed Rates, Granting Interventions, Establishing Procedures, and Terminating Prior Dockets

Issued July 23, 1981.

On February 5, 1980, in Docket Nos. ER79-559 and ER79-560, Niagara Mohawk Power Corporation (Niagara) filed a proposed increase in rates to the Power Authority of the State of New York (PASNY) for firm and interruptible transmission service to PASNY's municipal and cooperative customers. Energy is supplied to these customers from PASNY's St. Lawrence, Niagara, and Fitzpatrick Projects and is delivered by Niagara at high and low voltage levels as provided for in Niagara's Rate Schedule Nos. 18, 19 and 95.

By order issued April 2, 1980, in Docket Nos. ER79-559 and ER79-560, the Commission determined that Niagara's filings were deficient since the applicable contracts between Niagara and PASNY provide for modification only upon mutual agreement and since PASNY had not executed the superseding agreement filed by Niagara. We concluded that the proposed rates could not become effective prior to Niagara's obtaining PASNY's consent to the rate change.

Niagara submitted a new agreement to PASNY on February 18, 1981, for approval. The agreement provides for increased transmission rates to become effective on August 1, 1981, and for the construction by Niagara of additional transmission facilities as needed to meet the ongoing requirements of PASNY's customers. PASNY's Board of Trustees subsequently approved the February 18, 1981 agreement on February 24, 1981.

On May 29, 1981, Niagara tendered the executed agreement for filing¹ and requested that the increased rates for firm and interruptible transmission service become effective as of August 1, 1981, in lieu of its earlier submittals in Docket Nos. ER79-559 and ER79-560.² The proposed rates would increase revenues by approximately \$3.8 million (71%) for the twelve month period (Period II) ending December 31, 1981. Separate rates have been submitted for transmission services above and below 50 kV.³

Notice of the filing was issued on June 8, 1981, with comments, protests, or petitions to intervene due on or before June 26, 1981. Timely petitions to intervene were filed by the Municipal Electric Utilities Association of New York (MEUA), the New York State Rural Electric Cooperative Association (NYREC), Allegheny Electric Cooperative, Inc. (Allegheny), and PASNY.

MEUA and NYREC request a maximum suspension of the increased rates contending, among other things, that the submittal reflects ambiguous terms and conditions of service, improper demand allocations, an overstated rate base, improper treatment of revenue credit items, and improper rate design. Allegheny raises questions with respect to the claimed rate of return and various cost of service issues, and seeks to intervene primarily because it believes that the rates finally approved in this proceeding ultimately will be applied to Allegheny.⁴ PASNY's petition to intervene requests that the submittal become effective on August 1, 1981, subject to refund pending hearing and final decision.

Discussion

The Commission finds that participation in this proceeding by the petitioners is in the public interest. Accordingly, we shall grant the petitions to intervene.

Our analysis indicates that Niagara's revised rates for firm and interruptible transmission service have not been shown to be just and reasonable and may be unjust, unreasonable, unduly

discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept those rates for filing and suspend them as ordered 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 suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. We find that no such circumstances exist with respect to the proposed firm and interruptible transmission rates for service below 50 kV. Therefore, we shall suspend those rates for five months from the proposed effective date to become effective subject to refund thereafter on January 1, 1981. However, as to the rates for transmission service above 50 kV, we believe that a maximum suspension is not warranted. Our preliminary analysis of those rates suggests that they may not produce excessive revenues. Under these circumstances, a nominal suspension and a refund obligation should provide adequate protection to the affected customers pending further review of the proposed rates in light of the allegations contained in the petitions to intervene. Accordingly, we shall suspend the rates for firm and interruptible transmission above 50 kV for one day permitting those rates to take effect subject to refund thereafter on August 2, 1981.

Finally, we note that Niagara's current submittal supplants the deficient filings in Docket Nos. ER79-559 and ER79-560 and supersedes the rates which have continued in effect since before the deficient filings. Thus, any issues which may have been raised in Docket Nos. ER79-559 and ER79-560 are considered moot and those dockets will be terminated.

The Commission orders:

(A) Niagara's rates submitted in Docket No. ER81-499-000 for firm and interruptible transmission service below 50 kV are hereby accepted for filing and suspended for five months, to become

effective on January 1, 1982, subject to refund pending hearing and decision.

(B) Niagara's rates submitted in Docket No. ER81-499-000 for firm and interruptible transmission service above 50 kV are hereby accepted for filing and suspended for one day, to become effective on August 2, 1981, 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 Niagara's rates for firm and interruptible transmission service.

(D) The petitions to intervene of MEUA, NYREC, Allegheny, and PASNY are hereby granted subject to the rules and regulations of the Commission: *Provided, however*, that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided, further*, that the admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(E) The Commission staff shall serve top sheets in this proceeding on or before July 29, 1981.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(G) Docket Nos. ER79-559 and ER79-560 are hereby terminated.

(H) The Secretary shall promptly publish this order in the Federal Register.

¹ See Attachment A for rate schedule designations.

² As a result of the Commission's order of April 2, 1980, Niagara has continued to bill PASNY for wheeling service to its municipal and cooperative customers at the rates on file prior to the deficient filing in Docket Nos. ER79-559 and ER79-560.

³ At the present time, no transactions involving interruptible transmission service below 50 kV have been arranged during Period II.

⁴ Allegheny purchases firm power from PASNY's Niagara Project. Niagara is one of the New York transmission agents which wheel PASNY power to Allegheny.

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).

By the Commission.
Kenneth F. Plumb,
Secretary.

Attachment A

Niagara Mohawk Power Corp.

Rate Schedule Designations (Docket No. ER81-499-000)

Filed: May 29, 1981.

Other Party: Power Authority of the State of New York.

Designation

(1) Supplement No. 2 to Rate Schedule FPC No. 18 (Supersedes Supplement No. 1).

(2) Supplement No. 2 to Rate Schedule FPC No. 19 (Supersedes Supplement No. 1).

(3) Supplement No. 2 to Rate Schedule FPC No. 95 (Supersedes Supplement No. 1).

(4) Supplement No. 2 to Rate Schedule FERC No. 109 (Supersedes Supplement No. 1 as Supplemented).

[FR Doc. 81-21988 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-95-M

[Project No. 2149-006]

Public Utility District No. 1 of Douglas County; Application for Amendment of a Major License

July 23, 1981.

Take notice that the Public Utility District No. 1 of Douglas County (Applicant) filed on April 26, 1981, an application for an amendment of license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for its constructed Wells Hydroelectric Project, FERC Project No. 2149. The project is located on the Columbia River in Douglas and Okanogan counties, Washington. Correspondence with the Applicant should be directed to: Michael Doneen, President, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, Washington 98801.

The constructed Wells Project No. 2149 consists of: (1) a 145-foot high concrete and earthfill dam; (2) a reservoir with a gross storage capacity of 230,000 acre-feet; and (3) a powerhouse integrated with the dam and having a total installed capacity of 774.25 MW. Applicant proposes to raise the existing normal forebay elevation behind Wells Dam from 779.0 feet to 781.0 feet, a total of 2 feet, without any structural modifications. The proposed action will affect an additional 138.6 acres of Licensee-owned lands and will increase the average annual energy generation by 45,552 MWh.

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 September 8, 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. 2149-006. 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 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. 81-21989 Filed 7-27-81; 8:45 am]
BILLING CODE 6450-95-M

[Project No. 4492-000]

Steinberger Bros., Inc./Montgomery Worsted Mills; Application for Exemption From Licensing of a Small Hydroelectric Project of 5 Megawatts or Less

July 23, 1981.

Take notice that Steinberger Bros., Inc./Montgomery Worsted Mills filed with the Federal Energy Regulatory Commission on April 7, 1981, an application for exemption for its Montgomery Worsted Mills Project No. 4492 from all or part 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 Wallkill River in Orange County, New York. Correspondence with the Applicant should be directed to: Mr. Franklin Steinberger, Steinberger Bros. Inc., 23 Factory Street, Montgomery, New York 12549.

Project Description—The run-of-river project would consist of: (1) an existing concrete Ambursen dam, 12.5 feet high and 300 feet long, with 3-foot flashboards; (2) a pond with negligible storage covering about 20 acres and extending ¼ mile upstream; (3) three concrete penstocks 10.5 feet wide and 12 feet long with 6-foot discharge openings; (4) a small powerhouse containing two old turbines with new generator units having a total rated capacity of 190 kW at 12.5 feet of head; and (5) appurtenant facilities.

The annual average generation of 1,132,000 kWh would be used by the Applicant for plant purposes. Any excess would be sold to Central Hudson Gas & Electric Company.

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 requests for comments will be made. If any 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 September 4, 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

¹ Pub. Law 96-294, 94 Stat. 611. Section 408 of the ESA amends *inter alia*, Sections 405 and 406 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§ 2705 and 2706).

interested person to file the competing license application no later than January 4, 1982. Applications for a preliminary permit will be 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, protests, or petitions to intervene must be received on or before September 4, 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. 4492. 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 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. 81-22001 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-412-000]

**Western Gas Interstate Co.;
Application**

July 24, 1981.

Take notice that on July 13, 1981, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP81-412-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of gas to Southern Union Gas Company (Southern Union) and the construction and operation of a sales tap and appurtenant facilities necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically proposes to construct and operate a gas tap, approximately 15 feet of 2-inch wrapped steel pipe, a 2-inch tee, a 2-inch weld ell, three plug valves and a valve box on its East Line which is located in the Texas and Oklahoma Panhandles. Applicant also proposes to sell to Southern Union natural gas which would be resold by Southern Union to Omega Energy Corporation (Omega) for use in the production of gasohol. It is asserted that Omega would construct a plant near Applicant's East Line in Texas County, Oklahoma, which would use the gas proposed to be sold to Southern Union to meet its requirements. Applicant estimates the requirements of the Omega plant to be 160 Mcf for both peak day and average day service.

Applicant submits that the construction and operation of the proposed facilities are necessary to make the proposed sale to Southern Union. Applicant also contends that if the proposed sale to Southern Union is denied, Omega would be unable to operate its plant which is used to help replace dependence on foreign sources of crude oil by producing alcohol for use as part of gasohol aid. Furthermore, Applicant asserts that the Omega plant would create employment opportunities for that part of the Oklahoma Panhandle.

Applicant states that the proposed sale to Southern Union would not diminish Applicant's ability to meet the current level of peak day or average requirements on its system.

Applicant asserts that the proposed sale to Southern Union would be made pursuant to its Rate Schedule G-N.

Applicant estimates the cost for the proposed facilities to be \$2,757 which would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 17, 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. 81-22001 Filed 7-27-81; 8:45 am]

BILLING CODE 6450-85-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[RD-FRL 1894-3]

**Ambient Air Monitoring Reference and
Equivalent Methods; Receipt of
Application for a Reference Method
Determination**

Notice is hereby given that on June 18, 1981, the Environmental Protection Agency received an application from Thermo Electron Corporation, Hopkinton, Massachusetts, to determine if its Model 48 Gas Filter Correlation Ambient CO Analyzer should be designated by the Administrator of the

EPA as a reference method under 40 CFR Part 53 (40 FR 7049, 41 FR 11255). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Andrew P. Jovanovich,

Acting Assistant Administrator for Research and Development.

[FR Doc. 81-21933 Filed 7-27-81; 8:45 am]

BILLING CODE 6560-35-M

[OPTS-51287; TSH-FRL 1894-6]

Certain Chemicals; Premanufacture Notices

July 21, 1981.

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. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of interim policy published in the Federal Register of May 15, 1979 (44 FR 28558) and November 7, 1980 (45 FR 74378). 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 eleven PMN's and provides a summary of each.

DATES: Written comments by:

PMN 81-325 and 81-326: August 31, 1981

PMN 81-327, 81-328, 81-329, 81-330, 81-331, and 81-332: September 5, 1981

PMN 81-333, 81-334, and 81-335:

September 7, 1981

ADDRESS: Written comments, identified by the document control number "[OPTS-51287]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

For PMN No.	Notice manager	Telephone	Room No.
81-325	Mary Cushmac	(202-426-0503)	E-221.
81-326	George Bagley	(202-426-2601)	E-210.
81-327	Robert Jones	(202-426-8815)	E-208.
81-328	Robert Jones	(202-426-8815)	E-208.
81-329	Robert Jones	(202-426-8815)	E-208.
81-330	Rachel Diamond	(202-426-8815)	E-206.
81-331	Rachel Diamond	(202-426-8815)	E-206.
81-332	Rachel Diamond	(202-426-8815)	E-206.

For PMN No.	Notice manager	Telephone	Room No.
81-333	George Bagley	(202-426-2601)	E-210.
81-334	George Bagley	(202-426-2601)	E-210.
81-335	George Bagley	(202-426-2601)	E-210.

Mail address of notice managers: Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following are summaries of information provided by the manufacturer on the PMN's received by EPA:

PMN 81-325

Close of Review Period. September 30, 1981.

Manufacturer's Identity. National Starch and Chemical Corporation, 10 Finderne Avenue, Bridgewater, NJ 08807.

Specific Chemical Identity. Starch, diethylaminoethyl ether hydrochloride, 2 sulfo -2- carboxyethyl ether, calcium salt.

Use. The new substance is a modified starch intended to be used as a paper binder. It will impart dry strength, retain pigmented fillers, and retain cellulose fines in the paper web.

Production Estimates

	Millions of pounds per year
1st year	17
2d year	26
3d year	33

Physical/Chemical Properties

Physical state—Powder.

Color—White.

Moisture content—Approximately 10%.

pH (W4)¹—Approximately 4.

Odor—Starch odor.

Solubility in water (cold)—Insoluble.

Solubility in water (boiling)—Dispersible.

Boiling point—Not applicable.

Melting point—Not applicable.

Density—Approximately 1.5 g/cc.

Toxicity Data

Acute oral toxicity LD₅₀—> 16.0 gm/kg.

Acute dermal toxicity LD₅₀—> 2.0 gm/kg.

Primary skin sensitization—non irritant, irritation index: 0.0.

Primary eye irritation—non irritant.

Exposure. The manufacturer estimates that worker exposure will be limited to removing the bung from the drum and connecting a valve and hose to pipe the

¹W4 means 1 part starch to 4 parts water.

material into the tank. The manufacturer states that exposure will be roughly 8 min. per 8 hr./shift. This will be a minimum of 28 hrs./yr. increasing to a maximum of 59 hrs. at product's maturity. The manufacturer estimates that prior to the time the maximum exposure is reached, bulk storage tanks will be incorporated into the system, reducing worker exposure to a minimum.

Environmental Release/Disposal. The manufacturer anticipates that the production of the modified starch will have no adverse effects on the environment. The reaction of the raw materials will take place in a closed system. The reagents will be neutralized during the starch reaction; the starch product will be washed and filtered. The effluent will be diluted by adding fresh water in the ratio of 1:1 and then sent to a publicly owned treatment work (POTW).

PMN 81-326

Close of Review Period. September 30, 1981.

Importer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—> \$500 million.

Manufacturing site—Middle Atlantic Region.

Standard Industrial Classification Code—2865.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided: Alkyl sulfonic acid, organic-inorganic salt.

Use. The improper states that the PMN substance will be used as a commercial textile dyeing.

Import Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	5,000	10,000
2d year	10,000	15,000
3d year	15,000	20,000

Physical/Chemical Properties

Appearance—Powder, characteristic odor.

Decomposition temperature—145° C.

pH—> (50 g/l water).

Water solubility—> 500 g/l.

Specific gravity—860 kg/cm³.

Biodegradability (static method)—60-100%, CSB.

Toxicity Data

Oral LD₅₀ (rat)—> 3,100 mg/kg.

Skin irritation (rabbit)—slightly.

Eye irritation (rabbit)—slightly.

Exposure. The importer states that during processing of the new substance, 7 workers could be exposed through the skin and by inhalation, 2-3 hr./day, 50 days/yr. at an average concentration of 1-1 mg/m³ and peaking at 10-100 mg/m³, when weighing the substance into a mixer for preparing a premix paste and when weighing the premix into the final dye mix.

Environmental Release/Disposal. The importer states that less than 10 kg/yr. could be released into the air and 1,000 and 10,000 kg/yr. could be released into the water for 3 hr./day, 50 days/yr. The importer also states that the new substance biodegrades rapidly and disposal will occur on POTW.

PMN 81-327

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—Middle Atlantic Region.

Standard Industrial Classification Code—285.e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Polymer of an alkanedioic acid, an alkanediol and a substituted alkanooic ester.

Use. Claimed confidential business information. Generic use information provided: The manufacturer states that the new chemical substance will be in an open use that will release more than 50 but less than 5,000 kg/yr. into the environment.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	1,000	10,000
2d year	5,000	50,000
3d year	6,000	60,000

Physical/Chemical Properties¹

Acid value—11.8 mg. KOH/g.
Hydroxyl value—164 mg. KOH/g.
Total solids at 105° C—85.4%.
Viscosity (stokes)—8.9.
Color—1 (Gardner).
Flash point—102° F.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacturing and processing a total of 106 workers could have skin and eye exposure for 12 hr./day, 34 days/yr., and that the workers would be exposed only during the

extraction of small samples for Quality Control and during the drumming of the final product for shipment.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr. may be released to the air and water with 10-1,000 kg/yr. possibly being released to land. The manufacturer also states that some organic solvent added during processing may escape through the exhaust.

PMN 81-328

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Manufacturing site—Middle Atlantic Region.

Standard Industrial Classification Code—285.e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Isocyanate modified polyester.

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/yr. into the environment. There will be essentially no consumer contact since the substance will be an integral part of an article.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	50,000	500,000
2d year	50,000	1,000,000
3d year	50,000	3,000,000

Physical/Chemical Properties

Total solids at 105° C—60%.
Acid value—5.3 mg. KOH/g.
Hydroxyl value—8.0 mg. KOH/g.
Viscosity (stokes)—40.
Flash point—82° F²
Density—1.116.
Color—1 (Gardner).
Free isocyanate—None detected.

Toxicity Data. No data were submitted.

Exposure. The manufacturer claims that a combined total of 230 workers could have potential skin and eye exposure for 23 hrs./day, 5 days/wk. during manufacture, processing and use. The manufacturer claims that workers may be exposed while extracting small samples for Quality Control, during filtration, when filling shipment

containers, and during cleanup operations.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr. may be released to the air and water, with 10-1,000 kg/yr. possibly being released to land. Sludge remaining from cleanup operations will be disposed of by incineration.

PMN 81-329

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organization information provided:

Manufacturing site—Middle Atlantic Region.

Standard Industrial Classification Code—285.e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Isocyanate modified polyester.

Use. The manufacturer states that the new chemical substance will be used in an open use that will release more than 50 but less than 5,000 kg/yr. into the environment.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year		10,000
2d year	10,000	30,000
3d year	30,000	150,000

Physical/Chemical Properties.³

Total solids at 105° C—87.0%.
Acid value—109.
Hydroxyl value—121.
Color—1 (Gardner).
Viscosity (stokes)—98.7.
Density—1.115.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacturing and processing a combined total of 82 workers could have potential skin and eye exposure 18 hr./day, 48 days/yr. The manufacturer states that this exposure may occur during changing of mixing tank, sampling for a Quality Control and filling of shipment containers.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr. may be released to the air and water with 10-1,000 kg/yr. possibly being released to land. Sludge remaining from cleanup operations will be disposed of by incineration.

¹ Values are determined on a solution of the new substance at % total solids indicated.

² This value obtained on a solution of 60% solids.

³ These values are obtained on a solution of the new substance at % solids indicated.

PMN 81-330

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided: Annual sales—\$100 million to \$499,999,999.

Manufacturing site—Northeastern region.

Standard Industrial Classification Code—285.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Acrylic modified alkyd resin.

Use. The manufacturer states that the PMN substance will be used as a resin for low Volatile Organic Content Coating.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	2,500	5,000
2d year	5,000	15,000
3d year	10,000	50,000

Physical/Chemical Properties

Color—5.

Viscosity (stokes)—23.

Acid value—2.5.

Weight/Gallon—8.6.

Non-Volatile by weight—65%.

Volatile—Xylene.

Water solubility by 24 hr. extraction—.027%.

Toxicity Data. No data were submitted.

Exposure. The manufacturer estimates that during manufacturing and processing a total of 23 workers could have dermal exposure 16 hr./day, 34 days/yr. The exposure could occur through sampling, filling drums or tank trucks, or cleaning the filter press.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr. may be released to water with a duration of 12 hr./day, 45 days/yr., 10–100 kg/yr. may be released to land, and less than 10 kg/yr. may be released to the air with a total duration of release of 29 hr./day, 54 days/yr. Water is adjusted to a pH of 6–8, filtered and discharged to a sewer with the permission of the city. Sludge and sediment is disposed of by landfill.

PMN 81-331

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided: Annual sales—\$100 million to \$499,999,999.

Manufacturing site—Northeastern region.

Standard Industrial Classification Code—285.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Acrylic modified alkyd resin.

Use. The manufacturer states that the PMN substance will be used as a resin for low Volatile Organic Content Coatings.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	2,500	5,000
2d year	5,000	15,000
3d year	10,000	20,000

Physical/Chemical Properties

Color—7.

Viscosity—72.

Acid value—2–5.

Weight/Gallon—8.47.

Non-Volatile by weight—69.4.

Volatile—Xylene.

Toxicity Data. No data were submitted.

Exposure. The manufacturer estimates that a combined total of 53 could have potential dermal, inhalation and eye exposure for 24 hr./day, 304 days/yr. during manufacture, use and processing, with use averaging and peaking >100. The exposure could occur through sampling, filling drums or tank trucks, cleaning the filter press, or spraying applications.

Environmental Release/Disposal. The manufacturer states that less than 10 kg/yr. may be released to water with total duration of release of 12 hr./day, 45 days/yr., 10–100 to 1,000–10,000 kg/yr. may be released to land, and less than 10 kg/yr. may be released to the air with a total duration of release of 37 hr./day 304 days/yr. Water is pH adjusted 6–8, filtered and discharged to a POTW in accordance with local, state, and Federal regulations. Sludge and sediment is disposed of by landfill.

PMN 81-332

Close of Review Period. October 5, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided: Annual sales—\$500,000,000. Manufacturing site—Pacific region. Standard Industrial Classification Code—285.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: High solids

polyester resin derived from a mixture of phthalic acids and monobasic acids.

Use. Claimed confidential business information. Generic use information provided: The manufacture states that the PMN substance will be used in an open use that will release more than 5,000 kg/yr. but less than 50,000 kg/yr. Use will involve exposure of non-chemical industrial employees more than 5 times per week with potential skin, eye, oral and inhalation contacts.

Production Estimates. Claimed confidential business information.

Physical/Chemical properties

Non-Volatile by Weight—90%.

Weight/Gallon—9.6 lbs.

Molecular weight (estimate)—2,000–4,000.

Acid value—On solids—8 max.

Acid value—On solution—7 max.

Flash point—102°F.

Boiling range—above 125°C.

Viscosity—Z4–Z6.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that 157 workers could have potential skin and inhalation exposure for 8 hrs./day, 20 50 50 days/yr. during manufacture, processing and use. Exposure will occur during sampling, accidental spillage, infrequent periodic plant shutdowns and transfers. Skin contact and inhalation of fumes are minimized through protective equipment.

Environmental Release/Disposal. The manufacturer states that all vapors from the reactor and thinning tank are incinerated for burning, liquid effluent disposal is legally routed to a sewer system with adjustments to required pH, and solid disposal is loaded into truck wagons for transport to commercial legal disposal sites.

PMN 81-333

Close of Review Period. October 7, 1981.

Manufacturer's Identity. Claimed confidential business information. Organization information provided:

Annual sales—\$500,000,000.

Manufacturing site—Northeast region.

Standard Industrial Classification Code—264.

Specific Chemical Identity. 1 (3H)-isobenzofuranone,3-[4-(diethylamino)-2-hydroxy-phenyl]-3-[2-ethoxy-5-(phenylamino)phenyl]-.

Use. The manufacturer states that the PMN substance will be used as a dye intermediate.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	22,000	33,000
2d year	24,000	37,000
3d year	27,000	40,000

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacturing 4 workers could have potential dermal exposure of 1 hr./day, 250 days/yr. Exposure could occur when the new chemical substance will be manually transferred to a reactor for a subsequent transformation into a leuco dye product.

Environmental Release/Disposal. The manufacturer states that during processing some of the new chemical substance may remain unreacted and be a part of the solids left over in the residue of organic solids. The organic solids will be disposed of by incineration.

PMN 81-334

Close of Review Period. October 7, 1981.

Manufacturer's Identity. Claimed confidential business information.

Organization information provided:
Annual sales—Over \$500,000,000.
Manufacturing site—Northeast region.
Standard Industrial Classification Code—264.

Specific Chemical Identity.
Spiro[isobenzofuran-1 (3H),9'-9[H]xanthen]-3-one, 6'-(diethylamino)-2'-(phenylamino).

Use. The manufacturer states that the PMN substance will be used as a leuco dye in carbonless paper.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	18,500	27,000
2d year	20,240	30,500
3d year	22,250	33,500

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture and processing an estimated total of 12 workers could have a potential exposure for 1 hr./day, 5 days a week.

Environmental Release/Disposal. The manufacturer states that there is no likelihood of release into the environment. Solid residue will be disposed of by incineration through a

private contractor according to legal requirements.

PMN 81-335

Close of Review Period. October 7, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information.

Generic name provided:

Heteromonocycle modified maleated rosin and tall oil fractions.

Use. Claimed confidential business information. *Generic use information provided:* The end use of the PMN substance will be an open use that will release more than 50 kg/yr. but less than 5,000 kg/yr. to the environment.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties

Non-Volatiles by Weight—80%.

Viscosity (Gardner-Holdt)—72.

Color (Gardner)—12.

Specific gravity, 25°C/25°C—1.00.

Acid number—105.

Toxicity Data. No data were submitted.

Exposure. The manufacturer states that during manufacture 2 workers have a potential for dermal exposure 2 hr./day, 35 days/yr. Exposure may occur during filtration, sample taking, filling tank cars or tank trucks, and during lab analysis. No exposure of consumers to the PMN substance is anticipated.

Environmental Release/Disposal. The manufacturer states that losses to the environment will be that of carrier solvent to the air. Disposal will be to a landfill as a non-hazardous waste and effluent treatment system.

Dated: July 22, 1981.

Denise F. Swink,

Acting Director for Management Support Division.

[FR Doc. 81-21910 Filed 7-27-81; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-59057; TSH-FRL-1894-7]

Copolymer of Acrylamide; Test Marketing Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may,

upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the *Federal Register*. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny this application by August 27, 1981. Persons should submit written comments on the applications no later than August 12, 1981.

ADDRESS: Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460, (202-755-5687).

FOR FURTHER INFORMATION CONTACT:

Kathleen Ehrensberger, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-335B, 401 M Street, SW., Washington, DC 20460, (202-755-1150).

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the inventory of existing chemical 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* on May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks or injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the Federal Register a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the Federal Register.

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the Federal Register of January 10, 1979 (44 FR 2242) and October 18, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) Federal Register notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to the promulgation of the rules and notice forms.

Interested persons may, on or before August 12, 1981, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Rm. E-401, 401 M Street, 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-59057]". Comments received may be seen in Rm. E-107 between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding legal holidays.

TME 81-25

Close of Review Period. August 27, 1981.

Manufacturer's Identity. Claimed confidential business information.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Copolymer of acrylamide.

Use. Claimed confidential business information.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. Claimed confidential business information.

Exposure. Claimed confidential business information.

Environmental Release/Disposal. No data were submitted.

Dated: July 22, 1981.

Denise F. Swink,

Acting Director for Management Support Division.

[FR Doc. 81-21900 Filed 7-27-81; 8:45 am]

BILLING CODE 5590-31-M

[EN-FRL 1821-4]

Fuels and Fuel Additives; Revised Definition of "Substantially Similar"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretive rule—Final action.

SUMMARY: This notice broadens EPA's interpretation of the term "substantially similar" as it is used in section 211(f)(1) of the Clean Air Act (Act). This interpretation will enable fuel and fuel additive manufacturers to determine whether their fuels or fuel additives are covered by or excluded from the prohibitions of section 211(f)(1) and (3) of the Act, and will reduce the burdens on those manufacturers and EPA for processing waivers for fuels and additives which would otherwise be required. This interpretation applies only to unleaded gasoline. Leaded gasolines are not covered by the section 211(f) prohibitions and diesel fuels are not addressed in this interpretive rule. The interpretation supersedes an earlier interpretation issued by EPA. 45 FR 67443 (October 10, 1980).

DATES: This interpretive rule is effective August 27, 1981.

Public Docket: Copies of information relevant to this rule are available for

public inspection at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery I, 401 M Street, SW, Washington, D.C. 20460 and are available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN-397), Environmental Protection Agency, Washington, D.C. 20460 at (202) 472-8367.

SUPPLEMENTARY INFORMATION: Section 211(f)(1) of the Clean Air Act (42 U.S.C. 7545 (f)(1)) prohibits, after March 31, 1977, any fuel or fuel additive manufacturer from first introducing into commerce, or increasing the concentration in use of, any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model-year 1975, or subsequent model-year vehicle or engine under section 206 of the Act.

Section 211(f)(3) requires any manufacturer to cease to distribute in commerce certain fuels and fuel additives not later than September 15, 1978. These fuels and fuel additives are any which were first introduced into commerce or increased in concentration in use prior to March 31, 1977, and after January 1, 1974, and which would otherwise have been prohibited under section 211(f)(1).

Fuels or fuel additives which are "substantially similar" to those used during a 1975, or subsequent model year certification are thus excluded from the section 211(f)(1) and (3) prohibitions. For those fuels or fuel additives which are not "substantially similar," the fuel or fuel additive manufacturer may apply for a waiver of the section 211(f)(1) and (3) prohibitions, as provided in section 211(f)(4). The term "substantially similar" is not defined in the Act.

On March 16, 1979 (44 FR 16033), EPA proposed an interpretation of the term "substantially similar" in terms of the additive's elemental content, molecular structure, and total concentration in the fuel. EPA received comments on the proposal from 12 fuel and fuel additive manufacturers, two automobile manufacturers, the American Petroleum Institute (API), and the Department of Energy. A final interpretive rule incorporating these comments was published on October 10, 1980. For a summary of and response to these comments, the reader is referred to the

Federal Register of October 10, 1980 (45 FR 67443-67448).

Although the previous definition (hereafter, 1980 Definition) was effective upon publication, EPA indicated that it would accept comments for 90 days thereafter and would consider revising its interpretation if necessary. EPA received comments from 11 fuel and fuel additive manufacturers, the American Petroleum Institute (API), and the American Society for Testing and Materials (ASTM).

Some commenters questioned the advisability of using the ASTM "Standard Specifications for Automotive Gasoline" (D 439-79) as a criterion for determining whether a fuel is substantially similar to a certification fuel. Others stated that the 2.0 percent oxygen limit was too conservative, that a 3.5 percent limit (near to the oxygen content of gasohol) would be more appropriate. The exclusion of methanol as part of a "substantially similar" fuel or additive was questioned from a number of perspectives. The formula by which an additive may be determined to be "substantially similar" was criticized by some, and alternatives were suggested. In response to these comments, a number of changes have been made to the 1980 Definition. The comments received and the Agency's response are discussed in more detail below.

Summary of Comments Received and Agency Response

The following is a summary and discussion of the significant issues raised in the comments on the October 10, 1980 publication:

Comment—Methanol at high levels:

The 1980 Definition excluded any fuel which contained methanol (other than as an impurity at trace levels) from consideration as being a "substantially similar" fuel. The rationale for this was the existence of questions concerning the effects of methanol-gasoline mixtures upon fuel system components as well as the water separation and evaporative emission characteristics of such fuels. For these reasons, EPA excluded the use of methanol at high levels from the 1980 definition of "substantially similar."

One commenter concurred with EPA's judgment stating that methanol alone in gasoline (i.e., without co-solvent or higher molecular weight alcohols) may present problems in current vehicles, but argued that methanol with appropriate co-solvents should be included. This commenter stated that the definition should be expanded to include the 2.75 percent methanol/2.75 percent t-butanol (TBA) mixture as well as iso-propyl

alcohol, n-butyl alcohol, and other oxygenate mixtures with 2.75 percent methanol. Some argued that because a section 211(f)(4) waiver had been granted to a mixture of 2.75 percent methanol and 2.75 percent TBA in unleaded gasoline, EPA was not justified in excluding methanol from the definition.

Still another commenter stated that methanol should be included at 7 percent or less (this fuel would contain as much oxygen as one containing about 10 percent ethanol) and that the ASTM standards as well as market place pressures should maintain the quality of the fuel.

Agency Response:

In response to these comments, a general clarification is in order. As used in section 211(f)(1) of the Act, a "substantially similar" fuel is one which is substantially similar to a fuel or fuel additive utilized in the certification process. It does not mean substantially similar to a fuel or fuel additive that has received a section 211(f)(4) waiver. EPA believes that the presence of the section 211(f)(4) waiver provision clearly indicates that Congress intended only to include as "substantially similar" those fuels chemically and physically similar to fuels used in certification, recognizing that other fuels could potentially be shown not to cause vehicles to fail to meet emission standards. Thus, in general, the fact that EPA has granted a waiver for a fuel does not by itself bring that substance within the definition of "substantially similar." Conversely, any fuel or fuel additive not substantially similar to one used in the certification process is nonetheless eligible for a waiver, if the statutory prerequisites are met.

In selecting the "non-methanol aliphatic alcohols, and/or aliphatic ethers" portion of the fuel criteria, EPA's intent was to expand in a reasonable fashion the scope of fuels with properties which were characteristic of certification fuels. The certification process employs two fuels: a standardized testing fuel which must have properties that meet specifications promulgated under the Act and a mileage-accumulation fuel which must be representative of commercially available fuels. EPA has ascertained that at least one mileage-accumulation fuel contained propanol at a level equivalent to about 0.5 percent oxygen. From this, and using information regarding other oxygenated fuels which are known to possess emission characteristics similar to mileage-accumulation fuel, EPA has attempted to expand from the known certification specifications and oxygen content. EPA

acknowledges that the definition is thereby somewhat expansive in that it includes constituents in greater concentrations than have previously been used in certification fuel. However, based on considerable information, including data submitted as comments on this rulemaking, EPA believes that it is reasonable to permit this expansion because of confidence that these fuels are chemically and physically similar, and have been shown to have emission properties similar to certification fuels.

In particular, EPA has looked at information on three oxygenated fuels, including an unleaded gasoline blended with 7 percent tertiary-butanol (TBA), one blended with 7 percent methyl tertiary-butyl ether (MTBE), as well as a fuel containing 2.75 percent methanol, 2.75 percent TBA, and unleaded gasoline. These fuels have been shown to have emission characteristics similar to certification fuel. In addition, other information indicates that these fuels are not so dissimilar from certification fuels in other properties so as to be excluded from the ambit of this definition.

Initially EPA had substantial questions as to the compatibility of methanol (absent co-solvent alcohols like TBA) with gasoline and with the materials of construction used in current vehicles. Commenters pointed out that the use of a co-solvent alcohol with methanol could offset this adverse effect. EPA agrees that fuels containing an intermediate level of methanol (up to 2.75 percent) will possess good emission characteristics and should not pose materials-compatibility problems, if an equal volume of TBA is included in the fuel. Further, EPA agrees with commenters that TBA is not the only co-solvent alcohol that will offset the adverse effects of methanol. Thus, the use of aliphatic alcohols which have a molecular weight equal to or greater than TBA will be allowed as co-solvents for methanol. The use of a co-solvent alcohol which has a lower molecular weight than TBA will not be included in this interpretation because it is unclear whether equal volumes of propanol or ethanol added with methanol to a gasoline would ameliorate sufficiently the negative volatility and materials-compatibility effects of methanol.

Summarizing, EPA will consider as "substantially similar" any fuel which contains up to 2.75 percent methanol with an equal volume of butanol, or higher molecular weight alcohol, and which complies with the remaining criteria of this interpretation.

Comment—Methanol at low levels:

A few commenters noted that methanol has historically been used at low levels as a solvent in additive packages and at concentrations up to 0.3 percent (3000 ppm) as a fuel de-icer which aids in the removal of water from the fuel tank. They argue that this concentration has not caused noticeable adverse effects and that the continued exclusion of all methanol from gasolines would require the costly reformulation of additive packages and loss of performances with no discernible benefit.

Agency Response:

EPA agrees with the commenters and has corroborated independently that at least one manufacturer has used methanol as a de-icer commercially at levels approaching 0.3 percent (3000 ppm). EPA's decision not to include methanol within the 1980 Definition was not intended to preclude its use at these levels. Therefore, EPA has incorporated this change into the revised definition. This level of methanol use would not be subject to the previously discussed requirement of blending an equal volume of butanol, or higher molecular weight alcohol.

Comment—Oxygen content:

Half of the commenters suggested that the 2.0 percent oxygen limit is too restrictive and that an oxygen limit of 3.5 percent would be more reasonable. They argued that EPA granted a waiver for gasohol, a 10 percent ethanol/90 percent gasoline fuel which contains approximately 3.5 percent oxygen (in fact, after adjusting for liquid density differences, it contains roughly 3.7 percent oxygen) and that gasohol has not been shown to cause driveability problems at this elevated oxygen level. One commenter stated that EPA is without support in selecting a 2.0 percent oxygen figure.

Agency Response:

EPA agrees that vehicles using gasohol have experienced few driveability problems and that other alcohol-gasoline blends containing 3.7 percent oxygen would probably not experience enleanment-related driveability problems. However, the use of gasohol was shown to result in a slight increase in NO_x emissions and a larger increase in evaporative emissions. The 2.0 percent oxygen limit was chosen because EPA's experience with oxygenated fuels indicated that at least three fuels with 2.0 percent oxygen or less were shown to be characteristically similar to certification gasoline. Although EPA believes that a lower percentage of oxygen requirement would be justifiable, on the basis of actual fuel constituency and based on experience and comments, EPA is

confident that setting the limit at 2.0 percent oxygen is not inconsistent with the statutory intent.

The selection of 2.0 percent as the maximum level of oxygen had two primary purposes: to limit the stoichiometric enleanment of the fuel, which could lead to increases in NO_x emissions in some cars; and to provide a means of limiting the concentration of alcohols of various oxygen contents. This method limits those alcohols that contain a greater percentage of oxygen (and, because of their greater polarity, are more likely to cause evaporative emissions or materials-compatibility problems) to a lower level in the fuel.

Although the effects of alcohols which have a higher molecular weight than ethanol would probably be smaller at 3.7 percent oxygen than those of the ethanol fuel, there is no way to gauge without some testing whether these fuels would raise NO_x and evaporative emissions to the point of noncompliance with emission standards. These uncertainties concerning emissions, materials compatibility, and driveability have lead EPA to conclude that, consistent with Congress' intent, oxygen levels over 2.0 percent are best addressed in the section 211(f)(4) waiver process.¹ Therefore, the 2.0 percent oxygen limit has been retained in this interpretive rule.

Comment—Additives Formulation:

A few commenters argued that EPA was too restrictive in setting the limits on low-level additives as to type and quantity. They agreed with EPA's statement that additives composed of carbon, hydrogen, oxygen, nitrogen, and/or sulfur should combust to form materials which are already present in automobile exhaust and, at the levels which are typical of current additive use, should not cause any harmful effects. EPA had stated this as its justification for including any nitrogen, oxygen, or sulfur-containing additive with limits based on the heterogeneous element content. The commenters suggested that EPA simplify the 1980 Definition by including within it any additives which contain carbon, hydrogen, oxygen, nitrogen, and/or sulfur, regardless of structure, at an overall non-hydrocarbon content which differed among commenters. The range of suggestions was from 0.1 percent (1000 ppm) to 0.25 percent (2500 ppm). The latter figure is that which was proposed in the Notice of Proposed

¹In fact, EPA recently received an application for a waiver from Atlantic Richfield Company for a fuel containing methanol and TBA which contains oxygen up to 3.5 percent by weight.

Rulemaking 44 FR 16033 (March 16, 1979).

Agency Response:

The intent of including the heterogeneous element criterion within the 1980 Definition was to attempt to place differently structured additives on a comparable basis. If an additive contained only a small percentage of oxygen, nitrogen, or sulfur, it would be considered "substantially similar" at a higher level in the fuel than would another additive which contained a large percentage of the element. In either fuel, the amount of oxygen, nitrogen, or sulfur contributed by the additive would be the same. The complications added to the definition by the use of such a formula may, however, bring about no actual benefit. EPA continues to believe that small quantities of additives containing oxygen and nitrogen should not affect the control of emissions, so, to simplify the definition, this formula has been revised. The 2500 ppm non-hydrocarbon additive maximum has been reinstated based on the general acceptance of that level in comments on the 1979 proposal.

EPA has decided to treat sulfur-containing additives somewhat differently than those containing oxygen and nitrogen. As stated in the preamble of the 1980 Definition, small quantities of sulfur (approximately 15 ppm) should not be expected to cause a measurable effect on emissions. Somewhat larger quantities, however, may cause a measurable decrease in the efficiency of a catalytic converter.² Therefore, the restriction of 15 ppm sulfur added to a fuel by an additive package has been retained in this revised Definition.

For these reasons EPA has revised the 1980 Definition. An additive will be included within the definition of a "substantially similar" fuel if the additive contains carbon, hydrogen, and any or all of the following elements: oxygen, nitrogen, and sulfur, such that the total additive content other than hydrocarbons, aliphatic alcohols and aliphatic ethers comprises no more than 0.25 percent (2500 ppm) of the fuel, and that the additive contributes no more than 15 ppm sulfur to the fuel.

Comment—Use of the ASTM Standards:

Some commenters suggested that EPA substitute the Motor Vehicle Manufacturers Association (MVMA)

²Based on comments presented to the California Air Resources Board by General Motors Corporation and the Ford Motor Company on October 23, 1978, on the subject of Reconsideration of the Air Resources Board Regulation Limiting the Sulfur Content of Unleaded Gasoline Sold in California.

National Gasoline Survey and/or the Department of Energy (DOE) Survey of Motor Gasolines for the ASTM standards in the 1980 Definition, stating that these reflect the actual commercial variations in gasoline properties.

These and other commenters pointed out that the ASTM standards are voluntary ones, and that the use of the ASTM standards as a formal requirement for a fuel to be considered "substantially similar" by EPA would result in lower gasoline yields and could cause hardships for refiners. Gasoline yields would suffer in those instances where a manufacturer normally produces gasoline which is more volatile than the ASTM specifications for the particular area and time of year in which the gasoline is to be sold. Requiring the gasoline volatility to be lowered would dictate withholding some of the volatile blend components, thereby reducing the volume of gasoline by that volume of volatiles withheld. The reduction in gasoline yield would vary among companies and among refineries within a company because of differences in product specifications, blending practices, and geographic temperature conditions.

At EPA's request, the API attempted to quantify this effect. API stated that the typical impact on a large company's volume might be a loss of 0.5 percent or 0.6 percent, noting that some companies would experience no reduction, while others could experience reductions of as much as 3.2 percent during the winter months. API added that small companies and small refineries would experience larger reductions and more severe hardships than the large companies.

Additionally, several commenters noted that a refinery which produces gasoline for sale in several states and at all times of the year may be unable to satisfy each of the ASTM D 439 specifications for each state and season. This would decrease refining flexibility and could reduce gasoline yields further.

Finally, some commenters supported the use of the ASTM standards but noted that the 1980 Definition did not provide for changes in the ASTM standards or the institution of Emergency Standards (implemented in cases of a gasoline shortage to attempt to increase gasoline supplies).

Agency Response:

As previously stated, the Clean Air Act vehicle emission certification process employs two fuels: a standardized testing fuel used for measurements that meets certain specifications promulgated under section 206 (40 CFR 86.177-5), and a mileage-accumulation fuel which must be

representative of commercially available fuels. All of the properties which are specified both by the certification regulations and by ASTM are of equal or less stringency in the ASTM standards, thereby allowing flexibility which would not be available if a more strict interpretation were followed. (One property that is not specified in common is that of maximum aromatics. The certification regulations include a specification for this property whereas ASTM does not. EPA feels that this specification may not be among those routinely measured at the refinery and as such could represent a hardship to manufacturers.)

EPA continues to believe that the properties associated with ASTM standard D 439 are those which are relevant to gasoline quality. Commenters on the March 1979 proposal stated that the properties surveyed in the MVMA and DOE surveys are not routinely measured in the refinery and could cause hardships to refiners. These commenters suggested that the properties specified in the ASTM standards are those which are characteristic of a fuel's quality.

The MVMA and DOE Surveys, while reflecting the variability of commercially available gasolines, do not necessarily correlate with any measures of driving or emissions performance. For example the MVMA survey of July 15, 1980 reports that an unleaded gasoline sold by one marketer in Miami had a lead content of 2.140 grams per gallon; EPA would certainly not consider this fuel as substantially similar to unleaded certification fuel. The use of the DOE survey as a criterion for "substantially similar" would be subject to similar flaws. Therefore the ASTM standards have been retained.

The ASTM standards are compromises between the views of representatives of the auto and refining industries. They are designed to maximize gasoline production, minimize production costs, and maintain sufficient gasoline quality to operate in vehicles satisfactorily. EPA believes that ASTM has established and will maintain standard specifications for gasoline which are now and will continue to be consistent with all components of vehicle operations, including emission control devices or systems, as well as maximizing gasoline producibility. EPA will, however, review changes to the ASTM specifications to determine if the continued use of the standards as part of the "substantially similar" definition is appropriate, and amend the interpretive rule if necessary. Further, EPA will entertain petitions

from any party as to why a particular change in the ASTM standards should not be included within the definition of "substantially similar."

Lastly, EPA feels that the fuel should meet ASTM standards in general, that is, not necessarily for every geographic location and time of year. Compliance with the detailed requirements of the ASTM volatility specifications is not the intent of this interpretation; rather it is EPA's intent to ensure that gasolines resemble certification fuels in general. Therefore, EPA has removed from the interpretive rule the requirement that all fuels must meet ASTM specifications for all areas and times of year. This will eliminate the requirement that each refiner must assure that every gallon of gasoline sold in an area meets the ASTM standards for the area and time of year. Such a requirement would have reduced manufacturing and distribution flexibility.

Note.—Because this interpretive rule is a nationally applicable regulation, under section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of July 28, 1981. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The API indicated that the major cost of using the ASTM standards as part of the interpretation would be that fuel manufacturers may experience a 0.5 to 0.6 percent reduction in gasoline/producibility in response to the use of the volatility specifications. These revisions remove this potential reduction in volatility and yield from all but about 10 percent of unleaded gasoline production.³ The potential loss

³ This figure is based on the total sales of unleaded gasoline in 1979 in areas for which ASTM

in revenue could be assessed at approximately \$40 million.⁴ Any other cost associated with this interpretation should be, on balance, insignificant.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Finally, under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. This interpretation should not have a significant adverse impact on any of the smaller gasoline manufacturers, and the larger gasoline manufacturers and fuel additive suppliers are not "small entities" under the Regulatory Flexibility Act. Therefore, pursuant to 5 U.S.C. section 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

Dated: July 21, 1981.

Anne M. Gorsuch,
Administrator.

Definition

Substantially Similar EPA will treat a fuel or fuel additive for general use in light-duty vehicles manufactured after model year 1974 as substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year vehicle or engine under section 206 of the Act, i.e., "substantially similar," if the following criteria are met.

(1) The fuel must contain carbon, hydrogen, and oxygen, nitrogen and/or sulfur, exclusively,⁵ in the form of some combination of the following:

- (a) hydrocarbons;
- (b) aliphatic ethers;
- (c) aliphatic alcohols other than methanol;
- (d)(i) up to 0.3 percent methanol by volume;
- (ii) up to 2.75 percent methanol by volume with an equal volume of butanol, or higher molecular weight alcohol;
- (e) a fuel additive⁶ at a concentration of no more than 0.25 percent by weight which

recommends fuels of the highest volatility class. (Sales figures from "Yearly Report of Gasoline Sales By States, 1979," The Ethyl Corporation.)

⁴Figure based on a 0.6 percent loss in gasoline-productivity at a national rate of 6.5 million barrels of gasoline per day. About 50 percent of this is projected to be unleaded gasoline and only 10 percent of the unleaded should conform to ASTM's most volatile class. Loss in gallonage is valued at \$1.40/gallon with no credit taken for diverted blendstocks.

⁵Impurities which produce gaseous combustion products (i.e., products which exist as a gas at Standard Temperature and Pressure) may be present in the fuel at trace levels. An impurity is that substance which is present through contamination, or remains naturally, after processing of the fuel is completed.

⁶For the purposes of this interpretive rule, the term "fuel additive" refers only to that part of the additive package which is not hydrocarbon.

contributes no more than 15 ppm sulfur by weight to the fuel.

(2) The fuel must contain no more than 2.0 percent oxygen by weight.

(3) The fuel must possess, at the time of manufacture, all of the physical and chemical characteristics of an unleaded gasoline as specified by ASTM Standard D 439 (or applicable Emergency Standard if one has been instituted) for at least one of the Seasonal and Geographical Volatility Classes specified in the standard.

(4) The fuel additive must contain only carbon, hydrogen, and any or all of the following elements: oxygen, nitrogen, and/or sulfur.⁷

[FR Doc. 81-21836 Filed 7-27-81; 8:45 am]

BILLING CODE 6560-33-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; CSR Ltd. and MacFarms of Hawaii, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: CSR Limited is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of MacFarms of Hawaii, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by CSR Limited. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 30, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and

⁷Impurities which produce gaseous combustion products may be present in the fuel additive at trace levels.

requires that notice of this action be published in the Federal Register.

By direction of the Commission,

Carol M. Thomas,
Secretary.

[FR Doc. 81-21950 Filed 7-27-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; H. J. Wilson and Standard Sales of Florida Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Standard Sales of Florida Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by H. J. Wilson. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 18, 1981.

FOR FURTHER INFORMATION CONTACT:

Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission,

Carol M. Thomas,
Secretary.

[FR Doc. 81-21946 Filed 7-27-81; 8:45 am]

BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; M.I.M. Holdings, Ltd., and ASARCO, Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: M.I.M. Holdings, Ltd. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain voting securities of ASARCO Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: July 16, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,
Secretary.

[FR Doc. 81-21961 Filed 7-27-81; 8:45 am]
BILLING CODE 6750-01-M

Early Termination of the Waiting Period of the Premerger Notification Rules; Wometco Enterprises, Inc., and Coca-Cola Bottling Co., Inc.

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Wometco Enterprises, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all voting securities of Coca-Cola Bottling Co., Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early

termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 16, 1981.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,
Secretary.

[FR Doc. 81-21949 Filed 7-27-81; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79F-0414]

Pfizer, Inc.; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the withdrawal without prejudice of a petition (FAP 9A3458) proposing that the food additive regulations be amended to provide for the safe use of an additional process for the manufacture of food-grade mannitol.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 [21 U.S.C. 348(b)]), the following notice is issued: In accordance with section 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Pfizer, Inc., 235 E. 42d St., New York, NY 10017, has withdrawn its petition (FAP

9A3458), notice of which was published in the Federal Register of December 7, 1979 (44 FR 70569).

Dated: July 16, 1981.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 81-21776 Filed 7-27-81; 8:45 am]
BILLING CODE 4110-03-M

[Docket No. 79P-0444/CP]

Tomato Juice Deviating From Identity Standard; Extension and Further Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the extension and further amendment of a temporary permit issued to the Campbell Soup Co. to market test tomato juice from concentrate to which ascorbic acid is added to attain a vitamin C level of 3 milligrams per fluid ounce. This action enables the Campbell Soup Co. to improve the quality of information to be derived from the market test by expanding the areas of distribution and increasing the number of container sizes available to the consumer.

DATES: This amended permit is effective on July 28, 1981 and shall terminate either on the effective date of an affirmative order ruling on FDA's proposal to amend the identity standard for tomato juice, which was published in the Federal Register of May 9, 1978 (43 FR 19864), or 30 days after a negative order ruling on the proposal, whichever the case may be.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: A temporary permit was issued to the Campbell Soup Co. under § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of the issuance of the permit was published in the Federal Register of March 21, 1980 (45 FR 18482). Notice of an amendment of the permit was published in the Federal Register of July 1, 1980 (45 FR 44401). The amended permit provided for the temporary marketing of 112,500 cases of twelve 46-ounce cans, 71,000 cases of twenty-four

12-ounce cans and 175,000 cases of forty-eight 6-ounce cans of the product to be distributed in the eastern half of the State of Washington; ten counties in western Montana; four counties in northeastern Oregon; three counties in northwestern Pennsylvania; the State of New York, excluding metropolitan New York City; and in the State of Arizona.

The Campbell Soup Co. has requested that its existing temporary permit be extended and further amended by expanding the areas of distribution and increasing the number of container sizes available to the consumer. The company stated, "Consumer acceptance of Campbell's tomato juice from concentrate has been satisfactory in test markets." However, the company indicated that the marketing of the test product, as specified in the existing permit, was insufficient to obtain adequate data to assess the product's acceptability by consumers in all parts of the United States.

The Campbell Soup Co. has requested that its temporary permit be extended until final action is taken on FDA's May 9, 1978 proposal to amend the standard of identity for tomato juice.

FDA concludes that it will be in the interest of consumers to extend the time period of the temporary permit and, in addition to the quantities provided for in the existing permit, to permit market testing of 10,000 cases of six 64-ounce glass bottles; 1,116,000 cases of twelve 46-ounce cans; 120,000 cases of twenty-four 24-ounce cans; 937,000 cases of twenty-four 12-ounce cans; and 3,120,000 cases of forty-eight 6-ounce cans to be distributed in all States, except Alaska and Hawaii.

Under section 130.17, all interested persons may participate in the market tests under the same conditions that apply to the Campbell Soup Co., including the labeling requirements and the amounts to be distributed. The designated areas of distribution do not apply to the interested persons. Any interested person who elects to participate in the extended market test shall notify FDA in writing of that fact, the amount to be distributed, and the area of distribution; and shall submit, along with this notification, the labeling under which the food is to be distributed.

This temporary permit extension, as issued to the Campbell Soup Co. and all others who participate in accordance with the provisions set forth in this notice, is effective on July 28, 1981 and terminates either on the effective date of an affirmative order ruling on FDA's proposal of May 9, 1978, or 30 days after a negative order ruling on the proposal, whichever the case may be.

Dated: July 20, 1981.

William F. Randolph,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 81-21777 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-03-M

Health Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1981

Section 727 of the Public Health Service Act (42 CFR Part 60, previously 45 CFR Part 126) authorizes the Secretary to establish a Federal program of student loan insurance for graduate students in health professions schools. Section 60.13(a)(4) of the program's implementing regulations provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1981, two interest rates are in effect for loans executed through the HEAL Program.

1. For loans made before January 27, 1981, the variable interest rate is 11 percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury Bills for the preceding calendar quarter (15.64 percent), and rounding the result (12.14 percent) upward to the nearest $\frac{1}{4}$ percent (12.25 percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 19 $\frac{1}{4}$ percent (12 $\frac{1}{4}$ percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 11 $\frac{1}{2}$ percent for the quarter ending December 31, 1980; 12 $\frac{1}{2}$ percent for the quarter ending March 31, 1981; and 13 $\frac{1}{2}$ percent for the quarter ending June 30, 1981. Therefore, in order to maintain an average annual rate of 12 percent of the 12-month period ending September 30, 1981, the variable interest rate for the quarter ending September 30, 1981, would be at an annual rate of 11 percent.

2. For fixed rate loans executed during the period of July 1 through September 30, 1981, and for variable rate loans executed after January 27, 1981, the interest rate is 19 $\frac{1}{4}$ percent. Using the regulatory formula (42 CFR 60.13(a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury Bills during the preceding quarter (15.64 percent); adding

3.50 percent (19.14 percent); and rounding that figure to the next higher one-eighth of 1 percent (19 $\frac{1}{4}$ percent).

(Catalog of Federal Domestic Assistance No. 13.574, Health Professions Educational Assistance Act Insured Loans)

Dated: July 16, 1981.

John H. Kelso,
Acting Administrator.

[FR Doc. 81-21800 Filed 7-27-81; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-81-654]

Office of the Area Manager, Little Rock Area Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Area Manager is designating officials who may serve as Acting Area Manager during the absence, disability, or vacancy in the position of the Area Manager.

EFFECTIVE DATE: This designation is effective March 13, 1981.

FOR FURTHER INFORMATION CONTACT: Nancy J. Mattox, Director, Management and Budget Division, Office of Regional Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 221 West Lancaster Avenue, Fort Worth, Texas 76113, (817) 870-5451 (This is not a toll-free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence, disability, or vacancy in the position of the Area Manager, with all the powers, functions, and duties redelegated or assigned to the Area Manager: *Provided*, That no official is authorized to serve as Acting Area Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Area Manager.
2. Area Counsel.
3. Director, Housing Division.
4. Director, CPD Division.
5. Deputy for Development, Housing Division.
6. Deputy for Management, Housing Division.
7. Director, Fair Housing & Equal Opportunity Division.

This designation supersedes the designation effective April 2, 1979.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3389, February 23, 1971.

Thomas J. Armstrong,
Regional Administrator, Region VI.

[FR Doc. 81-21852 Filed 7-27-81; 9:45 am]

BILLING CODE 4210-01-M

[Docket No. N-81-1083]

Privacy Act of 1974; System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of system of records.

SUMMARY: The Department is giving notice of a system of records it maintains which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: The notice shall become effective August 27, 1981, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202-755-5333. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The system is the Congressional Correspondence Files which will contain information (correspondent's name, title, state, district, return address, date and subject of letter, and response status) on individuals including Members of Congress who have corresponded with the Secretary, Under Secretary, Assistant Secretary or Field Officials and individuals whose correspondence has been referred by the White House, other Executive agencies, or Members of Congress for response. Attachment A, which lists the addresses of HUD offices, was published at 45 FR 67626 (October 10, 1980). A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on June 11, 1981.

HUD/DEPT-72

SYSTEM NAME:

Congressional Correspondence Files (Communication Control System)

SYSTEM LOCATION:

Headquarters and some field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who correspond with the Secretary, Under Secretary, Assistant Secretary or Field Officials.
(b) Individuals whose correspondence has been referred by the White House, other Executive agencies, or Members of Congress to the Secretary, Under Secretary, Assistant Secretary or Field Officials for responses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence identification (Member of Congress name, correspondent's name, address, state, district, organization, title, control number, return address, date of letter, subject); status of response within the Department (office assigned, date due, current disposition); may include original correspondence, Department's response, referral letters, name and identification of person referring the correspondence, and copies of any enclosures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Department of Housing and Urban Development Act of 1965, P.L. 89-174.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magnetic disc/tape.

RETRIEVABILITY:

State, district, control number, name of Member of Congress, name of person referring correspondence, date of letter, subject of letter, office assigned, date due, current disposition.

SAFEGUARDS:

Manual files are kept in folders in lockable file cabinets and accessed only by authorized personnel, computer records are maintained in a secure area with access restricted to authorized personnel.

RETENTION AND DISPOSAL:

All manual files are maintained for one year and then are retained/disposed of in accordance with HUD handbook 2225.6, HUD Records Schedules, Schedule 54.

All computerized information is maintained on magnetic disc for two years, then is copied to magnetic tape and stored in a secure location.

SYSTEM MANAGER AND ADDRESS:

Administrative Staff Assistant, Office of Legislation and Congressional Relations, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed in relation to contesting the contents of records, it may be obtained by contacting the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. If additional information or assistance is needed in relation to appeals of initial denials, it may be obtained by contacting the HUD Department Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject, referral source, Department employees involved in processing the correspondence.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 1 Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C. July 17, 1981.

Albert J. Kliman,

Acting Deputy Assistant Secretary for Administration.

[FR Doc. 81-21854 Filed 7-24-81; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14878-A]

Alaska Native Claims Selection

On November 20, 1974, Qemirtalek Coast Corporation, for the Native village

of Kongiganak, filed selection application F-14878-A under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (ANCSA), for the surface estate of certain lands in the vicinity of Kongiganak.

Qemirtalek Coast Corporation in its November 20, 1974 application excluded several bodies of water. Because certain of those water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. Section 12(a) and 43 CFR 2651.4 (b) and (c) provide that a village corporation must, to the extent necessary to obtain its entitlement, select all available lands within the township or townships within which the village is located, and that additional lands selected shall be compact and in whole sections. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries. For these reasons, the water bodies which were improperly excluded in the November 20, 1974 application are considered selected by Qemirtalek Coast Corporation.

As to the lands described below, the Sec. 12(a) application, is properly filed, and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 103,435 acres, is considered proper for acquisition by Qemirtalek Coast Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Unsurveyed)

T. 1 S., R. 78 W.

Sec. 6;

Secs. 18 to 21, inclusive;

Secs. 28 and 29;

Sec. 30, excluding Native allotment F-18222 Parcel A;

Secs. 31 and 32, excluding Native allotment F-17411;

Sec. 33.

Containing approximately 6,088 acres.

T. 2 S., R. 78 W.

Sec. 3, excluding Native allotment F-17500 Parcel A;

Secs. 4 to 7, inclusive;

Sec. 8, excluding Native allotment F-16954

Parcel B;

Sec. 9;

Sec. 10, excluding Native allotments F-

17500 Parcel A and F-16975 Parcel D;

Secs. 15 and 16;

Sec. 17, excluding Native allotments F-

16954 Parcel B and F-18288 Parcel B;

Sec. 18;

Sec. 19, excluding Native allotments F-

16916 Parcel D, F-18222 Parcel B, F-16975

Parcel C, and F-19196 Parcel B;

Sec. 20 (fractional), excluding Native allotments F-18288 Parcel B, and F-17209

Parcel B;

Secs. 21 and 22 (fractional), excluding

Native allotment F-17208;

Secs. 27 and 29 (fractional);

Sec. 30;

Secs. 31 and 32 (fractional).

Containing approximately 8,797 acres.

T. 3 S., R. 78 W.

Sec. 6.

Containing approximately 20 acres.

T. 1 S., R. 79 W.

Sec. 1, excluding Native allotment F-17855

Parcel B;

Secs. 2 to 13, inclusive;

Sec. 14, excluding Native allotment F-18031

Parcel B;

Sec. 15, excluding Native allotment F-16975

Parcel A;

Secs. 16 to 20, inclusive;

Sec. 21, excluding Native allotments F-

17022 Parcel B and F-18462 Parcel A;

Sec. 22, excluding Native allotments F-

17469 Parcel A, F-18426 Parcel B, F-16974

Parcel A, F-17414 Parcel A;

Secs. 23 and 24;

Sec. 25, excluding Native allotment F-16916

Parcel B;

Secs. 26 to 36, inclusive.

Containing approximately 20,121 acres.

T. 2 S., R. 79 W.

Secs. 1 to 4, inclusive;

Sec. 5, excluding Native allotment F-16916

Parcel C;

Secs. 6 to 10, inclusive;

Sec. 11, excluding Native allotment F-18425

Parcel B;

Secs. 12 to 18, inclusive;

Sec. 19, excluding Native allotment F-16974

Parcel C;

Secs. 20 to 23, inclusive;

Sec. 24, excluding Native allotment F-16192

Parcel A;

Secs. 25 to 35, inclusive;

Sec. 36, excluding Native allotment F-15853

Parcel A.

Containing approximately 22,256 acres.

T. 3 S., R. 79 W.

Sec. 1 (fractional), excluding Native

allotment F-18435 Parcel A;

Sec. 2 (fractional);

Secs. 3 to 6, inclusive;

Sec. 7, excluding Native allotment F-16974

Parcel B;

Secs. 8 to 11 (fractional), inclusive;

Secs. 16 and 17 (fractional);

Sec. 18 (fractional), excluding Native

allotment F-15853 Parcel B.

Containing approximately 5,104 acres.

T. 1 S., R. 80 W.

Secs. 1, 2 and 3;

Secs. 10 to 15, inclusive;

Secs. 22 to 27, inclusive;

Secs. 34 and 35;

Sec. 36, excluding Native allotment F-18425

Parcel C.

Containing approximately 10,580 acres.

T. 2 S., R. 80 W.

Secs. 1, 2, and 3;

Sec. 10;

Sec. 11, excluding Native allotment F-

17924;

Secs. 12 and 13;

Sec. 14, excluding Native allotment F-

17924;

Sec. 15;

Secs. 22 to 25, inclusive;

Sec. 26, excluding Native allotment F-15853

Parcel D;

Sec. 27;

Secs. 34, 35, and 36.

Containing approximately 10,415 acres.

T. 3 S., R. 80 W.

Sec. 1.

Containing approximately 640 acres.

T. 1 N., R. 78 W.

Sec. 19;

Sec. 20, excluding Native allotment F-16192

Parcel B;

Sec. 21, excluding Native allotment F-15857

Parcel B;

Secs. 22 and 23;

Sec. 26;

Sec. 27, excluding Native allotment F-18058

Parcel B;

Sec. 28, excluding Native allotments F-

18057 Parcel B and F-18058 Parcel B;

Sec. 29, excluding Native allotment F-17948

Parcel B;

Secs. 30 and 31, excluding Native allotment

F-17926 Parcel B;

Sec. 32, excluding Native allotment F-18057

Parcel C;

Secs. 33, 34 and 35.

Containing approximately 8,462 acres.

T. 1 N., R. 79 W.

Sec. 19;

Sec. 20, excluding Native allotment F-13551

Parcel A;

Sec. 21;

Sec. 22, excluding Native allotment F-

17925;

Secs. 23 and 24;

Sec. 25, excluding Native allotment F-13820

Parcel A;

Sec. 28;

Sec. 27, excluding Native allotment F-14059

Parcel A;

Sec. 28, excluding Native allotment F-18425

Parcel D;

Secs. 29, 30, and 31;

Sec. 32, excluding Native allotment F-16185

Parcel B;

Sec. 33;

Sec. 34, excluding Native allotment F-14059

Parcel A;

Sec. 35;

Sec. 36, excluding Native allotment F-13820

Parcel A.

Containing approximately 10,952 acres.

Aggregating approximately 103,435

acres.

Excluded from the above-described

lands herein conveyed are the

submerged lands beneath all water

bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with trade, travel and commerce, as depicted on the attached navigability maps, the original of which will be found in the easement case file F-14878-EE.

Also excluded from the above-described lands herein conveyed are lands covered by tidal waters up to the line of mean high tide. Within the above-described lands, the following water bodies were estimated to be tidally influenced:

Ishkowiik River through the selection area; An unnamed slough from its confluence with the Ishkowiik River in Sec. 28, T. 1 N., R. 78 W. upstream to Sec. 26, T. 1 N., R. 79 W., Seward Meridian; and Kongignanohk River upstream to Sec. 1, T. 3 S., R. 80 W., Seward Meridian.

Actual limits of tidal influence, for water bodies listed above and for any other water bodies within the lands to be conveyed, if any, will be determined at the time of survey.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on available evidence they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for one or more of the following reasons: Lands are no longer under Federal jurisdiction; lands are under applications pending further adjudication; lands are pending a determination under Section 3(e) of ANCSA, or lands were previously rejected by decision. Lands within U.S. Surveys which are excluded are described separately in this decision if they are available for conveyance. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and
2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easement, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14878-

EE, is reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25-Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

(EIN 2 C3, D1, D9) An easement for an existing access trail twenty-five (25) feet in width from the Kongiganak Airport in Secs. 28, 32, and 33, T. 2 S., R. 79 W., Seward Meridian, westerly to the village; thence, westerly along the boardwalk between the armory and new school; thence, northerly along the boardwalk and beyond to the Kongignanohk River. The easement width on that portion of the trail along the boardwalk is reduced from twenty-five (25) feet to ten (10) feet. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;
3. Airport lease F-15811, containing approximately 124.3 acres located in Secs. 28, 32 and 33, T. 2 S., R. 79 W., Seward Meridian, issued to State of Alaska, Department of Transportation and Public Facilities under the provisions of the Act of May 24, 1928 (49 U.S.C. 211-214); and
4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the

lands hereinabove granted, as are prescribed in said section.

Qemirtalek Coast Corporation is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 103,435 acres. The remaining entitlement of approximately 11,765 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to Qemirtalek Coast Corporation, and shall be subject to the same conditions as the surface conveyance.

In accordance with Department regulation 43 CFR 2650.7(d), notice of this decision is being published once in the *Federal Register* and once a week, for four (4) consecutive weeks, in the *Tundra Drums*.

Any party claiming property interest in lands affected by this decision, an agency of the Federal Government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, provided, however, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Department of the Interior concerning navigability of water bodies.

Appeals should be filed with the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until August 27, 1981 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an

appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are: Qemirtalek Coast Corporation, Kongiganak, Alaska 99695; Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501.

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 81-21932 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-84-M

[Exchange CA 9674]

Realty Action; Correction

July 20, 1981.

In FR Doc. 81-18723, appearing on page 32942 of the Thursday, June 25, 1981 issue, the twelfth line of the first paragraph, reading "Sec. 28, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ " is corrected to read "Sec. 28, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$ ".

Joan B. Russell,

Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc. 81-21869 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Draft River Management Plan for Canyonlands National Park

AGENCY: National Park Service, Interior.

ACTION: Availability of Draft River Management Plan for Canyonlands National Park, Utah; and Finding of No Significant Impact.

SUMMARY: The National Park Service announces the availability of a draft plan for the management and use of the Green and Colorado Rivers in Canyonlands National Park. The draft plan is being released to the public before it is placed in final form.

The draft plan points out that in 1979 some 900 workbooks about preparing the plan were distributed to the public and seven public workshops were held. A draft environmental assessment was available at these workshops. Because of this extensive public involvement, the environmental assessment is not being redistributed at this time, but a limited number of copies remain available at the Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225; at the office of the Assistant to the Regional Director, Utah, National Park Service, 125 S. State Street, Room 3418,

Salt Lake City, Utah 84138, and at the office of the Superintendent at the address given below.

The environmental assessment addressed a number of issues affecting the management and use of the rivers and their resources. These issues included camping, campfires, human waste disposal, multiple trailing and scar restoration, use of motors and oars, levels of river use, allocations of river use, control of commercial allocation, development of facilities, group size, special populations, interpretation and information, protection and stabilization, of archeological resources, and protection of endangered and threatened fishes. Several alternatives were presented on how to deal with each of these issues.

The draft management plan describes the alternatives that were selected or modified to accommodate the public's comments and to meet management needs. Most public comments dealt with the use of motors *versus* oars; levels and allocations of river use; and control of commercial allocations. For these specific issues, the draft plan proposes to (1) allow use of both motors and oars on both the Green and Colorado Rivers, including Cataract Canyon, and consideration of a scheduling system to assist in the separation of oar powered and motorized trips; (2) increase the river use ceiling from the present 6,660 passengers to a new ceiling of 8,000 passengers, and spreading the use over the year and days of the week; and (3) limit commercial holdings to no more than three permit allocations. The rationale for these and other decisions are given in the plan.

The draft plan also includes a preliminary finding that the proposed actions will not have a significant effect on the environment. The public is invited to make any further comments on the proposed plan. Comments and requests for information will be received on or before September 11, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Peter L. Parry, Superintendent, Canyonlands National Park, Moab, Utah 84532; telephone 801/259-7164.

Dated July 17, 1981.

James B. Thompson,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 81-21968 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-70-M

[Order No. 3., Amendment No. 6]

Pacific Northwest Region; Superintendents et al., Pacific Northwest Region; Delegation of Authority

Pacific Northwest Regional Order No. 3, approved March 6, 1972, and published in the Federal Register of March 28, 1972 (37 FR 6325), is amended by the following additions to Section 2, Delegation:

The following are delegated authority for the L&WCF, UPARR and HPF Grant Documents:

(h) Associate Regional Director for External Services, All project documents except L&WCF Contingency Fund agreements and conversion requests.

(i) Chief, Division of Recreation Assistance, All project documents up to \$500,000 Federal Share, including Categorical Exclusions.

(j) Chief, Grants Assistance Branch, All projects documents up to \$100,000 Federal Share.

(k) Project Officers, All project documents up to \$50,000 Federal Share, including non-monetary amendments other than conversions.

(1) Chief, Division of Recreation Assistance or Chief, Grants Assistance Branch, Final billings and related correspondence.

(m) Chief, Grants Assistance Branch or Project Officer—Interim Billings and related correspondence.

Dated: June 1, 1981.

Daniel J. Tobin, Jr.,

Regional Director, Pacific Northwest Region.

[FR Doc. 81-21967 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 17, 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, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by

August 12, 1981. (15 days after publication date.)

Carol Shull,

Acting Keeper of the National Register.

NEVADA

Pershing County

Lovelock vicinity, *Marzen House*, S of Lovelock

Washoe County

Gerlach, *Gerlach Water Tower*, Main St.

NEW JERSEY

Atlantic County

Atlantic City, *World War I Memorial*, S. O'Donnell Pkwy, S. Albany and Ventnor Aves.

ALABAMA

Blount County *Covered Bridges Thematic Resources*. Reference—see individual listings under Blount County.

Blount County

Cleveland vicinity, *Swann Covered Bridge (Blount County Covered Bridges Thematic Resources)* W of Cleveland

Nectar vicinity, *Nectar Covered Bridge (Blount County Covered Bridges Thematic Resources)* 8 mi. SW of Nectar

Oneonta vicinity, *Easley Covered Bridge (Blount County Covered Bridges Thematic Resources)* Spans Dub Branch

Oneonta vicinity, *Horton Mill Covered Bridge (Blount County Covered Bridges Thematic Resources)* 5 mi. (8km) N of Oneonta on Rte. 3 [previously listed in the National Register 12-29-70]

ARIZONA

Cocconino County

Lee's Ferry vicinity, *Navajo Steel Arch Highway Bridge*, SW of Lee's Ferry

Gila County

San Carlos vicinity, *Coolidge Dam*, SW of San Carlos

Maricopa County

Tempe, *1931 Tempe Bridge*, Mill Ave.

Yuma County

Dome vicinity, *McPhaul Suspension Bridge*, W of Dome

CALIFORNIA

Alameda County

Berkeley, University of California Multiple Resource Area. This area includes: *California Hall*, Oxford St.; *Doe Memorial Library*, Oxford St.; *Durant Hall*, Oxford St.; *Faculty Club*, Oxford St.; *Founders' Rock*, Oxford St.; *Giannini Hall*, Oxford St.; *Hearst Greek Theatre*, Oxford St.; *Hearst Gymnasium for Women*, Oxford St.; *Hearst Memorial Mining Building*, Oxford St.; *Hilgard Hall*, Oxford St.; *North Gate Hall*, Oxford St.; *Sather Gate and Bridge*, Oxford St.; *Sather Tower*, Oxford St.; *South*

Hall, Oxford St.; *University House*, Oxford St.; *Wellman Hall*, Oxford St.; *Wheeler Hall*, Oxford St.

CONNECTICUT

New London County

New London, *Bulkeley School*, Huntington St.

FLORIDA

Dade County

Coral Gables, *Venetian Pool*, 2701 De Soto Blvd.

GEORGIA

Fulton County

Atlanta, *Grady Hospital*, 36 Butler St., SE.

Quitman County

Georgetown, *Quitman County Jail*, Main St.

ILLINOIS

Cook County

Chicago, *Pulaski Park and Fieldhouse*, 1419 W. Blackhawk St.

Chicago, *Rosenwald Apartment Building*, 47th St. and Michigan Ave.

Ogle County

Oregon, *Ogle County Courthouse*, Courthouse Sq.

[FR Doc. 81-21687 Filed 7-29-81; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Amendatory and Rehabilitation and Betterment Program Loan Contract Negotiations, Heart Mountain Division, Shoshone Project, Wyoming; Contracts

The Department of the Interior, through the Bureau of Reclamation, intends to begin contract negotiations with Heart Mountain Irrigation District for repayment of a loan covering the cost of a rehabilitation and betterment program to be performed on the Heart Mountain Division, Shoshone Project, Wyoming. The district has agreed to renegotiate its existing contract using a fixed payment option to replace the variable payment option.

The Heart Mountain Division lands consist of valleys, slopes, and benchlands. These lands generally have steep slopes. The lateral system, as constructed, extends down these slopes, with sublateral and lateral deliveries being constructed more on contours. This construction results in rather deep cuts immediately downstream of large drop structures. Because the subsoils are very permeable, excessive seepage occurs from the lateral system. Many of these laterals and structures are in need of rehabilitation.

The proposed R&B program would include replacing existing deteriorated control structures and measuring

devices and replacing approximately 65 miles of open-earth channels with concrete pipe and slip-form concrete lining. The United States would loan the district up to \$5.5 million to perform the work, and the irrigation district would repay the entire expenditure.

The proposed R&B contract with Heart Mountain Irrigation District would be negotiated pursuant to the Act of October 7, 1949 (63 Stat. 724), and the Act of June 17, 1902 (32 Stat. 388), as amended and supplemented.

The terms and conditions of the proposed R&B contract are ultimately dependent upon the Commissioner of Reclamation's approval of the basis for the loan, the Secretary of the Interior's approval of the form of the proposed contract, and a maximum 60-day congressional review period of the terms of repayment.

The public may observe any contract negotiation session. Advance notice of such sessions, if any, will be furnished on request. Request must be in writing and must identify the contract in which the requesting party is interested. Requests should be addressed to Regional Director, Bureau of Reclamation, Attention Code UM-440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The proposed draft contracts will be made available for public review following completion of contract negotiations. Thereafter, a public hearing may be held, if necessary, and a 30-day period will be allowed for receipt of written comments from the public. Unless significant interest is evidenced in the negotiations, the availability of the contracts for public review and comment will not be publicized.

For further information on scheduled contract negotiation sessions and copies of the proposed contract form, please contact Mr. William Crosby, Chief, Economics and Repayment Branch, Division of Water and Land, at the address stated above or by telephone (406) 657-6413.

Dated: July 21, 1981.

Clifford I. Barrett,

Assistant Commissioner of Reclamation

[FR Doc. 81-21625 Filed 7-27-81; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

July 22, 1981.

This application for long-and-short-haul relief has been filed with the I.C.C.

The protests are due at the I.C.C. within 15 days from the date of publication of the notice.

43925, Southwestern Freight Bureau, Agent, (No. B-124), increased rates on industrial sand, crude, from, to, and between stations in Southwestern Territory, in Supplement 179 to its tariff ICC SWFB 4319, effective August 29, 1981. Grounds for relief—additional revenue to offset increased operating costs.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-21915 Filed 7-27-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly Section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC F-14008F, filed May 4, 1979 (Supplemented May 22, 1981)
WORSTER MOTOR LINES, INC.
(Worster) (Gay Road, P.O. Box 110, North East, PA 16428)—Merger—
Worster-Michigan, Inc. (Michigan) and
Worster-Iowa, Inc. (Iowa) (Both of the above address). Representative: Robert D. Gunderman, 710 Statler Building,

Buffalo, NY 14202. Worster seeks authority for the merger of the operating rights and property of Michigan and Iowa into Worster for ownership, management, and operation. David B. Worster, majority stockholder of Worster, seeks to continue in control of said rights and property through the transaction. Michigan is authorized to operate as a motor common carrier, over irregular routes, pursuant to authority issued in MC-136904 and sub-numbers thereunder, which authorize the transportation of specified commodities between points in the United States. Iowa is authorized to operate as a motor common carrier, over irregular routes, pursuant to authority issued in MC-112148 and sub-numbers thereunder, which authorize the transportation of specified commodities between points in AR, CT, DE, IL, IN, IA, KS, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, ND, OH, PA, RI, SD, VT, WI, and DC. Worster is authorized to operate as a motor common carrier over irregular routes pursuant to authority issued in MC-109478 and sub-numbers thereunder, which authorize the transportation of specified commodities between points in AL, AR, CT, DE, FL, IL, IN, IA, KS, KY, ME, MD, MA, MI, MO, NE, NH, NJ, NY, OH, PA, RI, SC, VT, VA, WV, and DC.

Note.—Applicant has filed a directly related gateway elimination application in MC-109478 (Sub-No. 153F), published November 27, 1979 in the Federal Register.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-21913 Filed 7-27-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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.

By the Commission, Review Board No. 2,
Members Carleton, Fisher and Williams.

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".

Please direct status inquiries to the
Ombudsman's Office, (202) 275-7326.

Volume No. OPY-4-271

Decided: July 17, 1981.

MC 48957 (Sub-30), filed July 8, 1981. Applicant: CROWN MOTOR FREIGHT CO., 832 East 28th St., Paterson, NJ 07513. Representative: S. S. Eisen, 370 Lexington Ave., New York, NY 10017, (212) 532-5100. Transporting *synthetic fibers, and synthetic yarn*, between points in Mifflin and Crawford Counties, PA, and points in Warren County, VA, on the one hand, and, on the other, points in OH, WV, and ME.

MC 117427 (Sub-87), filed July 7, 1981. Applicant: G. G. PARSONS TRUCKING CO., P.O. Box 1085, North Wilkesboro, NC 28659. Representative: Dean N. Wolfe, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760, (301) 840-8565. Transporting *furniture* between points in Lincoln County, NC, on the one hand, and, on the other, points in the U.S.

MC 123057 (Sub-17), filed July 8, 1981. Applicant: HO-RO TRUCKING CO., INC., P.O. Box 487, Woodbridge, NJ 07095. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048, (212) 466-0220. Transporting *metal products*, between points in Nassau County, NY, on the one hand, and, on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, and WY.

MC 128837 (Sub-40), filed July 7, 1981. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544-5468. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Kaiser Aluminum & Chemical Corporation, of Oakland, CA.

MC 134387 (Sub-90), filed July 10, 1981. Applicant: BLACKBURN TRUCK LINES, INC., 4998 Branyou Ave., Southe Gate, CA 90280. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, (213) 627-8471. Transporting *food and foodstuffs* between points in CA, OR, WA, AZ, CO, NV, NM, MT, WY, UT, ID, TX, and OK.

MC 139257 (Sub-1), filed July 7, 1981. Applicant: FLOCK BROS., INC., Coulter Ave., Greensburg, PA 15601. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219, (412) 281-9494. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Tytron, Inc., of Luxor, PA.

MC 145787 (Sub-2), filed July 7, 1981. Applicant: HERBERT TRUCKING, INC., R.R. #1, Macon, IL 62544. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701, (217) 544-5468. Transporting *such*

commodities as are dealt in or used by manufacturers of corn and soybean products between points in the U.S., under a continuing contract(s) with A. E. Staley Manufacturing Company, of Decatur, IL.

MC 151667 (Sub-6), filed July 7, 1981. Applicant: J. F. LOMMA, INC., 125 Adams St., South Kearny, NJ 07032. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835-4411. Transporting *machinery and chemical process supplies, materials and equipment*, between points in the U.S., under a continuing contract(s) with Universal Process Equipment, Inc., of Robbinsville, NJ.

MC 154407 (Sub-1), filed July 7, 1981. Applicant: MALLORY TRANSPORT & SUPPLY, INC., P.O. Box 512, Lexington, OK 73051. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034, (405) 348-7700. Transporting (1) *lumber and wood products*, (a) between points in Jackson County, OR, on the one hand, and, on the other, points in AR, KS, OK, TX, AZ, NV, UT, and CO, (b) between points in Benton County, AR, Newton, Henry, and Polk Counties, MO, and OK, on the one hand, and, on the other, points in AZ, CA, ID, MT, NM, OR, and WA, and (2) *such commodities* as are dealt in or used by manufacturers and distributors of garage doors, between points in Pontotoc County, OK, and Los Angeles County, CA.

MC 156997, filed July 7, 1981. Applicant: ALTON HARTSFIELD, d.b.a. AL'S MOTORS, P.O. Box 8, Malden, MO 63863. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102 (314), 636-2321. Transporting *wrecked, disabled and used cars*, in truckaway service, between points in Dunklin, New Madrid and Stoddard Counties, MO, on the one hand, and, on the other, points in the U.S.

MC 157017, filed July 7, 1981. Applicant: MOUNTAIN READY MIX, INC., Box 248, Hazard, KY 41701. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101 (502) 781-4446. Transporting *coal, sand, and gravel*, between points in KY, IN, OH, IL, TN, VA, and WV.

MC 157077, filed July 10, 1981. Applicant: M. B. BULK HAULERS, d.b.a. MACHAUER BROS., RD #1, Box 174, Annandale, NJ 08801. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting *commodities in bulk*, between (1) points in NJ, on the one hand, and, on the other, points in CT, DE, GA, KY, MA, MD, NY, PA, OH, RI, VA, and WV; and (2) points in PA, on the one hand, and, on the other, points in CT, DE, MA, MD, NJ, and NY.

Volume No. OPY-4-272

Decided: July 17, 1981.

MC 11727 (Sub-9), filed July 7, 1981. Applicant: JAMES H. RUSSELL, INC., 3 Rocky Hill Rd., Smithfield, RI 02917. Representative: Charles R. Reilly, 391 Davisville Rd., North Kingstown, RI 02852, (401) 884-0969. Transporting *general commodities* (except classes A and B explosives), between points in AL, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WI, WV, and DC.

MC 33317 (Sub-8), filed July 7, 1981. Applicant: BOLUS FREIGHT SYSTEMS, INC., 700 N. Keyser Ave., Scranton, PA 18508. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517, (717) 344-8030. Transporting (1) *copper and copper rods*, (2) *wire and wire rope*, and (3) *electrical supplies and related products*, between points in Oneida, Onondaga, and Oswego Counties, NY, on the one hand, and, on the other, points in CT, MD, PA, and MA.

MC 76177 (Sub-336), filed July 9, 1981. Applicant: BAGGETT TRANSPORTATION COMPANY, Two So. 32nd St., Birmingham, AL 35233. Representative: Harold G. Hernly, Jr., P.O. Box 1281, Old Town Station, Alexandria, VA 22313, (703) 836-6115. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 109307 (Sub-19), filed July 9, 1981. Applicant: K-A EXPRESS, INC., 1007 W. Beverly Blvd., P.O. Box 639, Montebello, CA 90640. Representative: Bruce E. Mitchell, Fifth Fl., Lenox Towers So., 3390 Peachtree Rd., NE, Atlanta, GA 30328, (404) 262-7855. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with John Morrell & Co., of Chicago, IL.

MC 138157 (Sub-281), filed July 7, 1981. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn (same address as applicant) (615) 756-7511. Transporting *metal products*, between points in Hamilton County, TN, on the one hand, and, on the other, points in the U.S.

MC 142207 (Sub-30), filed July 9, 1981. Applicant: BRANNAN SYSTEMS, INC., P.O. Box 16058, Mobile, AL 36616. Representative: Bruce E. Mitchell, Fifth Fl., Lenox Towers So., 3390 Peachtree Rd., NE, Atlanta, GA 30328 (404) 262-7855. Transporting *petroleum and petroleum products*, between Metairie

and points in St. Charles Parish, LA, on the one hand, and, on the other, points in AL, FL, MS, KY, TN, and TX. **CONDITION:** The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343 (A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 5331.

MC 142207 (Sub-31), filed July 9, 1981. Applicant: BRANNAN SYSTEMS, INC., P.O. Box 160586, Mobile, AL 36616. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., Atlanta, GA 30326 (404) 262-7855. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Gulf-Atlantic Transportation Systems, Inc., of Mobile, AL. **CONDITION:** The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 5331.

MC 144577 (Sub-3), filed July 10, 1981. Applicant: SUNSET TRANSPORTATION COMPANY, P.O. Box 126, Kanosha, UT 84637. Representative: Stuart L. Poelman, P.O. Box 3000, Salt Lake City, UT 84110 (801) 521-9000. Transporting *Merger commodities*, between points in UT, NV, ID, WY, MT, CO, ND, SD, NE, KS, OK, TX, LA, NM, AZ, and CA.

MC 144957 (Sub-14), filed July 9, 1981. Applicant: PETERCLIFFE, LTD., 14730 Valley Blvd., LaPuente, CA 91746. Representative: Patrick H. Smyth, 19 So. LaSalle St., Suite 401, Chicago, IL 60603 (312) 263-2397. Transporting *general commodities* (except classes A and B explosives), between points in FL and MO.

MC 146447 (Sub-7), filed July 8, 1981. Applicant: TANBAC, INC., 847 Glenbrook Rd., Orange, CT 06477. Representative: David M. Marshall, 101 State St., Suite 304, Springfield, MA 01103 (413) 732-1136. Transporting *building materials*, between points in the U.S., under continuing contract(s) with Clipay Corporation, Door Products Division, of Hialeah, FL.

MC 146807 (Sub-29), filed July 7, 1981. Applicant: S-n-W ENTERPRISES, INC.,

P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Edward F.V. Pietrowski, 3300 Birney Ave., Moosic, PA 18507 (717) 343-2126. Transporting *iron and steel articles*, between the facilities of Bridon American Corporation, at points in ME, CT, NY, RI, VT, NJ, NV, UT, ND, SD, AZ, NM, NE, KS, MN, WI, MI, WY and ID.

MC 157047, filed July 2, 1981. Applicant: BENDER TRANSPORTATION CO., a corporation, 520 Evans Ave., Reno, NV 89512. Representative: Pat Fagan, P.O. Box 646, Carson City, NV 89702 (702) 882-0202. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with Reno-Sparks Shippers Association, of Reno, NV.

MC 157057, filed July 9, 1981. Applicant: PHIL-DAN TRUCKING, INC., Route 2, Box 355, Commerce, GA 30529. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133 (404) 949-7756. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S., under continuing contract(s) with The Kroeger Co., of Cincinnati, OH.

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Decided: July 20, 1981.

MC 3246 (Sub-26), filed July 7, 1981. Applicant: MASTERSON TRANSFER CO., INC., 3000 Pennsylvania Ave., W., Warren, PA 16365. Representative: Ronald W. Malin, Bankers Trust Bldg., 4th Fl., Jamestown, NY 14701 (716) 664-5210. Transporting *general commodities* (except classes A and B explosives), between points in Warren County, PA, on the one hand, and, on the other, points in the U.S.

MC 30446 (Sub-19), filed July 8, 1981. Applicant: BRUCE JOHNSON TRUCKING CO., INC., P.O. Box 5647, Charlotte, NC 28225. Representative: Charles Ephraim, 406 World Center Bldg., 918, 16th St., NW, Washington, DC 20006 (202) 833-1170. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with E. I. du Pont de Nemours & Company, Inc., of Wilmington, DE.

MC 67996 (Sub-12), filed July 9, 1981. Applicant: DISTILLERY TRANSFER SERVICE, INC., P.O. Box H, Bardstown, KY 40004. Representative: Robert H. Kinker, 314 W. Main St. P.O. Box 484, Frankfort, KY 40602 (502) 223-8244. Transporting *general commodities* (except classes A and B explosives), between points in KY, on the one hand, and, on the other, points in IL, IN, MO, NC, OH, TN, VA, and WV.

MC 123476 (Sub-70), filed July 7, 1981. Applicant: CURTIS TRANSPORT, INC., 23 Grandview Industrial Ct., Arnold, MO 63010. Representative: David G. Dimit (same address as applicant) (314) 464-1300. Transporting *such commodities* are manufactured or distributed by manufacturers of hardware and houseware products, between points in MO, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 150746 (Sub-10), filed July 13, 1981. Applicant: DFC TRANSPORTATION COMPANY, 12007 Smith Dr., P.O. Box 929, Huntley, IL 60142. Representative: Edward G. Bazelon, 39 South La Salle St., Chicago, IL 60603 (312) 236-9375. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 154026 (Sub-2), filed July 9, 1981. Applicant: ADVANCE EXPRESS, INCORPORATED, 410 Coitsville Rd., Campbell, OH 44405. Representative: Edmund P. Riek, 1200 S. State St., Girard, OH 44420 (216) 545-5467. Transporting *oil well pumping jacks*, between the facilities of Morgan Pump, Manufactured by Morgan Engineering, A unit of AMCA International Corporation in Stark County, OH, on the one hand, and, on the other, points in the U.S.

MC 155796, filed July 10, 1981. Applicant: TOM HASTINGS, d.b.a. TRANSPORTATION SPECIALISTS, Suite 440, Commercial Federal Tower, Omaha, NE 68124. Representative: Arthur J. Cerra, 2100 CharterBank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842-8600. Transporting *food and related products*, between points in the U.S., under continuing contract(s) with Land O'Lakes, Inc., Spencer Beef Division, of Spencer, IA.

MC 157056, filed July 9, 1981. Applicant: LASER TRANSPORT CO., INC., 2 Ogden Ave., Kearny, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 997-1801. Transporting *metal products*, between New York, NY, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, CT, NY, PA, OH, NJ, DE, MD, VA, WV, NC, SC, GA, FL, and AL.

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Decided: July 22, 1981.

MC 111656 (Sub-15), filed July 10, 1981. Applicant: FRANK LAMBIE, INC., Pier 79 No. River, New York, NY 10018. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (914) 835-4411. Transporting *automotive parts and accessories*, between points in

the U.S., under continuing contract(s) with Toyota Motor Sales, U.S.A., Inc., of Torrance, CA.

MC 126706 (Sub-12), filed July 10, 1981. Applicant: KLEYSEN TRANSPORT, LTD, 1495 Pembina Hwy., Winnipeg, Manitoba, Canada R3T 2C6. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402, (612) 339-4546. Transporting *building materials*, between points in Salt Lake County, UT, on the one hand, and, on the other, ports of entry on the international boundary line between the U.S. and Canada, at points in WA, ID, and MT.

MC 144956 (Sub-8), filed July 10, 1981. Applicant: TRANS-MUTUAL TRUCK LINES LTD., 4427A-72nd Ave. S.E., Calgary, Alberta, Canada T2C 2C1. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402 (612) 339-4546. In foreign commerce only, transporting *building materials*, between points in Salt Lake County, UT, on the one hand, and, on the other, points along the international boundary line between the U.S. and Canada at points in WA, ID, and MT.

MC 153666, filed July 16, 1981. Applicant: BOK TRUCKING, INC., P.O. Box 969, Mills, WY 82644. Representative: Carnett L. Borden [same address as applicant], (317) 639-4511. Transporting *machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacturing, processing, storage, transmission and distribution of coal, petroleum products, ores, and minerals, between points in AK, AR, AZ, CA, CO, ID, KS, LA, MS, MT, NE, ND, NM, NV, OK, OR, SD, TX, UT, WA, and WY.

MC 155747, filed July 10, 1981. Applicant: CHASTEEN E. WILLIS, d.b.a. WILLIS TRUCKING SERVICE, 619 Broad St., Harrisonburg, VA 22801. Representative: Robert R. Harris, 1730 M St., N.W., Washington, D.C. 20036, (202) 296-2900. Transporting *printed matter* between points in Rockingham County, VA, on the one hand, and, on the other, points in CT, DC, DE, MA, NJ, NY, PA, and VA.

MC 157106, filed July 7, 1981. Applicant: J. H. LYNCH & SONS, INC., First St., Cumberland, RI 02864. Representative: Stephen P. Lynch, [same address as applicant], (401) 723-0390. Transporting *asphalt, sand, stone, gravel, loam, salt, coal, and scrap metal*, between points in RI, CT, and MA.

MC 157127, filed July 13, 1981. Applicant: EARL LEMIEUR, d.b.a. EARL LEMIEUR BUS SERVICE, County Road 76 North, Little Falls, MN 56345.

Representative: Gordon Rosenmeier, 72 Broadway East, Little Falls, MN 56345, (612) 632-5458. Transporting *passengers, and their baggage*, in special and charter operations, beginning and ending at points in Morrison, Wadena, Crow Wing, Cass and Todd Counties, MN, and extending to points in the U.S.

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Decided: July 22, 1981.

MC 133296 (Sub-16), filed July 13, 1981. Applicant: YULE TRANSPORT, INC., P.O. Box 56, Medford, MN 55049. Representative: Robert S. Lee, 1600 TCF Tower, 121 S. 8th St., Minneapolis, MN 55402, (612) 333-1341. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Lakeside Packing Company, of Manitowoc, WI.

MC 133566 (Sub-179), filed July 13, 1981. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200-A, 205 W. Touhy Ave., Park Ridge, IL 60068, (312) 698-2235. Transporting *general commodities* (except classes A and B explosives), between points in CT, MA, MI, PA, and OH, on the one hand, and, on the other, points in the U.S.

MC 136246 (Sub-48), filed July 13, 1981. Applicant: GEORGE BROS., INC., P.O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, (402) 397-7033. Transporting *general commodities* (except A and B explosives), between points in Harlan and Phelps Counties, NE, on the one hand, and, on the other, points in the U.S.

MC 145416 (Sub-5), filed July 14, 1981. Applicant: HEINEMAN DISTRIBUTING, INC., 301 W. Second St., Port Clinton, OH 43452. Representative: A. Charles Tell, 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 Glenn Distributors, Inc., of Painesville, OH.

MC 146006 (Sub-5), filed July 14, 1981. Applicant: RODCO LEASING, INC., 380 Union St., W. Springfield, MA 01089. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *automotive parts and accessories*, between points in the U.S., under continuing contract(s) with EIS Division Parker Hanifan Corporation, of Berlin, CT.

MC 146336 (Sub-22), filed July 13, 1981. Applicant: WESTERN

TRANSPORTATION SYSTEMS, INC., 1609 109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358-3341. 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. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's off. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 4, Room 5331.

MC 146386 (Sub-10), filed July 14, 1981. Applicant: NATIONAL RETAIL TRANSPORTATION, INC., 10 East Oregon Ave., Bldg. A, Philadelphia, PA 19148. Representative: Richard Rueda, 135 No. 4th St., Philadelphia, PA 19106, (215) 627-1923. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

[FR Doc. 81-21916 Filed 7-27-81; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Transfer Rules; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find

Each transaction is exempt from section 11343 (formerly Section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur

on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell.

MC-FC-79093. By decision of June 24, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to S.J.F. TRANSFER CORP. of Dix Hills, NY 11746 of Certificate No. MC-148292 and subs 1, 2, 5, 7, 8, 9, 10 and 11 thereunder issued to J. POSA, INC. of Fulton, NY 16039 authorizing:

MC 148292. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *glass containers*, between the facilities of Midland Glass Co., Inc., at Cliffwood, NJ, on the one hand, and, on the other, East Hartford, Meriden, New Haven, and New London, CT, New Castle and Wilmington, DE, Baltimore and Catonsville, MD, Braintree, Lowell, Lynn, Millis, New Bedford, Northampton, Sagamore, Somerville, Waltham, and Worcester, MA, Albany, Fulton, Hamlin, Middletown, Newburgh, New York, Rochester, Saratoga Springs, Scotia, South Volney, Syracuse, and Williamson, NY, Allentown, Conshohocken, and Harrisburg, PA, Providence, RI, and Martinsville, Norfolk, Suffolk, and Williamsburg, VA, (2) *glass containers*, and *materials, supplies, and equipment* used in the manufacture, sale, and distribution of malt beverages, from the facilities of Midland Glass Co., Inc., at or near Cliffwood, NJ, to Newport News, Norfolk, Suffolk, Martinsville, and Williamsburg, VA, points in Bedford, Carroll, Floyd, Franklin, Halifax, Henry, Montgomery, Patrick, Pittsylvania, and Pulaski Counties, VA, and points in Alamance, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties, NC, and (3) *materials, supplies, and equipment* used in the manufacture, sale, and distribution of glass containers, from the destination

points indicated in (2) above, to the facilities of Midland Glass Co., Inc., at or near Cliffwood, NJ.

MC 148292 (Sub-1). (1) *malt beverages*, from Fulton and New York, NY, Elizabeth, Secaucus, and Newark, NJ, Eden, NC, and the ports of entry on the international boundary line between the United States and Canada located in New York, Ohio, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Vermont, Virginia, and the District of Columbia, and (2) *barrels, pallets, and supplies* used in the manufacture of malt beverages, from the destination in (1) above to the origin named in (1) above.

MC 148292 (Sub-2). (1) *paper and paper products, and woodpulp*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk and commodities, because of size and weight, require the use of special equipment) (a) between the facilities of Georgia-Pacific Corp., at points in New Jersey, New York, Ohio, Pennsylvania and Vermont, and points in Connecticut, Delaware, Florida, Georgia, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, Vermont, and the District of Columbia, (b) from Oswego, NY, to points in Alabama, Florida, Georgia, North Carolina, and South Carolina, and (c) between the facilities of Penntech Papers, Inc., at or near Johnsbury, PA, and points in New York, New Jersey, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

MC 148292 (Sub-5F). *malt beverages, supplies, materials, and equipment* used in manufacture, sales and distribution of malt beverages, between Onondaga and Oswego Counties, NY on the one hand, and, on the other, points in New York, New Jersey and Connecticut.

MC 148292 (Sub-7F). (1) *malt beverages*, in containers from Detroit, MI, to points in North Carolina, New York, Pennsylvania, Tennessee, Virginia, and West Virginia, and (2) *materials, supplies, and equipment* used in the manufacture and distribution of malt beverages, from points in North Carolina, New York, Pennsylvania, Tennessee, Virginia, and West Virginia to Detroit, MI.

MC 148292 (Sub-8F). *malt beverages, and equipment and supplies* used in the production and distribution of malt beverages, between Trenton, NJ, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

MC 148292 (Sub-9F). *paper and paper products and woodpulp*, from West Point, VA, to points in Connecticut, Delaware, Massachusetts, Maine, Maryland, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

MC 148292 (Sub-10F). *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the United States (except Alaska and Hawaii), restricted to traffic originating at or destined to the facilities of Union Camp Corporation.

MC 148292 (Sub-11). (1) *malt beverages*, in containers, from Rochester, NY, to Newport, KY, Brockton, MA, Havre de Grace, MD, Keene and Manchester, NH, Hainesport, NJ, and points in Ohio and Pennsylvania, and (2) *materials, supplies, and equipment* used in the manufacture, and distribution of malt beverages, from Newport, KY, Brockton, MA, Havre de Grace, MD, Keene and Manchester, NH, Hainesport, NJ, and points in Ohio, and Pennsylvania, to Rochester, NY. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. TA lease is not sought. Transferee is not a carrier.

Note.—Temporary authority is not susceptible to transfer under the transfer rules at 49 C.F.R. 1132.1(b). The appropriate action to be taken by transferee is to seek to be substituted as applicant in No. MC-148292 (Sub-Nos. 1-5TA, 3F, 4F, and 6F).

MC-FC-79175. By decision of June 25, 1981, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to SAUL TRANSFER CO., INC., of Certificate No. MC-1985, issued September 30, 1972, to J.C. NETZER COMPANY, authorizing the transportation of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading) between points in Laredo, TX, and between Laredo, TX, on the one hand, and, on the other, points in Webb County, TX. Representative: Stanley Freed, P.O. Box 820, Laredo, TX, 78040.

MC-FC-79180. By decision of 6/25/81 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, review Board Number 3 approved the transfer to CANTLAY TRANSPORTATION, INC. of Certificate No. MC-114897 (Sub-

No. 138) issued 8/16/81 to WHITFIELD TANK LINES, INC. authorizing the transportation of: Regular and Irregular Routes: *Liquid Petroleum* and *liquid petroleum products*, in bulk, from points in California to points in Arizona, serving no intermediate points on the regular routes, as follows: From points within 20 miles of Long Beach, CA, over irregular routes to junction U.S. Highway 60, thence over U.S. Highway 60 to the California-Arizona State line, thence over irregular routes to Tucson, AZ, points in Yuma and Maricopa Counties, AZ, those in Pinal County, AZ, west of, but not on, U.S. Highway 80, and those in Pima County, AZ, on Arizona Highway 84 west of Tucson, AZ, and return over irregular routes to the Arizona-California State line, thence over regular routes specified to junction irregular routes, thence over irregular routes to the origin points specified, with no transportation for compensation except as otherwise authorized. From points within 20 miles of Long Beach, CA, over irregular routes to junction Interstate Highway 10, thence over Interstate Highway 10 to junction California Highway 86, thence over California Highway 86 to El Centro, CA, thence over U.S. Highway 80 to the California-Arizona State line, thence over irregular routes to Tucson, AZ, points in Yuma and Maricopa Counties, AZ, those in Pinal County, AZ, west of, but not on, U.S. Highway 80, and those in Pima County, AZ, on Arizona Highway 84 west of Tucson, AZ, and return over irregular routes, to the Arizona-California State line, thence over regular routes specified to junction irregular routes, thence over irregular routes to the origin points specified, with no transportation for compensation except as otherwise authorized. *Petroleum* and *petroleum products*, except asphalt and heavy oils requiring special heated equipment. From points in California to the United States-Mexico Boundary, serving no intermediate points on the regular routes, as follows: From Los Angeles and points within 30 miles of Los Angeles over irregular routes to junction U.S. Highway 60, thence over U.S. Highway 60 to Beaumont, CA (also from the above-specified origin points over irregular routes to junction Interstate Highway 10, thence over Interstate Highway 10 to Beaumont), and thence over Interstate Highway 10 to junction California Highway 86, thence over California Highway 86 to the United States-Mexico Boundary line, and return, over the irregular routes to the specified origin points, with no transportation for compensation except

as otherwise authorized. From Los Angeles and points within 30 miles of Los Angeles over irregular routes to junction California Legislative Highway 72, thence over California Legislative Highway 72 to junction U.S. Highway 101, thence over U.S. Highway 101 to Doheny Park, CA (also from the above-specified origin points over irregular routes to junction California Highway 1, thence over California Highway 1 to Doheny Park), and thence over U.S. Highway 101 to the United States-Mexico Boundary line, and return over the regular routes to junction irregular routes, thence over irregular routes to the specified origin points, with no transportation for compensation except as otherwise authorized. Irregular routes: *Liquid petroleum products*, except asphalt and heavy oils requiring special heated equipment, in bulk, in tank vehicles, from Los Angeles, CA, and points within 30 miles of Los Angeles, to points in Arizona except that service is not authorized to any on-rail bulk storage facility in Arizona except at Tucson, Casa Grande, Coolidge, Gila Bend, Yuma, Buckeye, Mesa, Phoenix, Peoria, Wickenburg, Prescott, and Springerville, AZ, and *Rejected cargo or return shipments of contaminated products of the same kind*, from the next above-specified destination points to Los Angeles, CA, and points within 30 miles of Los Angeles. *Liquid Petroleum* and *Liquid Petroleum Products*, in bulk, from points within 20 miles of Long Beach, CA, to Los Angeles Harbor points, with no transportation for compensation on return except as otherwise authorized. *Petroleum* and *Petroleum Products*, in bulk, in tank trucks, except asphalt and heavy oils requiring special heated equipment, from points in Ventura, Los Angeles, and Orange Counties, CA, to points in Esmeralda, Nye, and Clark Counties, NV, and points in Washington, Kane, Iron, and Garfield Counties, UT, and *Rejected or Contaminated Shipments* of the next above-specified commodities, from points in Esmeralda, Nye, and Clark Counties, NV, and points in Washington, Kane, Iron, and Garfield Counties, UT, to points in Ventura, Los Angeles, and Orange Counties, CA. *Contaminated Petroleum* and *Contaminated Petroleum Products*, in bulk, in tank vehicles, from points in Arizona, to Salt Lake City and Woods Cross, UT, and points within 10 miles of each. *Petroleum* and *Petroleum Products*, except road oils and asphalts, in bulk, in tank vehicles, from points in Alameda, Contra Costa, and San Diego Counties, CA, to points in Arizona; and *Contaminated Shipments* of petroleum

and petroleum products, from points in Arizona, to points in Alameda, Contra Costa, and San Diego Counties, CA. Restriction: The service authorized in the 2 paragraphs next above is subject to the following conditions: Service shall not be provided for the transportation of wax from Richmond, CA, to Phoenix, Tucson, and Benson, AZ, and points in the Cochise County, AZ, within 20 miles of Benson. Service shall not be provided for the transportation of petroleum products from points in San Diego County, CA, to ports of entry on the United States-Mexico Boundary line at San Luis, AZ, or within 20 miles thereof. Service shall not be provided for the transportation of petroleum products from San Diego, CA, to points in Arizona within 15 miles of Yuma. *Petroleum* and *Petroleum Products*, in bulk, in tank vehicles, except petroleum products which require special equipment for the application of heat to facilitate unloading, and except liquified petroleum gases, from points in Ventura, Los Angeles, and Orange Counties, CA, to points in Nevada, except points in Esmeralda, Nye, and Clark Counties, NV, with no transportation for compensation on return except as otherwise authorized. *Petroleum* and *Petroleum Products* as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from points in California, to points in New Mexico, with no transportation for compensation on return except as otherwise authorized. Restriction: The service authorized immediately above shall not be performed for the transportation of petroleum lubricating oil, in bulk, in tank vehicles, from El Segundo, CA, to Santa Rita, NM, and points within 25 miles thereof, and Gage, NM, and points within 10 miles thereof. From Colton and Miland, CA, to points in Arizona and Nevada and ports of entry at or near Andrade, Calexico, Tecate, and San Ysidro, CA, on the United States-Mexico Boundary line, with no transportation for compensation on return except as otherwise authorized.

Rejected and Contaminated Shipments of the next above-specified commodities. From points in Josephine, Jackson, Klamath, Lake, and Harney Counties, OR, to points in Alameda and Contra Costa Counties, CA, with no transportation for compensation on return except as otherwise authorized. *Petroleum* and *Petroleum Products* (except petrochemicals) in bulk, in tank vehicles, from Imperial, CA, and points within 10 miles thereof, to points in Yuma and Maricopa Counties, AZ, with

no transportation for compensation on return except as otherwise authorized. *Contaminated and Returned Shipments* of the commodities specified next above. From points in Yuma and Maricopa Counties, AZ, to points in Los Angeles and Orange Counties, CA, with no transportation for compensation on return except as otherwise authorized. *Weed Killing Compounds*, in bulk, in tank vehicles, restricted to shipments moving in the season April to September, inclusive, of each year. From points in Los Angeles, Orange, and Ventura Counties, CA, to points in McKinley Valencia, and Bernalillo Counties, NM, with no transportation for compensation on return except as otherwise authorized. *Liquefied Helium* and *Empty Government-Owned Trailers* and *Dewar Containers*, Between Cleveland, OH, Richmond, CA, Amarillo, TX, and Otis and Elkhart, KS, on the one hand, and, on the other, Huntsville, AL, Boron, Downey, Goldstone, San Diego, and Torrance, CA, Boulder, CO, the Kennedy Space Center near Cape Kennedy, FL, the Michoud Assembly Facility near New Orleans, LA, the Goddard Space Flight Center at Greenbelt, MD, the Mississippi Test Facility in Hancock County, MS, the White Sands Test Facility in New Mexico, Bethage, NY, and the Manned Spacecraft Center near Houston, TX. *Sugar*, in bulk, in tank or hopper-type vehicles, *Molasses*, in bulk, in tank vehicles, *Dried Beet Pulp*, in bulk, in hopper-type vehicles, and *Dried Beet Pulp with Molasses*, in bulk, in hopper-type vehicles. From the plant and storage facilities of Spreckels Sugar Company Division, American Sugar Company, at or near Chandler and Phoenix, AZ, to points in California, Colorado, Nevada, New Mexico, Texas, and Utah, with no transportation for compensation on return except as otherwise authorized. *Petroleum* and *Petroleum Products*, in bulk, in tank vehicles. From Phoenix, AZ, to Las Vegas, NV, with no transportation for compensation on return except as otherwise authorized. *Liquid Animal Feed Supplements*, in bulk, in tank vehicles. From Fresno and Tulare, CA, to points in Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, and Washington, with no transportation for compensation on return except as otherwise authorized. *Liquid Fertilizer Solutions*, in bulk, in tank vehicles. From San Diego, CA, to points in Clark County, NV, and points in that part of Nye County, NV, on and south of U.S. Highway 95, with no transportation for compensation on return except as otherwise authorized.

Bituminized Fiber and Indurated Conduit, From Sherman, TX, to points in California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Washington, and Wyoming, with no transportation for compensation on return except as otherwise authorized. *Nitrosyl Chloride*, in bulk, in shipper-owned trailers. From the plant site of Hercules, Inc., at or near Hercules, CA, to Indianapolis, IN, and Wichita, KS, with no transportation for compensation on return except as otherwise authorized.

Petroleum Products, in bulk, in tank vehicles. From Fredonia, AZ, to points in Nevada, with no transportation for compensation on return except as otherwise authorized. *Citrus Juices*, in bulk, in tank vehicles. From the port of entry on the United States-Mexico Boundary line located at Nogales, AZ, to points in Maricopa County, AZ, with no transportation for compensation on return except as otherwise authorized. Restriction: The operations authorized under the commodity description immediately above are restricted to transportation in foreign commerce only. Any duplication of authority granted herein or to the extent that such authority duplicates any heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right. Irregular routes: *Liquid Hydrogen*, *Liquid Oxygen*, and *Liquid Nitrogen*, in bulk, in tank vehicles. Between points in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Michigan, Missouri, New Mexico, New York, Nebraska, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, and Washington. Restriction: The service authorized herein is subject to the following conditions: The authority granted herein is restricted against the transportation of shipment moving to points which are not missile storage or missile launching sites, missile test facilities, or manufacturing plants producing plants producing liquid oxygen, liquid hydrogen, or liquid nitrogen. The authority granted herein to the extent that it duplicates any authority granted in No. MC-110147 may not be severed from common ownership by sale or otherwise. That authority granted herein to the extent that it duplicates any authority heretofore to or now held by carrier shall not be construed as conferring more than one operating right. Irregular routes: *Liquid Hydrogen*, in bulk, in tank vehicles. Between the plant site of Air Products and Chemicals, Inc., located at or near Long

Beach, CA, on the one hand, and, on the other, points in Illinois and Missouri. Restriction: The authority granted herein to the extent that it duplicates any authority granted in No. MC-110147 may not be severed from common ownership by sale or otherwise. The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right. Irregular routes: *Liquid Oxygen*, *Liquid Nitrogen*, *Liquid Hydrogen*, *Liquid Argon*, and *Liquid Helium*, in bulk, in tank vehicles. From Portland, OR, Spokane, and Vancouver, WA, Denver, CO, Phoenix, AZ, Albuquerque, NM, and points in California, to points Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority granted herein to the extent that it duplicates any authority granted in No. MC-110147 may not be severed from common ownership by sale or otherwise. Irregular routes: *Petroleum* and *petroleum products*, (except chemicals, residual fuel oils used in paving operations, asphalt, road oils, and road emulsions), in bulk, in tank vehicles. From Richmond, Sacramento, and Chico, CA, to points in Churchill, Douglas, Lyon, Storey, and Washoe Counties, NV. Representative is: William S. Richards, Esq., P.O. Box 2465, Salt Lake City, UT 84110.

MC-FC-79182. By decision of June 9, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 3 approved the transfer to C. HARRELL, INC., of Elmer, NJ of the portion of Certificate No. MC-18634 issued June 5, 1968, to STRANG TRANSPORTATION, INC., of Elmer, NJ, authorizing transportation as a motor common carrier, in interstate or foreign commerce, over irregular routes, transporting (1) *fertilizer*, from Philadelphia, PA, and Baltimore, MD, to points in Salem and Cumberland Counties, NJ; (2) *lime and limestone*, from Devault, PA to points in Salem and Cumberland Counties, NJ; and (3) *lime and limestone sand*, from points in Montgomery County, PA to points in Salem, Cumberland, Gloucester and Atlantic Counties, NJ, with no transportation for compensation on return except as otherwise authorized. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210 (703) 525-4050.

MC-FC-79192. By decision of June 1, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 3 approved the transfer to SUNLINE, LTD. of Certificate of Registration No. MC-128901 (Sub-No. 1) issued December 11, 1967 to TEXAS TRANSPORT, INC. authorizing the transportation of (1) household goods and livestock, feedstuffs between Luling, TX and all points in Texas (the transportation of household goods and livestock feedstuff is prohibited from dealer to dealer.) (2) To transport the following commodities between all points in Texas oilfield equipment and pipe, when moving as oilfield equipment. Pipe when it is to be used in the construction of pipe line of any and every other character or use other than oilfield equipment between the points within the area covered by the existing certificate of the applicant; except that the applicant is prohibited from transporting pipe when not moving as oilfield equipment, where both origin and destination are places on the certificated routes of regular route common carrier motor carriers, when such pipe is less than four inches (4") in diameter and is also less than twenty-eight feet (28') in length. Tronching machines, tractors, drag lines, back fillers, caterpillars, and building machinery, batch bins, ditching machinery, bulldozers, heavy mixers, finishing machinery, power hoists, cranes, heavy machinery, pile driving rigs, paving machines and equipment, graders, construction equipment, boilers, scrapers, irrigation and drainage machinery, road maintainers, electric motors, pumps, transformers, circuit breakers, turbines, bridge construction equipment, shovels, planes, lathes, air compressors, rotaries, prefabricated houses, bulk station storage tanks, heavy tanks, pump machinery, erection machinery, and equipment, refinery machinery and equipment, boats and prefabricated steel girders, threshing machines, sawmill machinery, telephone and telegraph poles, crossties and other pilings, heavy furnaces or ovens, pipe (including iron, steel, concrete, composition or corrugated), punches, presses, iron or steel girders, beams, columns, posts, channels and trusses, generators, and dynamos, iron and steel castings, sheets, and plates, industrial hammers, industrial machinery, including laundry, ice making, air conditioning, baker, bottling, gin, crushing, dredging, mill, brewery, textile, water plant and wire covering, twisting or laving, derricks, hoists, steam or internal combustion engines, rollers, power shovels, safes, vaults, bank

doors, and gasoline, fuel oil and other storage tanks, when said commodities are not moving as oilfield equipment, as follows:

The holder of this authority may transport the above name commodities together with its attachments and its detached parts thereof between incorporated cities, towns and villages only when the commodity to be transported weighs 4,000 pounds or more in a single piece or when such commodity, because of physical characteristics other than weight, requires the use of "special devices, facilities or equipment" for the safe and proper loading or unloading thereof. Absorbers (scrubbers); air or gas lift equipment; amplifiers, seismic; anodes; magnesium; armatures (heavy) and parts; assemblies, backside, casinghead, Christmas tree suffing, knock-off, screen setting, seating and set shoe; asphalt plant; asphalt or pipe lince (sic) coating, in barrels or drums, bailers; barges; benders pipe; blowout preventers; boons, crane, truck, dragline, derrick and tractor; brakes and parts; bridges, portable; buckets, clam shell, dragline and shovel; bag blowers; cable tool drilling machines; cable tools; cat heads; chains, loading, in barrels; casing spiders; chlorine and other chemicals in steel cylinders of tanks (not tank trucks); gas compressors; connection racks; conveyors; core barrels; coring units; clutches (heavy); crown blocks; crank shafts (heavy); cross-arms and their hardware; cross-ties; cylinder, engine and compressor; dehydration units; derrick ramps; derrick starting leg; derrick skids; derrick steps; derrick substructure; drill bits; drill collars; drilling line; drilling hose; draw works; drilling rig machinery; elevators; elevator bails; engine substructure; empty cylinders; extensions, derrick base; engine compound; finger boards; floor skids; fronts, rig or derrick; fishing tools; fouble boards; fuel oil and gasoline (not including movement in tank trucks or tank trailers); garages, portables; guards, chain and belt; grief stems or kelly joints; guns, mud; gravity meters; heat exchanges; hooks; jack shafts; kelly and pipe straightener; ladders, derrick; light plants; machinery, pipe screening, pipe screwing, pipe slotting, pipe threading or cutting, pipe wrapping; water well machinery; water well surveying machinery; milling machine; marsh buggies; magnetic field balances; magnetometers; masta; monorail systems; mud boats; mud houses; mud mixers; mud tanks; mufflers, (heavy); mouse holes; nipples, iron, cement, perforators; planners, ower; plow; poles, gin; power

transmission equipment (towers); pressure devices; rails, steel; railroad engines; cars and equipment; rat holes; radiators (heavy); reamers; reinforcing steel; retorts, iron or steel; river clamps; rods, reinforcing and sucker (single and bundles); recording equipment; road lumber; rig timbers; seismic shooting equipment; slips; shale shakers; screens; substitutes; speed reducers; smoke stacks, starting units; stand pipes; swivels; suction; spears and tools; take-off, power; tool joints; towers; treating plants; tongs; traveling blocks; tubing and tubing heads; valves; V-belt of drives; utility houses; welding machines; wire line, rope or cable, on reels; lift equipment; conditioners (not including movements in tank trucks or tank trailers); propellers or shafts; blades, including bit, scraper and grader; boring machines or mills, including parts and equipment; dam and powerplant machinery and equipment (control gates); collars, including drill or pipe; counterbalances, including counter shafts and weights; hoppers; printing machines; telephone equipment (cables, reels, switchboards); tools in boxes and houses; trailer, mounted units, including mounted workover units; treaters blocks; jacks (heavy); joints, including expansion or kelly; core drilling machines; core drilling equipment, protectors (attached to pipe); and heaters, when not moving as oilfield equipment as follows; The holder of this authority may transport the above-named commodities (beginning with the commodity "Absorbers") together with its attachments and its detached parts thereof, between points in the pick-up and delivery limits of the regular route common carrier motor carriers in incorporated cities, towns and villages only when the commodity to be transported weighs 4,000 pounds or more in a single piece or other than weight, require the use of "special devices, facilities or equipment" for the safe and proper loading or unloading and transportation thereof. The term "special devices, facilities or equipment," is construed to mean only those operated by motive or machinical power; and all commodities to be transported, beginning with "trenching machines", together with attached and detached parts thereof, must require specialized equipment for the safe and proper loading or unloading and transportation thereof. Representative is: Kenneth R. Hoffman P.O. Box 2165 Austin, TX 78768.

MC-FC-79194. By decision of June 8, 1981 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the

transfer to MORGAN TRUCKING, INC., of Shelton, WA of Certificate No. MC-152483 (Sub-No. 1) issued April 8, 1981 to H & S TRUCKING, INC., of Auburn, WA authorizing the transportation, by irregular routes, of *general commodities* (except classes A and B explosives), between points in Oregon and Washington. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101.

MC-FC-79196. By decision of June 9, 1981 issued under 49 USC 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ISIS LEASING CORPORATION of Certificate No. MC-144435 (Sub-Nos. 3 and 4) issued to TRADERS BANK OF KANSAS CITY AS SUCCESSOR IN INTEREST TO J & L REFRIGERATED TRUCKING CO., INC. authorizing the transportation of (1) *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Inland Storage Distribution Center, at Kansas City, KS, to points in OK and TX, restricted to traffic originating at the facilities of Inland Storage Distribution Center and destined to the named states, and (2) *foodstuffs*, in vehicles equipped with mechanical refrigeration, from Kansas City, MO, to points in AL, SC, and TN, restricted against the transportation of traffic originating at the facilities of Mid-Continent Underground Storage, at Bonner Springs, KS, and Commercial Distribution Center, at or near Independence, MO. Representative is: E. Wayne Farmer, City Center Square, 27th Floor, 12th and Baltimore, P.O. Box 26010, Kansas City, MO 64196.

Notes.—(1) Transferee is not an ICC carrier. (2) An application for temporary authority has been filed. (3) Certificates issued in accordance with Ex Parte No. MC-107, Transportation of Government Traffic, 131 MCC 845, shall not be transferable by sale or otherwise.

MC-FC-79197. By decision of June 8, 1981 issued under 49 USC 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to LOCKWOOD FREIGHT LINE, INC., of Oak Lawn, IL of Certificate No. MC-591 issued November 30, 1955 and Certificate No. MC-591 (Sub-No. 9) issued November 17, 1961 to LINCOLN-DIXIE FREIGHT LINES, INC. of Chicago, IL, authorizing the transportation of (1) *general commodities* over specified regular and irregular routes serving various points in Illinois, Indiana and Iowa; (2) *coal; household goods; wire and wire products; articles* manufactured and or repaired by arsenals; *electric signs; tankage; hardware; sporting goods; agricultural machinery; implements, tractors, and*

parts; vinegar; cooperage; feed; onions; chocolate; cocoa; livestock; canned goods; mussel shells; crushed shells; various containers, salesman's sample cases and baggage; iron and steel articles; clay products; materials and equipment used or useful in the construction of silos; *composition roofing; condensed buttermilk; advertising materials; and malt beverages* over specified regular and irregular routes serving various points in Illinois, Iowa, Wisconsin, Minnesota and Missouri. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-31914 Filed 7-27-81; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; 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 on December 31, 1980, at 45 FR 88771. 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to

exist where the application is opposed. 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 become 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.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7328.

Volume No. OP1-212

Decided: July 21, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 156970, filed July 6, 1981.
Applicant: ROBERT F. KAVANAUGH d.b.a. AFFILIATED DISTRIBUTION SERVICES, 1209 Hull Terrace, Evanston, IL 60202. Representative: Robert F. Kavanaugh (same address as applicant) (312) 475-7870. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 157150, filed July 13, 1981.
Applicant: MUSTANG LEASING, INC., P.O. Box 146, So. Dartmouth, MA 02748. Representative: Kenneth F. Braz (same address as applicant) (617) 993-1704. As a *broker of general commodities* (except household goods), between points in the U.S.

Volume No. OPY-5-114

Decided: July 17, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 153189 (Sub-1), filed July 13, 1981. Applicant: T-90 TRUCKS, INC., P.O. Box 7917, Louisville, KY 40207.

Representative: Paul Lynch, Sr., 209 So. 5th St., Suite 400, Louisville, KY 40217 (502) 637-3546. 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.MC 153328 (Sub-10), filed July 7, 1981. Applicant: RED K TRANSPORT, INC., 2545 Peach Tree Street, Cape Girardeau, MO 63701. Representative: Guy H. Boles, 321 North Spring Ave., Cape Girardeau, MO 63701 (314) 335-6636. 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.MC 156828 filed July 8, 1981. Applicant: L. SOILS ASSOCIATES, INC., 2425 E. Slauson Ave., Huntington Park, CA 90255. Representative: Lynon Soils, Jr. (same address as applicant.) (213) 588-8137. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, sensitive weapons and munitions), between points in the U.S.MC 156999, filed July 7, 1981. Applicant: JWS ENTERPRISES, INC., 8613 SE 8th Ave., Portland, OR 97202. Representative: John M. Pugh (same address as applicant) (503) 289-3585. (1) As a *broker of general commodities* (except household goods), between points in the U.S.; (2) transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.; and (3) transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.MC 157019, filed July 8, 1981. Applicant: C. E. SHORE, Rt. 2, Box 286, Hudson, NC 28638. Representative: C. E. Shore (Same address as applicant) (704) 728-2406 Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs),*agricultural limestone and fertilizers, and other soil conditioners* by the owner of motor vehicle in such vehicle, between points in the U.S.MC 157079, filed July 13, 1981. Applicant: LESTER F. MARTIN R. D. No. 2, East Earl, PA 17519. Representative: Lester F. Martin (same address as applicant) (215) 445-4604. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

[FR Doc. 81-21976 Filed 7-27-81; 8:45 am] BILLING CODE 7035-01-M

Motor Carriers; 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* 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. 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 a public need for the proposed operations and that it 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. This presumption shall not be deemed to exist where the application is opposed. 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.

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".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OPY-5-111

Decided: July 17, 1981.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

FF 558 filed July 14, 1981. Applicant: CHAMPION AIRFREIGHT, INC., 2230 Landmeier Rd., Elk Grove, IL 60007. Representative: Edward J. Kiley, 1730 M Street NW, Washington, D.C. 20036, 202-296-2900. As a freight forwarded transporting *general commodities* (except classes A and B explosives), between Chicago, IL, on the one hand, and, on the other, points in the U.S.

MC 41096 (Sub-63), filed July 8, 1981. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, DC 20006, (202) 833-8884. Transporting *machinery* between points in the U.S., under continuing contract(s) with Beckman Instruments, Inc., of Fullerton, CA.

MC 105159 (Sub-42), filed July 13, 1981. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main St., Red Wing, MN 55066. Representative: Stephen F.

Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333-1341. Transporting *floor tile*, between Houston, TX, on the one hand, and, on the other, points in IA, IL, MN, ND, SD, and WI.

MC 109448 (Sub-35), filed July 10, 1981.

Applicant: PARKER

TRANSPORTATION COMPANY, a Corporation, P.O. Box 256, Elyria, OH 44036. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614) 228-1541. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of heating and air-conditioning units, between points in Franklin and Huron Counties, OH, on the one hand, and, on the other, points in the U.S.

MC 115648 (Sub-39), filed July 13, 1981.

Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201.

Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001, (307) 634-2184. Transporting *metal products*, between points in Box Elder County, UT, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, WA, and WY.

MC 144449 (Sub-8), filed July 10, 1981.

Applicant: A & A MOVING & STORAGE CO., d.b.a. A & A

CONTRACT CARRIERS, 414 Blue Smoke Court West, Fort Worth, TX 76105. Representative: Billy R. Reid, 1721 Carl St., Forth Worth, TX 76103, (817) 332-4718. Transporting *machinery*, between points in the U.S., under continuing contract(s) with Camco, Inc., of Richardson, TX.

MC 146719 (Sub-8), filed July 13, 1981.

Applicant: MATERIAL DELIVERY SERVICE, INC., P.O. Drawer F, County Road 26, Alabaster, AL 35007.

Representative: Edward J. Kiley, 1730 M Street NW, Washington, DC 20036, 202-296-2900. Transporting *general commodities* (except classes A and B explosives), between points in AR, FL, GA, LA, MS, NC, SC, TN, and TX, on the one hand, and, on the other, points in the U.S.

MC 146758 (Sub-15), filed July 13, 1981.

Applicant: LADLIE

TRANSPORTATION, INC., 103 East Main St., Albert Lea, MN 56007.

Representative: Phillip H. Ladlie (same address as applicant), 800-533-6038. Transporting *food and related products* between the facilities used by Lamb-Weston, Inc. at those points in the U.S. in and west of WI, IL, MO, AR, and LA, on the one hand, and, on the other, those points in the U.S. in and west of WI, IL, MO, AR, and LA.

MC 147348 (Sub-14), filed July 13, 1981.

Applicant: SOUTHWEST FREIGHT DISTRIBUTORS, INC., 1320 Henderson,

North Little Rock, AR 72114.

Representative: James M. Duckett, 221 W. 2nd, Suite 411, Little Rock, AR 72201, (501) 375-3022. Transporting *paper and paper products*, between points in Lauderdale County, MS and Choctaw County, AL, on the one hand, and, on the other, points in AR.

MC 147509, filed July 10, 1981.

Applicant: HUNTER

TRANSPORTATION CO., INC., P.O. Box 53329, Houston, TX 77052.

Representative: Billy J. Overby (same address as applicant), (713) 675-2367. Transporting *general commodities* (except classes A and B explosives), between points in AR, LA, OK, and TX.

MC 148639 (Sub-1), filed July 10, 1981.

Applicant: JOE D. O'BANION, d.b.a.

O'BANION TRUCKING, 3787 Broadway, Vallejo, CA 94590. Representative:

James H. Gulseth, 100 Bush St., 21st Floor, San Francisco, CA 94104, (415) 986-5778. Transporting (1) *iron and steel articles*, between points in Santa Clara County, CA, and Grayson County, TX, on the one hand, and, on the other, points in AZ, NV, TX, OR, CA, WA, ID, UT, and NM, (2) *lumber and wood products*, between points in CA, OR, and WA, on the one hand, and, on the other, points in NV, CA, AZ, NM, and TX, and (3) *building materials*, between points in CA, OR, and WA, on the one hand, and, on the other, points in CA, OR, WA, TX, AZ, NV, NM, UT, WY, MT, CO, and ID.

MC 149378 (Sub-6), filed July 13, 1981.

Applicant: KIRBY TRANSPORT, INC., 8023 East Slauson Ave., Montebello, CA 90640.

Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08817, 201-494-8765. Transporting *such commodities* as are dealt in or used by automobile body repair shops, between points in the U.S. under continuing contract(s) with U.S. Chemicals and Plastics of Canton, OH.

MC 152109 (Sub-6), filed July 10, 1981.

Applicant: KAIBAB

TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036.

Representative: Michael F. Morrone, 1150 17th St., NW., Suite 1000, Washington, DC 20036, (202) 457-1124.

Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Babbitt Brothers Trading Company, of Flagstaff, AZ.

MC 153328 (Sub-11), filed July 15, 1981.

Applicant: RED K TRANSPORT, INC., 2545 Peach Tree St., Cape Girardeau, MO 63701.

Representative: G. H. Boles, 321 North Spring Ave., Cape Girardeau, MO 63701, (314) 335-8636. Transporting *metal products*, between points in

Reynolds, Jefferson, Washington, and Iron Counties, MO, on the one hand, and, on the other, points in the U.S.

MC 155658 (Sub-2), filed July 13, 1981.

Applicant: D. F. SYSTEM, INC., 875 Providence Highway, P.O. Box 242, Dedham, MA 02026. Representative: Robert G. Parks, 20 Walnut St., Ste. 101, Wellesley Hills, MA 02181, 617-235-5571. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with Clairol, Incorporated of Stamford, CT.

MC 156069 (Sub-1), filed July 10, 1981.

Applicant: TRANSITALL SERVICES, INC., Two North Riverside Plaza,

Chicago, IL 60606. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603, (312) 782-

8880. Transporting *metal and metal products*, between points in the U.S., under continuing contract(s) with John Thomas Batts, Inc., of Zeeland, MI, and Taubensee Steel & Wire Company, of Wheeling, IL.

MC 156079, filed July 10, 1981.

Applicant: CIRCLE "C" CARRIERS, INC., P.O. Box 6158, 3401 E. Roosevelt Rd., Little Rock, AR 72204.

Representative: Sonny Curtner (same address as applicant, (501) 372-2014. Transporting (1) *household appliances*, and (2) *television sets and recorders*, between points in Pulaski County, AR, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and NM.

MC 156079 (Sub-3), filed July 15, 1981.

Applicant: CIRCLE "C" CARRIERS, INC., P.O. Box 6158, 3401 E. Roosevelt Rd., Little Rock, AR 72216.

Representative: Sonny Curtner (same address as applicant, (501) 372-2014. Transporting *general commodities* (except classes A and B explosives), between Philadelphia, PA, New York, NY, and points in Essex County, MA, on the one hand, and, on the other, points in the U.S.

MC 157008 filed July 6, 1981.

Applicant: CAMPTOWN, INC. 265 Elizabeth Ave., Newark, NJ 07108.

Representative: Ronald I. Shapps, 450 Seventh Ave., New York, NY 10123, (212) 239-4610. Transporting *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Essex, Morris, Union, Hudson, and Middlesex Counties, NJ, and extending to New Orleans, LA, Atlanta, GA, Las Vegas, NV, and points in CA, FL, NC, VA, MD, DE, PA, NJ, NY, CT, RI, MA, VT, NH, ME, and DC.

Volume No. OPY-2-135

Decided: July 20, 1981.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 107743 (Sub-61), filed June 16, 1981. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456TA, Spokane, WA 99220. Representative: George H. Hart, 1100 IBM Building, Seattle, WA 98101, (206) 624-7373. Transporting *building materials, lumber and wood products, and forest products*, between those points in the U.S. in and west of MI, OH, PA, WV, KY, MO, AR and LA.

MC 144122 (Sub-83F), filed July 13, 1981. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17 North, Paramus, NJ 07652. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322-5030. Transporting *general commodities* (except classes A and B explosives) between points in VA, MD, DE, PA, NJ, NY, CT, RI, MA, GA, IN, IL, MO, WI, TX, CA, WA, and OR, on the one hand, and, on the other, points in the U.S.

MC 144222 (Sub-15F), filed July 13, 1981. Applicant: RON'S TRUCKING SERVICE, INC., Rt. 3, Norwalk, OH 44857. Representative: Richard H. Brandon, 220 W. Bridge St., Dublin, OH 43017, (614) 889-2531. Transporting (1) *ores and minerals*, (2) *coal and coal products*, (3) *clay, concrete, glass, or stone products*, (4) *building materials*, and (5) *metal products*, between points in the U.S. in and east of MN, IA, MO, KS, OK, and TX.

MC 144572 (Sub-57), filed July 13, 1981. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80632. Representative: John T. Wirth, Suite 2600, 717-17th Street, Denver, CO, (303) 892-6700. Transporting *Food and related products*, between the facilities used by Banquet Foods Corporation at points in the U.S. on the one hand, and, on the other, points in the U.S.

MC 144672 (Sub-27F), filed July 13, 1981. Applicant: VICTORY EXPRESS, INC., P.O. Box 26189, Trotwood, OH 45426. Representative: Richard H. Schaefer (same address as applicant), (513) 277-8933. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) Stuart Fox Company, Kettering, OH, (2) The Sorg Paper Company, Middleton, OH, (3) Ralston Purina Company, St. Louis, MO, (4) Westvaco Corporation, New York, NY, (5) Victory Warehouse, Inc., Dayton, OH, (6) Midwest Solvents, Company, Inc., Atchinson, KS, (7)

Roaring Springs Blank Book Company, Roaring Springs, PA.

MC 145042 (Sub-12F), filed July 13, 1981. Applicant: ZEELAND FARM SERVICES, INC., 2468 84th Avenue, Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Building, Lansing, MI 48933, (517) 489-5724. Transporting *waste or scrap materials not identified by industry producing*, between Holland, MI, on the one hand, and, on the other, points in IL, IN, and OH.

MC 153483 (Sub-1), filed July 10, 1981. Applicant: ANTWEILER TRUCKING COMPANY, INC., Star Route, Montgomery City, MO 63361. Representative: David Earl Tinker, 1000 Connecticut Ave., NW., Suite 1112, Washington, DC 20036, (202) 887-5868. Transporting *such commodities as are dealt in or used by manufacturers and distributors of (1) chemicals, non-ferrous metals, ores and concentrates, and (2) paint and paint products*, between points in the U.S.

[FR Doc. 81-21977 Filed 7-27-81; 8:45 am]
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[Volume No. 128]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: July 23, 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 \$10.00.

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, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the

normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Sporn, Ewing, and Shaffer. Agatha L. Mergenovich, Secretary.

FF 459 (Sub-1)X, filed July 9, 1981. Applicant: RICHARDSON FORWARDING COMPANY, 992 Artesia Boulevard, Long Beach, CA 90805. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, DC 20006. Applicant seeks to remove restrictions in its Sub-No. 1 permit to eliminate the restriction prohibiting the transportation of traffic to AK, which will authorize the transportation of specified commodities between all points in the U.S.

FF 531 (Sub-1)X, filed July 9, 1981. Applicant: SECURITY HOUSEHOLD GOODS FORWARDING, INC., 100 West Airline Highway, Kenner, LA 70063. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, DC 20006. Applicant seeks to remove the restriction in its lead permit excluding AK.

MC 2934 (Sub-110)X, filed July 13, 1981. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry, 9998 North Michigan Road, Carmel, IN 46032. Applicant seeks to broaden the commodity description in its lead certificate from household goods to "household goods, furniture and fixtures".

MC 7840 (Sub-41)X, filed May 1, 1981, previously published in the *Federal Register* of June 5, 1981, republished as corrected this issue: Applicant: ST. LAWRENCE FREIGHTWAYS, INC., 650 Cooper Street, Watertown, NY 13601. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street, NW., Washington, DC 20001. Applicant seeks to remove restrictions in its Sub-Nos. 8F, 13F, 14F, 20F and 22F certificates to (1) broaden the commodity descriptions from paper and paper products, and materials, equipment and supplies used and useful in the manufacture and shipping of the commodities named above to "pulp, paper and related products," in Sub-Nos. 8F, 13F, 14F, 20F and 22F and from plastic film to "rubber and plastic products," in Sub-No 14, (2) remove the "in bulk" restriction, in Sub-Nos. 13F and 20F, (3) replace authority to serve specified plantsites or points with county or city-wide authority as follows: (a) St. Lawrence County, NY, for a

facilities at Newton Falls, NY in Sub-No. 8; (b) Des Moines County, IA and Henderson County, IL for facilities at Burlington, IA; Gary IN for a plantsite at Gary; Kalamazoo, MI, for a facility at Kalamazoo, MI; Clinton and Lewis Counties, NY, for plantsites at Lyons Falls and Plattsburg, NY; Cincinnati, OH for a plantsite at Cincinnati, OH for a plantsite at Cincinnati, OH; and Essex County, VT, for a plantsite at Gilman, VT in Sub-No. 13; (c) New Castle County, DE, for facilities at Newark and New Castle, DE; Decatur County, IN, for a facility at Greensburg, IN; Jefferson, Saratoga, Warren and Washington Counties, NY, for facilities at Carthage and South Glen Falls, NY; and Boone County, KY, for a facility at Florence, KY in Sub-No. 14; (d) Christian and Will Counties, IL for facilities at Lockport and Taylorville, IL; St. Louis, MO, and points in Jersey, Madison, Monroe and St. Clair Counties IL and St. Charles, St. Louis, and Jefferson Counties, MO for a plantsite at St. Louis; Washington, County, ME for a plantsite at Woodland, ME; Albany, Orange, and Wayne Counties, NY, for a facility at Guilderland Center, and Thompson and Warwick, NY; Richmond County, NC, for Hamlet, NC; Berks County, PA, for Reading, PA; Richmond, VA for plantsite at Richmond and Lincoln County, WI, for Tomahawk, WI in Sub-No. 20; and (e) Clinton County, NY, for Plattsburg, NY in Sub-No. 22; (4) broaden the territorial description in Sub-No. 22 from one-way authority to radial authority between Clinton County, NY, and several States and DC; (5) remove the "originating at and destined to" restrictions in Sub-Nos. 8, 13, and 14; and (6) eliminate the restriction prohibiting transporting traffic from Plattsburg, NY, to MI and OH in Sub-No. 13F. The purpose of this republication is to replace in part 3(d) St. Louis, MO, and its commercial zone, with the appropriate counties (for the commercial zone).

MC 69322 (Sub-No. 10X), filed July 7, 1981. Applicant: DOBSON CARTAGE AND STORAGE COMPANY, 5025 So. Garfield Road, Auburn, MI 48611. Representative: Robert J. Gallagher, Esq., 1000 Connecticut Avenue, NW., Suite 1200, Washington, D.C. 20036. Applicant seeks to remove restrictions from its Sub-No. 9 certificate to broaden the commodity description from household goods to "household goods and furniture and fixtures".

MC 92068 (Sub-22)X, filed July 13, 1981. Applicant: BAILEYS' EXPRESS, INC., 2423 Kenilworth Avenue, Tuxedo, MD 21781. Representative: Edward N. Button, 580 Northern Ave., Hagerstown,

MD 21740. Applicant seeks to remove restrictions in its Sub-No. 21 certificate to (1) broaden its commodity descriptions in parts (2), (3) and (4) to "general commodities (except classes A and B explosives)", from general commodities (with exceptions); (2) replace cities and facilities with city or county-wide authority: facilities in Washington, D.C. with Washington, D.C.; Annapolis, MD with Anne Arundel County, MD; facilities at or near Woodbridge, VA with Prince William, County, VA; facilities at Frederick and Westminster, MD, and Fredericksburg, VA, with Frederick and Carroll Counties, MD, and Fredericksburg, VA; facilities at Baltimore, MD, with Baltimore, MD; facilities at Elkton and Salisbury, MD, with Cecil and Wicomico Counties, MD; facilities at Lexington Park, Waldorf, and Odenton, MD, and Lower Paxton Township, PA, with Saint Mary's, Charles, and Anne Arundel Counties, MD, and Dauphin County, PA; facilities at or near Crofton, MD, with Anne Arundel County, MD; facilities at or near Bel Air, MD, with Harford County, MD; facilities at Frederick, Hagerstown and Lexington Park, MD, and Fredericksburg and Manassas, VA, with Frederick, Washington, and Saint Mary's Counties, MD, Fredericksburg, VA, and Prince William County, VA; (3) authorize service at all intermediate points between Baltimore, MD and Alexandria, VA, in part (1); and (4) change one-way to two-way authority.

MC 94901 (Sub-11)X, filed July 10, 1981. Applicant: EDDY MESSENGER SERVICE, INC., 31 Merritt Street, Port Chester, NY 10573. Representative: Roy A. Jacobs, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. Applicant seeks to remove restrictions in its Sub-No 9F certificate to (1) broaden the commodity description from general commodities (with exceptions) to "general commodities (except classes A and B explosives)" and (2) eliminate restriction against transportation of articles weighing in the aggregate more than 500 pounds from one consignor to one consignee on any one day, service to be completed within 24 hours of pickup.

MC 97310 (Sub-40)X, filed July 10, 1981. Applicant: SHARRON MOTOR LINES, INC., P.O. Box 31066, Birmingham, AL 35222. Representative: David A. Watson, Jr., P.O. Box 31066, Birmingham, AL 35222. Applicant seeks to remove restriction in its Sub-No. 25 to (1) broaden the commodity description from general commodities (with exceptions), to "general commodities (except classes A and B explosives)"; (2) serve all intermediate points between

Birmingham, AL and Memphis, TN and between Meridian and Corinth, MS; (3) remove restriction at Memphis, TN and points in its commercial zone against the handling of traffic originating at, destined to, or interchanged at Florence, Muscle Shoals, Sheffield and Tusculumbia, AL and points in their respective commercial zones; and (4) remove the restriction limiting service at Corinth, MS for purposes of joinder only.

MC 109448 (Sub-34)X, filed July 2, 1981. Applicant: PARKER TRANSFER COMPANY, P.O. Box 256, Elyria, OH 44306. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. Applicant seeks to remove restrictions in its Sub-Nos. 6, 8, 10, 11, 12, 14, 16, 20, 22, 23, 25 and 28 certificates to (1) broaden the commodity description to "machinery" from sandstone, sandstone products, grindstone frames and fixtures, power grindstones, and pallets used in their transportation on in Sub-No. 6, from heating and air conditioning plants, equipment, accessories and parts thereof in Sub-No. 11, from heating and air conditioning units, equipment and parts thereof and such materials as are required for the installation thereof, iron and steel castings, patterns, flasks and parts thereof and oil burners in Sub-No. 12, sheet 2; from heating and air conditioning units and component parts in Sub-No. 25; to "machinery and material, equipment and supplies" from heat exchangers and equalizers for air, gas or liquid, machinery and equipment for heating, cooling, conditioning humidifying, dehumidifying and moving of air, gas or liquid, and parts, materials, equipment and supplies in Sub-No. 20; to "metal products" from heating and air-conditioning plants, equipment, accessories, and parts thereof, oil burners, furnace casings and parts of warm air furnaces, and warm air furnaces and air conditioning equipment and supplies in Sub-No. 8, from furnaces, furnace parts and iron castings in Sub-No. 12, from furnace tubes and furnace parts in Sub-No. 14, from heating and air conditioning plants and equipment and parts thereof and such materials as are required for the installation thereof in Sub-No. 16, from iron and steel articles in Sub-No. 23, and from steel, steel products, and brass stock in Sub-No. 28; to "metal products and materials, equipment and supplies" from heating and air-conditioning plants, equipment and parts and materials and supplies in Sub-No. 22; to "rubber and plastic products" from rubber and rubber products in Sub-No. 8, sheet 2; to "clay, concrete, glass or stone products" from slate in Sub-No. 10; and to "food

and related products" from malt beverages in Sub-No. 12; (2) change city to county-wide authority from (a) Amherst, OH and points within 5 miles thereof to Lorain County, OH in Sub-Nos. 6 and 10, (b) Elyria, OH to Lorain County, OH in Sub-Nos. 8, 11, 14, 16, 22, and 28, (c) Medina, OH to Medina County, OH in Sub-Nos. 8 and 11, (d) Rochester, NY and New Castle, PA to Monroe County, NY and Lawrence County, PA and Minster, OH to Auglaize County, OH in Sub-No. 12, (e) Erie, PA to Erie County, PA in Sub-No. 14; (3) remove facilities limitations in Sub-No. 23 and replace Lorain and Cleveland, OH and Gary, IN with Lorain County, OH and Cleveland, OH and Gary, IN in Sub-No. 23; (4) remove the size and weight restriction in Sub-Nos. 11 and 16; (5) remove the "originating at and destined to" restriction in Sub-Nos. 16 and 20; (6) remove the in bulk restriction in Sub-No. 20; (7) remove the restriction to minimum of 15,000 pounds from any one consignor in Sub-No. 12; (8) remove the exception to AK and HI in Sub-No. 20 and (9) change one-way to radial authority between various combinations of the above counties and points in the U.S. in all subs except Sub-Nos. 6, part 4 of Sub-No. 12, and Sub-Nos. 20, 22 and 28.

MC 113545 (Sub-21)X, filed July 7, 1981. Applicant: CORMETT FORWARDING CO., INC., P.O. Box 38, Jersey City, NJ 07303. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Applicant seeks to remove restrictions in its lead and Sub-No. 5 permits to (1) broaden the commodity description to "pulp, paper and related products" from facial tissues, paper towels and toilet tissues, returned or damaged shipments of the above commodities, in the lead, and paper and paper articles, as described in Appendix XI to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209, in Sub-No. 5 and to "printed matter, and pulp, paper and related products" from textbooks, in the lead, (2) remove the restriction to traffic having a prior movement by rail and (3) broaden the territorial description to between points in the U.S.

MC 118445 (Sub-4)X, filed July 9, 1981. Applicant: ALASKA WEST EXPRESS, INC., 2009 Spar Avenue, Anchorage, AK 99501. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th Street, N.W., Washington, DC 20004. Applicant seeks to remove restrictions in its Sub-No. 3 certificate to (1) broaden the commodity description from general commodities (with usual exceptions) to "general commodities, except classes A and B explosives," and (2) eliminate the

restriction prohibiting the transportation of traffic between points in the AK Pan handle south of Haines, AK.

MC 119988 (Sub-280)X, filed July 10, 1981. Applicant: GREAT WESTERN TRUCKING, CO. INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Larry Norwood (same as applicant). Applicant seeks to remove restrictions in its Sub-No. 271F certificate to eliminate the "except commodities in bulk" restriction, in its authority to transport such commodities as are dealt in by manufacturers and users of chemicals between points in the U.S.

MC 119991 (Sub-38)X, filed July 15, 1981. Applicant: YOUNG TRANSPORT, INC., 1601 Woodlawn Avenue, P.O. Box 3, Logansport, IN 46947. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian Street, Indianapolis, IN 46204. Applicant seeks to remove restrictions in its Sub-Nos. 26F, 30F, and 35F, certificates to (1) remove the facilities limitation in Sub-No. 30F; (2) eliminate the originating at restriction in Sub-No. 26F; (3) replace the authority to serve Alton, Kankakee, and Joliet, IL with Madison, Kankakee, and Will Counties, IL in Sub-No. 35F; and (4) broaden the commodity descriptions to include "materials, equipment and supplies used in the manufacture or processing of the foregoing commodities, on return".

MC 126622 (Sub-9)X, filed July 13, 1981. Applicant: AUDET & MEGANTIC TRANSPORT, LTEE, P.O. Box 1330, Lac Megantic, Quebec, Canada. Representative: Harold C. Pachios, 443 Congress St., Portland, ME 04101. Applicant seeks to broaden the territorial authority in its Sub-No. 8F permit to between points in the United States, under continuing contract(s) with named shippers in authority to transport lumber.

MC 129712 (Sub-52)X, filed July 13, 1981. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, Ga. 30326. Applicant seeks to remove restrictions in its lead and Sub-Nos. 6, 13, 21F, 22F, 23F, 24F, 25F, 26F, 27F, 29F, 30F, and 31F permits to authorize service between points in the U.S. under contract(s) with named shippers.

MC 133708 (Sub-43)X, filed July 10, 1981. Applicant: FIKSE BROS., INC., 12647 East South Street, Cerritos, CA 90701. Representative: John C. Russell, 1545 Wilshire Boulevard, Los Angeles CA 90017. Applicant seeks to remove restrictions in its Sub-No. 6 certificate to (1) broaden the commodity description from cement (in bulk) to "building

materials" and (2) remove the prior movement by rail restriction.

MC 133917 (Sub-14)X, filed July 9, 1981. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 10102, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Applicant seeks to remove restriction in its Sub-Nos. 1, 2, 4, 5, 7, 8, 9, and 10 certificates to (1) broaden the commodity description (a) from general commodities (with exceptions) to "general commodities except classes A and B explosives in Sub-No. 1, 2, 4, and 9; (b) by removing restrictions excepting frozen commodities and commodities in bulk in Sub-Nos. 5F and 8F; and (c) from glass containers to "clay, concrete, glass or stone products and containers" in Sub-No. 7F; (2) serve all intermediate points in its regular routes in Sub-Nos. 1, 4, 5F, 9F, and 10F; (3) remove originating at or destined to restrictions and interline restrictions in Sub-Nos. 1, 2, and 8F; and (4) remove facilities limitations (a) at Chattanooga, TN, in Sub-No. 7F and (b) at Atlanta, GA, in Sub-No. 8F.

MC 134829 (Sub-1)X, filed July 15, 1981. Applicant: I.W.I. REFRIGERATED EXPRESS, 900 South Newton Street, Sioux City, IA 51106. Representative: Richard J. Marx (same address as applicant). Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description from meats, meat products and meat by-products and articles distributed by meat packinghouses to "food and related products"; (2) remove the restriction against transportation of "hides and commodities in bulk in tank vehicles"; (3) replace Sioux City, IA with Dakota County, NE, Union County, SD and Woodbury County, IA; (4) change one-way to radial authority; (5) remove the "originating at and destined to" restriction.

MC 135069 (Sub-5)X, filed July 8, 1981. Applicant: ROCKAWAY TRUCKING, INC., 109 Route 46, P.O. Box 45, Rockaway, NJ 07866. Representative: Charles E. Creager, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740. Applicant seeks to remove restrictions in its Sub-No. 4F Permit to: (1) broaden the commodity description from new containers and cylinders and trichloromonofluoromethane, dichlorodifluoromethane and monochlorodifluoromethane gases, to "containers, cylinders, compressed gases, and chemicals"; and (2) broaden the territorial description to between points in the U.S. under a continuing contract with a named shipper.

MC 135237 (Sub-6)X, filed July 7, 1981. Applicant: EAST PENN TRUCKING COMPANY, R. D. #1, Lehigh, PA 18235. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Applicant seeks to remove restrictions in its Sub-Nos. 1, 3F, and 5 certificates to (A) broaden commodity descriptions as follows: Sub-Nos. 1 and 5 (parts 1 and 2), to "coal and coal products" from coal; Sub-No. 3, to "food and related products" from ice cream, ice milk, water ice novelties, foods, food products and ingredients, animal food and ingredients, and meat by-products; Sub-No. 5 (part 3), to "ores and minerals, and mineral mixtures" from minerals and mineral mixtures; (B) remove language restricting service, "except in bulk" and "in vehicles equipped with mechanical refrigeration" in Sub-No. 3, "except commodities named in hopper, tank or dump vehicles" and "except coal" in Sub-No. 5, and remove the restriction in Sub-No. 5 against the transportation of named commodities (a) from points in DE, MD, NJ, and NY, (b) from points in a named PA county, and (c) from named facilities at points in CT, MA, NJ, NY, OH, PA, and VA; (C) remove the restriction limiting traffic to that originating at and destined to the named points in Sub-No. 3; (D) change one-way authority to radial authority; and (E) broaden the plantsites and municipalities to county-wide authority as follows: Sub-No. 1, Monmouth and Passaic Counties, NJ (Neptune, NJ, and part of Passaic County, NJ); Sub-No. 3, (a) Lackawanna, Lehigh and Wyoming Counties, PA (facilities at Scranton, Upper Macungie Township, Lemon Township, and Allentown, PA), and (b) Cobb County, GA (Marietta, GA), and Talladega County, AL (Sylacauga, AL); and Sub-No. 5, Carbon County, PA (Palmerton, Carbon County, PA), and Monongalia County, WV (National, Monongalia County, WV).

MC 135647 (Sub-2)X, filed July 9, 1981. Applicant: ROBERT EMANUEL AND MARGARET EMANUEL, d.b.a. EMANUEL'S EXPRESS, 201 East Township Line Road, Kirklyn, PA 19082. Representative: Robert Emanuel (same address as applicant). Applicant seeks to remove restrictions in its lead certificate to eliminate the restriction limiting transportation to shipments weighing 5,000 pounds or less from one consignor at one location to one consignee at another location during a single day.

MC 136288 (Sub-3)X, filed July 9, 1981. Applicant: CABANO TRANSPORT, LTD, 365 Rue Temiscouata, Riviere-Du-Loup, Temiscouata County, Quebec, Canada G5R 3A9. Representative: Frank

J. Weiner, 15 Court Square, Boston, MA 02108. Applicant seeks to remove restrictions in its lead certificate to (1) broaden the commodity description from woodpulp, wood products, and newsprint to "pulp, paper and related products, and lumber and wood products," (2) remove the originating at and/or destined to restrictions, (3) remove restrictions limiting service through specific ports of entry to allow service at all ports of entry in UT, NY, and ME and (4) replace one-way authority with radial authority.

MC 136545 (Sub-39)X, filed July 13, 1981. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad Street, Prentice, WI 54556. Representative: Richard A. Westley, 4506 Regency Street, Suite 100, P.O. Box 5088, Madison, WI 53705. Applicant seeks to remove restrictions in its Sub-No. 28F certificate to (1) remove the plantsite limitations; (2) expand one-way to radial authority; (3) replace Pittsburgh and Aliquippa, PA with Allegheny, Beaver, Washington and Westmoreland Counties, PA; and (4) broaden the commodity description from iron and steel articles to "metal products".

MC 140484 (Sub-100)X, filed July 9, 1981. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, FL 33902. Representative: Chester A. Zyblut, 386 Executive Building, 1030 Fifteenth St., N.W., Washington, DC 20005. Applicant seeks to remove restrictions in its Sub-Nos. 5, 19, 20, 29M1F, 35F, 58F, 72F, and 73F certificates to (1) change its authority to "machinery, metal products, and rubber and plastic products", from electric motors, electric welders, and parts and accessories for electric motors and welders; welding supplies and hand truck parts, in Sub-Nos. 5 and 19; electric motors, electric gear motors, power transmission equipment, and machinery and controllers or controller parts, and parts and accessories therefor, elevator and elevator parts and accessories, weighing machinery and parts and accessories and telecommunication equipment and parts and accessories and escalators and escalator parts and accessories, in Sub-No. 20; electric motors, electric gear motors, power transmission equipment, controllers, and parts and accessories for power transmission equipment and controllers, elevators and elevator parts and accessories, escalators and escalator parts and accessories, weighing machinery and parts and accessories for weighing machinery, and telecommunications equipment and parts and accessories for

telecommunication equipment, in Sub-No. 29M1F; motors, generators, controllers, power transmission equipment, power transmission machinery, and scales . . . parts and accessories for the commodities above, in Sub-No. 35F; computer scales and parts and accessories thereof, in Sub-No. 58F; electric motors, electric welders, and parts and accessories for electric motors and electric welders, welding supplies and hand truck parts, in Sub-No. 72F, and water heaters, hot water storage tanks, and household heating boilers, in part (1) of Sub-No. 73F; (2) substitute point or county authority for plantsite or point authority as follows: (a) Lake County and Cleveland, OH, for facilities at Cleveland and Mentor, OH, in Sub-Nos. 5 and 19; (b) Anderson County, KY, for a facility at Lawrenceburg, Ky, in Sub-Nos. 20 and 35F; (c) Jefferson and St. Joseph Counties, IN; Hawkins County, TN; Anderson County, Ky; Hall County, GA; Buncombe County, NC; and Spartanburg County, SC, for Madison and Mishawaka, IN, Rogersville, TN, Lawrenceburg, KY, Gainesville, GA, Weaverville, NC, and Spartanburg, SC, in 29M1F; (d) Columbus and Worthington, Ohio, for facilities at Columbus and Worthington, Ohio; Spartanburg County, SC for Spartanburg, SC, and Cabarrus, Gaston, Mecklenburg and Union Counties, NC, and Lancaster and York Counties, SC, for Charlotte, NC, in Sub-No. 58F; (e) Cuyhoga and Lake Counties, OH, for facilities in Cuyahoga and Lake Counties, OH, in Sub-No. 72F; and (f) Chesterfield County, SC, for a facility at McBee, SC, in Sub-No. 73F; (3) broaden one-way authority to radial authority between points located mainly in the eastern and central portions of the U.S.; and (4)(a) eliminate restrictions against the handling of size and weight commodities in Sub-No. 5, 19, 20, 35F, 58F, 72F, and 73F; and (b) eliminate "originating at and destined to" restriction and restrictions to the transportation of traffic in containers and in foreign commerce, and ex-water restriction, in Sub-No. 19.

MC 141284 (Sub-1)X, filed July 7, 1981. Applicant: PACIFIC EAST AIR FREIGHT TRANSFER, INC., 34 Lakeview Drive, Cherry Hill, NJ 08003. Representative: Leonard C. Zucker, 321 Brookline Avenue, Cherry Hill, NJ 08002. Applicant seeks to remove restrictions in its lead certificate to (1) remove all restrictions from its general commodities except classes A and B explosives; (2) replace authority to serve named airports with authority to serve Kansas City, MO, Kansas City, KS,

Flagstaff, Phoenix, Tucson and Yuma, AZ, Albuquerque and Santa Fe, NM, Las Vegas and Reno, NV, and San Francisco, Los Angeles, and Oakland, CA; and (3) remove the restriction limiting service to the transportation of shipments having a prior or subsequent movement by air.

MC 143179 (Sub-24)X, filed July 6, 1981. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). Applicant seeks to remove restrictions from its Sub-Nos. 6F, 7F, 15F, 17F, 19F and 20F permits to: (1) broaden the territorial description in each of its permits to between points in the United States, under continuing contracts(s) with a named shipper; (2) remove the restriction against "in bulk commodities" in Sub-No. 7F; and (3) broaden the commodity descriptions in Sub-No. 6F from plastic containers, plastic container lids, and plastic foam products, in Sub-No. 7F from urethane foam products Sub-No. 17F from rebonded polyurethane carpet padding and Sub-No. 19F from urethane foam products to "rubber and plastic products".

MC 144110 (Sub-8)X, filed July 10, 1981. Applicant: KANE TRANSPORT, INC., P.O. Box 126, Sauk Centre, MN 56378. Representative: Gene P. Johnson, P.O. Box 2471, 700 Metropolitan Bldg., Fargo, ND 58108. Applicant seeks to remove restrictions in its Sub-Nos. 1, 2F, 4F and 6F certificates and MC-148242 Sub-No. 1F permit to (1) broaden the commodity description from (a) liquid fertilizers and anhydrous ammonia to "chemicals and related products" Sub-Nos. 1, 4F and 6F certificates, and (b) liquefied petroleum gas, and petroleum and petroleum products to "petroleum, natural gas their products" in Sub-No. 2F certificate and MC 148242 Sub-No. 1F permit; (2) eliminate the facilities limitation in Sub-No. 2 and 4F certificates, and MC-148242 Sub-No. 1F permit; (3) expand city to county-wide authority from Alexandria to Douglas County, MN in Sub-Nos. 1 and 6F certificates; Mankato to Blue Earth County, MN, in Sub-No. 2F certificate; Benson to Swift County, MN, in Sub-Nos. 2F and 4F certificates; and Barnesville to Clay County, MN in Sub-No. 4F certificate; (4) expand one-way to radial authority in each certificate; (5) remove the "in bulk, in tank vehicles" restriction in each certificate and permit; and (6) broaden the territorial description to between points in the U.S., under continuing contracts(s) with a named shipper in MC 148242 Sub-No. 1F permit.

MC 144340 (Sub-1)X, filed July 14, 1981. Applicant: CONCRETE MATERIALS SUPPLIES, INC., P.O.B. 361, Cleveland, UT 84518. Representative: Bruce W. Shand, Ste. 280, 311 S. State St., Salt City UT 84111. Applicant seeks to remove restrictions in its lead permit to broaden the territorial scope to between points in the U.S., under continuing contract(s) with ARCO Coal Company, d/b/a/ Beaver Creek Coal Co., which recently purchased Swisher Coal Company, in connection with its authority to transport coal.

MC 144505 (Sub-7)X, filed July 10, 1981. Applicant: DOYLE LOVE, d.b.a. LOVE TRUCKING, Route 1, Box 438, Mabank, TX 75417. Representative: Thomas L. Cook, 5801 Marvin D. Love Freeway, Suite 301, Dallas, TX 75237. Applicant seeks to remove restrictions in its Sub-No. 4F certificate to broaden the commodity description from motorcycles to "transportation equipment".

MC 144610 (Sub-3)X, filed July 15, 1981. Applicant: C. ALLEN TRUCKING, INC., 1 Nenner Lane, East Brunswick, NJ 08816. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Applicant seeks to remove restrictions in its Sub-No. 2 permit to (1) broaden the commodity description from ships' stores (except foodstuffs and commodities in bulk) to "ships' stores" and (2) broaden the territorial description to between points in the U.S. under continuing contract(s) with a named shipper.

MC 145559 (Sub-12)X, filed July 2, 1981. Applicant: NORTH ALABAMA TRANSPORTATION, INC., P.O. Box 38, Ider, AL 35981. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Applicant seeks to remove restriction from its Sub-No. 5F certificate to (1) broaden the commodity description from general commodities with the usual exceptions to general commodities (except Classes A and B explosives), (2) change city to countywide authority from Los Angeles, CA to Los Angeles County, CA, and (3) remove restriction to transportation of traffic moving from or to facilities used by a named shipper association and its members.

MC 148423 (Sub-16)X, filed July 22, 1981. Applicant: AVANT TRUCKING COMPANY, INC., P.O. Box 216, Gray, Georgia 31032. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta Georgia 30345. Applicant seeks to remove restrictions in its Sub-Nos. 5F, 6F, 7F, 8F, 9F, 10F 11 and 13 certificates to: in Sub-No. 5F, (1)

broaden the commodity description from raw sugar, in bulk (except liquid sugar), to "sugar mill products or by-products, and sugar, refined, cane or beet"; and (2) replace one way authority with radial, between points in FL, and, points in GA; in Sub-No. 6F: (1) broaden the commodity description from industrial waste materials in bulk, to "waste materials"; (2) replace facilities at Atlanta, GA with DeKalb and Fulton Counties, GA; and (3) replace one way authority with radial between points in Dekalb and Fulton Counties, GA, and points in AL and SC; in Sub-No. 7F (1) broaden the commodity description from salt and salt products to "chemicals and related products"; and (2) replace one way authority with radial between points in Glynn County, GA, and, points in FL, NC, SC and TN; in Sub-No. 8F: (1) broaden the commodity description from fertilizer and fertilizer materials to "agricultural chemicals, fertilizers and chemical or fertilizer minerals"; (2) replace facilities at or near Brunswick and Albany, GA and Dothan, AL with Glynn and Dougherty Counties; GA and Houston County, AL; and (3) replace one way authority with radial (a) between points in Glynn and Dougherty Counties, GA, and, points in AL, and (b) between points in Houston County, AL, and points in GA; in Sub-No. 9F (1) broaden the commodity description from road construction material and aggregates to "building or construction materials and supplies, and aggregates"; and (2) replace one way authority with radial between points in GA, and points in AL and part of FL; in Sub-No. 10 to: (1) replace facilities in Bibb County with Bibb County, GA, and (2) replace one way authority in Parts (1) and (2) with radial between points in Bibb County, GA, points in AL, DC, FL, KY, MD, MS, NC, SC, TN, VA and WV; in Sub-No. 11: broaden the commodity description from road building materials and aggregates to "building or construction materials and supplies and aggregates"; and in Sub-No. 13 broaden the commodity description from fertilizer materials, including agricultural limestone and other soil conditioners to "agricultural chemicals, fertilizers and chemical or fertilizer minerals".

MC 148708 (Sub-5)X, filed July 13, 1981. Applicant: W. F. DOYLE ENTERPRISES, INC. d.b.a. R. D. CARTAGE CO., 4720 w. 55th St., Chicago, IL 60629. Representative: Robert J. Gill, First Commercial Bank Bldg., 410 Cortez Rd West, Bradenton, FL 33507. Applicant seeks to remove restrictions in its Sub-Nos. 2F, 3F, and 4F certificates to (1) broaden the commodity descriptions to (a) "ores and minerals" from copper and

copper cathodes, in Sub-No. 3F, and (b) "general commodities (except classes A and B explosives)" from general commodities, with exceptions in Sub-No. 4F; (2) replace Munster, IN with authority to serve Lake County, IN, in Sub-No. 2F; and (3) remove the ex-rail restriction, in Sub-No. 4F.

MC 148840 (Sub-3)X, filed July 14, 1981. Applicant: SHANE INDUSTRIES, INC., 2724 East Annadale Avenue, Fresno, CA 93706. Representative: John Paul Fischer, 256 Montgomery Street, 5th floor, San Francisco, CA 94104. Applicant seeks to remove restrictions in its Sub-No. 2F certificate to (1) broaden the commodity description from general commodities (with exceptions) to "general commodities (except classes A and B explosives)"; (2) remove restriction limiting transportation to shipments moving on bills of lading of freight forwarders as defined in 49 U.S.C. 10102; and (3) broaden Richmond, CA, to Contra Costa County, CA.

MC 149412 (Sub-4)X, filed July 10, 1981. Applicant: MILK TANK LINES, INC., P.O. Box 788, Frazer, PA 19855. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 66 Eleventh Street NW, Washington, DC 20001. Applicant seeks to remove restrictions from its Sub-No. 1F certificate by broadening the commodity description sugar, syrups, blends of sugar and syrups, citrus juices, and edible oil, all in bulk commodities to "commodities in bulk".

MC 150019 (Sub-4)X, filed July 7, 1981. Applicant: EDWARD E. GARBER d.b.a. CUSTOM TRANSPORT, 6600 Sweet Air Lane, Sykesville, Md 21784. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteen St., N.W. Washington, DC 20005. Applicant seeks to remove restrictions in its Sub-No. 1 certificate to eliminate the facilities limitation at Baltimore, MD and remove the originating at or destined to restriction, in its radial authority between Baltimore and points in the U.S.

MC 150552 (Sub-1)X, filed July 1, 1981. Applicant: RICHARD B. JONES, d.b.a. DICK JONES TRUCKING, 2051 Geneva St. #43, Oceanside, CA 92054. Representative: Charles H. Kenyon, 21 Merchants Row Box 136, Swanton, VT 05488. Applicant seeks to remove restriction in its lead permit to (1) broaden the commodity description from general commodities with the usual exceptions to general commodities (except Classes A and B explosives) and (2) change territorial description to between points in the U.S. under continuing contract(s) with a named shipper.

MC 152245 (Sub-4)X, filed July 13, 1981. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: G.H. Stensrud, Armour Food Express Company, Greyhound Tower, Phoenix, AZ 85077. Applicant seeks to remove the restriction, excepting hides and commodities in bulk, in part (1) of its Sub-No. 2 certificate, in connection with its authority to transport (1) meats, etc., and (2) such commodities as are dealt in by chain grocery and food business houses, between points in the U.S.

MC 152629 (Sub-2)X, filed July 7, 1981. Applicant: ATLAS WAREHOUSE COMPANY, P.O. Box 456, Burlington, IA 52601. Representative: Michael D. Bromley, 4317 South 35th Street, Arlington, VA 22206. Applicant seeks to remove restrictions in its Sub-No. 1F certificate to (1) broaden the commodity description to "food and related products" from bakery goods; (2) remove the facilities limitation at Burlington IA and replace with Des Moines and Lee Counties, IA and Henderson County, IL; (3) replace one-way with radial authority; and (4) remove the exception of AK and HI.

[FR Doc. 81-21978 Filed 7-27-81; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 431]

Motor Carriers; Permanent Authority; Republications of Grants of Operating Rights; Authority Prior to Certification; Decision-Notice

The following grants of operating rights authorities are republished by order to the Commission to indicate a broaden grant of authority over that previously noticed in the *Federal Register*.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this *Federal Register* notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 125985 (Sub-32) (Republication), filed June 25, 1979, published in the

Federal Register issue of January 24, 1980, and republished this issue. Applicant: AUTO DRIVEAWAY COMPANY, 310 S. Michigan Ave., Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, D.C. 20014. A Decision of the Commission, Review Board Number 1, decided October 10, 1980 and served October 17, 1980, finds that the performance by applicant of the service described herein will serve a useful public purpose, responsive to a public demand or need to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *trucks* with a load capacity of more than ¾ tons, in secondary movements, in driveway service, between Houston, TX, and points in CA, LA, NM, OK, and WY; that 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 reflect applicant's actual grant of authority.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-21975 Filed 7-27-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 USC 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being

established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.
2. Employment trends in the same industry in the local area.
3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.
4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).
5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: David O. Williams, Administrator, U.S. Employment Service, Room 8000 Patrick Henry Building, Employment & Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 23rd day of July 1981.

Luis Sepulveda,

Acting Director, Office of Program Services.

Applications Received During the Week Ending July 25, 1981

Name of applicant and location of enterprise	Principal product or activity
Angels Shopping Center, Angels Camp, California.	Shopping center.

[FR Doc. 81-22092 Filed 7-27-81; 8:45]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; Determination Required by Secretary of Labor Under Waiting Week Provisions in Section 1022 of Pub. L. 96-499

Section 1022 of Pub. L. 96-499 which was enacted on December 5, 1980, amended section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA). That amendment provides that a State will not be entitled to reimbursement for the Federal share of the cost of benefit payments for the first week in an individual's eligibility period for which extended compensation or shareable regular compensation is paid, if the State law provides for payment (at any time or under any circumstances) of regular compensation to an individual for his first week of otherwise compensable unemployment. The prohibition against Federal sharing of such benefits became effective with respect to compensation paid to individuals whose eligibility periods (benefit years) became effective on or after December 5, 1980.

However, section 1022(b)(2) of Pub. L. 96-499 specifies that the Secretary of Labor may extend the December 5, 1980 effective date in the case of States that he determines will require legislative action to enact a noncompensable waiting week. Specifically, section 1022(b)(2) provides that: In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to eliminate its current policy of paying regular compensation to an individual for the first week of otherwise compensable unemployment, the amendments made by this section shall apply in the case of compensation paid to individuals during eligibility periods beginning after the end of the first regularly scheduled session of the State legislature ending more than thirty days after the date of the enactment of this Act.

Thus, where it has been determined that a State law provides for payment of regular compensation to an individual

for his first week of otherwise compensable unemployment, and this provision can only be eliminated by action of the State legislature, a State will be given to the end of the first regular session of its legislature ending more than 30 days subsequent to December 5, 1980 to take such action. The date a State legislature ends will, for purposes of section 1022(b)(2), be decided in accordance with State statutory and constitutional provisions. The States allowed a grace period by reason of the determination made herein will be expected to provide the information regarding such ending date. Because of the different periods that State legislatures are in session, the effective date for application of the provisions in section 204(a)(2), EUCA, to such States will vary depending on the ending dates of such sessions. If a State does not have a regularly scheduled session ending more than 30 days after December 5, 1980, which would include at a minimum the period from December 6, 1980 through January 5, 1981, it would be given to the end of the first session which begins thereafter.

On the basis of responses received from those States acknowledging that legislative action is necessary to provide for a noncompensable waiting week in their law, it is hereby determined pursuant to the provisions in section 1022(b)(2) of Pub. L. 96-499 that the following States will require legislative action in order to eliminate their current policy of paying regular compensation to individuals for their first week of otherwise compensable unemployment:

Alabama	Montana
Alaska	Nebraska
Arizona	Nevada
California	New Hampshire
Connecticut	New Jersey
Delaware	New Mexico
Georgia	New York
Hawaii	North Dakota
Idaho	Ohio
Illinois	Oregon
Iowa	Pennsylvania
Kentucky	Puerto Rico
Louisiana	Rhode Island
Maine	Tennessee
Maryland	Texas
Massachusetts	Virginia
Michigan	West Virginia
Minnesota	Wisconsin
Missouri	

Accordingly, such States are given to the end of the first regularly scheduled session of the State legislature ending more than 30 days after December 5, 1980, in order to amend their laws for the purposes designated under section 1022(b)(2) of Pub. L. 96-499.

Those States that amend their law during the time allowed above, by including a noncompensable waiting week in their law which is effective before or at the end of the designated session of the legislature, will not be subject to any loss of Federal payments as prescribed by section 204(a)(2), EUCA.

If a State fails to amend its law as set forth above and continues to provide for payment of compensation for the first week of otherwise compensable unemployment after the end of its legislative session, the amendment to section 204(a)(2) will take effect in such a State with respect to individuals whose eligibility periods (benefit years) begin on or after the day following the end of the legislative session as prescribed by section 1022(b)(2), EUCA. In other words, such State will not be subject to the loss of the Federal share of the first week of extended benefits until those individuals whose benefit years began on the day after the end of the legislative session have become exhaustees and establish entitlement to extended benefits.

Signed at Washington, D.C. on July 21, 1981.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 81-21974 Filed 7-27-81; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-81-142-C]

Black Diamond Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Black Diamond Coal Mining Company, 2229 1/2 First Avenue North, Birmingham, Alabama 32503 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Shannon Mine located in Jefferson County, Alabama. 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 electric face equipment.

2. Recently the mine has encountered an ancient stream bed which meanders randomly through the mine. This stream bed induced a deposition of a fine grained, extremely hard sandstone, reaching 10 to 15 feet in thickness and approximately 200 feet wide, which has temporarily reduced the seam height from the normal 75 to 80 inches. To traverse this area it is necessary to

shoot at least 12 inches of top rock to allow clearance for cabs. This "brushing" has produced a fractured and uneven roof requiring extensive scaling and making proper roof bolt installation difficult.

3. Petitioner states that with cabs removed in this mining height, all equipment could safely operate beneath the rock intrusion thereby creating a smooth and uniform roof condition. Once the area of the rock intrusion is passed, cabs would be immediately re-installed. Use of cabs or canopies in this mining height would hamper the visibility of the equipment operator, creating the possibility of an accident.

4. For these reasons, 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 August 27, 1981. Copies of the petition are available for inspection at that address.

Dated: July 20, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-21973 Filed 7-27-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-130-C]

Energy Resources, Ltd., Petition for Modification of Application of Mandatory Safety Standard

Energy Resources, Ltd., General Delivery, Dayhoit, Kentucky 40824 has filed a petition to modify the application of 30 CFR 75.805 (couplers) to its No. 2 Fox Knob and No. 2 Ewing Mines located in Harlan County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Petition is seeking a modification of the standard to allow the use of junction boxes manufactured by Pemco Corporation and equipped with a Micro switch wired in series with the ground check circuit to cause the power circuit to be deenergized in the event the cover is removed. The boxes are constructed of 1/2 inch steel and equipped with insulated strain clamps.

2. In support of this request, petitioner states that the following stipulations will be observed:

a. Junction boxes shall be located in dry, well rock-dusted areas or supported above wet locations. The boxes may be supported on concrete blocks or the equivalent;

b. All junction boxes shall be identical to Pemco Corporation part number J-133527;

c. When different size cables are used, fittings for the cable entrance shall be properly sized and secured to prevent strain on the electrical connections;

d. The high-voltage cables shall be terminated in accordance with the termination kit manufacturer's recommendations;

e. The junction boxes and cables shall be protected in accordance with the provisions of 30 CFR 75.807 and 30 CFR 75.1107-1(a)(3).

3. Petitioner states that the proposed alternate method will at all times guarantee no less protection 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 August 27, 1981. Copies of the petition are available for inspection at that address.

Dated: July 20, 1981.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 81-21972 Filed 7-27-81; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-137-C]

Jones and Laughlin Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

Jones and Laughlin Steel Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania 15263 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Vesta No. 5 mine located in Washington 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 return entries be examined weekly for hazardous conditions.

2. The return entries were developed between 1953 and 1969 utilizing wooden headers and posts for roof support; such support has long since deteriorated and numerous roof falls have rendered these entries impassable.

3. As an alternate method, petitioner proposes to establish and maintain specified air measuring stations to measure ventilation and detect methane in the returns.

4. In support of this alternate method, petitioner states that:

a. Methane and air readings will be made by a certified person on a daily basis and the results will be recorded on a date board at each location;

b. Methane will not be permitted to accumulate in the returns; immediate investigation and corrective action will be taken if methane is present beyond permissible limits.

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 August 27, 1981. Copies of the petition are available for inspection at that address.

Dated: July 20, 1981.

Frank A. White,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 81-21971 Filed 7-22-81; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Panel; Notice of Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel to the National Council on the Arts, will be held on August 13-14, 1981, from 9:00 a.m.-5:30 p.m., and on August 15, 1981, from 9:00 a.m.-2 p.m., in Room 1422 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506

A portion of this meeting will be open to the public on August 15, 1981, from 1:00 p.m.-2:00 p.m. for Public Discussion.

The remaining sessions of this meeting on August 13-14, 1981, from 9:00 a.m.-5:30 p.m. and on August 15, 1981, from 9:00 a.m.-1:00 p.m. are for the purpose of Panel review, discussion,

evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions 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 with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

July 21, 1981.

[FR Doc. 81-21938 Filed 7-27-81; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Information Science and Technology; Notice of Meeting

In accordance with the Federal Advisory Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Information Science & Technology.

Date & Time: August 14, 1981, 9 a.m. to 4 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mrs. Darcey Higgins, Room 1250, National Science Foundation, Washington, DC 20550. Telephone: 202/357-9572. Persons planning to attend should notify Mrs. Higgins by August 7, 1981.

Summary Minutes: May be obtained from the Contact Person, at the above address.

Purpose of Committee: To provide advice, recommendations, and oversight concerning support for activities related to the Foundation's program in information science and technology.

Agenda:

9:00-9:30 a.m., Director

9:30-10:00 a.m., Assistant Director/BBS

10:00-10:15 a.m., Break

10:15-11:00 a.m.

New Organization

Budget Review

Implications of Budget on relations with

Behavioral and Social Science Research

11:00 a.m.-Noon

Information Technology Working Group

Report

Submission to Advisory Committee

Discussion and Approval
Implications for IST Program Development
Advisory Committee Recommendations
Noon-1:30 p.m., Lunch
1:30-2:30 p.m.

Status of Information and the Economy
Working Group Report

Information Impact Program Working
Group proposal

The Information Science and Technology
Act of 1981 (Brown Bill)

2:30-3:00 p.m., New Research Foci

3:00-3:30 p.m., New Business

3:30-4:00 p.m., Public Comment

Dated: July 23, 1981.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-21920 Filed 7-27-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Earth Sciences, Geology Subcommittee; Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Earth Sciences (Geology Subcommittee).

Date and time: August 14-15, 1981; 8:30 a.m. to 5:00 p.m. each day.

Place: Colorado State University, Ft. Collins, Colorado 80521

Type of meeting: Closed.

Contact Person: Dr. Robin Brett, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357-7958.

Purpose of committee: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6), of 5 U.S.C. 522b(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

July 23, 1981.

[FR Doc. 81-21918 Filed 7-27-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Earth Sciences, Geochemistry and Petrology Subcommittee; Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Earth Sciences (Geochemistry and Petrology Subcommittee).

Date and time: August 13-15, 1981; 8:30 a.m. to 5:00 p.m. each day.

Place: The National Science Foundation, Room 643, 1800 G Street, N.W., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. Robin Brett, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357-7958.

Purpose of committee: To provide advice and recommendations concerning support for research in Earth Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

Authority: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 81-21919 Filed 7-27-81; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology; Notice of Meeting

In accordance with the Federal Advisory Committee Act, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Minorities in Science & Technology.

Place: Rm. 642, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Date: Wednesday, August 12 and Thursday, August 13, 1981.

Time: 9:00 a.m. to 5:00 p.m.

Type of meeting: Open.

Contact person: Mrs. Mary Poats, Executive Secretary of the Committee, National Science Foundation, Rm. 537, 1800 G Street, N.W., Washington, D.C. 20550 Telephone: 202/357-9571.

Purpose of subcommittee: Responsible for all Committee matters relating to the

participation in and opportunities for education, training, and research for minorities in science and technology, and the impact of science and technology on minorities.

Summary minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittee is asked to consider mechanisms to increase participation of minorities in Foundation programs, on research projects; to provide advice to the Director for the modification of NSF policies and procedures relating to minority appointments on advisory committees, as well as to suggest a modification of the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Coordinator.

July 23, 1981.

[FR Doc. 81-21921 Filed 7-27-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-341]

Detroit Edison Co.; Notice of Availability of Safety Evaluation Report for the Enrico Fermi Atomic Power Plant, Unit 2

The Office of Nuclear Reactor Regulation has published its Safety Evaluation Report on the proposed operation of the Enrico Fermi Atomic Power Plant, Unit 2, located in Monroe County, Michigan. Notice of receipt of Detroit Edison Company's application for a facility operating license for the Enrico Fermi Atomic Power Plant, Unit 2 was published in the Federal Register on May 28, 1975 (40 FR 23122).

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Monroe County Library System, Reference Department, 3700 South Custer Road, Monroe, Michigan 48161 for inspection and copying. The report (Document No. NUREG-0798) can also be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 21st day of July 1981.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 81-21900 Filed 7-27-81; 8:45 am]

BILLING CODE 7590-01-M

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy Concerning the Removal and Disposition of Solid Nuclear Wastes From Cleanup of the Three Mile Island Unit 2 Nuclear Plant

July 15, 1981.

The attached memorandum, subject as above, specifies interagency procedures between the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) to the removal and disposition of solid nuclear wastes generated during the cleanup of the Three Mile Island Unit 2 nuclear plant. This memorandum is an important step towards ensuring that the Three Mile Island site does not become a long-term waste disposal site.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Concerning the Removal and Disposition of Solid Nuclear Wastes from Cleanup of the Three Mile Island Unit 2 Nuclear Plant

I. Objective

This memorandum of understanding specifies interagency procedures for the removal and disposition of nuclear wastes resulting from cleanup of the Three Mile Island Unit 2 plant. This will help to ensure that the TMI Site does not become a long-term waste disposal facility.

II. NRC Roles and Responsibilities

The NRC has the responsibility under the Atomic Energy Act of 1954 as amended (42 U.S.C. 2011 *et seq.*), to regulate all licensee activities at the TMI-2 site, including waste management, and ensure these activities are carried out in accordance with the requirements of applicable rules and regulations and the requirements of Facility Operating License Number DPR-73, as modified by amendments or orders issued by the NRC. NRC will carry out its responsibilities by onsite observation of licensee activities. As required, policy, and technical support will be provided to the NRC TMI Site Office by NRC Headquarters and Regional Office(s).

NRC will work cooperatively and closely with the DOE, and will keep DOE fully and currently informed of NRC's activities.

NRC will continue to keep public, state and local officials informed of NRC's activities. When appropriate,

NRC will involve DOE in these information exchanges with the public, state and local officials.

III. DOE Role and Responsibilities

Where DOE determines that generically beneficial research, development and testing of the TMI-2 accident generated solid wastes can be carried out, DOE will perform such activities at appropriate DOE facilities. For those other wastes that cannot be disposed of in commercial low level waste facilities, DOE may also assume responsibility for removal, storage, and disposal to the extent that the licensee provides reimbursement to the DOE. These activities will be undertaken to the extent consistent with appropriate statutory authority. NRC licensing of DOE facilities that are utilized for storage, processing or disposal of TMI-2 accident generated wastes will not be required since these facilities have primary uses other than for receipt and storage of wastes resulting from licensed activities.

The DOE will provide technical support to the licensee and the NRC as deemed appropriate.

DOE will work closely with the NRC and keep NRC informed of DOE's activities.

IV. Currently Identified TMI-2 Accident Generated Solid Radioactive Wastes

The following lists those TMI-2 accident generated solid radioactive wastes which currently exist or are planned to be generated. This listing may be modified in the future as the cleanup progresses.

1. EPICOR-II System Wastes. Forty-nine ion exchange resin liners with loadings up to 1500 curies/liner are in temporary storage at the TMI-2 site. DOE plans to develop a prototype high integrity container (HIC), production units of which, if utilized by the licensee, may allow these liners to be acceptable for licensed disposal in commercial land burial facilities some 1-2 years from now. DOE is also performing characterization experiments on one of these liners and may find it desirable to extend its R&D program to other liners. Should a more expeditious handling of these wastes be required due to the potential for a limited release to the storage environment (which could cause public concern), a contingency plan will be implemented wherein DOE would at its discretion take receipt of these EPICOR liners on a reimbursable basis from the licensee for storage or disposal. Future EPICOR II liners are anticipated to be loaded to allow commercial shallow land disposal offsite by the licensee.

2. Submerged Demineralizer System Wastes. It is anticipated that the dispersed radioactivity in accident generated water will be deposited on zeolites in submerged demineralizer system (SDS) liners. Due to the unique character and nature of these wastes, DOE will take possession of and retain these liners to conduct a waste immobilization research and development and testing program.

3. Reactor Fuel. The present plan for the damaged core is to remove the fuel, provide appropriate fuel assemblies and samples to DOE for analysis characterization and archiving, place the balance in fuel storage containers, and store the fuel in the TMI Unit 2 spent fuel storage pool. As is the case with other nuclear power plant spent fuel, disposition of the balance of the TMI-2 fuel will await resolution of the spent fuel storage issue.

4. *Transuranic Contaminated Waste Materials*. As the cleanup progresses, some waste materials (e.g., sludges) may be found to be contaminated with transuranics at levels above which commercial low level burial facilities are authorized to accept. Alternatives for such material will be considered on a case-by-case basis and could include archiving, R&D evaluation or temporary storage onsite, or at a DOE facility awaiting further processing and/or disposal in a permanent repository offsite. Depending on the nature of these materials, DOE's activities could either take the form of an R&D program of generic value, or would be subject to reimbursement by the licensee.

5. Makeup and Purification System Resins and Filters. During the TMI-2 accident, the makeup and purification system demineralizer vessels and filters were highly contaminated by letdown of reactor coolant through the system. These resins and filters have not been characterized, however, based on radiation measurements, the resins and filters are believed to have specific activities well in excess of the loadings on the high specific activity EPICOR-II prefilters and are considered unsuitable for commercial land disposal. Due to the generic value of the information to be obtained and the very high specific activities of the filters, DOE will take possession and retain these filters for research and development activities. DOE's activities regarding the purification system resins will either take the form of an R&D program of generic value, or DOE will take possession of these resins for storage or disposal on a reimbursable basis.

6. Other Solid Radioactive Wastes. The low-level wastes associated with decontamination (e.g., some ion

exchange media, booties, gloves, trash) will be disposed of by the licensee in licensed commercial low level burial facilities.

V. This Memorandum of Understanding will take effect when it has been signed by the authorized representative indicated below for each agency. DOE and NRC shall each have the right with the consent of the other party to modify this agreement.

Dated: July 15, 1981.

For the U.S. Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, TMI Program Office, Office of Nuclear Reactor Regulations.

Dated: July 15, 1981.

For the U.S. Department of Energy.

Franklin E. Coffman,

Acting Director, Office of Coordination and Special Projects, Office of Nuclear Energy.

[FR Doc. 81-21961 7-27-81, 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Company, et al.; Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 80 and 78 to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised the licenses for operation of the Peach Bottom Atomic Power Station, Units Nos. 2 and 3 located in York County, Pennsylvania. The amendments are effective as of the date of issuance and are to be fully implemented within 60 days of Commission approval in accordance with the provisions of 10 CFR 73.55(b)(4).

The amendments add license conditions to include the Commission-approved Guard Training and Qualification Plan as part of the licenses.

The licensee's filing, which has been handled by the Commission as an application, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required

since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filing dated March 16, 1981, is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 80 to License No. DPR-44, and Amendment No. 78 to License No. DPR-56, and (2) the Commission's related letter to the licensee dated July 20, 1981. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of July, 1981.

For the Nuclear Regulatory Commission.

John F. Stolz,

*Chief, Operating Reactors Branch No. 4,
Division of Licensing.*

[FR Doc. 81-21902 Filed 7-27-81; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.47, "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel

Mixtures Outside Reactors," describes procedures acceptable to the NRC staff for complying with the Commission's regulations for the prevention of criticality accidents in operations involving homogeneous plutonium-uranium fuel mixtures outside reactors. The guide endorses ANSI/ANS 8.12-1978, "Nuclear Criticality Control and Safety of Homogeneous Plutonium-Uranium Fuel Mixtures Outside Reactors," which was prepared by a work group composed of members of private and governmental organizations, including several from the Department of Energy. While use of the guide extends at present to a limited number of licensed facilities, it is also of use to Department of Energy facilities that process homogeneous plutonium-uranium fuel mixtures.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publication Sales Manager. (5 U.S.C. 552(a))

Dated at Silver Spring, Md. this 21st day of July 1981.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 81-21903 Filed 7-27-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. and Yankee Nuclear Power Station; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 89 to Facility Operating License No. DPR-3, issued to Yankee Atomic Electric Company (the licensee), which revised the Technical

Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment incorporates provisions into the Technical Specifications required for operation with the refueled Core XV, and associated with modifications made to the main steam non-return valves and the auxiliary feedwater system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 26, 1981, as revised by letters dated May 27, 1981 and July 8, 1981, (2) Amendment No. 69 to License No. DPR-3, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated in Bethesda, Maryland, this 22nd day of July 1981.

For the Nuclear Regulatory Commission.

Richard P. Snaider,

*Acting Chief, Operating Reactors Branch #5,
Division of Licensing.*

[FR Doc. 81-21964 Filed 7-27-81; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION**Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing**

July 22, 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: Canada Southern Petroleum, Common Stock, \$1 Par Value (File No. 7-5955).

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 August 12, 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. 81-21986 Filed 7-27-81; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2003]

California, Declaration of Disaster Loan Area

Imperial County and adjacent counties within the State of California constitute a disaster area because of damage resulting from an earthquake that occurred on April 26, 1981. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 21, 1981, at: Small Business Administration, District Office, 211 Main Street, 4th Floor, San Francisco, California 94105, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 22, 1981.

Michael Cardenas,
Administrator.

[FR Doc. 81-21989 Filed 7-27-81; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-0122]

77 Capital Corp.; License Surrender

Notice is hereby given that 77 Capital Corporation, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). 77 Capital Corporation was licensed by the Small Business Administration on November 16, 1977.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 6, 1981, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 21, 1981.

Peter F. McNeish,
Acting Associate Administrator for
Investment.

[FR Doc. 81-21988 Filed 7-27-81; 8:45 am]
BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the Federal Register the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR Section 107.301(c) does not supersede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of state usury ceilings, and to its forfeiture and penalty provisions.

Effective August 1, 1981, and until further notice, the FFB rate to be used

for purposes of computing the maximum cost of money pursuant to 13 CFR 107.301(c) is 14.715% per annum.

Dated: July 23, 1981.

Peter F. McNeish,
Acting Associate Administrator for
Investment.

[FR Doc. 81-21987 Filed 7-27-81; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY**Fiscal Service**

[Dept. Circ. 570, 1981 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Universal Insurance Co.

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of \$959,000 has been established for the company.

Name of Company: Universal Insurance Company
Business Address: G.P.O. Box 71338, San Juan, Puerto Rico 00936
State of Incorporation: Puerto Rico

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1981 Revision, at page 33975 to reflect this addition. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20026.

W. E. Douglas,
Commissioner, Bureau of Government
Financial Operations.

[FR Doc. 81-21980 Filed 7-27-81; 8:45 am]
BILLING CODE 4810-35-M

VETERANS ADMINISTRATION**Station Committee on Educational Allowances; Notice of Meeting**

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on

Educational Allowances that on August 21, 1981, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 9th Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Rutledge College, 7 North Bellevue, Memphis, Tennessee, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: July 21, 1981.

R. S. Bielak,

*Director, VA Regional Office, 110 9th Avenue,
South, Nashville, Tennessee.*

[FR Doc. 81-21936 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 48, No. 144

Tuesday, July 28, 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

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 38196, July 24, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:30 a.m., Friday July 24, 1981.

CHANGES IN THE MEETING: Postponed until 2:00 a.m., Monday, July 27, 1981.

[S-1148-81 Filed 7-24-81; 3:32 pm]

BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 1:00 p.m. on Thursday, July 23, 1981, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider certain matters which it determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director Charles E. Lord (Acting Comptroller of the Currency), required its consideration on less than seven days' notice to the public.

The Board met in open session to accept the resignation of Irvine H.

Sprague as Chairman of the Board of Directors of the Federal Deposit Insurance Corporation effective the close of business on August 2, 1981 and to elect William M. Isaac as Chairman of the Board of Directors effective August 3, 1981.

The Board then met in closed session to consider a personnel matter.

In considering the matter in closed session, the Board determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation and that the matter could be considered in a closed meeting pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The Board further determined, by the same majority vote, that no earlier notice of the meeting was practicable.

Dated: July 23, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1144-81 7-24-81 1:00 pm]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10 a.m., Thursday, July 30, 1981.

PLACE: 1700 G Street, NW., Board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Marshall (202-377-6879).

MATTERS TO BE CONSIDERED: The following item has been added to the open portion of the Bank Board meeting.

Conforming Amendments on Rates of Return Payable on Savings Accounts

No. 519, July 24, 1981.

[S-1140-81 7-24-81 10:47 am]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM.

Board of Governors

TIME AND DATE: 10 a.m., Monday, August 3, 1981.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: July 24, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1147-81 Filed 7-24-81; 3:06 pm]

BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION.

[USITC SE-81-22]

TIME AND DATE: 2 p.m., Tuesday, August 4, 1981.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 22-43 (Certain Tobacco)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1149-81 Filed 7-24-81; 3:37 pm]

BILLING CODE 7020-02-M

6

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.

Cultural Minorities Task Force.

DATE AND TIME:

Thursday, August 6, 1981, 9:00 a.m.-4:30 p.m.

Friday, August 7, 1981, 9:00 a.m.-4:30 p.m.

Saturday, August 8, 1981, 9:00 a.m.-4:30 p.m.

PLACE: Twin Bridges Marriott Hotel, US 1 & I-395, Arlington, Virginia.

STATUS: OPEN.

MATTERS TO BE DISCUSSED: Writing of Final Report.

July 21, 1981.

Ruby O. Woods Robinson,
Research Associate.

[S-1146-81 Filed 7-24-81; 2:08 pm]

BILLING CODE 7527-01-M

7

NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-81-27]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 37150, July 17, 1981.**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 1:30 p.m., Friday, July 24, 1981.**CHANGE IN MEETING:** A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below:**STATUS:** Closed under Exemptions 2 and 9B of the Government in the Sunshine Act.**MATTERS TO BE CONSIDERED:**

1. FY 1982 and 1983 Program and Personnel Review.

2. Proposal to terminate Aerospace Management Services International participation in accident investigations.

CONTACT PERSON FOR MORE**INFORMATION:** Sharon Flemming 202-382-6525.

July 23, 1981.

[S-1141-81 Filed 7-24-81; 11:24 am]

BILLING CODE 4910-58-M

8

PAROLE COMMISSION.

[1P0401]

National Commissioners (the Commissioners presently maintaining offices at Bethesda, Maryland, Headquarters)

TIME AND DATE: 9:30 a.m., Monday, July 27, 1981.**PLACE:** Room 420-F, One North Park Building, 5550 Friendship Boulevard, Bethesda, Maryland 20015.**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.**MATTERS TO BE CONSIDERED:** Referrals from Regional Commissioners of approximately 5 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.**CONTACT PERSON FOR MORE****INFORMATION:** Linda Wines Marble,

Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492-5926.

[S-1142-81 Filed 7-24-81; 11:30 am]

BILLING CODE 4410-01-M

9

PAROLE COMMISSION.

[1P0401]

TIME AND DATE:

9:30 a.m. to 5:30 p.m., Thursday, August 6, 1981.

9:30 a.m. to 2:00 p.m., Friday, August 7, 1981.

PLACE: Room 420-F, Park Place, One North Park Building, 5550 Friendship Boulevard, Bethesda, Maryland 20015.**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.**MATTERS TO BE CONSIDERED:** Appeals to the Commission of approximately 24 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.**CONTACT PERSON FOR MORE****INFORMATION:** Linda Wines Marble, Chief Case Analyst, National Appeals Board, United States Parole Commission (301) 492-5926.

[S-1143-81 Filed 7-24-81; 11:30 am]

BILLING CODE 4410-01-M

10

POSTAL SERVICE.

(Board of Governors)

Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:00 A.M. on Tuesday, August 4, 1981, in the General Mail Facility, Conference Room 4007, 25 Dorchester Avenue, Boston, Massachusetts. Except as indicated in the following paragraph, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On July 7, 1981, the Board of Governors of the United States Postal Service voted to close to public observation a portion of its August 4 meeting which is expected to be

attended by the following persons: Governors Babcock, Camp, Ching, Hardesty, Hughes, Hyde, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Secretary to the Board Cox; and Counsel to the Governors Califano.

The portion of the meeting to be closed will involve a continuation of the discussion of the Postal Service's possible strategies and position in connection with anticipated collective bargaining negotiations.

Agenda

1. Minutes of the Previous Meeting.

2. Remarks of the Postmaster General.

(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Quarterly Report on Financial Performance (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the Quarterly Summary of Financial Performance.)

4. Quarterly Report on Service Performance (Mr. Benson, Deputy Postmaster General, will present the Quarterly Summary of Service Performance.)

5. Review of "Legislative Status Report" Matters and Government Relations. (Mr. Horgan, Assistant Postmaster General for Government Relations, will report on current legislative activities involving the Postal Service.)

6. Report of the Regional Postmaster General (Mr. Mulligan, Regional Postmaster General, will report on postal conditions in the Northeast Region.)

7. Capital Investment Projects

a. General Mail Facility and Vehicle Maintenance Facility for Fort Worth, Texas (Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present a proposal for funds for design and construction of a new General Mail Facility and Vehicle Maintenance Facility at Fort Worth, Texas.)

b. General Mail Facility and Vehicle Maintenance Facility at Birmingham, Alabama.

(Mr. Biglin will present a proposal to purchase the Main Post Office and Vehicle Maintenance facility, which are currently leased, at Birmingham, Alabama.)

8. Report of the Committee on Corporate Responsibility

(The Board will continue its discussion of the Committee's report in regard to Postal Service policy on equal employment opportunity and affirmative action.)

9. Report of the Committee on Safety and Health.

(The Board will continue its discussion of the Committee's report in regard to Postal Service employee safety programs.)

10. Discussion of Labor Relations

(The Board will continue its discussion of the Postal Service's strategies and positions in connection with collective bargaining negotiations. As stated above in the Notice of Meeting, this portion of the meeting will be closed to the public.)

Louis A. Cox,

Secretary.

[S-1145-81 Filed 7-24-81; 2:07 pm]

BILLING CODE 7710-12-M

11

SECURITIES AND EXCHANGE COMMISSION.

DATE AND TIME: July 23, 1981, 2:30 p.m.

STATUS: Closed meeting. The Commission will hold a closed meeting on Thursday, July 23, 1981, at 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Shad and Commissioners Loomis and Thomas determined to hold the aforesaid meeting in closed session.

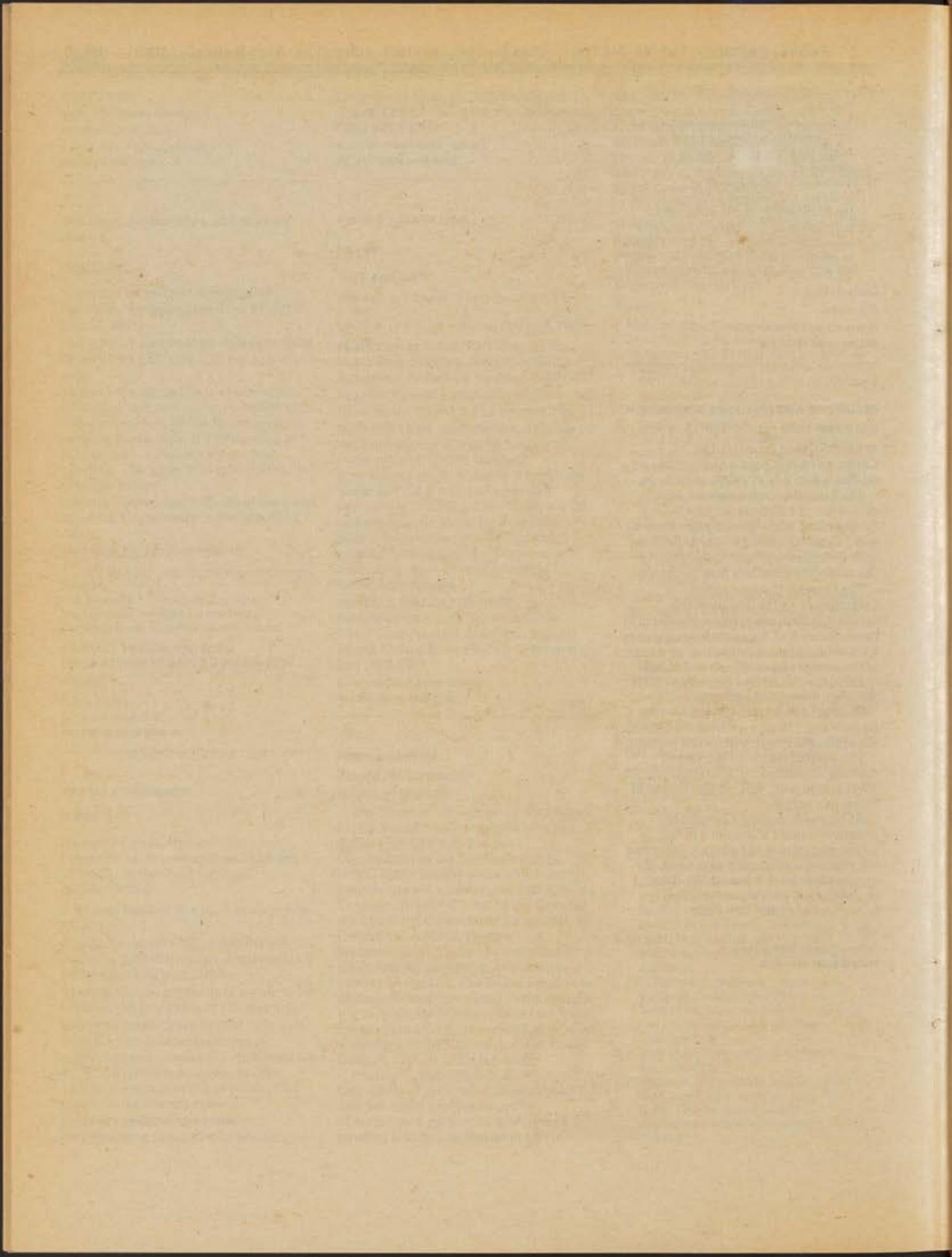
The subject matter of the closed meeting scheduled for Thursday, July 23, 1981, at 2:30 p.m., will be: Settlement of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

July 23, 1981.

[S-1139-81 Filed 7-24-81; 10:24 am]

BILLING CODE 8010-01-M



federal register

Tuesday
July 28, 1981

Part II

Civil Aeronautics Board

**Investigation Into the Competitive
Marketing of Air Transportation—Retail
Pricing Phase**

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[EDR-429; Docket No. 39836; July 21, 1981]

Tariff Flexibility

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to allow, but not compel, airlines to use a tariff flexibility system for domestic passenger air fares for the period until January 1, 1983, when airlines will no longer be required to file tariffs for domestic transportation. The system is designated to allow airlines and travel agents to prepare for the transition at their own pace.

DATES: Comments by: August 26, 1981. Comments and relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: August 6, 1981. The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 39836, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: George S. Baranko or Barry Molar, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-6011 or 202-673-5205, respectively.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is the outgrowth of two separate Board proceedings, the *Investigation into the Competitive Marketing of Air Transportation* (Docket 36595) and a rulemaking on "maximum tariffs" (Docket 38746; EDR-408; 45 FR 64864; September 30, 1980). The procedural background of this proposal is more fully discussed in Order 81-7-108, attached as an appendix and incorporated here by reference.

In recent years, the Board has given air carriers broad flexibility in setting their domestic passenger fares and permission to file tariffs stating those fares on short notice. Remaining intact, however, are the basic provisions of section 403 of the Federal Aviation Act that require carriers to file all fares in

tariffs with the Board and to charge passengers the amounts set forth in applicable tariffs, no more and no less. The Board is now proposing an exemption from section 403, which would be set out in 14 CFR Part 221, that would permit, but not compel, airlines to use a flexible tariff-filing scheme for domestic passenger fares. The scheme is intended to allow an orderly transition period until January 1, 1983, at which time the Airline Deregulation Act provides for the expiration of section 403 with respect to domestic air transportation.

The flexible tariff-filing scheme is designed to promote increased reliance on competition yet respond to the main concerns expressed by parties in the earlier proceedings. The reasoning behind and details of this proposal are discussed fully in Order 81-7-108. This notice sets out the actual text of the proposed amendment, with a brief discussion.

Under the proposed rule, an air carrier would be required to file a tariff stating an unrestricted coach fare for each pair of U.S. points that it served. The filing in tariffs of other fare categories, such as first class, night coach, or supersaver, would be permissive. Carriers could thus continue to file all their fare categories, as they do today, file a few of them, or file only unrestricted coach fares. For each category that it chose to file, the carrier would state a fare and the conditions under which the fare category was available.

If a passenger purchased a fare category that was filed in a tariff, carriers could not charge more than the fare on file, but could charge any amount less than that fare. If the purchased fare category were not on file, then the permissible selling prices would depend on the kind of service. For first class or other premium service that included amenities beyond the carrier's basic unrestricted point-to-point service in that market, there would be no regulatory constraints on the actual selling price. For all other fare categories not filed in a tariff, the actual selling price could not exceed the unrestricted coach fare on file, which would continue to be subject to the Board's fare policies under 14 CFR Part 399, Subpart C. That subpart establishes zones of limited suspension, based on the standard industry fare level (SIFL).

Travel agents would, as a regulatory matter, have the same freedom as carriers to charge fares below filed amounts or, for first class and other premium service, charge fares at any level when no tariff is on file. Carriers that wished to continue today's practice of establishing retail prices to be

charged by their travel agents could do so, by arranging for such fixed fares by contract with their agents. Carriers could file notice of the arrangements in tariffs, but an agent's failure to observe them would not be considered a violation of the Federal Aviation Act or the Board's rules. The amendment of Part 221 would not constitute Board approval of such contracts under section 412 or a grant of antitrust immunity under section 414.

In markets where the unrestricted coach fare on file was also used for the construction of joint fares, no additional tariff filings would be required. In markets where a different fare was to be used for construction, that amount would also have to be filed in a tariff. The current practice in some markets of filing two coach fares, one for local traffic and one for construction of joint fares, could thus continue. In any event the constructed joint fare, unlike single-carrier fares, would be binding as it is today on both carriers and agents, unless the carriers agreed to a lower joint fare. Carriers that agreed to a lower joint fare could file or not file it in a tariff, at their option. Either way, such an agreed-upon joint fare would, as a regulatory matter, be only a ceiling, and carriers and agents would be free to charge a lower amount without violating section 403 or the Board's rules. As discussed above, however, carriers could specify by contract with their agents that such joint fares must be charged exactly.

The Board also invites comments on an alternative approach. Carriers would be required to file tariffs describing all their fare categories instead of merely normal unrestricted coach fares and, where different, the fare for construction purposes. In all other respects this alternative is the same as the first proposal so that, for example, carriers would still be free to charge below their filed fares. This alternative would ensure that more information is available to travel agents and others through the tariff system, but it might encourage price-signalling and discourage fare innovation. It is discussed further in Order 81-7-108.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, took effect on January 1, 1981. The Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

The analysis is required to describe the need, objectives, legal basis for, and flexible alternatives to the agency's proposed action. These requirements are met by the discussion above and in Order 81-7-108, attached as an appendix and incorporated here. In addition, the analysis must include a description of the small entities to which this proposal would apply, the reporting, recordkeeping, or other compliance requirements of this proposed rule, and any other Federal rules that may duplicate, overlap, or conflict with it. The proposed rule would apply to certificated air carriers, some of which may be small businesses, and to travel agents, most of which are small businesses. There would be no reporting or recordkeeping requirements. Since the proposed rule would be an exemption from existing law and is purely permissive, there would be no new compliance requirements. Finally, there are no other Federal rules duplicating, overlapping, or conflicting with the proposal.

The Proposal

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 221, *Tariffs*, as follows:

In § 221.3, the first sentence of paragraph (a) would be amended by inserting "or (e)" and a new paragraph (e) would be added, to read:

§ 221.3 Carrier's duty.

(a) *Must file tariffs.* Except as set forth in paragraph (d) or (e) of this section, * * *

(e) *Domestic passenger fare tariffs.*

For interstate and overseas air transportation of passengers, the following provisions apply to each pair of points served by an air carrier:

(1) The carrier shall file a tariff stating an unrestricted coach fare for service between those points. The carrier may also file tariffs describing other fare categories (e.g., first class, super-saver). Such tariffs shall include the availability conditions applicable to each fare category filed. The carrier shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may charge less than that fare. If there is no fare on file for the fare category purchased by the passenger, the carrier shall not charge more than the unrestricted coach fare on file, except for service that includes additional amenities.

(2) The carrier shall also file a tariff stating the amount to be used for construction of joint fares for interline service, if that amount is different from the unrestricted coach fare on file. Joint

fares constructed from such filed amounts shall be binding on carriers and ticket agents except for interline routings where the carriers have agreed to charge lesser amounts.

(3) Ticket agents shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may, except as set forth in paragraph (e)(2) of this section, charge less than that fare. If there is no fare on file for the fare category purchased by the passenger, the ticket agent shall not charge more than the unrestricted coach fare on file except for service that includes additional amenities. A carrier may arrange, by contract with its ticket agents, to specify fixed fares to be charged by the ticket agents, and may provide notice of such arrangements in its tariffs. Failure of ticket agents to observe such arrangements will not, however, be considered a violation of the Act or of Board rules. The Board does not hereby approve such contractual arrangements under section 412 of the Act or exempt them from the antitrust laws under section 414.

(4) Air carriers and ticket agents are exempted from the requirements of section 403(a) and (b)(1) of the Act and the other provisions of this part to the extent necessary to allow the filing of tariffs and the charging of prices for interstate and overseas air transportation as set forth in this paragraph (e).

(5) In this paragraph, "charge" includes "charge," "collect," "demand," and "receive," as those terms are used in section 403 of the Act.

Alternative Proposal

Paragraph (e)(1) would read:

* * * * *

(e) * * *

(1) The carrier shall file a tariff stating an unrestricted coach fare for service between those points. The carrier shall also file tariffs describing all its other fare categories (e.g., first class, super-saver). Such tariffs shall include the availability conditions applicable to each fare category. The carrier shall not charge any passenger more than the fare on file for the fare category purchased by the passenger, but may charge less than that fare."

(Secs. 102, 204, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 754, 757, 758, 760, 769, 771, 788; (49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482))

By the Civil Aeronautics Board,

Phyllis T. Kaylor,
Secretary.

Appendix to EDR-429; Order 81-7-108—Investigation Into the Competitive Marketing of Air Transportation—Retail Pricing Phase

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of July 1981.

Investigation into the Competitive Marketing of Air Transportation—Retail Pricing Phase, Docket 36595; EDR-408, Notice of Proposed Rulemaking to Amend Parts 221, 296 and 297 of the Board's Economic Regulations, Docket 38746, EDR-429, Notice of Proposed Rulemaking to Amend Part 221 of the Board's Economic Regulations, Docket 39836.

Tentative Order

By Order 79-9-64, September 13, 1979, we undertook an examination of the current system of marketing air transportation and whether that system would be responsive to the needs of air carriers in a deregulated environment. Two lines of inquiry were drawn: One, whether we should continue to approve and grant antitrust immunity to air carrier conference agreements that establish the existing travel agency system, and two, whether we should retain the tariff filing requirement or modify it to facilitate change in anticipation of the end of the statutory tariff structure in domestic transportation.¹ The "agreements issues" are the subject of an oral evidentiary hearing now before an administrative law judge. This order sets out our tentative decision on the tariff issues as they affect domestic air transportation.²

We have tentatively decided to adopt a transitional policy permitting greater pricing flexibility while retaining certain features of tariffs that may facilitate interlining and the dissemination of information through posting of prices. In EDR-429, issued along with this order, we are proposing an amendment of 14 CFR Part 221 that would exempt carriers and agents from portions of section 403. Under our proposal, all carriers would have to continue filing fares for unrestricted coach service. The tariff

¹The provisions of section 403 and most provisions of section 404 of the Federal Aviation Act, particularly those which proscribe unjust discrimination in the sale of air transportation, will expire for interstate and overseas air transportation on January 1, 1983.

²The question of increased tariff flexibility in international air transportation will be deferred pending further consultation with other federal agencies.

price would serve as a ceiling for the fare, but carriers would be free, at their discretion, to charge less. The filing of the unrestricted coach fare would assure publication of local fares to be used in constructing interline joint fares. Where a carrier uses a different rate for constructing joint fares than the rate filed as the unrestricted coach fare, it would be required to file that different rate as well. Other carriers and travel agents would therefore have access to the specific price information alleged to be the prerequisite to widespread interlining.

Carriers would have the option of filing fare categories other than the required tariff price, as well as any associated conditions for obtaining these fares.³ Carriers and agents could charge less than the posted fare without violating the Federal Aviation Act. They would also be free to file prices above the unrestricted coach fare for premium services such as first class, or to charge higher prices for those services, without filing them. Carriers would likewise be free to continue the existing unitary pricing system by making the tariff fare the only actual price for that class of service. However, such unitary pricing would have to be enforced by contract rather than CAB regulation. Carriers would, of course, be able to agree to offer joint fares which are below the mandatory ceilings and they would have the option of publishing these lower joint fares, or the segment fares used to construct them, in their tariffs.

We are also requesting comments on an alternate proposal. The alternative is essentially similar to our first proposal in the forms of pricing flexibility that would be permitted. It differs only in that all generally available fare categories would have to be filed, in addition to an unrestricted coach fare. Carriers would have the freedom to charge less than their posted prices, but this proposal would require the carriers to file more information.

If we should adopt either alternative we will reopen the record in this case after a year to reexamine our flexible tariff filing policies. We will not impose reporting or recordkeeping requirements at this time, but we will informally monitor developments. Since the parties to this proceeding may be in a better position to develop this sort of information, we hope that they will be prepared to supply us with relevant data at the end of this trial period.

Finally, we have decided to deny motions requesting that Member Elizabeth Bailey be disqualified from

participating in these proceedings. Our reasoning is set forth below in section VI.

I. Procedural History

When we instituted the *Investigation into the Competitive Marketing of Air Transportation* in September 1979, we intended it as a vehicle for a comprehensive examination of the air transportation marketing industry. For that reason, we placed at issue both the agency agreements and tariff flexibility. To facilitate parties' discussions of the legal and policy implications of increased price competition, we suggested six alternative means of granting air carriers increased pricing freedom in the sale of air transportation.⁴

In September 1980, we issued EDR-408, 45 FR 64864, September 30, 1980, the so called maximum tariff rulemaking. There, we proposed to allow carriers in both domestic and international markets to file tariffs stating only maximum amounts, and to let them charge any amount below the maximum. As advantages of that approach, we mentioned that it seemed to promote competition and meet various carriers' requests for pricing freedom in Pacific markets, and possibly lessened the competitive inhibitions and the higher retail prices the present tariff system may produce.⁵

The similarity of the issues raised in the maximum tariff rulemaking with some of those in the retail pricing portion of the *Marketing* case led us to coordinate our consideration of the two proceedings. In addition, we took steps to expedite consideration of the pricing issues the *Marketing* case and directed the presiding judge to certify the record to us immediately at the close of the hearing because of the limited time that remained to develop an interim pricing policy before our authority over domestic tariffs terminates.⁶ We also assured parties of our intention to provide further opportunity to comment on this interim policy.

On March 26, 1981, Administrative Law Judge Ronnie Yoder certified the record on the retail pricing issues developed in the *Marketing* case.⁷ Briefs

³These alternatives ranged from the total elimination of tariffs, to proposals establishing a zone of pricing flexibility or the adoption of a two tiered pricing structure whereby carriers would establish both "retail" and "wholesale" prices. It was later recognized that the maximum tariff proposal encompassed the alternatives designed to permit a range of pricing flexibility.

⁴Comments were due on December 1, 1980.

⁵See Orders 80-12-70, December 12, 1980 and 80-12-82, December 18, 1980.

⁶The record was later reopened to permit the cross-examination of Dr. James Miller in accordance

were filed on June 1, 1981⁸ and oral argument was heard on June 15, 1981.⁹

II. Overview

Central to our decision is the recognition that on January 1, 1983, the requirement to file and adhere to tariffs for domestic passenger air transportation will end. Our concern is therefore with the development of a transitional policy to assist carriers and travel agents in adjusting to an air transportation system that will function completely without tariffs in a relatively short time.

Given this reality, we can at the outset dispose of certain arguments against any change in the present tariff regime. Many of the arguments extolling the virtue of tariffs imply that tariffs should be permanently retained as a feature of the air transportation system. But the fundamental decision to eliminate tariffs has already been made by the Congress, and we fully support its determination that the process of deregulation involves restoring pricing decisions to the workings of the competitive marketplace.¹⁰ When viewed in this light, the issue becomes one of timing. Many parties made arguments on the benefits of existing travel agent programs which they allege would be lost if the Board deviated from existing policies. While the benefits of the travel agency programs are relevant in assessing the public interest, they are

with our decision in Order 81-4-47. No party has objected to the admission of the testimony and exhibits sponsored by Dr. Miller. Consequently, his testimony, exhibits and transcripts of his cross-examination are accepted into the record.

⁸Parties' briefs are summarized in the attached Appendix. In addition, we grant the motions of British Airways and the National Passenger Traffic Association (NPTA) for leave to file their briefs one day late.

⁹With regard to outstanding procedural matters, we confirm earlier oral denials of the NPTA motion to expand its time allotment for oral argument, the motion of the Association of Retail Travel Agents (ARTA) to discontinue proceedings, and the motions of the ARTA and Associated Travel Nationwide to postpone oral argument pending a ruling on their motions for disqualification of Member Bailey. In addition, we grant the motions of the American Express Company, the Bureau of Domestic Aviation, the International Airforwarders and Agents Association, the International Air Transport Association, and the American Society of Travel Agents to correct the transcript of the oral argument.

¹⁰Some parties urge that we do nothing because there is a possibility that Congress may reverse this determination. However, we cannot, as a matter of sound administrative practice, presume that the statute will be amended and we find it counterproductive to defer preparation for the elimination of tariffs on the chance that Congress might alter this plan. Actual experience under a transitional policy may prove an invaluable aid to Congress in deciding whether tariffs are required for the smooth functioning of the domestic air transportation system.

³If a carrier chose to file a restricted fare it would have to file the eligibility conditions.

but one factor to be weighed in our decision to adopt a transition pricing policy.¹¹ They are not properly the sole basis for our decision.

Some parties argue that there is no need for change since the current system satisfies carriers' legitimate needs without inhibiting pricing flexibility. If the current marketing and distribution system is the product of competitive pressures and has not been inhibited by regulation, the system is likely to remain largely unchanged by the loosening of government oversight.¹² If, on the other hand, the system is largely influenced by regulatory constraints, and not market forces, then some relaxation in this area will bring the benefits to airlines and consumers that can be expected from a more competitive system.¹³ Others have urged that we need only continue our current liberal policies for regulating industry pricing behavior as the best means of effecting an orderly transition to 1983. But this approach assumes a uniformity of air carrier interests that is fundamentally inconsistent with reliance on competitive forces to govern the industry. We think the better course of action is to permit carriers to make the transition to complete pricing flexibility at their own pace.

Our preference is for allowing markets to function relatively free of unwarranted government interference. We believe that continuation of the rigid tariff system, however liberal our exemption policies under that system, would be justified only if we were convinced that the pricing practices likely to emerge in a more competitive environment would create the

probability of undue harm to the public, air carriers, travel agents or other segments of the industry. No convincing evidence of the likelihood of substantial harm appear in the record. While some travel agents may be less prepared than others for a more competitive environment, we cannot conclude that the flexibility we intend to authorize will have any negative impact on the industry or consumers, and the proposal may lead to substantial benefits to the public.

With these general observations in mind, we turn to the issue of what sort of transitional pricing policy would best serve the public interest. The best approach, in our view, is a purely permissive one that does not mandate any changes in carrier pricing and that allows individual carriers to determine how to adjust to the ultimate elimination of tariffs. In fashioning our proposal for tariff flexibility, we are nevertheless sensitive to the objections that were voiced against relatively complete pricing freedom. We are consequently formulating a plan that responds to legitimate concerns by preserving certain features of the tariff system as an interim measure. In the remainder of this order, we consider our reasons for adopting a permissive transitional policy, outline the specific aspects of our tariff flexibility proposal, discuss the need to retain certain filing requirements in the interim adjustment period, and analyze the major arguments raised by the parties in the *Marketing* case.

III. Our Permissive Policy

When we instituted this proceeding, we placed in issue the need to mandate changes in the way in which carriers now market their air transportation services including, specifically, the possibility of introducing a differentiated fare structure that would be binding on carriers and their agents. This interest in mandatory differentiated pricing mechanisms resulted in large measure from the implicit assumption that carriers might not, in the absence of tariffs, have the legal right to dictate prices charged by travel agents.¹⁴ Based on an assumption that unitary pricing would not survive after 1983, a differentiated tariff structure was one way of insuring that carriers moved their pricing practices toward those which they would have to adopt in 1983. However, we are no longer persuaded

¹¹Manufacturers are generally foreclosed from setting the resale price of their products through independent retailers. *California Liquor Dealers v. Midcal Aluminum*, 445 U.S. 97, 102 (1980); *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911).

that unitary pricing would constitute resale price maintenance. Virtually all parties agree that airlines could lawfully set the price for retail sales because the "agency exception" applies to the air carrier/travel agent relationship, at least where the agent has not assumed the risk of loss for an unsold seat.¹⁵

Because carriers will be able to continue unitary pricing practices after 1983, we see no need to force changes in the industry at this time. Mandatory policies could create distortions based on regulatory perceptions that differ from carriers' behavior in the market. While the oral evidentiary hearing developed useful background information, such a proceeding cannot conclusively establish the specific impact that alternative practices might have on the industry or consumers. Any decision to mandate policies could induce pricing practices in which carriers would not otherwise engage and would discontinue after 1983.

There is also a virtual consensus among the parties that whatever pricing practices we endorse should be permissive.¹⁶ These parties argue, and we agree, that a permissive approach would be most consistent with the fundamental policies of the Airline Deregulation Act. It is our responsibility under the Act to reduce regulatory intervention in the industry and to rely instead on the market forces to protect and foster the public interest. If, as we tend to believe, carriers will be legally able to continue establishing their own retail prices, any modification of the tariff filing requirement that permits, but does not mandate, price differentiation of air transportation will increase the pricing options available to air carriers. Carriers responding to the marketplace forces will determine whether there will be changes in marketing, the type of changes, and the pace of their implementation.¹⁷

¹²This exception permits a supplier to dictate prices charged by its distributors if a *bona fide* agency relationship exists between the supplier and distributors. *Simpson v. Union Oil Co.*, 377 U.S. 13 (1964); *United States v. General Electric Co.*, 272 U.S. 476 (1926). The Department of Justice agrees with the interpretation and states that, in any event, it would not prosecute airlines engaging in the practice. DOJ Statement of Position at 9.

¹³The only exception appears to be Central Data Corporation (Ticketron). Ticketron argues we should require carriers to file tariffs that do not include carriers' marketing costs, essentially wholesale tariffs. Distribution outlets would then be guaranteed the freedom to add their individual costs to arrive at the retail price.

¹⁴IATA argues that carriers will be subject to antitrust lawsuits even though a *bona fide* principal/agent relationship exists. The possibility of frivolous law suits would not justify continuing a unitary tariff. In any case, carriers will be exposed

¹¹Issues relating to whether the ATC and IATA travel agency agreements should be approved under section 412 are being heard by an administrative law judge, and we are taking no action on those phases of the *Marketing* case at this time. The standard for exemption from section 409 of the Act is consistency with public interest. In contrast, the hearing under section 412 will determine whether the agreements are anticompetitive and whether they should be approved because of transportation benefits. Since section 412 is not involved here, we have not implied any view on the question of transportation benefits from the agency agreements in deciding to permit greater pricing flexibility under the general public interest standards.

¹²Indeed, we would then only have reduced administrative and regulatory reporting burdens on carriers.

¹³The record demonstrates that air carriers are exploring new marketing methods. In response to our invitation to carriers in Order 79-6-65 to submit pricing experiments we received a host of contractor bulk fare proposals and Southwest's Ticknet program. Outside the *Marketing* case we approved General Services Administration fares, Order 80-7-63, establishing fare discounts for government travelers. Recently, several carriers have implemented frequent-flyer fares which give customers bonus travel based on miles traveled or trips taken. United Airlines has also requested an exemption to permit travel agents to add service fees to the price of a ticket. Docket 37642.

Another of the alternatives we placed at issue in the instituting order was an immediate and complete exemption from the tariff filing requirement of section 403. Apparently because of a perceived need to afford the industry time to position itself for the elimination of tariffs, few parties support an immediate exemption. Even the Department of Justice would wait six months before eliminating tariffs so that the industry could prepare for the change. We therefore find that a total exemption from tariff filing is not warranted at this time. There are sound policy reasons for continuing some moderate form of regulatory oversight to monitor fare levels and to assure the industry that the tools they believe are still necessary to construct mandatory joint fares and international through fares will be available throughout the transition.

IV. Tariff Flexibility

As noted, we are proposing to compel carriers only to continue filing unrestricted coach fares and to allow them to charge any price below that fare. We would implement this new authority through an exemption granted to carriers and ticket agents from section 403 of the Act set out in an amendment of Part 221 of our regulations. See EDR-429, issued along with this order. We believe that this proposal will promote increased reliance on competitive forces, bring the advantages that we envisioned might result from the maximum tariff, and yet be responsive to the chief concerns voiced by parties in these proceedings about maximum tariffs.

The hallmark of this proposal is that carriers would determine voluntarily whether to change their marketing practices. For our part, we would merely remove the inhibitions to innovative pricing practices inherent in the existing tariff filing system. We reject the arguments that equivalent opportunities for innovation can be maintained under the existing tariff structure with a continuation of the Board's liberal pricing regime. These arguments rest primarily on the assertion that the Board's policies permitting short term tariff filings virtually eliminate tariffs as a means of communicating prices in advance¹⁹ and that in the absence of

to no greater liability than firms in other industries, an outcome which Congress provided for in legislating the termination of section 403 domestically in 1983.

¹⁹ See ER-1205, 45 FR 87008, December 24, 1980, amending Part 221 of the Board's regulations, 14 CFR 221.195. Carriers are now permitted to request Special Tariff Permission (STP) to implement fares on as little as 12 hours' notice.

tariffs ordinary marketing requirements would result in no less extensive communication of pricing information.¹⁹ The arguments miss the central point for our action.

First, it is by no means clear that carriers could routinely use the Board's Special Tariff Permission (STP) procedures for all pricing innovations. The mere presence of a mandatory filing system limits the range of options that a carrier might be willing to utilize. Our experience with carrier pricing experiments since the *Marketing Case* was instituted suggests that any truly novel experiments will be met with formal opposition by either competing carriers or agents. This opposition virtually assures that the fares cannot be implemented on short notice, and that competitors will have greater opportunity to match. The prospect of losing a competitive advantage as carriers' pricing proposals are immediately matched may well provide a disincentive to experimentation.²⁰ Even if carriers could implement a new fare on one day's notice, the filing requirement itself acts to inhibit legitimate pricing behavior by adding to costs and reducing benefits of flexible pricing policies. For example, in contemplating a policy of short term price reductions a carrier would have to weigh the expense of potentially numerous short term tariff filings. This could have a particularly chilling effect on carrier interest in decentralizing marketing strategies to allow regional or local managers to offer discounts in specific markets to meet particular local demand.²¹

It is also conceivable that a tariff requirement—by alerting competitors in advance and allowing them to match—might greatly reduce a carrier's incentive to offer selective discounts to establish an identity and a healthy traffic share in new markets.²² We cannot overlook the further possibility that the current tariff system may have unduly inhibited carriers from offering discounts to certain large volume customers. We therefore conclude that a flexible tariff policy is more consistent with the Congressional directive to give weight " * * * to the desirability of

¹⁹ Brief of the American Society of Travel Agents (ASTA) pp. 17, 18, 32-34; Brief of the Air Traffic Conference, at pp. 5-6.

²⁰ See e.g. Brief of American Automobile Association at 7, suggesting that the prospect of matching discounts will discourage carriers from offering volume discounts. The ability to match depends of course, upon knowledge of prices being offered.

²¹ Dr. James Miller (BDA): Opportunities for last minute changes are restrained by posting. 32 Tr. 82.

²² In citing these examples, we are not predicting that they will necessarily occur in the absence of tariffs.

allowing each air carrier to determine prices in response to its own costs and the competitive conditions of the route it serves."²³

Finally, an unavoidable aspect of the tariff system is price signalling, which has long been recognized as unacceptable anticompetitive behavior in unregulated industries. Circulation of advance price information to competitors through the tariff system was once justified because carrier pricing behavior was totally regulated. But continuing the requirement that carriers must signal their pricing strategies is anomalous now that these pricing decisions are largely out of our control. As the process of deregulation proceeds, we must gradually remove these incidents of the prior regulatory structure, especially when the mechanics of tariff filing involve practices that are often viewed as incompatible with competitive behavior.

At the same time, our proposed rule retains certain features of tariffs that, at least according to some parties, should facilitate interlining and the dissemination of information through posting of prices. With carriers required to continue filing an unrestricted coach fare, and a construction fare if different,²⁴ other carriers and travel agents would have sufficient information for mandatory joint fare construction. Moreover, this requirement would provide a specific fare for use in constructing through fares for international air transportation. Our proposal therefore mitigates the major concerns expressed about interlining, since carriers and their agents could know through the operation of the tariff system the exact price to be charged an individual passenger, even if one of the interlining partners were engaging in individual flexible pricing. In addition,

²³ S. Rep. 95-631, 95th Cong., 2d Sess. 108 (1978).

²⁴ In markets where the unrestricted coach fare on file is also used for the construction of joint fares, no additional tariff filings would be required. In markets where a different fare was to be used for construction, that fare would also have to be filed. The current practice of filing two coach fares, one for local traffic and one for construction of joint fares, could thus continue. In any event, the constructed joint fare, unlike single carrier fares, would be binding as it is today on both carriers and agents, unless the carriers agreed to a lower joint fare. Carriers that agreed to a lower joint fare could file or not file it in a tariff, at their option. Either way, such an agreed-upon joint fare would, as a regulatory matter, be only a ceiling, and carriers and agents would be free to charge a lower amount without violating section 403 of the Act or the Board's rules. As discussed above, carriers could specify by contract with their agents that such joint fares must be charged exactly. Commuter carriers now file a fare for construction of joint fares with certificated carriers. The proposal would not affect this practice.

the required filing would also allow us to monitor basic fare levels throughout the industry and better fulfill our responsibilities to assess the impact of deregulation in our report to Congress.²⁵

With the exception of constructed joint fares carriers choosing to file some or all of their fare categories, would not be bound to charge only the exact fares. Carriers would be prohibited from charging more than the price filed for each fare category purchased by the passenger. However, they could charge any amount less than the fare on file. If carriers chose to maintain a unitary price system they would notify the agents directly and could not rely on the tariff system.²⁶ In effect, carriers could individually decide to continue the present system although the mere posting of a price in the form of a tariff would not establish an enforceable unitary price.²⁷

The primary advantage of this permissive posting system is that it will provide a good test of the value of tariffs as opposed to other forms of communicating and distributing pricing information during the transition. If tariff filings are an effective means of distributing price information to agents and consumers, carriers would use the option of filing some or all their prices in addition to their coach fare. There would be no regulatory pressure imposed to revise current practices. Carriers would also have the opportunity to make adjustments before tariffs are eliminated in 1983.

In the notice of proposed rulemaking we are also requesting comments on an alternative proposal that would mandate, instead of permitting, carriers to file a fare and availability conditions for each of their generally available fare categories. Carriers would still be free to charge prices less than those posted, or simply not to have special fares.

An alleged advantage of this alternative is that it would provide us with more information on pricing practices during the transition, to better fulfill any monitoring responsibilities. However, most of the data the Board uses to obtain such information do not come from the tariff system. Finally, a

mandatory filing system might provide additional assurance to consumers about the availability of fares and the conditions that must be met to qualify for the posted prices.

We are interested in receiving comments on whether it would be difficult to formulate a precise definition of the "generally available fare categories" that would have to be filed, without forclosing some new forms of price competition. Parties are also asked to discuss whether the mere requirement that carriers who maintain a variety of generally available fare categories must file them, could reinforce the existing tariff system and impede experimentation during the transition to a tariffless environment. Finally, we are soliciting carriers' views on whether the alternative proposal may perpetuate and perhaps even increase their regulatory and administrative burdens. We invite parties to comment on any other features of the proposals and the relative attractiveness of the two alternatives.

We intend to monitor the results of any flexible pricing policy that we adopt through our Bureau of Domestic Aviation, in concert with the Bureau of Compliance and Consumer Protection. In a year, we would request comments or otherwise invite parties to submit information on the effects of this policy on the airlines, travel agents and consumers. One of the chief advantages we see from allowing some tariff flexibility at this time is that we will have this opportunity to study the actual effects on the marketplace and to judge the need for tariffs as a means for providing price information and facilitating interlining. We, of course, retain the ability to restore the current tariff system at any time, even before the scheduled evaluation, if it appears necessary. We turn now to a detailed analysis of the various arguments against tariff flexibility and our reasons for concluding that the public interest is best served by permitting the opportunity for pricing innovations at this time.

V. The Marketing Record

A. Effect on Interline Service

Many opponents of a change in the existing system argue that exact price tariffs are essential to preserve the existing interline system.²⁸ This

²⁵ See e.g., Thomas Welburn (British Airways) BA-T-1 at 12, 13, 14 Tr. 74; Randall Malin (USAir) 14 Tr. 55-57; Robert Wilson (Ozark) Tr. 35-38; Charles Pfaff, (American) 10 Tr. 169-171. See also the following briefs to the Board: AAA at 8; ASTA at 50, 57; ATA at 13; British Airways at 25-29; IATA at 32-39.

argument, along with other claims about the benefits of mandatory tariffs (such as their alleged value to preserving the exchangeability of tickets among carriers), are really directed at Congress' basic decision to abolish tariffs rather than at our attempts to develop a transitional policy. For the most part these arguments are also premised on Board action mandating retail price competition. As a result, they simply do not apply to a decision establishing permissive pricing flexibility. Since Congress has eliminated the tariff filing requirement as of January 1, 1983, our emphasis during the transition must be on developing means to help the industry deal with the post-1982 environment. The principal advantage of our proposed rules is that they give carriers the opportunity to experiment and develop new pricing programs in preparation for deregulation but, at the same time, leave those who wish to preserve unitary pricing free to do so.²⁹

Our proposals may require some adjustments in interline settlements and carrier agreements relating to the uniform acceptance of travel documents. However, to the extent carriers find interlining is in their best interest, they will find solutions and not abandon a fixed tariff until the problems are worked out.³⁰

Many parties predicted the demise of the interline system when the Board eliminated fixed commission, claiming that remitting would be cumbersome where interline partners had differing commission rates. Carriers were able to resolve these difficulties by agreement.³¹ In the same vein, we can presume that carrier self-interest dictates that

²⁸ The fact that the Board would not act to prevent charges below exact price tariffs should not in our view decrease whatever benefits tariffs may have in facilitating interline and related services. Carrier A's exact price tariff would give notice to Carrier B that it could rely on the price listed for settlement purposes.

²⁹ The tremendous growth of point-to-point low fare services suggest that a complex interline system that may have been critical in the early days of the industry or when many carriers were excluded by regulations from serving many markets may be less critical now. Maintenance of the system is very costly to the airlines and with the advent of computerized ticketing the continuing need for the universal ticket stock is not readily apparent. Indeed, carriers may choose for cost or competitive reasons to limit interlining. This does not mean the system is deteriorating but merely indicates a continuation of the transition to a competitive system that meets consumer's needs.

³¹ See *Competition for Agency Services Show Cause Proceeding*, Orders 80-2-33, February 5, 1980; 80-5-157, May 29, 1980. In the cargo area, we have no evidence of international rate construction difficulties following the elimination of domestic tariffs, and no reason to believe that there would be greater problems in the area of passengers.

²⁵ Of course, the unrestricted coach fare would continue to be regulated under the SIFL formula, 14 CFR Part 399, Subpart C.

²⁶ We do not intend to prevent carriers from giving notice in tariffs that they are maintaining unitary price systems. Carriers would now, however, be permitted to use the tariff system to enforce uniformity on their agents. Enforcement would be accomplished through the principal-agent contract, consistent with agency arrangements in general.

²⁷ Since carriers would be permitted to file other fares with the Board the informational value of tariffs will be preserved.

adequate price information will be disseminated to consumers and agents through the same channels that carriers now use. Even with tariffs, the airline industry relies on private price information publications and computerized reservations systems to provide basic price information. Consumers rely on such readily available sources of information as advertising, the memo tariffs published by the Airline Tariff Publishing Corporation (ATP), computer systems, or the carriers themselves, rather than on tariffs.

Several parties argue that provisions of U.S. air services agreements with foreign governments foreclose changes to the domestic tariff system. Most of these arguments are premised on the view that any transitional pricing policy would substantially curtail foreign carriers' opportunities to interline with U.S. carriers or otherwise place them at a competitive disadvantage.³² We foresee no serious difficulties in the construction, sale or marketing of international travel to/from the U.S. either under our proposed transitional policy or after domestic tariffs are eliminated. During the transition, our proposal would insure that foreign carriers have access to a fare that can be used for interline fare construction purposes. Moreover, there is every reason to believe that some system for disseminating price information would continue after official tariff filing requirements end. Through fares to/from interior U.S. points could still be constructed using the memo tariffs of ATP and the individual domestic carriers. Arbitrariness in international tariffs could continue to be adjusted to reflect changes in domestic fares.

In sum, there is no basis for concern that interlining and ticket exchangeability would be disrupted by the pricing flexibility that we propose. To the extent legitimate objections have been raised, we have dealt with them by retaining certain mandatory aspects of the tariff system. Other objections are mooted by our selection of a permissive rather than mandatory approach. The pricing alternatives that emerge would be the product of carrier choice and our

³² The Department of State in a motion to terminate EDR-408 filed May 14, 1981, also argued that elimination of binding domestic tariffs might deny fair and equal access to foreign carriers. To the extent the parties argue that bilateral agreements in themselves require the continuation of the existing domestic tariff system, we reject their arguments. While international carriers are entitled to fair and equal access to a domestic system, they have no right under bilateral agreements to dictate the type of system that will exist.

decision merely would serve to facilitate experimentation.

B. Impact on Travel Agents.

Much of the record in these proceedings has focused on the effects of a transitional pricing policy on travel agents. We view the possible impact of our actions on the travel agency system, rather than on individual travel agents, to be a legitimate concern in light of the system's central importance in the retail marketing network. Most parties predict some adverse consequences for travel agents, with net remission schemes and to a lesser extent volume discounts, discussed *infra*, causing the most concern.³³ Others argue, however, that changes during the transition will probably not be dramatic.³⁴ There is no conclusive evidence to support the specter of serious harm to the travel agency structure which would justify prohibiting specific pricing policies such as net fares.³⁵

Generally, carriers have strong incentives for maintaining an efficient and workable retail network, and, therefore, for taking the interests and needs of retailers into account.³⁶ Given the importance of travel agencies to airline marketing,³⁷ carriers would not be likely to adopt any approach that would seriously undermine them. Several major carriers for example, have indicated they would not engage in net remissions, at least where there was no

³³ Under a net remission scheme, a carrier would not pay a traditional commission to agents. Instead, it would simply tell the agent how much it expects to be paid and give the agent discretion to include a mark-up to the price charged to passengers.

³⁴ Aaron Gellman, testifying for ATC, indicated agents will probably survive in an environment of retail price competition. 6 Tr. 42.

³⁵ While there is a variety of forecasts about the impact on travel agents, estimates were made on the assumption that the Board would mandate net fares and/or eliminate travel agency exclusivity in its decision on the agreements phase of the case. Some of the estimates were: Aaron Gellman (ATC)—substantially more than half of the existing travel agency community would survive if contract bulk fares and other methods of ticket discounting became prevalent. 6 Tr. 80-81. Randall Malin (USAir)—weaker undercapitalized agents may not survive in a net remittance environment. 9 Tr. 80. Robert Nathan (ASTA)—if carriers give LTD's deep discounts "a number" of agencies will fail. 17 Tr. 40. Margaret Guerin-Calvert (DOJ)—to the extent a carrier charges lower prices to large volume purchasers, some agents will go out of business. 18 Tr. 181. and "not many firms will exit" with price and entry restrictions removed. 19 Tr. 41-42.

³⁶ See Roger Chase (TWA) 2 Tr. 71. DOJ agrees with this conclusion. Brief at 27.

³⁷ On the basis of information responses of 16 U.S. carriers that provided data on travel agency sales volume, agent sales generated between 31 and 68 percent of carrier passenger revenues. Ten of the 16 carriers reported agent sales of over 50 percent of revenues. See Information Response # 18 of the various jointly represented carriers. See also Exhibits AA-IR-15, DL-18, PA-23, RC-1, TXI-IR-18 and UA-IR-11.

passing of inventory risk from carrier to agent.³⁸ They maintain that as long as the airline is responsible for providing the service, honoring tickets sold, complying with various consumer regulations and assuming personal and property liability, it should set the price of tickets sold through travel agents. Net remissions might also be unattractive if carriers prove reluctant to allow agents to undersell them or depress demand by charging excessive prices, or to risk the loss of consumers' good will if advertised prices can be obtained at only a few outlets or if passengers are subjected to large surcharges.³⁹

We have other reasons to doubt bleak predictions about the demise of smaller agents based on economies of scale and other advantages that allegedly give larger agents a competitive edge. Similar arguments of a substantial industry shake-up were raised in opposition to open commissions. There were predictions that large volume agents would command commission premiums simply because of their control over substantial volumes of air transportation.⁴⁰

Experience has proved these predictions wrong. After initial instability, commission rates tended to settle at fairly uniform and higher rates.⁴¹ Moreover, the number of entrants into the travel agent business has continued to grow, and relatively few agents have left the field.⁴² In 1980, the number of travel agency locations increased by over 1200.⁴³ We have no reason to assume that the dire

³⁸ Randall Malin (USAir) 9 Tr. 86-87; Charles Pfaff (American) 10 Tr. 137; Sheldon Srulevitch (Braniff) 7 Tr. 111.

³⁹ The only carriers that seem likely to establish net remissions schemes are those whose route structures are especially suited for that method of marketing. Southwest is often cited as the best example. The Ticketnet program, it is argued, fits well into an essentially point-to-point system where the carrier does not interline.

⁴⁰ See Order 80-2-33 at 5.

⁴¹ As a general rule, overrides are paid on increased volume over a base period with a particular carrier and are therefore not related to the overall volume of the business itself. 13 Tr. 139-41. However, some carriers do not pay overrides, Continental for example, 11 Tr. 63, and some pay overrides on a straight sliding scale with volume. Some overrides are tied to sales on particular segments and new entry in markets. 13 Tr. 139.

⁴² See 28 Tr. 161-62. The number of travel agencies is growing at 9% each year. 17 Tr. 105-06. Despite record losses by the air carriers in 1980, it was a record year for travel agents in terms of sales handled and commissions earned. 5 Tr. 166. The average commission paid through the Area Settlement Plan rose from 8.4% in 1979 to 8.9% in 1980. Commission payments increased in the neighborhood of \$300 million to \$1,533,831,000. 5 Tr. 112-15.

⁴³ At the end of 1979 there were 16,112 total agency locations. As of 11/1/80 there were 17,339. 5 Tr. 99-100.

predictions about pricing flexibility will materialize any more than those about open commissions.

Moreover, there is also evidence that agents can benefit from increased pricing flexibility. For example, travel agents have benefitted from contractor bulk fare experiments. There is a general consensus that contractors should be entitled to a price concession because the inventory risk associated with those experiments is passed from airline to contractor.⁴⁴ Besides becoming contractors themselves, travel agents have become the primary sales outlets for contractor travel packages.⁴⁵ Other new competitive opportunities should also be fostered by our proposed action. For example, the ATC witness testified that travel agents could act as agents for purchasers in negotiating volume discount fares with air carriers.⁴⁶

As noted, we believe that carriers would have strong incentives to work with agents in planning the transition to a tariffless environment. To the extent that a permissive tariff policy benefits carriers by permitting experimentation, it follows that agents will continue to benefit as well to the extent that they are included in any experiments.⁴⁷ At this point of course, we can only speculate about opportunities for agents. However, in the absence of convincing evidence that a permissive policy would have serious negative consequences, adoption of this approach would be most consistent with our responsibilities under the Airline Deregulation Act.

C. Volume Discounts

We also reject arguments that our transitional policy should prohibit air carriers from offering price concessions to corporations or other purchasers of large volumes of air transportation.

⁴⁴BDA has suggested a blanket exemption for indirect air carriers' risk taking experiments. ASTA opposes such an exemption. It suggests the Board must continue to oversee such experiments. There is an outstanding show cause order proposing a blanket exemption to permit contractor bulk fares in their current form. By a concurrent Order 81-7-109 we are granting the proposed exemption and we will shortly propose a broader exemption.

⁴⁵The Davis Agency, a bulk contractor, reported around 60% of its ticket sales are being made by other travel agents, at a commission of 10.5%, which is higher than the average for all airline sales. (Davis Agency Statement of Position at 5.) Other participants in group contractor experiments report that as many as 90 percent of retail sales are made by travel agents at comparable commission levels.

⁴⁶5 Tr. 148, 6 Tr. 26-67. "Woodside" and "Action 6", travel agencies specializing in large commercial account business have apparently made an effort to negotiate an open commission rate on the basis of their large aggregate volume. 6 Tr. 99.

⁴⁷To a large extent, carrier marketing techniques are the result of carrier decisions that can be changed at any time, and they are not dictated by the Board.

There are several possible justifications for volume discounts. A discount tied to a volume purchase may reflect the value a carrier perceives in having a commitment of an assured number of passengers.⁴⁸ Business travel departments (BTD) may directly reduce carrier costs by conserving their in-house ticketing resources and saving the expense of additional personnel and ticketing equipment.⁴⁹ Finally, if BTD's experience lower overhead and have simpler ticketing requirements than travel agents, a volume discount might represent the saving to the carrier of part of the commission it would otherwise pay agents.

Some parties argue that selective discounts are discriminatory, whether based on volume certainty or alleged cost savings to the airlines by having corporations handle their own ticketing and reservations. They claim that if the Board permits price concessions to volume users, corporations will be able to command discounts far in excess of any cost savings or other benefit to the airlines.

This argument presumes that there will be a price war for volume business, and that at the end of the process, fares to business travelers will drop below costs.⁵⁰ To cover these projected revenue shortfalls, prices to discretionary passengers would be increased and they would end up subsidizing the price inelastic

⁴⁸A discount could be based solely on the premise that a purchaser will buy a substantial amount of transportation from the carrier. The promise to purchase reduces the risk of unsold seats, thereby adding to profitability or reducing loss. See 17 Tr. 116-17. An agreement could take the form of a customer promising to buy a precise amount of transportation, or it could simply take the form of a requirements contract, with no commitment by the purchaser to buy any amount. There are examples of these two forms of pricing behavior under the tariff mechanism. The discount fares for official government travel, approved by the Board in Order 80-7-63, were examples of a discount based on a requirements contract. The government contracted to use the discount carriers whenever possible unless agency priorities, including total trip cost, precluded use of the carriers. Another form of volume discounts has been manifested in ticket books offered by World. Under this system, a customer pays the full tariff price for 10 tickets and receives an eleventh ticket coupon free. This translates into a 9.1 percent discount for each ticket.

⁴⁹Many large corporate purchasers of air transportation have their own business travel departments (BTDs) which are equipped with automated ticketing and reservations systems. Ticket discounts based on cost savings to carriers may be described as service fees. Hart Daniels (Continental) testified that an additional reservations agent is necessary for each additional 12 to 15 calls per hour. An additional reservations agent costs \$1500 a month. 11 Tr. 31.

⁵⁰See 9 Tr. 122-23. It has been suggested that this is exactly what has occurred since the Board's approval of GSA fares. See 10 Tr. 68.

commercial travelers, despite their assertedly higher cost of service.⁵¹ These higher fares would, in turn, depress traffic levels and ultimately lead to higher individual fares for discretionary and nondiscretionary travelers alike. In support of this theory, opponents point to the experience in the car rental industry, which they characterize as having uneconomic corporate rates.

We are not persuaded by predictions that carriers will offer uneconomic discounts to corporate travelers with the hope of recouping the loss from elastic travelers because this theory is simply unrealistic. The market will foreclose the kind of pricing strategy that opponents fear. There is absolutely no reason to assume that a carrier offering uneconomic volume discounts could raise prices to individual passengers, especially discretionary travelers who are identified as the price conscious segment of the industry.⁵² Even if there were such a tendency, it would be disciplined by competition, particularly at a time when we see new entrants with lower costs offering lower fares to all travelers. If one carrier undertook to set prices above cost to subsidize business discounts, another carrier might reduce its prices to attract those passengers. Moreover, there is no reason to believe that corporations would wield market power over carriers.⁵³ Nor is there any evidence that rented car company pricing strategies are not rational or profitable, even if we were to assume that the experience in that industry is readily transferrable to airlines.⁵⁴

In general, the economic arguments against selective discounts can be reduced to arguments that we should protect carriers from each other's competitive initiatives. We rejected similar "competitive madness" arguments as a reason for continuing protective route regulation and rigid fare regulation. These same predictions were also made and rejected when the Board liberalized its policies on unjust discrimination and status fares⁵⁵ and when the Board approved discount fares

⁵¹It is alleged that the cost of providing service to commercial travelers is higher because their travel needs require frequent, conveniently timed flights. That is to say, air carriers must afford them a high degree of seat access. See 27 Tr. 112.

⁵²The very definition of the term "price elastic" suggests that carriers would not have an inducement to raise prices for this segment of passengers.

⁵³The record suggests the opposite. See 23 Tr. 33 and 25 Tr. 127. It is unlikely that even the largest corporation provides even 1 percent of the traffic in the high density markets in which corporate travelers generally travel.

⁵⁴Rental car companies are profitable. 9 Tr. 128.
⁵⁵PS-93, 45 FR 36058 (May 29, 1980).

for official government travel.⁶⁶ Nothing in the *Marketing* case record convinces us that our reliance on the market mechanism was misplaced in those instances and we continue to believe that competition will insure that prices are competitive and close to costs. Our experience leads us to believe that once again carriers will choose to offer discounts only if this strategy is perceived to maximize profits over the long run.⁶⁷ If providing a greater frequency of well-timed flights to cater to the business traveler produces higher costs, then carriers may be expected to avoid price concessions completely or to offer discounts in only limited situations.⁶⁸

As in the case with net remission programs, we cannot accurately predict the extent to which the agency industry would suffer from volume discounts. Arguably the large agents in major urban areas who specialize in commercial accounts would be the ones most likely to lose significant commercial business. But these agents are the best equipped to adjust to the new environment,⁶⁹ and it is very possible that by aggregating their clients' demand, they may find volume discounts useful for their own commercial sales.

V. Further Procedures

Parties wishing to file objections to any portion of this tentative order or comments on our notice of proposed rulemaking may file them in Docket 39836. Comments and/or objections will be due 30 days after publication of this order in the *Federal Register*. Parties will not be afforded an additional opportunity to present oral argument.

In order to afford the air carrier industry advance notice, we expect at this time that any new rule we adopted would be effective October 1, 1981.

VI. Member Bailey's Disqualification

ARTA and Associated Travel Nationwide (ATN) seek to disqualify Member Elizabeth Bailey from further participation in this proceeding on the basis of certain remarks she made in a speech to the Corporate Travel Association of New York on May 14, 1980. They claim that the speech shows a prejudgment of certain issues in the *Competitive Marketing Investigation*,

particularly on those relating to the appointment, accreditation and compensation of corporate travel departments.

We conclude that ARTA and ATN have not demonstrated that Member Bailey should be disqualified. The standard for disqualification from a rulemaking proceeding, as set forth in *Association of National Advertisers v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979), is that "[a] commissioner should be disqualified only when there has been a clear and convincing showing that the agency Member has an unalterably closed mind in matters critical to the disposition of the proceeding." Member Bailey's comments suggest at most a preference for reliance on the forces of competition, a policy objective of the Act, and her belief in the existence of potential new opportunities for corporate travel departments in the future. During her appearance, Member Bailey expressly refused to comment on the merits of the *Marketing* case, and ARTA and ATN have not related her statements to specific factual issues in the proceeding. Clearly, nothing in Member Bailey's comments indicates "an unalterably closed mind." Moreover, even if the standards for adjudications were applied, the parties have not demonstrated that "a disinterested observer may conclude that [the decision maker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." *Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970).

ATN also alleges that Member Bailey violated the Board's ex parte regulations by communicating with Paul S. Smith, counsel for the Bureau of Domestic Aviation in the *Investigation*. Mr. Smith apparently assisted Member Bailey in preparing her speech. This basis for disqualification must also be rejected. Section 300.4(a) of our Procedural Regulations proscribes only substantive communications between a Board member and an employee participating in a hearing. In this case, there were no communications between Member Bailey and Mr. Smith on the merits of the *Investigation*. Nor were any facts specifically at issue in the case discussed. A memorandum from the General Counsel to Member Bailey discussing these issues is available in Docket 36595.

Accordingly:

1. We tentatively find and conclude that it is in the public interest to grant exemptions from section 403 of the Act to air carriers and travel agents to the extent necessary to permit one of the tariff policies discussed above and set

out in detail in EDR-429, Docket 39836; issued along with this order;

2. Parties wishing to file objections to or comments concerning our tentative findings and conclusions in portions of this order are directed to file their objections or comments in Docket 39836;

3. Comments will be due 30 days after the publication of this order in the *Federal Register*.

4. We deny the motions of the Association of Retail Travel Agents and Associated Travel Nationwide to disqualify Member Elizabeth Bailey;

5. We deny the motions of the Association of Retail Travel Agents and Associated Travel Nationwide to postpone oral argument pending a ruling on their motions for disqualification of Member Bailey;

6. We deny the motion of the Association of Retail Travel Agents to Discontinue Proceedings;

7. We deny the motion of the National Passenger Traffic Association to expand its time allotment for oral argument;

8. We deny the motions of British Airways and the National Passenger Traffic Association for leave to file their briefs one day late;

9. We grant the motions of the American Express Company, the Bureau of Domestic Aviation, the American Society of Travel Agents, the International Airforwards and Agents Association, and the International Air Transport Association to correct the transcript of the oral argument;

10. We admit into the Phase 5 record the testimony, exhibits and the transcripts of cross-examination of Dr. James Miller III;

11. This order will be served on all parties to Docket 36595 and on those persons who filed comments in Docket 38746; and

12. This order shall be published along with EDR-429, Docket 39836 in the *Federal Register*.

By the Civil Aeronautics Board.

Phyllis T. Kaylor⁶⁰

Secretary.

Appendix A—Summary of Briefs

The parties who filed briefs in the *Competitive Marketing Investigation* and the maximum tariff rulemaking disagree over whether further Board action to encourage retail price competition in the sale of air transportation is needed and would be wise and lawful.

The parties favoring further Board action were the Bureau of Pricing and Domestic Aviation (BDA), the

⁶⁰ All Members concurred.

⁶⁶ Order 80-7-83.

⁶⁷ See 27 Tr. 50.

⁶⁸ See 27 Tr. 112.

⁶⁹ Smaller agents are generally concentrated in rural or suburban areas and handle little commercial transportation. What commercial travel they do handle is not likely to be of sufficient interest to air carriers to be granted commercial discounts.

Department of Justice (DOJ), the Department of Transportation (DOT), the Ticketron division of Control Data, DHL, American Express, and National Passenger Traffic Association (NPTA). Parties who advocated competitive pricing opportunities mostly supported maximum tariffs as the means for opening up those opportunities.¹ Indeed, some parties explicitly discouraged more limited initiatives, such as requiring a fixed differential between carrier prices to agents and agents' prices, on the ground that these would unduly limit competitive flexibility. Under maximum tariffs, the carrier would be permitted to sell to the public or agents at any price at or below its listed tariff, and agents would be able to resell at any level below the tariff. Thus, instead of receiving commissions, agents could negotiate the price they would remit to carriers for tickets (tickets could either be paid for in advance or handled on consignment) and set their own "markup" for sale to the public. Carriers could negotiate different prices under different circumstances, such as discounts for volume or advance purchases. The filing of maximum tariffs would be optional: Carriers could condition their tariffs to specify a fixed sale price to the public, and they could choose to continue using the unitary fare/commission system. DOT, however, suggested that the maximum tariffs not be applied to international fares. BDA stated that the Board should continue to enforce the standard industry fare level limits on fare increases and not permit the evasion of those limits through maximum tariffs.

Ticketron suggested an alternative form of pricing freedom, under which carriers would post a "wholesale price" tariff that they must follow in sales to agents, but both agents and carriers could exercise total pricing freedom in selling to the public. American Express proposed a more limited experiment with maximum tariffs confined to a small number of specified markets, discussed in more detail below.

Those parties who support the present distribution system generally want the pricing phase of the *Competitive Marketing Investigation* and the maximum fare tariff rulemaking terminated with the status quo left

¹There were also recommendations of steps allowing even more discretion for carriers and agents. DOJ urged total exemption from domestic tariff requirements within six months, and would not oppose immediate exemption. NPTA also advocated eliminating tariffs completely. BDA recommended a standing exemption for marketing schemes such as contract bulk fares and Ticknet that involve agents in some measure of inventory risk.

intact. These parties include American Airlines (American), the American Automobile Association (AAA), the American Society of Travel Agents (ASTA), the Association of Retail Travel Agents (ARTA), the Air Traffic Conference together with several airlines (ATC),² British Airways, the International Air Transport Association (IATA), Piedmont Airlines, Republic Airlines, and Transamerica Airlines. These parties contend that the pricing of air transportation is already very competitive and that the changes to the tariff system proposed by some parties in the *Investigation* and by the Board's maximum tariff rulemaking notice would cause great inconvenience to the public and the air transportation industry without providing significant benefits such as price reductions or an increased variety of marketing services. No one wants the Board to take steps to discourage new forms of pricing and marketing competition, and no one has asked that the Board revoke its approval of the two kinds of fare involving new methods of distributing tickets: the group contractor fares and Southwest's Ticknet fares. Republic, moreover, asked that the Board continue its case-by-case approach to experimental fare proposals.

I. Present Marketing and Competitive Conditions

The parties' arguments in this case depend in large part on their view of the benefits and disadvantages of the current methods of marketing and pricing air transportation, as described below.

Supporters of Change

The maximum fare proponents argued that the current tariff requirements, which prevent price competition in marketing airline tickets, were contrary to the Board's competitive mandate and discouraged innovation of potential new marketing initiatives. Innovation is discouraged, explained DOJ, because any departure from the conventional unitary tariff system carries with it the risk of Board disapproval, a certain time delay necessarily involved in government review, and the premature disclosure of marketing strategies. On the other hand, argued proponents, maximum tariffs would permit quick changes in fares and marketing practices.

In addition, these parties claim that relief from the current tariff

²The following carriers joined in the ATC brief: Air California, Braniff, Continental, Eastern, Evergreen International, Frontier, Air New England, Ozark, and USAir.

requirements would improve the efficiency of air transportation marketing, promote a variety of price/service options for consumers' selection, and provide a smooth transition to 1983 when tariffs will be completely abolished. They pointed out that consumers using travel agents now indirectly pay a standard charge (the agent's commission) for a full "bundle" of travel services—including consultation, advice, itinerary planning, brochures, reservations and ticketing—whether or not they use all of those services, and passengers dealing directly with carriers pay the same price. Thus, many consumers must contribute to the cost of services they do not want, and they are encouraged to use those services (since it costs no more to do so) when they might not be willing to pay for them if there were an extra charge.

Only Ticketron alleged that the current system of unitary tariffs was a form of resale price maintenance flatly illegal under the antitrust laws. Ticketron argued that the carriers should therefore be required to file tariffs reflecting their wholesale prices. This view was not shared by DOJ and DOT.

Opponents of Change

The supporters of the status quo assert that there is already vigorous fare competition in the sale of air transportation, despite the filing requirements of the tariff system. Tariffs assertedly present no bar to price competition since the Board permits the filing of new fares on very short notice and is willing to approve innovative fares, as shown by the approval given Southwest's Ticknet fares and the group contractor fares. ASTA and IATA also contend that the airlines already use as wide a variety of means for selling seats, such as direct sales, travel agents, charter and tour operators, and contractors selling group contractor fares, as can be found in any industry.

These parties additionally state that the airlines' use of travel agents is an economically rational marketing method which benefits both the carriers and the traveling public. Because of the expense of opening many of their own ticket offices and the inconveniences of selling tickets by mail, the airlines benefit from the marketing of their services by this country's numerous travel agents. British Airways and IATA note that the foreign carriers are particularly dependent on the travel agents since these carriers can afford to open few ticket offices of their own and because the greater complexity of international

ticket sales makes it relatively difficult for travellers to purchase such tickets directly from the carrier. ASTA asserts that travel agents are an effective sales method for the carriers, that agents are already operating as efficiently as possible, and that their commissions are not unreasonably high and thus not too costly for the airlines. In addition, ASTA and IATA state that travel agents increase the demand for air travel by being a good, convenient source of information on fares and service options for consumers.

While the airlines establish the prices charged by travel agents for scheduled air transportation, this pricing pattern is assertedly characteristic of all service industries, such as hotels and car rentals, which are also sold by agents. Ticketron similarly sets none of the prices for any of the services sold by it. In addition, these parties contend that the airlines' control of the travel agents' prices is not barred by the antitrust laws. When there is a genuine principal-agent relationship between the airlines and the travel agents, those laws allow the carriers to establish the ticket prices charged by the travel agents to the public.

The airlines' present control of travel agent pricing is economically rational because the airlines must control pricing as long as they bear the risk of unsold seats. If the agent charged too high a price, fewer seats would be sold and that would injure the carrier. British Airways contends that the airlines also must control pricing since they are held responsible by the public for providing the service. American claims that it would be unable to use price advertising if agents were free to set the retail price. ASTA states that the carriers' establishment of fares allows them to match supply and demand more effectively and to get better information on the effect of different pricing strategies.

In addition, ATC and IATA argue that the current tariff system with its posted prices is necessary for the maintenance of interlining, joint fares, easy availability of ticket refunds, and interchangeability of tickets of different carriers as these features all depend on the carriers knowing what fare is being charged each passenger.³

II. Board's Authority To Change the Tariff System

A. Termination of Tariff Requirements

Under the deregulation act, Section 403's requirements that the carriers state

³ British Airways notes that some carriers are already becoming reluctant to interline, a situation which it alleges will be worsened without tariffs.

their domestic passenger fares in tariffs filed with the Board and that they comply with those tariffs will terminate on January 1, 1983. There is no sunset date for international passenger or cargo tariffs. To a substantial extent, the new kinds of pricing proposed in this phase of the *Competitive Marketing Investigation* and the maximum tariff rulemaking will require the Board to exempt the carriers using those pricing techniques from Section 403's tariff requirements.⁴

The proponents of competitive marketing argued that the Board has ample exemption authority under Section 416(b) to permit maximum tariffs, or even to eliminate tariffs completely. They cited the procompetitive mandate of the Board, particularly as expressed in the Section 102 policy statement, as permitting the finding that such an exemption would be in the public interest.

The parties supporting the maintenance of the current tariff system argue that the Board has no legal authority to end it before the statutory sunset date, for in their view Congress expressly decided that the tariff system should remain in effect until January 1, 1983. They contend that the Board's exemption powers under Section 416 of the Act do not authorize the Board to abolish such a statutory requirement.⁵

B. Unjust Discrimination

If the carriers no longer are required to specify their exact fares in tariffs they could theoretically charge different passengers different fares without regard to any cost or marketing factors justifying the difference in fares and without the Board's knowledge. In such event the fares would be unjustly discriminatory and therefore unlawful under Section 404 of the Act, according to supporters of the current tariff requirements. They argue that Board action which permits such fares would violate the Board's duty to enforce

⁴ No exemption from the tariff filing requirements would be necessary to the extent that the carriers' tariffs could state the fares available under the new pricing strategies, e.g., by stating the precise discounts given volume purchasers of air travel or business travel departments.

⁵ To support this argument they quote the statement from the conference report on the deregulation act that "Congress expects the deregulation of the aviation industry to move in accordance with this legislation and not in accordance with the perhaps differing concepts of some members of the CAB" (H.R. Rep. No. 95-1779, 95th Cong., 2d Sess. (1978), p. 56). These parties recognize that the Board's use of the exemption power to terminate domestic cargo tariffs was upheld in *National Small Shipments Traffic Conference v. CAB*, 618 F.2d 819 (D.C. Cir., 1980). They assert that that case is distinguishable since there the Board implemented a Congressional policy of quickly deregulating the domestic cargo industry.

Section 404. Furthermore, they argue that only Congress can properly decide an important policy question like ending the statutory prohibition against unjustly discriminatory fares.

As explained below, the supporters of change believe that the carriers will charge different passengers different fares only to the extent justified by rational marketing and cost factors. They would assume, therefore, that the carriers would not engage in unjustly discriminatory pricing. Any unreasonable or unfairly discriminatory pricing practices should be corrected by competitive forces, and in any event maximum tariffs would not prevent the Board from enforcing section 404 on an ad hoc basis.

C. Other Issues

ASTA and ARTA claim that the Board cannot lawfully end the tariff system in the pricing phase of the *Competitive Marketing Investigation* without simultaneously deciding the other phases of the case. They claim that the issues in the different phases are so intertwined that the Board cannot rationally decide the pricing issues without considering the distribution and agency issues still to be investigated.

Although Transamerica does not contend here that the group contractor fares are unlawful, the U.S. Court of Appeals for the D.C. Circuit has before it Transamerica's petition for review of several Board orders approving such fares, *Transamerica Airlines v. CAB*, D.C. Cir. No. 80-1266. In that case Transamerica argued, *inter alia*, that the fares violate the Section 401(n)(1)'s prohibition of part charters, a provision in effect until December 31, 1981.

III. Proposed Forms of Pricing Freedom

The parties' briefs in the *Competitive Marketing Investigation* and the maximum tariff rulemaking have focused on three forms of pricing freedom: the group contractor fares (or bulk contractor fares), where a contractor buys a block of scheduled airline seats for resale at a price determined by him, with the contractor bearing most of the risk that not all the seats may be resold to the public; net remission schemes; and volume discounts, where a carrier (or agent) can give volume purchasers (such as business travel departments) a discount not available to individual travellers. Maximum tariffs, where either the retailer or the carrier can sell seats to the public at a price set by the seller and not specified by any tariff, would allow all these pricing practices.

A. Group Contractor Fares

No one here opposes the carriers' use of group contractor fares. Indeed American specifically favors them, although it opposes other proposed forms of pricing competition, and other parties cite them as evidence of the vigorous fare competition already present which the Board should encourage.

B. Net Remissions

The opposition to any substantial changes in the retail pricing system has concentrated on the proposals to give carriers blanket authority to adopt pricing systems that would not specify the fare in the form of a tariff applicable to all sales within the class, such as the maximum fare tariffs proposed by EDR-408. A related form of pricing freedom would be net fares, which would allow travel agents and other retailers to resell airline seats at prices set by them rather than the airline. Southwest's Ticknet fares are a form of net fares. Although the maximum tariffs and net fares do not involve identical issues, they are sufficiently similar so that the parties' positions on them will be considered together (the international issues presented by these fares are discussed in a separate section below).

1. *Likelihood of Change.* Despite their opposition to changing tariff requirements, many of the parties supporting tariffs state that if the Board granted the carriers blanket authority to engage in retail price competition, they would not change their distribution methods at all. This statement is grounded on their belief that the present distribution system is the most economically rational one available. Furthermore, ATC points out that the travel agents and Ticketron do not want to assume any inventory risk, which assertedly means that the carriers will insist on keeping control of pricing. ASTA notes as well that no new distributors can enter the retail business without complying with the ATC rules until the Board's decision on the other phases of the *Competitive Marketing Investigation*.

Nonetheless, some supporters of the status quo suggest that the grant of blanket authority to adopt maximum fare tariffs and similar pricing proposals could force all carriers into abandoning the present distribution system. British Airways theorizes that the Board's adoption of a policy favoring retail price competition by itself would coerce the airlines into following the policy. AAA claims that one carrier's adoption of new discount fares will force its competitors to match. Finally, IATA

asserts that the carriers may stop establishing the prices charged by travel agents out of fear of antitrust suits.

The parties advocating more pricing freedom do not suggest that the airlines will radically change their marketing and pricing methods if the Board allows them to file maximum tariffs. They argue instead that the carriers should have that freedom to respond to market forces if they wish.

2. *Need for Experimentation.* BDA argues that the Board should now give the carriers more pricing freedom than permitted by the traditional tariff system because of the need for a transition to the period after 1982 when there will be no tariffs at all. The proponents of change see benefits in giving the industry the opportunity to experiment with different marketing options now, before tariffs are eliminated, to facilitate a smooth transition. The Board would retain some control over pricing, while carriers could work out difficulties in implementing new marketing methods within the context of familiar tariff procedures.

The supporters of the status quo, on the other hand, assert that there is no need for a transition period since the industry is already preparing to shift to a non-tariff system on the statutory sunset date. A few of these parties argue that Congress may decide to keep the tariff system beyond the current sunset date and thereby end any need for a transition period.

3. *Impact on Fare Levels.* If such pricing methods as net fares or maximum fare tariffs became common, they would not result in any savings for the public, according to the supporters of the status quo. ATC, ASTA, and IATA assert that the record demonstrates that travel agent profit margins are not large enough to enable them to reduce significantly their prices to the public. The costs of marketing and distributing airline tickets, which are substantial, must be borne by consumers and will not permit any significant lowering of ticket prices. Insofar as net fares are concerned, ASTA states that experience with Southwest's Ticket fares shows that travel agents will usually charge the public the same price charged by the carrier. ASTA and IATA claim that the assertedly probable reduction in the number of travel agents and the resulting concentration in the industry caused by more retail price competition will in fact cause the public to be charged higher prices than they are now. In addition, if travel agents and other distributors are free to establish their own prices, they are likely to engage in "scalping" and "price gouging" on

tickets for travel during peak seasons, such as Christmas and Thanksgiving, say ASTA, British Airways, and IATA.

The parties supporting more pricing freedom disagree that any price changes stimulated by greater marketing competition would be outweighed by the disruptions that would attend the change to a new system. While they seem to agree that price changes would be relatively small, since marketing costs constitute a small percentage of the ticket price and some costs are inevitable in any transaction, they see definite benefits to fostering competition. BDA argued that price differences, while small in percentage, could be significant in absolute amounts on many occasions. Further, BDA viewed the opportunity to experiment and achieve a smooth transition to the tariff-free environment as quite important regardless of price changes.

In addition, these parties predict that competitive marketing would permit consumers to choose among "full service" travel agents that provide assistance beyond ticketing, or "discount" agents that provide less service with lower prices. Thus, consumers could satisfy their needs more precisely and avoid paying for unwanted services. In addition, both carriers and agents would be forced to be more efficient in marketing air transportation, since competition would keep marketing changes fairly close to costs. The effects of deregulating commissions in the stock market were cited as an example of the efficacy of price competition in marketing.

BDA states that price gouging and "scalping" can be prevented merely by precluding carriers or agents from selling tickets for more than the fare permitted by SIFL.

4. *Discriminatory Pricing.* According to the parties favoring the status quo, any fare reductions which did occur would go only to large purchasers of air transportation rather than individual travellers. According to ATC and Republic, this has been the pattern in the car rental industry and on domestic cargo rates since the latter were deregulated. Such a result is assertedly irrational since large purchasers (usually business travellers) are relatively insensitive to price whereas the individual consumer is more likely to be the discretionary traveller more likely to fly if lower fares are available.

The parties favoring change, on the other hand, disagree with these predictions that the carriers will give unreasonably low fares to certain classes of customers not entitled to them on economic grounds. They assert that

no buyer possesses sufficient market power to compel carriers to grant it unjustified discounts. While business travellers may obtain greater discounts, DOJ suggests that they will result because the larger volume of their business and their need for fewer services will justify lower fares. BDA also points out that if groups are given special discounts, private organizations such as clubs and schools formed by travel agents could qualify for them. These parties further believe that competitive forces will discourage airlines from giving uneconomical discounts to some passengers at the expense of higher fares for their other passengers.

5. *Access to Information.* Some of the parties contend that retail price competition would make it more difficult for consumers to obtain adequate information about the kinds of fares and service available. IATA thus believes this problem would arise because of the damage to the existing travel agent system, assertedly an excellent method of providing consumer information. ASTA states that the increased variety of fares would create the confusion, particularly because travellers would have more trouble in obtaining information on their terms and conditions. Only British Airways asserts that consumers' access to information would be reduced by a loss of the travel agents' impartiality, and this assertion is limited to situations where the retailer has assumed the inventory risk and will therefore be more interested in reselling his seats than in providing impartial advice.

The advocates of maximum tariffs deny that the public will become unable to obtain adequate information. With respect to the "search costs" (the time consumers spend to find the best bargains), they reason that consumers would spend time searching for bargains only so long as it was in their interest to do so. Indeed, they argue that the Board should not "save" consumers from the opportunity to find better bargains if consumers felt it was worth the effort, and if the search costs were not worth the bargain in particular cases the market would adjust. Proponents also assert that agents have a great incentive to be impartial in any case because of the importance of developing repeat business. Some proponents note that open commissions would seem to threaten impartiality the same as other competitive incentives, yet there is no evidence that agents have become more partial since open commissions were introduced.

6. *Integrated System Benefits Create by Tariffs.* Most of the parties supporting the current tariff system state that the adoption of net fares or maximum fare tariffs would eliminate or reduce several desirable features of the present air transportation system. They assertedly depend on each carrier knowing what fares are being paid by passengers, and this information which is readily available under the tariff system. Thus several parties assert that interlining will become substantially more difficult and therefore less common, since interlining depends on the carriers knowing each other's fares and rules of carriage. These parties cite British Airways' testimony that non-tariff pricing would cause it to interline with only 50 carriers rather than the nearly 300 with which it now interlines. Similarly, ATC and ASTA allege that joint fares would become impracticable under net fare or maximum fare tariff arrangements. In addition, the lack of information on what fare was actually paid by the passenger would discourage anyone but the issuer of the ticket from giving the passenger a refund or from exchanging the ticket for transportation on a different carrier.

The supporters of pricing freedom, however, reject fears that pricing competition would undermine interlining, joint fare arrangements, and ticket transferability. They argue that carriers would still have strong incentives to provide these mutually beneficial arrangements. Proponents note that it had been argued in earlier proceedings that open commissions would destroy joint fares and that international interlining would be impaired without IATA rate-setting conferences, although neither of those consequences has occurred in practice. They point out that no party has said, for example, that interlining will become impossible under maximum tariffs. Proponents recognize that differing marketing systems would make interlining, joint fares, and transferability more complicated, but they were confident that satisfactory methods could be developed, especially with the aid of computer technology.

7. *Impact on Travel Agents.* The opponents of new retail price competition argue that the abandonment of the current tariff system would drive a substantial number of travel agents out of business. This argument is based on two propositions: that the larger agents' modest economies of scale and other cost advantages would give them a competitive edge over smaller agents, and that the greater marketing power of the larger agents will enable them to

obtain such pricing techniques as net fares would help only the larger agents, according to British Airways.

The parties favoring more pricing freedom contend that these fears about the fate of the travel agent industry are overstated at best. Travel agents perform a useful service for many travellers apart from the sale of airline tickets, for they arrange for hotels and ground arrangements. As a result, their services will remain in demand. Arguments that profit margins are currently slim and cannot sustain increased competition were met with evidence that the number of agencies has doubled since 1972. This increased entry into the industry shows that its profitability was great enough to attract new businesses, even before open commissions were available. Even if profits are low, it is argued, protection of incumbents from competition is not a valid reason for continuing restrictions. Proponents recognize that greater price competition could lead to greater concentration in some parts of the industry, but deny that this was necessarily an undesirable consequence or would lead to severe dislocations. Rather, if large agencies or carriers are more efficient in marketing air travel, there is no reason why they should be restricted, and existing agencies will be able to adapt by specializing, merging, and innovating. To the extent that agencies are not efficient enough to compete, their exit from the market will result in more efficient service to the public. In any case, proponents argue there is no evidence that price competition would reduce public demand for travel marketing services. Also, they said that there is no evidence that carriers desire to enter the travel marketing field, which often involves offering auxiliary services, such as ground arrangements and maintaining a network of field offices, nor would it be in the interest of carriers to destroy the current marketing network if they could not offer more efficient service themselves. Thus, opponents' fears that agents would be driven from the market by predatory carrier practices were dismissed as unfounded.⁶

⁶ The "free rider" problem (the prospect that a consumer might obtain free travel information from one agent and use it to purchase transportation from a less expensive source) is not considered troublesome for several reasons by advocates of maximum tariffs. First, it was noted that "free riders" are not an unmanageable problem in other businesses, such as stereo equipment, in which "full-service" retailers coexist with discounters. Parties assert that "free riders" are limited by the fact that information or opportunities may grow stale quickly or be unavailable from other sources.

Finally, BDA believes that the airlines will not do anything that would antagonize the travel agents unnecessarily since over half their sales are now made by travel agents.

8. *Impact on Air Carrier Competition.* The supporters of the tariff system argue that the abolition of that system will injure the airlines' abilities to operate and compete efficiently in several different ways. According to British Airways, smaller carriers are more dependent than large carriers on the travel agents for marketing seats and informing the public of their services; thus the damage to the travel agent industry predicted by the supporters of the existing pricing structures would injure the smaller carriers' ability to compete with the larger carriers. ATC asserts that the carriers would be burdened with more requests for information than they are now. On the assumption that each passenger will feel free to negotiate the price of his ticket with any airline, Piedmont forecasts substantial confusion and increased ticketing costs for the airlines. Piedmont further claims that carriers will be unable to compete effectively if the end of the present tariff system deprives them of their knowledge of what competitors are charging.

DOT argues that advertising difficulties caused by varying retail prices would be small and in any case would be outweighed by other consumer benefits. Some parties reasoned that carriers could establish a "suggested retail price" and advertise on that basis, while individual agents could give discounts in their discretion. In any case, as DOJ explains, no carrier or agent would be compelled to use maximum tariffs. If price competition provided no net benefits, business could continue to use unitary tariffs.

9. *Injury to Foreign Carrier Interlining.* the State Department, IATA, and British Airways contend that the abolition of domestic tariffs will deprive foreign carriers of the information needed for them to interline with domestic carriers. This assertedly will make it more difficult for them to compete for U.S. traffic. DOT agreed the foreign carriers may have more trouble but considers this disadvantage greatly outweighed by the benefits of domestic maximum tariffs.

C. Volume Discounts

The third type of pricing competition at issue here is a discount for volume purchasers, such as business travel

departments (BTD's). If the Board permitted the carriers to file maximum tariffs, the carriers would then be able to offer volume discounts if they wished. Accordingly, many of the objections to maximum tariffs, such as the injury to interlining and the travel agent industry, apply as well to volume discounts. However, ASTA and NPTA discussed volume discounts, especially for BTD's, at length in their briefs.

ASTA claims that volume discounts would injure the smaller travel agents and the smaller carriers. The larger agents will be able to compete more effectively since their greater volume of business will enable them to obtain larger discounts than those available to smaller agents. The larger agents accordingly will be competitively benefitted, whether or not they are more efficient. Similarly, larger carriers will be better able to offer volume discounts than the smaller carriers, since their services are not used as heavily by large purchasers of air transportation.

In objecting to discounts for BTD's ASTA first argues that NPTA is wrong in asserting that such discounts are necessary for the survival of BTD's. ASTA states that the discounts given BTD's by car rental companies and others already make BTD's a valuable corporate means of obtaining travel services. The airlines, moreover, already give BTD's preferential treatment by giving them extended payment terms on tickets and favorable terms on leases of automated equipment. Discounts for BTD's would injure the airlines since the carriers are heavily dependent on business travel and many BTD's belong to companies with great economic power. Furthermore, the carriers inevitably will offer discounts larger than justified by any cost savings created by using BTD's as shown by the experience of the car rental industry. The end result would be lower yields for the airlines and higher fares for discretionary travellers. Moreover, travel agents could not compete with the discounts given corporate customers and thus would lose a substantial part of their business.

NPTA, which represents the interests of BTD's favors maximum tariffs or complete tariff elimination. BTD's function as in-house travel agents for many large corporations, providing services such as reservations and ticketing, travel planning, and hotel and ground transportation arrangements, but are not designated as agents by carrier and therefore cannot receive commissions for their services. According to NPTA, BTD's are usually operated at a loss for independent

business reasons, such as maintaining control over travel expenditures and fostering direct relations with carriers. NPTA complains that BTD's relieve carriers and agents of many marketing expenses, yet must pay full retail price for tickets. They desire the ability to negotiate directly with carriers for discounts below the "retail" price, based on the volume and marketing cost savings they provide. They do not seek to sell air transportation to the public in competition with travel agencies.

NPTA maintains that many companies now do business with travel agents only because it is too expensive to maintain BTD's, and that the agencies specializing in business travel are among the largest in the industry. These agencies should have no special right to protection from competition by BTD's. Such competition, NPTA continued, will insure efficient operations by agents, since the BTD's will perform the services themselves if they can do so more efficiently. NPTA supports its desire to negotiate directly for discounts by noting that land and sea carriers are permitted to give a discount to shippers who perform some of the transportation duties normally expected of the carriers.

DOJ agrees with NPTA that the increased use of BTD's resulting from discounted transportation would be in the public interest since the carriers' willingness to give discounts would indicate that BTD's are an efficient means of marketing air transportation.

D. American Express' Proposed Experiment

American Express deviated from other proponents of price competition by advocating a limited experiment with maximum tariffs confined to a few selected markets. American Express suggested using one of two models: either the three markets of Pittsburgh-Phoenix, St. Louis-Dallas/Ft. Worth, and Columbus-Louisville, or 60 markets involving Philadelphia, St. Louis, and Dallas/Ft. Worth and 20 destination cities selected for each of those three points. The methodology for selecting these markets is described in detail in exhibits, and it appears they were selected to be representative of air travel pattern and convenient for American Express's data collection purposes. American Express recommended a limited experiment in order to "test the waters" gradually and allow the industry to work out problems with interlining, joint fares, ticket interchangeability and so forth on a small scale before implementing a system-wide change. Participation in the experiment of the posting of maximum

In any case, they say, agents would be free to impose separate charges for advice and consulting services if "free riders" were a significant problem.

tariffs in the selected markets would be optional.

Several of the proponents of maximum tariffs criticized American Express's proposal. They contended that it would impose burdensome reporting and evaluation requirements on the industry and the Board, that it would involve carriers and agents to varying extents and thus give some an unfair headstart over others, and that the limited scope of the experiment would limit its usefulness in anticipating the problems of system-wide deregulation.

[FR Doc. 81-21923 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 221

[Docket No. 38746; EDR-408D]

Domestic Air Transportation; Maximum Tariffs; Partial Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Partial termination of rulemaking.

SUMMARY: In this rulemaking proceeding the CAB proposed to allow airlines to file tariffs that state prices as maximum instead of exact amounts. The CAB is terminating the proceeding with respect to domestic air transportation because it has been superseded by the agency's proposal in EDR-429, issued along with this notice. The CAB is deferring action on maximum tariffs in international markets.

DATE: Adopted: July 21, 1981.

FOR FURTHER INFORMATION CONTACT:

George S. Baranko or Barry L. Molar, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-6011 or 202-673-5205, respectively.

SUPPLEMENTARY INFORMATION: The Civil Aeronautics Board is terminating the rulemaking proceeding begun by EDR-408 (45 FR 648, September 30, 1980, Docket 38746) to the extent it proposed

to establish a maximum tariff rule for interstate and overseas air transportation. Insofar as the rulemaking proceeding would have modified tariff filing requirements in international markets, the Board is deferring further consideration of the proposal pending consultations with other federal agencies. Supplementary information about the Board's action appears in Order 81-7-108, July 21, 1981, and notice of proposed rulemaking EDR-429, Docket 39836, which are being issued along with this notice.

Accordingly, the Board terminates the rulemaking in Docket 38746 with respect to interstate and overseas air transportation.

(Secs. 102, 204, 401, 402, 403, 404, 411, 416, 1001, 1002, Pub. L. 85-725, as amended, 72 Stat. 740, 743, 454, 757, 758, 760, 769, 771, 788; (49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1374, 1381, 1386, 1481, 1482))

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-21924 Filed 7-27-81; 8:45 am]

BILLING CODE 6320-01-M

CIVIL AERONAUTICS BOARD

[Docket No. 38934; Order 81-7-109]

Exemption to Persons Who Contract for the Purchase of Blocks of Seats on Scheduled Service Pursuant to Applicable Tariffs for Resale to the Public

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 21st day of July 1981.

Order Granting Interim Exemption**I. Introduction**

By Order 81-7-108, issued concurrently, the Board issued its tentative decision in the pricing phase of the *Investigation into the Competitive Marketing of Air Transportation* (Marketing case), Docket 36595. As a part of that decision we have tentatively concluded that appropriate exemptions should be granted to permit airlines to implement marketing schemes which involve a shifting from airlines of the risk of loss from unsold seats (inventory risk), and we will be issuing shortly a notice of proposed rulemaking to reflect that tentative decision. As a result of that tentative decision, we have also decided to grant, on an interim basis, a more limited exemption to permit a specific form of such marketing, as discussed below.

While the *Marketing* case was pending, the Board was confronted with marketing schemes involving shifting of inventory risk in the form of group contractor fare proposals. These proposals involved requests by individual carriers to sell in specific markets blocks of seats in scheduled service to middlemen for resale. The middlemen generally paid for the seats in advance and were subject to cancellation penalties for returning unsold seats. By order 80-11-24, 45 FR 74740, November 12, 1980, we proposed, using show cause procedures, to grant a general exemption from section 401, 402, and 403 of the Federal Aviation Act¹ to permit this type of pricing scheme.² By this order, we are granting the exemption with the scope that was proposed, pending action on the more

¹ We inadvertently did not include Part 221 of our regulations in the proposed exemption. We correct that omission here.

² Specifically, the exemptions would have applied only to sales under tariffs which meet the requirements set forth in Order 80-2-112, in which we first approved contractor bulk fares. We also required that carriers file the names of their contractors with the Bureau of Domestic Aviation, and required that consumers receive actual notice of deviations from terms and conditions of transportation normally associated with scheduled air services.

comprehensive exemption which we will propose shortly. We have, however, decided to spell out the tariff requirements we are imposing, so that the specific conditions of the exemption are clearly set out in one place.

Transamerica Airlines, Inc. (Transamerica) and Alitalia-Linee Aeree Italiane-S.p.A. (Alitalia) have filed comments in response to Order 80-11-24, but neither has persuaded us to alter the tentative conclusions we set forth in that order.

Transamerica objects to the blanket form of authority which the Board proposes to grant since it believes contract marketing schemes to be unlawful "part charters." The carrier also argues that the proposed action would promote the Board's approval of individual contract marketing programs to "a general rule." In addition, Transamerica expresses concern that the show-cause order would give considerable discretion to direct and indirect air carriers engaged in contract bulk sales and that such discretion is discriminatorily denied to marketers of competing charter services, who must conform to expensive consumer protection regulations for indirect air carriers engaged in charter sales.

By charterizing our action to grant an exemption as "a general rule," Transamerica apparently is arguing that we should have followed different procedures. However, the carrier has not made a convincing case that the procedures we have followed here are in any way deficient. Even if our exemption were described as a rule, we have followed procedures which adequately protect the rights of all potentially interested parties under the Administrative Procedure Act. The show-cause order, which was published in the *Federal Register*, clearly specified the scope of the exemption, the requirements necessary for its applicability to a particular situation, and the Board's reasons for proposing it. Comments were requested from all interested persons, and we have in fact received timely comments on the merits from Transamerica and one other carrier. Transamerica has alleged no specific prejudice from the Board's decision to proceed by a general show-cause order and we are certainly aware of none. The essentials of informal rulemaking—notice and an opportunity to comment—have been provided in this case.

We recognize that charter operators may be required to incur expenses to comply with Board regulations that do not apply to scheduled services. However, historically, scheduled services have not produced the kinds of

consumer protection problems that the charter field has. We adhere to our decision not to impose consumer protection devices, like bonding and escrow requirements, on the contractor middlemen because direct air carriers retain the responsibility to provide the service to the consumer as in other scheduled services. Should air carriers encountering financial difficulties implement contract marketing programs, we can monitor such programs through the tariff mechanism.³

Alitalia states that the Bilateral Agreement between the United States and the Republic of Italy provides that both governments shall approve tariffs for air travel between the two countries; and that the Italian government has rejected applications for authorization to contract for blocks of seats in scheduled service. Alitalia believes that it would be a deviation from the Bilateral Agreement for the Board to unilaterally issue a blanket exemption permitting such marketing programs; and that this form of marketing program constitutes a part charter arrangement which neither government has approved.

We find that our action in granting contractors an exemption from sections 401, 402, and 403 of the Act and Part 221 of our regulations is not inconsistent with the existing Bilateral Agreement between the United States and Italy. Our grant of blanket exemption authority does not diminish at all the rights of the Italian government under the Bilateral Agreement. It remains free to consider any contract bulk fares in the Italy market pursuant to the criteria and procedures in the Agreement. However, that does not in any way diminish the Board's right to take the proposed action. Adoption of this exemption will merely facilitate reciprocal adoption of bulk contractor marketing principles for air transportation between the U.S. and other countries that are willing to permit greater pricing freedom without thereby compromising the rights of other countries under their bilateral agreements.⁴ In Order 80-2-112, we

³ In the event that our tariff flexibility policy is adopted. (See EDR-429) we will consider the need to modify our tariff filing requirement here. In any event, we will be able to continue to monitor the programs through the requirement that direct carriers report the names of their contractors.

⁴ Our decisions to allow bulk contractor fares filed by foreign permit holders on an experimental basis have reflected a concern with principles of reciprocity and comity. In this case reciprocity extends to both direct carriers and contractors. Thus, we would not allow a section 402 permit-holder to engage in contractor bulk marketing in the U.S. if its government did not give a similar privilege to our air carriers. Likewise, we would not permit a

Continued

discussed in great detail the reasons why we have concluded that the contract marketing programs we have approved do not constitute part charters.

The carrier also suggests that the proposed exemption should be considered within the context of a decision in the *Competitive Marketing Case*. The pricing phase of the *Marketing* case has now been completed, and we have found nothing in the record of the case to suggest that this marketing device should not be routinely permitted. To the contrary, contractor bulk fares were the only new marketing concept that received almost universal support in the case. Most carriers favored the use of contractor bulk fares because of their feature of shifting inventory risk. They indicated a willingness to permit marketers to set prices because they assumed inventory risk. The record in the *Marketing* case also indicates that travel agents have been active in the sale of contractor bulk fares.⁹ Thus, contractor bulk fares represent a viable marketing concept designed to tap a new market and provide new opportunities for retail price competition. The record in the *Marketing* case also establishes that this marketing device is available to small and medium sized agents. Under these circumstances grant of the blanket exemption is wholly consistent with our policies developed in the *Marketing* case.

We therefore make final the tentative findings and conclusions contained in Order 80-11-24 and will grant the proposed exemption pending our consideration of a more comprehensive exemption.

foreign citizen to act as a marketer in the U.S. if its government did not extend a similar privilege to U.S. citizens. (See ER-1228, 46 FR 32552, June 24, 1981.)

⁹ See Order 81-7-108, at 17.

Accordingly:

1. We exempt persons who contract with direct air carriers or foreign air carriers to purchase blocks of seats on scheduled service under applicable tariffs for resale to the public (hereafter "contractors") from sections 401, 402, and 403 of the Federal Aviation Act to the extent necessary to allow such contractors to resell the seats without themselves filing tariffs or having a certificate of public convenience and necessity or foreign air carrier permit, as applicable. The exemption is subject to the following conditions:

(a) The direct air carriers or foreign air carriers implementing marketing programs under this exemption shall file tariffs which state the price or prices to be charged to contractors;

(b) The direct carriers or foreign air carriers implementing marketing programs under this exemption shall file tariff rules that clearly describe the relationship existing between the carrier and the passenger. These rules shall establish that upon payment by passengers, the direct carriers bear the responsibility for safeguarding the passengers' money (*i.e.* either refunding it or providing the transportation for which the money was paid) in the event of insolvency or malfeasance of the contractors.

(c) The direct air carriers or foreign air carriers implementing contract marketing programs and all contractors operating under this blanket exemption authority shall insure that consumers receive clear and conspicuous notice, before payment of deposit, of any special contractual conditions, imposed either by the contractor or by the carrier, applicable to passengers, including, but not limited to, the following: The terms and amount of any cancellation penalties, fees for reservations changes, or other special charges; limits on voluntary refund

(specifically, notice that clearly informs the passenger of his risk in the event of voluntary cancellation by stating the exact amount of the applicable refund for voluntary cancellation); limits on involuntary refund, rerouting or ticket reissuance rights; limits on ticket endorsability or special ticket purchase; check-in or reconfirmation requirements; if true, the fact that the passenger may be assessed price increases after ticket purchase; if true, the fact that flight dates and times are not guaranteed at time of purchase; and information on the allocation of responsibility between the contractor and carrier for the passengers' funds and transportation; and

(d) The direct air carriers and foreign air carriers implementing contract marketing programs shall file with the Office of the Assistant Director, Fares, Rates and Tariffs, Bureau of Domestic Aviation, the name and address of each contractor operating under this exemption within 30 days after first entering into the contractual arrangement;

(e) The Board may withdraw the exemption authority granted above to foreign contractors at any time, with or without hearing, if the Board finds that it is in the public interest to do so.

This order shall be served on all certificated air carriers and foreign air carriers holding permits authorizing scheduled service, all persons who filed comments in this docket and all parties in the *Investigation into the Competitive Marketing of Air Transportation*, Docket 36595.

This order shall be published in the *Federal Register*.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 81-21925 Filed 7-27-81; 8:45 am]

BILLING CODE 8320-01-M

federal register

Tuesday
July 28, 1981

Part III

Office of Personnel Management

**Demonstration Project: An Integrated
Approach To Pay, Performance Appraisal,
and Position Classification for More
Effective Operation of Government
Organizations**

**OFFICE OF PERSONNEL
MANAGEMENT**

Demonstration Project: An Integrated Approach To Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of demonstration project plan and inclusion of technicians in the demonstration project.

SUMMARY: This notice identifies the technician career path by classification level and shows its relationship to current grade levels. In addition, the notice amends procedures for converting exiting demonstration project employees to the General Schedule.

EFFECTIVE DATE: Technicians will enter the demonstration project and be subject to its provisions on August 23, 1981. The amended exit procedures are effective July 28, 1981.

FOR FURTHER INFORMATION CONTACT:

(1) In San Diego, California: Susan Rainville, (714) 225-2131. (2) In China Lake, California: Clara Erickson, (714) 939-2434. (3) In Washington, D.C.: Donald Hill, (202) 632-4628.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) approved a demonstration project, "An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations," and published the final project plan in the *Federal Register* on Friday, April 18, 1980 (45 FR 26504).

Under the section "Types and Numbers of Participating Employees" (45 FR 26513), the approved project plan provided for the addition of other categories of employees as project number limitations and successful experience permit, subject to consultation and agreement with OPM. Administrative personnel at the GS-12 level entered the demonstration project on January 11, 1981, to complete

classification/pay band level III. The project plan projected that technicians would be added to the project in August 1981.

Representatives from the Naval Ocean Systems Center (NOSC) and the Naval Weapons Center (NWC) proposed the technician career path and composition shown in the notice below in March 1981 and it has been approved by OPM. Informal briefings were held by NOSC and NWC managers with technician occupation employees. Written information was also provided to employees. Opportunities to comment orally and in writing were provided on April 15, 1981 at the NOSC Hawaii laboratory, on April 30, 1981 at NOSC, San Diego, California, and on June 3, 1981 at NWC, China Lake, California. Comments were made and questions were raised about aspects of the project by 8 persons, although no objections were made against the inclusion of technicians in the demonstration project.

The main thrust of these comments were directed at three concerns:

The perceived inferior status of the technician occupation when compared to the professional occupations, as evidenced by fewer classification/pay levels, lower pay, and lesser prestige;

Procedures for technician promotion, and varying and lengthy waiting periods between promotions; and

Lack of technician training opportunities (one comment).

NOSC and NWC management will address expressed concerns. However, the comments were not of such nature as to delay the inclusion of technicians into the demonstration project on August 23, 1981.

In another matter, OPM discussed concerns and problems with NOSC and NWC about the conversion of exiting demonstration project employees to the General Schedule and its impact on:

(1) final salary in cases of retirement, death, or separation from Federal Service;

(2) salary setting in cases of reassignment, transfer, or subsequent reemployment; and

(3) application of the two-step promotion benefit provided in 5 USC 5334(b).

OPM, NOSC, and NWC have agreed to amend the procedures for converting exiting demonstration project employees to the General Schedule.

Office of Personnel Management,
Beverly McCain Jones,
Issuance System Manager.

The demonstration project plan, An Integrated Approach to Pay, Performance Appraisal, and Position Classification for More Effective Operation of Government Organizations, published in the *Federal Register* on Friday, April 18, 1980, 45 FR 26504-26543, is amended as follows:

1. Demonstration Elements—Classification Levels (45 FR 26513-26516). Existing GS classification levels for aids and technicians at GS-1 through GS-12 (Demonstration Technicians (DT)) are incorporated into four broad pay levels with a special provision for progression into the established Demonstration Professional (DP) Career Path at DP Level III. New Table 4A lists series initially included in the Technical Career Path. The amendment to Table 5 illustrates the Technical Career Path and progression to the Demonstration Professional Career Path. Classification levels follow the general pattern in the DP Career Path as follows:

DT Lever A—Basic entrance positions (includes GS-1 through GS-4).

DT Level I—Training positions (includes GS-5 through GS-7).

DT Level II—Advanced training and specific task performance (includes GS-8 through GS-10).

DT Level III—Journeyman performance (includes GS-11 and GS-12).

Subsequent progression to DP Levels III and IV is provided for those technicians whose duties and performance are of demonstrated professional nature and/or include professional type managerial responsibilities. Other basic provisions of the approved plan are unchanged.

Table 4A. Technician Series included in the Demonstration Technical Career Path.

332 (NOSC only)	809 (NWC only)	1060	1531 (NWC only)
335 (NOSC only)	818	1152 (NOSC only)	1599 (NOSC only)
404	856	1311	1960
699 (NWC only)	895	1341	2181 (NWC only)
802	899 (NOSC only)	1521	

Note: NWC (Naval Weapons Center); NOSC (Naval Ocean Systems Center)

Amendment to Table 5. Technical Career Path Identification by Classification Level as Related to Current Grade Levels.

GS Grade Level	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Technical Career Path	A			I			II			III			↓		
Professional Career Path					I			II			III		IV		

2. Entry Into and Exit From the Project (45 FR 26519-26520). Material in brackets is deleted; material in italics is added.

The employees exit at the dollar amount of salary currently received. [matched to the appropriate grade and step in the General Schedule.]

Prior to exit of employees from the demonstration project *because of project termination*, each employee will be converted back to the appropriate GS

grade, using the base grade principle. An information sheet describing the demonstration project and the conversion procedure will accompany the Official Personnel Folder (OPF) to the new employing office as a permanent record in the OPF. *For employees exiting the demonstration project because of normal changes such as promotions, reassignments, transfers, separations, etc., documentation will include an information sheet as above*

and a statement in the remarks portion of a notice of personnel action (SF-50) noting that the "Demonstration Project position above is equivalent to GS- or GM- (if appropriate) grade of the GS/ GM schedules." [This same documentation exit procedure will be used for exiting employees in any necessary instance.]

[FR Doc. 81-21953 Filed 7-27-81; 8:45 am]

BILLING CODE 6325-01-M

Tuesday
July 28, 1981

federal register

Part IV

Department of the Treasury

Fiscal Service

Regulations Governing Agencies for Issuance of United States Savings Bonds

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 317

Regulations Governing Agencies for Issue of United States Savings Bonds

AGENCY: Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Department of the Treasury Circular, Public Debt Series No. 4-67, as revised (31 CFR, Part 317), contains the regulations governing agencies authorized to sell and issue United States Savings Bonds, Series EE. This rule adds an appendix which supplements the provisions of § 317.8 of the circular on the remittance of savings bond sales proceeds.

EFFECTIVE DATE: September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, D.C. 20226 (202-376-0244).

SUPPLEMENTARY INFORMATION: As of November 1, 1978, qualified savings bond issuing agents, other than Federal agencies, became eligible to receive fees for issuing savings bonds. Following the institution of such fee payments, the rules governing the remittance of savings bond sales proceeds were revised to provide for their more timely receipt by the Treasury. The revised rules were distributed to each issuing agent through Federal Reserve Banks, acting as fiscal agents of the United States. Similar distributions will be made of this appendix.

The appendix provides detailed advice on the requirements for timely remittance and provides that interest will be assessed for remittances that are not made within the established time limitations. The charge will be computed and collected by Federal Reserve Banks on late remittances dated on and after September 1, 1981.

Provision is made for waiving the interest in any case in which the amount would be less than \$50.

This appendix is issued under authority of Section 22 of the Second Liberty Bond Act, as amended (49 Stat. 21, as amended; 31 U.S.C. 757c) and 5 U.S.C. 301. The Bureau of the Public Debt, Department of the Treasury, has determined that this (1) appendix does not require a notice of proposed rulemaking since it relates to public contracts, *i.e.*, procedures applicable to qualified issuing agents of the United States savings bonds; and (2) the appendix, given its nature, is not a major rule for purposes of Executive Order 12291.

Dated: July 13, 1981.

Paul H. Taylor,

Fiscal Assistant Secretary.

§ 317.8 [Amended]

Accordingly, 31 CFR 317.8 is amended by adding the following appendix:

APPENDIX TO § 317.8—REMITTANCE OF SALES PROCEEDS, DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 4-67, REVISED

(31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

1. *Purpose.* This appendix is issued for the guidance of organizations qualified as issuing agents of United States Savings Bonds, Series EE, under the provisions of Department of the Treasury Circular, Public Debt Series No. 4-67. Its purpose is to supplement the provisions of § 317.8 of the Circular relating to the remittance of savings bond sales proceeds, including the interest charge to be collected for late remittances.

2. *Definition of terms.* As used in this appendix:

(a) "Issue Date" is the date as of which a bond begins to earn interest. It is the date entered by the issuing agent in the upper right corner of the bond.

(b) "Validation Date" is the date on which a bond is actually inscribed for issue. It is entered by the issuing agent immediately below the "Issue Date" in the area marked "Issuing Agent's Dating Stamp".

(c) "Over-the-counter sale" includes all sales of savings bonds (i) on the basis of individual purchase applications received over-the-counter or by mail, and (ii) on Bond-a-Month plans.

(d) "Payroll sale" includes all issues of savings bonds paid for with deductions withheld from the pay of employees of organizations which maintain (i) payroll savings plans or (ii) thrift, savings, vacation, or similar plans.

(e) "Issuing agent", as provided in § 317.1(c) of the Circular, refers to an organization which has been granted a certificate of qualification by a Federal Reserve Bank to sell and issue savings bonds.

3. *Determination of issue date.* The obligation of the United States to pay interest on a savings bond is determined by its issue date. That date is the first day of the month in which a qualified issuing agent receives or accumulates the full purchase price of the bond. In the case of a bond purchased under a payroll savings plan operated by an organization which is not an issuing agent, the issue date should be fixed as of the month in which the organization accumulates the full issue price of the bond, but such funds must be remitted to the issuing agent in time to permit such dating.

4. *Form of remittance.* Issuing agents shall remit sales proceeds in timely fashion (a) by check or (b) by charge to their reserve account with a Federal Reserve Bank. Agents which are note option Treasury tax and loan depositories may also remit by credit to the tax and loan account, subject to the provisions of § 203.9 of Department of the Treasury Circular No. 92, as revised, the

regulations governing Treasury Tax and Loan Depositories (31 CFR, Part 203).

5. *Remittance date.* Sales proceeds should be remitted on the date shown on the transmittal document, Form PD 3252 (over-the-counter sales) or PD 4848 (payroll sales). However, if there is a significant time difference between the date on the remittance document and the date of receipt in the Federal Reserve Bank, the transmittal date may be determined, for purposes of this appendix, by the postmark, if the remittance is mailed, or the receipt date, if the remittance is forwarded by courier, messenger, or similar means.

Subpart B—Remittances Covering Over-the-Counter Sales

1. *Remittance schedules.* Each Federal Reserve Bank will classify its over-the-counter agents and establish remittance schedules, based on a periodic determination by the Bureau of the Public Debt of the average monthly over-the-counter sales remitted by each agent.

2. *Agents with average monthly sales of less than \$5,000.* Each agent with average monthly over-the-counter sales of less than \$5,000 (issue price) will remit the proceeds of such sales no less often than once each month, on a schedule established by the Federal Reserve Bank. The agent will be allowed two (2) business days to prepare the remittance; sales during those two (2) days may be included in the following month's remittance.

3. *Agents with average monthly sales of \$5,000 or more.* Each agent with average monthly over-the-counter sales of \$5,000 (issue price) or more will remit the proceeds of such sales no less often than once a week, on a schedule established by the Federal Reserve Bank. Sales proceeds shall be transmitted no later than seven (7) business days from the day the bonds are inscribed for issue (the validation date). The agent will be allowed two (2) business days to prepare the remittance; sales during those two days may be included in the following week's remittance.

Subpart C—Payroll Sales

1. *Application of requirements.* The remittance requirements apply to the agent which issues the bonds. That agent may be either (a) the employer organization which maintains the payroll deduction plan, or (b) a financial institution which services the employer organization. Organizations which maintain payroll deduction plans but do not issue bonds should be notified by the issuing agent serving them that they must remit the issue price of bonds to the agent in sufficient time to permit compliance with the requirements.

2. *Bonds inscribed currently.* If a bond is inscribed for issue during the month shown in the issue date, the proceeds shall be remitted no later than two (2) business days after the validation date.

3. *Bonds inscribed subsequent to issue date.* If a bond is inscribed for issue after the month shown in the issue date (*i.e.*, the month in the validation date is later than the month in the issue date), the proceeds shall be remitted no later than the second business

day of the month following the month shown in the issue date.

Subpart D—Interest on Late Remittances

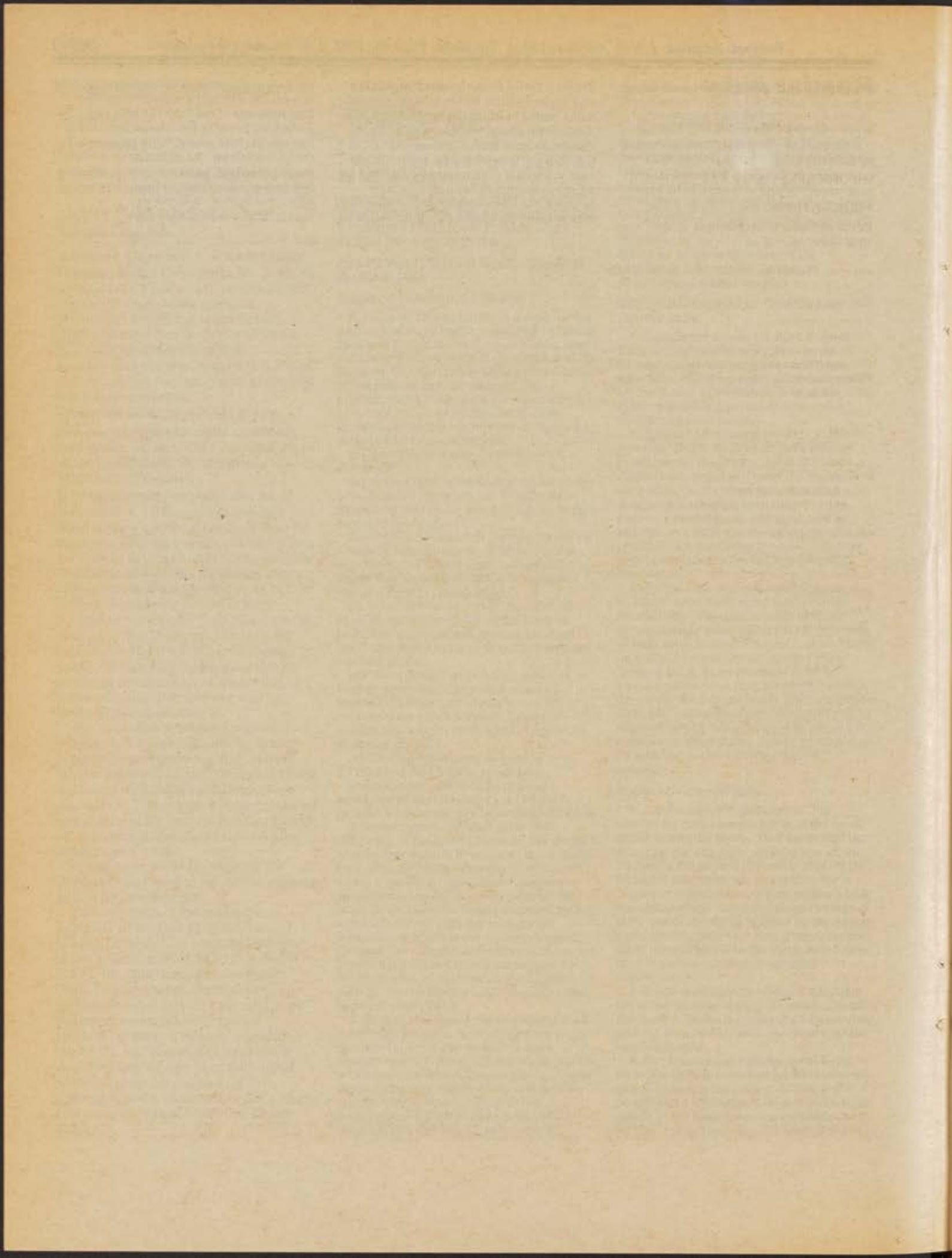
1. *Rate of interest.* Interest will be assessed for each day's delay in the remittance of sales proceeds, based on the actual date of remittance. The rate of interest to be used will be the current value of funds to the Treasury, as set forth each quarter in the

Treasury Fiscal Requirements Manual. The rate applied will be that in effect during the entire period in which the remittance is late. The interest charge will be collected by the Federal Reserve Bank.

2. *Waiver.* Interest will be waived in any case in which the interest is less than \$50 for all sales reported during a given month; however, the Commissioner of the Public Debt may suspend the application of the waiver in

the case of any agent which consistently fails to meet the remittance requirements. The Commissioner of the Public Debt is also authorized to waive the interest payment in any specific case where, in the judgment of the Commissioner, the circumstances warrant such action. The Commissioners' decision on any waiver action shall be final.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

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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.
Comments on this program are still invited.
Comments should be submitted to the

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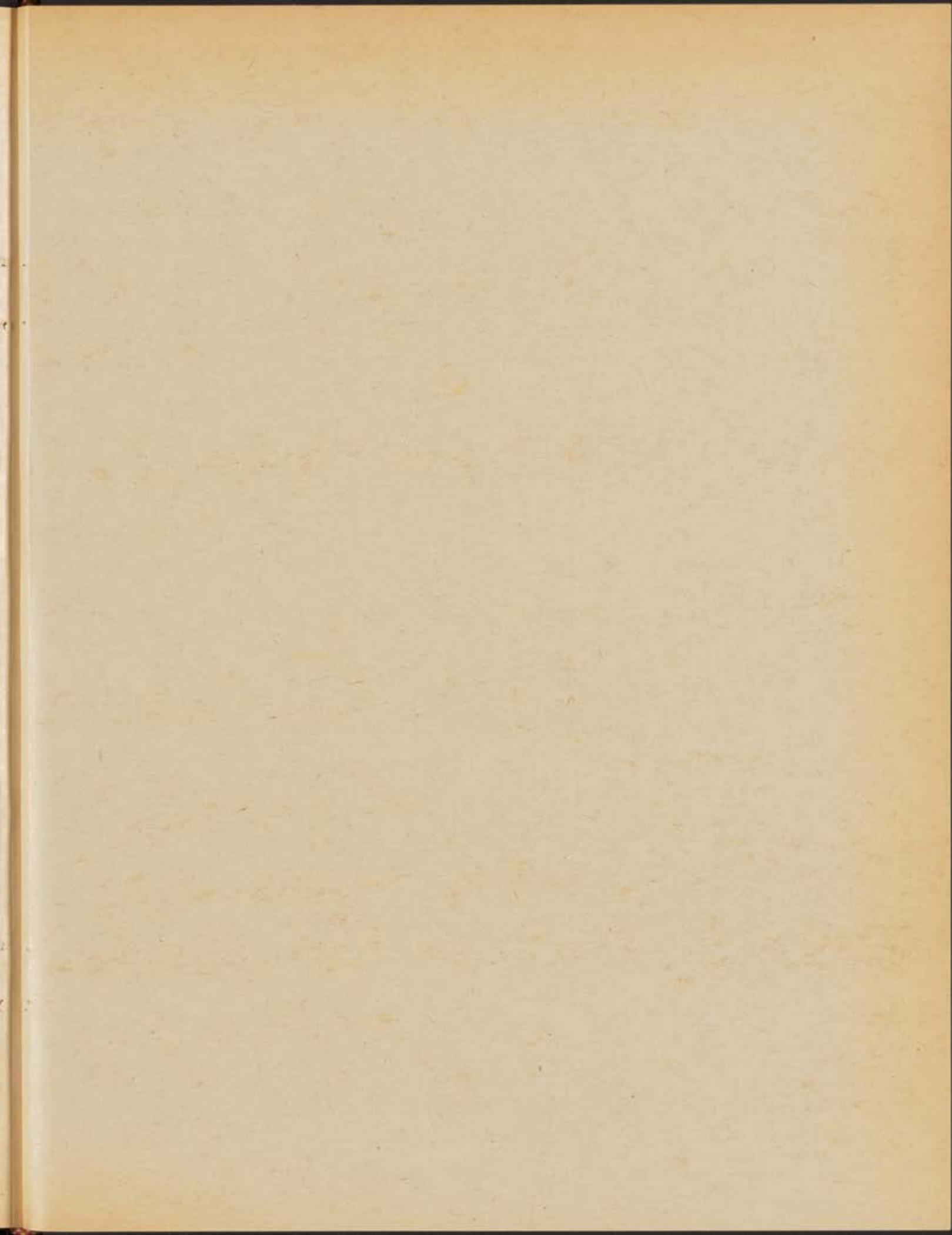
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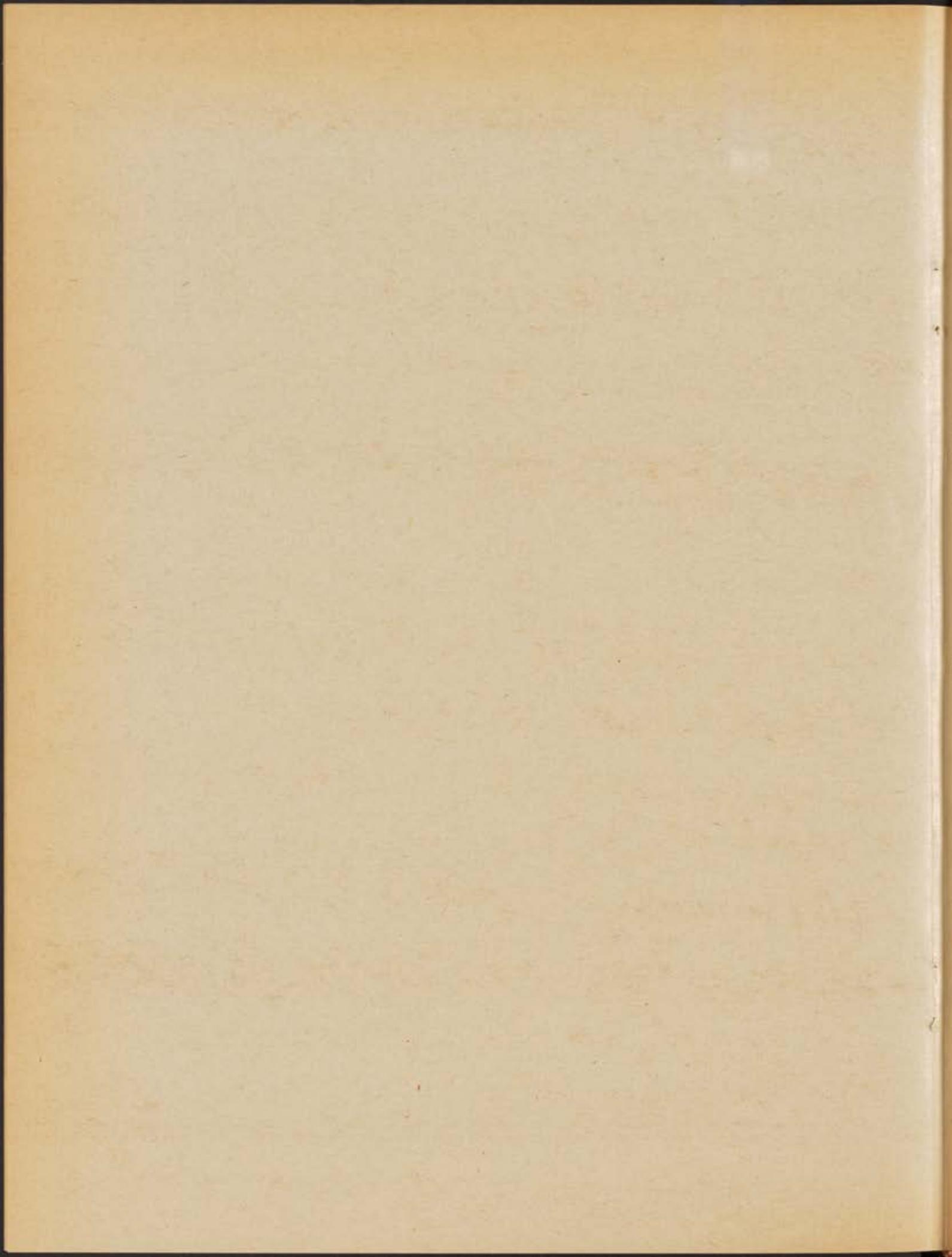
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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