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Wednesday
October 14, 1981

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50505 **Columbus Day** Presidential proclamation.

50507 **National Forest Products Week, 1981** Presidential proclamation.

50756 **Vocational Education** HHS/SSA proposes to reimburse States and other qualified entities for services to persons successfully rehabilitated. (Part IV of this issue)

50766 **Air Pollution Control** EPA changes definitions in regulations on preparation of State Implementation Plans. (Part V of this issue)

50553 **Securities** SEC requests comments on financial statement disclosure for public real estate programs.

50551 **Airports** CAB proposes to discontinue airport notice approved service plan requirements and other operating restrictions.

50539 **Natural Gas** DOE/FERC eliminates 31 incremental pricing regions.

50582 **Petroleum** DOE/ERA issues schedule of monthly price adjustments for crude oil.

50544 **Energy Conservation** DOE/CRE proposes to amend test procedures for refrigerators, refrigerator-freezers and freezers.

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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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Presidential Documents

Title 3—

The President

Proclamation 4873 of October 9, 1981

Columbus Day

By the President of the United States of America

A Proclamation

Christopher Columbus, whose life and exploits we commemorate each October, is one of the true heroes of our Nation's history.

He is justly admired as a brilliant navigator, a fearless man of action, a visionary who opened the eyes of an older world to an entirely new one. Above all, he personifies a view of the world that many see as quintessentially American: not merely optimistic, but scornful of the very notion of despair.

Nearly five centuries have passed since the fateful day on which Columbus changed the course of history. But his adventurous spirit lives on among us, challenging us to emulation and abiding with us as we too press forward on our voyage of discovery.

In tribute to the achievement of Columbus and to the many sons and daughters of Italy who have helped to shape our life and destiny as a people, the Congress of the United States of America has requested the President to proclaim the second Monday in October of each year as Columbus Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Monday, October 12, 1981, as Columbus Day; and I invite the people of this Nation to observe that day in schools, churches, and other suitable places with appropriate ceremonies in his honor.

I also direct that the flag of the United States of America be displayed on all public buildings on the appointed day in memory of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-29846
Filed 10-9-81; 3:37 pm]
Billing code 3195-01-M

Editorial Note: The President's remarks of Oct. 9, 1981, on signing Proclamation 4873, are printed in the Weekly Compilation of Presidential Documents (Vol. 17, No. 41).

Presidential Documents

Proclamation 4874 of October 9, 1981

National Forest Products Week, 1981

By the President of the United States of America

A Proclamation

The first settlers arriving in our land looked to the forests as their key to survival in an untamed and often forbidding land. The forests gave them wood for shelter, fuel for warmth, and meat for their table. Since those early times, our Nation's bountiful forests have provided for the welfare of generations of Americans. Yet, there are almost as many trees in our forests today as when the first tree was felled by our forefathers.

Although the daily lives of most Americans are now far removed from the forest environment, forests still supply lumber for homes, paper for disseminating information, fuel for stoves and fireplaces, and thousands of other uses that have become so commonplace they are often taken for granted.

Forests play a vital role in maintaining a healthy economy—more than 3 million Americans are employed in wood-dependent occupations, and their combined production is valued at about $100 billion each year. Moreover, our forests provide us with a wealth of other treasures that can carry no price tags—water, wildlife, outdoor recreation, and wilderness.

The contribution forests must make to our Nation's welfare will remain just as great in the years ahead as in the past. To meet the needs of the future, our forests must benefit from effective timber management and from continuing research to find better ways to utilize forest products. Improved wood growth and usage will make more wood products available at affordable prices while helping to stimulate our entire economy.

America has been greatly blessed with the resources of our forests. To allow them to waste away, when they could benefit so many, would be to ignore our responsibilities of stewardship. Our forests must be managed in ways that are environmentally safe and that ensure they will be available for the enjoyment and use of future generations.

If we act intelligently, our forests will continue to benefit the economy, even as they nourish the human spirit. The need and opportunity to commune with nature, to seek solitude, and to appreciate the beauty and grandeur of America's forests must be respected and preserved. With wise forest management, the demands of aesthetics and economics will remain compatible.

To promote greater awareness and appreciation for our forest resources, the Congress has by Public Law 86-753, 36 U.S.C. 163, designated the week beginning on the third Sunday in October as National Forest Products Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of October 18 through October 24, 1981, as National Forest Products Week and ask that all Americans express their appreciation for the Nation's forests through suitable activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of October, in the year of our Lord nineteen hundred and eighty-one, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 81-29847
Filed 10-9-81; 3:38 pm]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service[1]

7 CFR Part 2853

Increase in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service revises the rates for voluntary Federal meat grading and certification services because of increased program costs. This amendment is being implemented on an interim basis without a prior proposal because of the Agency's need to increase these rates to cover increased costs of providing service. It is also being published for comment as a means of providing full public participation in the rulemaking process.

DATES: Interim rule effective November 29, 1981; comments must be received on or before December 31, 1981.

ADDRESS: Written comments may be mailed to David K. Hallett, Chief, Meat Grading and Certification Branch; Livestock, Meat, Grain, and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; Room M-1, Annex Building; Washington, D.C. 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: David K. Hallett (202/382-1246).

[1] The Commodity Services Program of the Food Safety and Quality Service of the U.S. Department of Agriculture (USDA) was transferred to the Agriculture Marketing Service of USDA by USDA Secretary's Memorandum 1000-1 issued June 17, 1981. A notice detailing the Agencies' reorganization is being drafted for later publication.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

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

This regulation has been reviewed for cost effectiveness under USDA Secretary's Memorandum 1512-1 implementing Executive Order 12291. It increases fees to cover escalating costs of providing voluntary Federal meat grading and certification services. Federal law requires that users pay for these services. It is anticipated that these increases will not have a significant economic effect on meatpackers, processors, and consumers. An alternative to increasing fees would be to significantly reduce the amount of supervision and training of meat grading and certification personnel. This could result in nonuniform application of U.S. grade standards and specifications causing economic inequities among segments of the meat industry. The uniform and accurate application of grade standards and specifications nationwide is essential to maintaining the effectiveness and integrity of grading and certification services and facilitating interstate marketing of meat and meat products. Any decline in the effectiveness and integrity of services could result in an adverse impact on the identification of the quality of products available to consumers and on the orderly marketing of red meats.

Pursuant to the authority in U.S.C. 553, it is found that other public procedure and notice with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective November 29, 1981.

Effect on Small Entities

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 the fees merely reflect a minimal increase in the cost-per-unit graded and/or certified currently borne by those entities utilizing the services. Additionally, the increased fees will not affect normal competition in the marketplace.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection in the Washington, D.C., Meat Grading and Certification Branch office during regular business hours.

Background

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary Federal meat grading and certification services. The fees for these services are determined by the grader's salary and fringe benefits, cost of supervision, travel, training, and other overhead and administrative costs.

Since the last fee increase on December 28, 1980, which was based primarily on the October 1980, Federal employee pay increase, program costs have contined to rise. Federal employees recently received a 4.8 percent increase in conformity with the Federal Pay Comparability Act of 1970. In addition, the grade level or pay scale of graders currently performing service has shifted to a higher level due to longevity and progressive promotion to the journeyman meat grader level. Similarly, there have been significant increases in other costs such as travel, rent, and other associated overhead and administrative costs. Grader training costs also will increase during 1982 as an additional training class of new employees will be required to maintain the current employment level.

In view of the situations described above, the base hourly rate for voluntary Federal meat grading and certification services performed between the hours of 6 a.m. and 6 p.m.,

Monday through Friday, except on legal holidays, is increased from $20.20 to $23.20 per hour. For work performed on Saturday or Sunday and before 6 a.m. or after 6 p.m., Monday through Friday, except on legal holidays, the hourly rate is increased from $25.20 to $28.20 per hour. For all work performed on legal holidays, the hourly rate is increased from $40.40 to $46.40 per hour.

Because increased revenues are needed immediately to cover the costs of providing services, it has been determined that the following amendment must be adopted, effective November 29, 1981, on an interim basis. A final rule will be promulgated after evaluation of comments received in response to this notice.

Accordingly, under the authority contained in sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624), the U.S. Department of Agriculture hereby amends the Regulations Governing the Grading and Certification of Meats, Prepared Meats, and Meat Products (7 CFR, Part 2853) as follows:

PART 2853—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. Section 2853.27 is amended by revising paragraph (a) to read as follows:

§ 2853.27 Fees and other charges for service.

* * * * *

(a) *Fees based on hourly rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calclated to the nearest 15-minute period, including time required for the preparation of certificates and travel of the official grader in connection with the performance of service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate shall be $23.20 per hour for work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays; $28.20 per hour for work performed before 6 a.m. or after 6 p.m., Monday through Friday, and anytime Saturday or Sunday except on legal holidays; and $46.40 per hour for all work performed on legal holdiays.

* * * * *

(Agriculture Marketing Act of 1946, as amended, Sec. 203 and 205, 60 Stat. 1087, 1090; 7 U.S.C. 1622, 1624)

Done at Washington, D.C., October 5, 1981.

Eddie F. Kimbrell,

Acting Deputy Administrator.

[FR Doc. 81-29770 Filed 10-13-81; 8:45 am]

BILLING CODE 3410-02-M

Packers and Stockyards Administration

9 CFR Part 201

Federal Seed Act Regulations; Definitions

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends the definitions in § 201.2 of the regulations to reflect internal reorganization and nomenclature changes.

EFFECTIVE DATE: November 13, 1981.

FOR FURTHER INFORMATION CONTACT: John A. Sands, Director, Livestock Marketing Division, telephone (202) 447-6951, or William V. Carroll, Director, Packer and Poultry Division, telephone (202) 447-6771.

SUPPLEMENTARY INFORMATION: Amendments to § 201.2 were proposed and published in the Federal Register on December 31, 1980 (45 FR 87002). Comments filed in response to the proposal contained no objections to the scheduled definition changes. The final rule is now adopted as originally proposed with minor nomenclature changes resulting from the USDA reorganization outlined in Secretary's Memorandum 1000-1 issued June 17, 1981. That memorandum re-established the Packers and Stockyards Administration as a unit separate and apart from the Agricultural Marketing Service.

Executive Order 12291

This amendment to regulation 201.2 is not a major rule as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

James L. Smith, Acting Administrator, Packers and Stockyards Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities. This amendment to the regulation reflects internal reorganization and nomenclature changes only and imposes no costs to the industry.

PART 201—FEDERAL SEED ACT REGULATIONS

Accordingly, § 201.2 is revised to read as follows:

§ 201.2 Terms defined.

The definitions of terms contained in the Act shall apply to such terms when used in the Regulations under the Packers and Stockyards Act, 9 CFR Part 201; Rules of Practice Governing Proceedings under the Packers and Stockyards Act, 9 CFR Part 202; Statements of General Policy under the Packers and Stockyards Act, 9 CFR Part 203; and Organization and Functions, 9 CFR Part 204. In addition the following terms used in these parts shall be construed to mean:

(a) "Act" means the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 et seq.).

(b) "Department" means the United States Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department authorized to act for the Secretary.

(d) "Administration" or "agency" means the Packers and Stockyards Administration.

(e) "Administrator" or "agency head" means the Administrator of the Administration or any person authorized to act for the Administrator.

(f) "Regional Supervisor" means the regional supervisor of the Packers and Stockyards Administration for a given area or any person authorized to act for the regional supervisor.

(g) "Person" means individuals, partnerships, corporations, and associations.

(h) "Registrant" means any person registered pursuant to the provisions of the Act and the regulations in this part.

(i) "Stockyard" means a livestock market which has received notice under section 302(b) of the Act that it has been determined by the Secretary to come within the definition of "stockyard" under section 302(a) of the Act.

(j) "Schedule" means a tariff of rates and charges filed by stockyard owners and market agencies.

(k) "Custom Feedlot" means any facility which is used in its entirety or in part for the purpose of feeding livestock for the accounts of others, but does not include feeding incidental to the sale or transportation of livestock.

(7 U.S.C. 228(a))

Done at Washington, D.C., this 5th day of October 1981.

James L. Smith,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 81-29631 Filed 10-13-81; 8:45 am]

BILLING CODE 3410-28-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 34 and 131

[Docket No. RM 81-16; Order No. 182]

Application for Authorization of the Issuance of Securities or the Assumption of Liabilities

October 7, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising Part 34 of its regulations, "Application for Authorization of the Issuance of Securities or the Assumption of Liabilities." The Part 34 provisions are clarified and simplified and certain of the requirements therein are reduced or deleted.

The changes are part of the Commission's ongoing effort to update its reporting and filing requirements and to eliminate unnecessary reporting burdens for those entities which file applications or reports with the Commission pursuant to Part 34.

DATE: The revisions are effective October 7, 1981.

FOR FURTHER INFORMATION CONTACT: Robert E. Hildebrand, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 3408N, Washington, D.C. 20426 (202) 357-9184.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is revising its regulations at 18 CFR Part 34, "Application for Authorization of the Issuance of Securities or the Assumption of Liabilities." These revisions clarify and simplify the Part 34 provisions and delete or reduce certain of the requirements therein. The revisions are made as part of the Commission's effort to reevaluate all of its data requirements and to eliminate the reporting of data that are not necessary for Commission regulatory purposes.

Part 34 provides filing requirements for any issuance of a security or assumption of liability by a public utility, licensee or other entity for which approval must be obtained from the Commission under sections 19, 20 and 204 of the Federal Power Act (FPA) (16 U.S.C. 812, 813, 824c).

This final rule to amend Part 34 was preceded by a Notice of Proposed Rulemaking issued February 27, 1981 (46 FR 15513, March 6, 1981). Among the proposed changes to Part 34 were consolidation and simplification of the requirements for competitive bidding and negotiated placements, deletion of certain of the data elements which were previously required in an application, and addition of requirements to report certain items which were previously obtained through individual data requests.[1]

I. Summary and Analysis of Comments

A. General

In response to the Notice of Proposed Rulemaking, the Commission received six comments.[2] Two of the commenters, Idaho and Pacific, generally approved the proposed changes to Part 34 and commended the Commission for clarifying and abbreviating the requirements for security applications. Two other commenters, SCE&G and Iowa Electric, expressed certain concerns about the Commission's procedures for approving security issuances. The remaining commenters, Edison and Keleher offered alternative language for § 34.1 of the regulations.

Pacific stated that the revisions should increase the efficiency of the process and reduce costs associated with securities applications by about 25 percent. SCE&G said that it uses about 100 man hours and $5,000 to prepare an application under the current requirements; and that these figures could be reduced by more than 90 percent if the Commission approved this company's suggestions to further reduce the reporting requirements in the application. Iowa Electric stated that its reporting burden associated with the Part 34 requirements would not materially change as a result of this rulemaking.

SCE&G stated that the Commission's proposed requirements: (1) Do not reflect the "real world with regard to issuance of commercial paper," (2) continue to impose unnecessary requirements with respect to short-term borrowing, (3) do not go far enough in applying a short-form application for borrowing up to 5 percent of par value of outstanding securities, and (4) should permit a short-form application for borrowing up to 15 percent of par value of a utility's outstanding securities. SCE&G stated that the requirement of a long form application for short-term debt involving more than 5 percent of par value was "unrealistic" and was "unduly burdensome without any corresponding public benefit." According to SCE&G, much of the essential information in the long-form application, including all of Exhibits H, I and J could be derived from data included in or attached to Form No. 1 reports filed with the Commission.[3]

With respect to raising the limitation of outstanding debt from 5 percent to 15 percent, the Commission notes that section 204(e) of the Federal Power Act specifically prescribes the 5 percent of par value limitation. Therefore, revision of the 5 percent limitation would require an Act of Congress rather than Commission action.

The Commission, however, has further simplified the "long-form" requirements for utilities which apply for short-term issuances of securities. Both Exhibits I (§ 34.4(i)) (information concerning the construction program) and J (§ 34.4(j)) (estimates of peak load and capacity) have been deleted from Part 34 because the Commission may obtain these data from information filed in, or attached to, the Form No. 1.[4] Data in Exhibit J are also available to the Commission through ERA Form No. 119-A, "Annual Projected Electric Utility Energy and Capacity Report." Therefore, a separate filing of Exhibit J with the Commission is no longer necessary.

The Commission notes that applicants who file for any short-term issuances of securities are not required to comply with the following provisions in Part 34 because such provisions relate only to long-term offerings: (1) Section 34.3(e)(1), "Type and nature of securities"; (2) § 34.3(e)(3), "Interest or dividend rate, if any"; (3) § 34.3(e)(4), "Dates of issuance and maturity"; (4) § 34.3(e)(5), "Institutional rating of the securities, or if the securities are not rated, an explanation thereof"; (5) § 34.3(e)(6), "Any stock exchange on which the

[1] For a detailed discussion of the particular changes proposed for Part 34, see pp. 2-6 of the Notice of Proposed Rulemaking in this docket.

[2] Idaho Power Company (Idaho); Iowa Electric Light and Power Company (Iowa Electric); Pacific Power and Light Company (Pacific); Southern California Edison Company (Edison); South Carolina Electric and Gas Company (SCE&G); and Keleher and McLeod, P.A. (Keleher).

[3] Form No. 1 is the "Annual Report for Electric Utilities, Licensees and Others [Class A and Class B]" and is required to be filed by § 141.1 of the Commission's regulations.

[4] Pacific suggested that Exhibit I should be clarified to provide the timing or cost changes which trigger revisions to information reported in the exhibit. Because the exhibit is eliminated by this final rule, this clarification is no longer necessary.

securities will be listed"; (6) § 34.3(e)(7), "Information in support of an exemption from competitive bidding requirements pursuant to § 34.2(a)(1) (i), (ii) or (iii)"; (7) Exhibit F (§ 34.4(f)) (The SEC Registration Statement); (8) Exhibit G (§ 34.4(g)) (Copies of public invitations for proposals to purchase or underwrite securities offered for issuance); or (7) Exhibit H (§ 34.4(h)) (Summaries of data from proposals for negotiated placements).

SCE&G also argued that the attorney's opinion on legality of the debt could be omitted from the application if the signature of the attorney on the application were interpreted as a certification of legality.

The Commission notes that the attorney's opinion on legality of the debt had been proposed for deletion in the notice and is hereby eliminated from the Part 34 requirements.

Iowa Electric objected to the Commission's entire process for authorizing the issuance of securities. The proposed rule in this docket would not materially change the reporting burden of the application process, according to Iowa Electric, and does nothing to address the basic issues raised at the Electric Power Informal Public Conference held at the Commission on March 6, 1981.[5] Specifically, Iowa Electric claimed that competitive bidding procedures for the sale of securities "is completely untenable in today's market" and that the Commission's negotiated bidding process is, in fact, competitive bidding.

The Commission notes that the March 6, 1981, Informal Conference dealt with broad issues more directly related to rate matters than security issuances. However, with respect to Iowa Electric's specific concerns about the competitive and negotiated bidding processes, the Commission believes that these processes are proven methods of authorizing the sale of securities and are, therefore, "compatible with the public interest," according to section 204(a) of the FPA. Furthermore, competitive bidding remains the required method for security issuances subject to regulation by the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79–79z–6).[6] The negotiated bidding process is not synonymous with the competitive bidding process. Competitive bidding is accomplished through public invitation for bids. Negotiated placements are exempted from this public invitation process. The only elements common to the competitive bid process and the negotiated placement process are the prohibitions respecting competitive bids and negotiated placements in § 34.2(e), and the written application requirements specified in § 34.3.

Iowa Electric also stated that the Commission should seriously consider adopting a process wherein approval of security issuances would be limited to the appropriateness of a pro forma capital structure. Iowa Electric added that once a pro forma capital structure was reviewed and approved by the Commission, the company would be permitted to have access to the market at times and on terms deemed to be in its best interests.

Pursuant to section 204(a) of the FPA, "no public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability." The Commission does not believe that the approval of a utility's pro forma capital structure would constitute the authorization of issuances of securities or assumption of liability that is prescribed in section 204(a). Furthermore, capital structures are subject to changeable market conditions and are necessarily an internal consideration for each company. Therefore, it would not be in the public interest for the Commission to review and approve capital structures.

Iowa Electric also stated that revisions to Part 34 should be deferred until the basic problems with the security authorization process were addressed. The Commission will not defer this final rule to revise its security application procedures because the method used for the authorization of securities, is, in the Commission's opinion, a workable method. Furthermore, in response to comments received in this docket, the Commission has, where possible, made further reductions in its application requirements to ease the utilities' reporting burden. The Commission must continue to require certain basic data in order to make a reasonable determination that a proposed issuance or assumption "is for some lawful object within the corporate purposes of the applicant and compatible with the public interest * * *" (section 204(a), FPA).

B. Discussion of Particular Sections

1. *Section 34.1.* Among its specific comments, Pacific opposed the deletion of the small issue exemption from competitive bidding for securities of less than $1 million.[7] Pacific said that a small issue exemption should be retained and increased to $5 million to facilitate financing at this modest level.

A small issue exemption of 5 million dollars or even 10 million dollars is of no benefit to most companies because of the prohibitively high costs associated with the issuance of stocks or bonds for these relatively small amounts. The Commission, therefore, has eliminated a meaningless regulation to reflect the realities of the financial world. The Commission also notes that a company may apply for exemption from the competitive bidding requirements according to the provisions of § 34.2(a)(1)(iv) of the Commission's regulations. The company could, therefore, obtain a "small issue exemption" for a particular security issuance if the Commission finds that the noncompetitive placement is consistent with the public interest.

Both Edison and Keleher offered suggestions to revise § 34.1(c)(1). This provision exempts from the Commission's review security issuances by a utility, if the State in which the utility is organized and operates regulates the issuance of such securities. The proviso in the § 34.1(c)(1) exemption states "that such utility must obtain express authorization for such State agency prior to the issuance of such securities." Edison, an electric utility which is organized and operates in California, stated that California statutes do not provide explicit statutory power for the California Public Utilities Commission (CPUC) to "authorize" certain of Edison's transactions. Under CPUC's broad regulatory powers, however, Edison has sought and received "approvals" of these transactions. Edison stated that § 34.1(c)(1) should provide for authorization "or approval" from such State agency. This change would assure

[5] (Docket No. EL81–7–000) The purpose of the hearing in this docket was to obtain views and comments from interested persons concerning the financial health of electric utilities and to determine ways in which the Commission could improve the situation consistent with its responsibilities to electric utility consumers. Copies of documents in this proceeding are on file in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

[6] Iowa Electric suggested eliminating clause (5) of § 34.3(c) and modifying certain items in Exhibit H (§ 34.4(h)). These suggestions are discussed in connection with Pacific's comments concerning those issues at subsections 2 and 3 of this Part.

[7] The small issue exemption was provided at § 34.1a(a)(3) of the previous regulations.

that a company would not have to proceed before both the State commission and the Federal Energy Regulatory Commission for "authorization" prior to issuance of securities.

Similarly, Keleher inquired whether the "approval" for security issuances under the New Mexico Public Service Commission regulations may be construed to be "express authorization" according to § 34.1(c)(1).

The Commission has added the word "approval" to the proviso, as requested. In addition, the Commission has substituted the word "written" for the word "express" so that the proviso now states that, "* * * such utility must obtain written authorization or approval" from the appropriate State agency prior to the issuance of the particular securities. The change was made to clarify that the authorization (or approval) obtained from a State agency for a security issuance or obligation must be evidenced by a written order. However, so long as the State agency has the power to ratify an issuance and does so in writing, any appropriate language of endorsement may be used.

Pacific requested that the exemption from Commission security issuance rules under § 34.1(c)(3) for certain qualifying facilities be extended to include an exemption for alternative energy resource financing by and for regulated utilities. This exemption, according to Pacific would "further promote utility ventures into such resources."

The Commission will not exempt from the requirements in Part 34 energy resource financing by and for regulated utilities. Each of the exemptions in § 34.1(c) is authorized by statute. An exemption for energy resource financing is not so authorized and, therefore, is not subject to exemption from the Commission's securities regulations.[8]

2. *Section 34.3.* Iowa Electric was opposed to the requirement in § 34.3(e)(5) (institutional rating of securities) because the information prescribed in that clause would not yet be available when an application was filed.

The Commission believes that Iowa Electric could comply with § 34.3(e)(5) because it requires an "institutional rating of the securities—or *if the securities are not rated,* an explanation as to why they are not rated * * *" (Italics added.) Thus, an explanation would be required in situations where the securities are not rated, either as a matter of course or because the rating process has not been completed as of the date of the filing. The Commission has also amended this provision to require as part of the explanation an estimate of what the rating will be, once the rating process is completed. Thus, the best available information about the institutional rating would be provided, without a burden to the applicant.

Pacific stated that the requirements in § 34.3(e) (5) and (6),[9] while not burdensome, are possibly duplicative of information filed in the Securities and Exchange Commission (SEC) Registration Statement. Pacific also stated that in the case of publicly-offered securities, the data required in § 34.3(k) and (1) (limitations on interest and dividend coverage, and rate change summary, respectively) are reported in the SEC Registration Statement. Pacific urged the Commission to provide for incorporation by reference of such data in the securities application.

The Commission agrees with Pacific's suggestions and notes that a copy of the SEC Statement is filed with the Commission pursuant to § 34.4(f), Exhibit F. Therefore, the Commission has provided in § 34.3 that, in lieu of filing the information required in paragraphs (e), (k) and (1), a specific reference may be made to the portion of the SEC Registration Statement which includes the information required in these paragraphs.

3. *Section 34.4.* Pacific proposed the deletion of four items required in Exhibit H (§ 34.4(h)).[10] These were items (viii), "Offering price to the public or to other purchasers"; (ix), "Discount or premium"; (xi), "Net proceeds to company for each unit of security and for the total issue"; and (xii), "Net cost to the company for securities with a stated interest or dividend rate". Pacific argued that this information could be discussed in item (xiii), "Other pertinent data," and in staff information requests according to the current procedure. Iowa Electric criticized the same items (viii), (ix), (xi) and (xii), and also item (iii), "Total dollar amount of issue." Iowa Electric stated that these data are not available to underwriters until immediately before the public offering of securities and, therefore, cannot be reported in the securities application.

The Commission has retained items (viii), (ix), (xi) and (xii) of Exhibit H because each of these requirements describes the criteria which are most frequently used in the selection of a bid. They are listed as individual items so that the Commission may determine the extent to which companies rely on these data in selecting and justifying negotiated financing. This categorization is meant to assist the Commission in utilizing and analyzing the data reported in Exhibit H; it should not discourage applicants from using and describing other criteria for selecting a bid. Item (xiii) was specifically included as a summary item in Exhibit H for the reporting of any other information that the company wished to include.

In response to Iowa Electric, the Commission has amended § 34.4(h)(1) to provide that the summaries of proposals for negotiated placement of securities may include estimated information, if actual data are not available. These data must, however, be identified as estimates.

4. *Section 34.10.* Pacific stated that the "Report of Securities Issued" (18 CFR § 132.43) which is required to be filed under § 34.10 could not be timely filed with all costs final in the proposed 45-day period because some expenses and fees are not determined or billed within 45 days after completion of a security sale. Pacific suggested that the requirement be amended to provide for "as available" reporting within 45 days and final reporting by 180 days.

The Commission has amended § 34.10 to provide that the report shall be due no later than 180 days after the sale or placement of equity or long-term debt or entry into another contractural obligation authorized in Part 34.

II. Summary of Changes to the Part 34 Requirements

The Commission has adopted the changes to Part 34 of its regulations which were proposed in the Notice of Proposed Rulemaking. In addition, further revisions are made in this final rule as a result of the comments received in this docket. They are summarized as follows:

(1) Section 34.1(c)(1) is amended in the proviso to state that a utility must obtain "written authorization or approval" from the appropriate State agency prior to the issuance of particular securities.

(2) Section 34.3 is amended to provide that, in lieu of filing the information required in paragraphs (e), (k) and (l), a specific reference may be made to that portion of the SEC Registration Statement which includes the necessary data.

[8] The exemption for a utility orgainzed and operating in a State which regulates securities prior to their issuance, and the exemption for short-term notes or drafts, are provided for in section 204 of the Federal Power Act. The exemption for certain qualifying facilities is provided for in section 210 of the Public Utility Regulatory Policies Act of 1980 (16 U.S.C. 2601-2635).

[9] Section 34.3(e)(6) requires stock exchange identification data.

[10] Exhibit H prescribes summaries of data from each proposal received by the applicant for a negotiated placement of securities offered for issuance.

(3) Section 34.3(e)(5) is amended to require an institutional rating of securities—or if the securities are not rated, an explanation as to why they are not rated and if such securities will be rated, an estimate of such rating.

(4) Exhibit H (§ 34.4(h)) is amended in paragraph (1) to provide that the required information may be estimated if actual data are not available, provided such data are identified as estimates.

(5) Exhibits I and J (§ 34.4(i), (j)) are deleted because the information required therein is available in Form No. 1 reports and information in Exhibit J may also be derived from ERA Form No. 119–A.

(6) Section 34.10 has been revised to require that the "Report of Securities Issued" (§ 131.43) shall be filed within 180 days after the issuance of securities.

In addition to clerical and conforming changes, the Commission has made the following additional revisions to the regulations at Part 34:

(1) A definition for the word "State" has been added at § 34.1(b)(4), based upon the definition of "State" in section 3(6) of the Federal Power Act.

(2) Section 34.2(b)2)(i)(B) is amended. That provision requires that upon receipt of an exemption from competitive bidding requirements, a utility "shall negotiate with, and obtain proposals with regard to placement of such securities from, at least three prospective dealers, purchasers or underwriters." The Commission has added "unless otherwise authorized by the Commission" after the word "underwriters." The Commission has determined that in certain instances (*e.g.*, those involving unsolicited proposals or "Eurodollar" financing), deviations from the standard of "three prospective dealers purchasers or underwriters" may be appropriate.

(3) Section 34.3(m) is modified to eliminate from the **Federal Register** requirements, Item (3), "the purpose of the issuance," because this information is not required in a **Federal Register** notice.

(4) Section 34.4(d) (Exhibit D) is modified to eliminate the requirements for "supporting plant schedules" because that information is not necessary to the Commission's review of security issuances. Similarly, the reference to the Form No. 1's "Statement B, 'Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion,'" is also eliminated from Exhibit D because that is the form in which the now deleted plant schedule data would have been reported.

(5) Section 34.7 (Number of copies to be filed), 131.43 (Report of Securities Issued), and 131.50 (Certificate of Notification) are revised to reduce from five to four the number of copies of documents (in addition to the original) required to be filed with the Commission.

III. Effective Date

Immediate adoption of the revisions to Part 34 of the Commission's regulations will promote an expeditious reduction of unnecessary reporting burdens. Therefore, under 5 U.S.C. 553(d), the Commission is making these changes effective immediately for applications filed after October 7, 1981.

(Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142; Federal Power Act, (16 U.S.C. 792–828(c)); Public Utility Regulatory Policies Act, (16 U.S.C. 2601–2635))

In consideration of the foregoing, the Commission amends Part 34 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective October 7, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 34 is revised to read as follows:

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

Sec.

34.1 Applicability; definitions; exemptions in case of certain State regulation, certain short-term issuances and certain qualifying facilities.
34.2 Competitive bidding requirements; negotiated placements; exemptions.
34.3 Contents of application for competitive bids or negotiated placements.
34.4 Required exhibits.
34.5 Additional information.
34.6 Form and style.
34.7 Number of copies to be filed.
34.8 Verification.
34.9 Filing fee.
34.10 Reports.

Authority: Federal Power Act, secs. 3(16), 19, 20, 41 Stat. 1063, 1073; secs. 203, 204, 305, 308, 309, 49 Stat. 849, 850, 856, 858; (16 U.S.C. 796(16), 812, 813, 824b, 824c, 825d, 825g, 825h; Public Utility Regulatory Policies Act, sec. 210, 92 Stat. 3117; (16 U.S.C. 824a–3); Department of Energy Organization Act, (42 U.S.C. 7101–7352); E.O. 12009, 3 CFR 142, unless otherwise noted.

Cross References: For rules of practice and procedure, see Part I of this chapter. For Approved Forms, Federal Power Act, see Part 131 of this chapter.

OMB Reference: "FERC Filing No. 523" is the identification number used by the Commission and the Office of Management and Budget to reference the filing requirements in Part 34.

§ 34.1 Applicability; definitions; exemptions in case of certain State regulation, certain short-term issuances and certain qualifying facilities.

(a) *Applicability.* This part applies to applications for authorization from the Commission to issue securities or assume an obligation or liability which are filed by:

(1) Licensees and other entities pursuant to sections 19 and 20 of the Federal Power Act (41 Stat. 1073, 16 U.S.C. 812, 813) and Part 20 of the Commission's regulations; and

(2) Public utilities pursuant to section 204 of the Federal Power Act (49 Stat. 850, 16 U.S.C. 824c).

(b) *Definitions.* For the purpose of this Part:

(1) The term "utility" means a licensee, public utility or other entity seeking authorization under sections 19, 20 or 204 of the Federal Power Act;

(2) The term "securities" includes any note, stock, treasury stock, bond, or debenture or other evidence of interest in or indebtedness of a utility;

(3) The term "issuance or placement of securities" means issuance or placement of securities, or assumption of obligation or liability; and

(4) The term "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(c) *Exemptions.*—(1) *If State regulates securities prior to issuance.* A utility whose security issueances are regulated by a State agency, shall be exempted from the provisions of sections 19, 20 and 204 of the Federal Power Act, and from the provisions of this part: *Provided, however,* That the State agency is required to exercise its regulatory authority with respect to the issuance of such securities prior to issuance, and that the utility must obtain written authorization or approval from the State agency prior to the issuance of such securities.

(2) *For short-term notes or drafts.* Pursuant to section 204(e) of the Federal Power Act, the issuance, renewal, or assumption of liability on a note or draft:

(i) Maturing not more than one year after the date of such issuance, renewal, or assumption of liability, and

(ii) Aggregating (together with all other then outstanding notes and drafts of a maturity of one year or less on which such utility is primarily or secondarily liable) not more than 5 per cent of the total of the other securities of the utility then outstanding, including:

(A) In the case of securities having a par value, such par value, and

(B) In the case of securities having no par value, the fair market value of such securities as of the date of issuance, renewal or assumption of such note or draft, is exempt from Commission regulation pursuant to this part: *Provided, however,* That within 10 days after any such issuance, renewal, or assumption of liability, the utility shall file with the Commission a certificate of notification, in the form set forth in §131.50 of this chapter.

(3) *For certain qualifying facilities.* Any cogeneration or small power production facility which is exempt from sections 19, 20 and 204 of the Federal Power Act pursuant to § 292.601 of this chapter shall be exempt from the provisions of this part.

§ 34.2 Competitive bidding requirements; negotiated placements; exemptions.

(a) *Competitive Bids.*—(1) *General requirement for competitive bidding: exemptions.* Every issuance by a utility of a security subject to sections 19, 20 or 204 of the Federal Power Act shall be made only after public invitation for and acceptance of competitive bids for such securities in accordance with the requirements of this part, except when:

(i) The securities are to be issued to holders of existing securities on a pro-rata basis;

(ii) The securities are to be issued to a commercial bank, insurance company or similar institution and are not for resale to the public: *Provided, however,* That no fee or commission is paid to any third party for negotiating the transaction (except an associated service company charging only its costs of service);

(iii) The securities to be issued have a maturity of one year or less; or

(iv) The issuance of the securities, if not otherwise exempt from the competitive bidding requirements under paragraph (a)(1)(i), (ii), or (iii) of this section, is nevertheless exempted by the Commission pursuant to a utility's request, under paragraph (b)(2) of this section, for authority to negotiate for placement of securities, in lieu of seeking competitive bids: *Provided, however,* That the Commission may deny any such exemption from competitive bidding upon a finding that a non-competitive placement is not consistent with the public interest.

(2) *Competitive bid application and Commission action thereon.* A utility which proposes to issue securities subject to this part according to competitive bidding procedures shall file an application with the Commission under this part for authority to make such issuances. Upon the receipt of authorization, the utility may invite bids and issue the securities: *Provided, however,* That:

(i) The proposed bids as may be received in response to the public invitation shall not be opened at any time or place other than as specified in the invitation;

(ii) The duly authorized representative of any person making any such proposed bid shall be entitled to be present at the opening of the proposed bids and may examine each proposed bid submitted;

(iii) The invitation shall refer to the prohibitions set forth in paragraph (c) of this section;

(iv) At least two of the bids received shall meet the conditions set forth in the invitation for bids; and

(v) (A) The bid which is accepted shall provide the utility with the greatest overall proceeds, or be the least costly of the proposals obtained, or

(B) If the utility intends to accept a bid other than that described in paragraph (a)(2)(v)(A) of this section, the utility shall before accepting the bid:

(*1*) File with the Commission further justification as the Commission may require, in support of the utility's intention to accept the other bid, and

(*2*) Obtain Commission approval to accept the other bid.

(b) *Negotiated placements.*—(1) *Negotiated placement application pursuant to paragraph (a)(1)(i), (ii) or (iii), and Commission action thereon.* Any utility which is exempt from the competitive bidding requirements under paragraph (a)(1)(i), (ii) or (iii) of this section shall submit an application for negotiated placement of securities pursuant to § 34.3. Upon the Commission's authorization to such utility for negotiated placement of the securities, the utility may make the placement.

(2) *Negotiated placement application pursuant to paragraph (a)(1)(iv), and Commission action thereon.* (i) A utility which requests authority to issue securities by negotiation pursuant to paragraph (a)(1)(iv) shall:

(A) File for and obtain an exemption from the Commission's competitive bidding requirements prescribed in paragraph (a) of this section;

(B) Upon receipt of the exemption, shall negotiate with, and obtain proposals with regard to placement of the securities from at least three prospective dealers, purchasers or underwriters, unless otherwise authorized by the Commission, and each such dealer, purchaser or underwriter shall be notified of the prohibitions set forth in paragraph (c) of this section; and

(C) File an application for authority to issue the securities, pursuant to § 34.3.

(ii) Upon the Commission's authorization to a utility to issue the securities, such utility may make the issuances.

(c) *Prohibitions respecting competitive bids or negotiated placements.* No bid for the placement of any securities shall be invited or accepted from, nor shall negotiations occur with, any person who:

(1) Prior to the submission of bids, or beginning of negotiations, has performed any service for any fee or compensation in connection with the proposed issuance of securities; or

(2) Violates section 305(a) of the Federal Power Act with respect to the bid, invitation, or negotiation.

§ 34.3 Contents of application for competitive bids or negotiated placements.

Each application to the Commission for authority to issue securities shall contain the information specified in this section. In lieu of filing the information required in paragraphs (e), (k) and (l) of this section, a specific reference may be made to the portion of the registration statement filed under § 34.4(f) of this chapter which includes the information required in these paragraphs.

(a) The official name of the applicant and address of its principal business office.

(b) The State in which the utility is incorporated, the date of incorporation, and each State in which it operates.

(c) The name, address and telephone number of a person within the utility authorized to receive notices and communications with respect to the application.

(d) The date by which Commission action is requested.

(e) A full description of the securities proposed to be issued, including:

(1) Type and nature of securities;

(2) Amount of securities (par or stated value and number of units);

(3) Interest or dividend rate, if any;

(4) Dates of issuance and maturity;

(5) Institutional rating of the securities—or if the securities are not rated, an explanation as to why they are not rated, and if the securities will be rated, an estimate of the rating;

(6) Any stock exchange on which the securities will be listed; and

(7) Information in support of an exemption from competitive bidding requirements pursuant to § 34.2(a)(1) (i), (ii) or (iii).

(f) A description as to how such securities are to be issued and sold or

the procedure by which the applicant will assume any obligation or liability as guarantor, endorser, surety, or otherwise.

(g)(1)(i) The name and address of any person receiving or entitled to receive a fee for services (other than persons who render technical services, such as attorneys, or accountants) related to the negotiation, issuance or sale of securities; or, receiving or entitled to receive a fee for services in securing underwriters, sellers, or purchasers of securities, except as related to any competitive bid;

(ii) The amount of each such fee;

(iii) The facts showing that the services are necessary, and that the fee is reasonable for rendering services in an arm's length transaction; and

(iv) Any other relevant factors concerning fees or services that the utility wished to provide.

(2) All facts showing or tending to show that the applicant directly or indirectly controls, is controlled by, or is under the same common control as any person named pursuant to the requirements of paragraph (g)(1)(i) of this section; or facts showing or tending to show the contrary. For purposes of this clause, "control" has the same meaning as "Control" in Item 5.B. of the Definitions at 18 CFR Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class A and Class B).

(h) The purpose for which the securities for which application is made are to be issued:

(1) If the purpose of such issuance is the construction, completion, extension, or improvement of facilities, describe in reasonable detail the construction program for which the funds were or are to be used.

(2) If the purpose for such issuance is for the refunding of obligations, describe in detail the obligations to be refunded, including the character, principal amounts, applicable discount or premium, dates of issuance and maturity, and all other material facts concerning such obligations.

(3) If the purpose for such issuance is for other than construction or refunding, explain such other purpose(s) in detail.

(i) A statement as to whether or not any application with respect to the transaction or any part thereof is required to be filed with any State regulatory body.

(j) A detailed statement of the facts relied upon by the applicant to show that the issuance:

(1) Is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, is necessary or appropriate for or consistent with the proper performances by the applicant of service as a public utility and will not impair its ability to perform that service, and

(2) Is reasonably necessary or appropriate for such purposes.

(k) A detailed statement of the bond indenture(s) or other limitations on interest and dividend coverage, and the effects of such limitations on the issuance of additional debt or equity securities.

(l) A brief summary of any rate changes which were made effective during the period for which financial statements are submitted or which became or will become effective after the period for which statements are submitted.

(m) A form of notice suitable for publication in the **Federal Register**, setting forth: (1) The legal name of the applicant, (2) the securities offered for issuance including the proposed issue date, and (3) the comment procedure.

(n) Any applicable exhibits as required under § 34.4.

§ 34.4 Required exhibits.

(a) *Exhibit A.* A copy of the applicant's charter or articles of incorporation with amendments to date of filing the application; and a copy of the by-laws with amendments to date: *Provided, however,* That if the documents required in this exhibit have been filed with the Commission no more than 5 years prior to the current application, a specific reference to, and the date of such previous filings, will be accepted in lieu of separate filings.

(b) *Exhibit B.* A copy of all resolutions of the applicant's directors authorizing the issuance of securities for which the application is made; and copies of the resolution of the stockholders approving such issuance if approval of the stockholders has been obtained.

(c) *Exhibit C.* A statement of the measure of control or ownership exercised by or over the applicant as to any utility, bank, trust company, banking association, firm that is authorized by law to underwrite or participate in the marketing of securities of a utility, or any company supplying electric equipment to such applicant. If any intercorporate relationships exist among any such entities through holding companies, ownership of securities, or otherwise, a statement is required concerning the ownership of securities or the nature and extent of such relationship. If the applicant is not a member of any holding company system, a statement to that effect is required.

(d) *Exhibit D.* The balance sheet and attached notes for the most recent 12 month period, on both an actual basis and pro forma basis in the form prescribed for Statement A, "Comparative Balance Sheet" of Form No. 1, "Annual Report for Electric Utilities, Licensees and Others (Class A and Class B)" (*see* 18 CFR 141.1). Each adjustment made in determining the pro forma basis shall be clearly identified.

(e) *Exhibit E.* The income statement, with attached notes, for the most recent 12 month period, on both an actual basis and a pro forma basis in the form prescribed for Statement C ("Statement of Income for the Year") of Form No. 1. Each adjustment made in determining the pro forma basis shall be clearly identified.

(f) *Exhibit F.* A copy of registration statement and exhibits which are filed with the Securities and Exchange Commission for the proposed security issuance.

(g) *Exhibit G.* A copy of the public invitation(s) for proposals to purchase or underwrite the securities offered for issuance.

(h) *Exhibit H.* (1) A copy of each proposal received by the applicant for a negotiated placement of the securities offered for issuance, and a summary tabulation of all proposals. If actual data concerning such proposals are not available, estimated data may be substituted, if they are identified as estimates. The summary shall include the following information, identified by prospective dealer, purchaser or underwriter:

(i) Par or stated value of the securities.

(ii) Number of units (shares of stock, number of bonds) to be issued.

(iii) Total dollar amount of the issue.

(iv) Life of the securities, including maximum life and average life for a sinking fund issue.

(v) Dividend or interest rate.

(vi) Call provisions.

(vii) Sinking fund provisions.

(viii) Offering price to public or to other purchaser(s).

(ix) Discount or premium.

(x) Commission or underwriting spread.

(xi) Net proceeds to company for each unit of security and for the total issue.

(xii) Net cost to the company for securities with a stated interest or divident rate.

(xiii) Other pertinent data.

(2) A list identifying any person with whom negotiations took place but from whom no proposal was received.

(3) A justification in support of the utility's intention to accept a particular offer.

§ 34.5 Additional information.

The Commission may, in its discretion, require the filing of additional information which appears necessary to reach a determination on any particular application.

§ 34.6 Form and style.

Each application pursuant to this Part 34 shall conform to the requirements of § 1.15 of this chapter.

§ 34.7 Number of copies to be filed.

Each applicant shall submit to this Commission an original and four copies of each application pursuant to this Part 34.

§ 34.8 Verification.

The original application shall be signed by an authorized representative of the applicant, who has knowledge of the matters set forth therein, and it shall be verified under oath.

§ 34.9 Filing fee.

Each application shall be accompanied by a fee as prescribed in 18 CFR 36.2.

§ 34.10 Reports.

The applicant shall file a report pursuant to 18 CFR 131.43 no later than 180 days after the sale or placement of equity or long-term debt securities, or entry into other contractual obligations pursuant to authority granted under this Part. This requirement does not apply to debt having a maturity of one year or less.

PART 131—FORMS

2. Section 131.43 is amended by revising the first two parenthetical sentences following the section heading, to read as follows:

§ 131.43 Report of securities issued.

(See § 34.10 of this chapter.) (Submit an original and four copies.)

* * * * *

3. Section 131.50 is revised to read as follows:

§ 131.50 Certificate of notification.

(See § 34.1(c)(2) of this chapter. If the aggregate amount of the issuance reported herein, together with all other outstanding notes and drafts with a maturity of 1 year or less is in excess of 5 percent of the par value of the outstanding securities at the date of the issuance in accordance with §34.1(c)(2) of this chapter, the respondent shall file an application pursuant to Part 34 of this chapter.)

(Submit an original and four copies.)
[Name of Public Utility]
[Address of Public Utility]

This is to certify that the following are the facts relating to an issuance entered into by the above-named public utility to which the provisions of section 204(e) of the Federal Power Act are applicable:

(1) Date of issuance, renewal, or assumption.

(2) Description of the terms of the note or draft including the amount, payee, interest rate and maturity date.

(3) Aggregate amount of such note or draft, and all other outstanding notes and drafts of a maturity of 1 year or less on which the public utility is primarily or secondarily liable at the date of this issuance.

(4) Total par value (or, in the case of securities having no par value, the fair market value as of the date of this issuance) of all other securities outstanding at the date of this issuance.

(5) Full details on how fair market value of securities having no par value was calculated at the date of this issuance of securities.

(6) Date of State authorization and docket number, if applicable.

[Corporate Seal]

(Name and title of person who signs this certificate) _____

Subscribed and sworn to before me this ____ day of _____, 19—.

(Notary public) _____

Only original need be verified.

[FR Doc. 81-29712 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

18 CFR Part 35

[Docket No. RM81-41]

Sales of Electric Power to the Bonneville Power Administration; Filing of Rate Schedules; Interim rule

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule.

SUMMARY: Under the Pacific Northwest Electric Power Planning and Conservation Act, the Bonneville Power Administration must develop and file with the Commission for review and approval an "average system cost" methodology for sales of electric power made by electric utilities to the Bonneville Power Administration.

Some utilities that will use the methodology are subject to this Commission's jurisdiction under the Federal Power Act and must file rate schedules pursuant to Part 35 of the Commission's rules. The Commission is amending, on an interim basis, its rules governing the sales of electric power as they may pertain to such utilities and is granting conditional interim approval to the average system cost methodology filed with the Commission by the Bonneville Power Administration. Interim approval of the methodology will permit immediate implementation of the purchase and sale power exchange established in the Pacific Northwest Electric Power Planning and Conservation Act.

DATES: This interim rule is effective October 1, 1981. Comments must be submitted on or before November 13, 1981. Comments of the joint state board must be submitted on or before December 14, 1981.

ADDRESSES: All comments must be mailed to:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426

Hon. A. J. Benedetti, Commissioner, Washington Utilities and Transportation Commission, Mail Stop PB&2, Highways-Licenses Building, Olympia, Washington 98504

Hon. Thomas J. Schneider, Commissioner, Montana Public Service Commission, 1227 Eleventh Avenue, Helena, Montana 59601

Hon. Richard S. High, Commissioner, Idaho Public Utilities Commission, 472 West Washington Street, Boise, Idaho 83720

Hon. John J. Lobdell, Commissioner, Oregon Public Utilities Commission, 300 Labor and Industries Building, Salem, Oregon 97310

Hon. Ernst Liebman, Administrative Law Judge, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426

All comments should refer to Docket No. RM81-41.

Copies of the materials submitted by the Bonneville Power Administration to the Commission include (1) Administrator's Record of Decision—Average System Cost Methodology; (2) Residential Purchase and Sale Agreement; (3) Exhibit A—Wholesale Power Rate Schedules and General Rate Schedule Provisions; (4) Exhibit B—General Contract Provisions; and, (5) Exhibit C—Average System Cost Methodology. Copies of these materials are available for public inspection at:

Federal Energy Regulatory Commission, Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426

Idaho Public Utilities Commission, Commission Secretary's Office, 472 West Washington Street, Boise, Idaho 83720

Washington Utilities and Transportation Commission, Office of the Secretary, 7th Floor, Highways—Licenses Building, Olympia, Washington 98504

Montana Public Services Commission, Office of the Secretary, 1227 Eleventh Avenue, Helena, Montana 59601

Oregon Public Utilities Commission, Room 330, Labor and Industries Building, Salem, Oregon 97310

In addition, copies of materials described above are available from the BPA by contacting Donna L. Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; the telephone number is (503) 234-3361, ext. 4261. BPA maintains toll-free lines for use by persons within the region. Oregon callers may use 1-800-452-8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 1-800-547-6048. Messages and requests for information received after normal business hours (after 4:30 p.m. and before 7:30 a.m.) may be recorded on the toll-free lines. These materials are also available for public inspection at the BPA Office of Public Involvement 1002 Northeast Holladay, Area 494, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Michael Kessler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-5227.

SUPPLEMENTARY INFORMATION:

A. Introduction

October 1, 1981.

The Federal Energy Regulatory Commission (Commission) is amending, on an interim basis, its rules that govern the sale of electric power (18 CFR Part 35) to provide for certain sales made under the provisions of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).[1] Specifically, the Commission is adding a new § 35.13a to: (1) Provide for the filing of rate schedules for sales of electric power made by Pacific utilities to the Bonneville Power Administration (BPA) under Section 5(c) of the Northwest Power Act and (2) approve conditionally the average system cost methodology, with which those rates schedules must conform, as developed by the BPA and filed with the Commission.

The rule, including conditional approval of the average system cost methodology, is being instituted on an interim basis in response to a petition filed with the Commission by the BPA. Comments on both the rule and the methodology are requested.

B. Background

Among the purposes of the Northwest Power Act is "to assure the Pacific Northwest of an adequate, efficient, economical and reliable power supply." [2] To effectuate that purpose, the Act establishes rules and procedures governing the purchase and sale of electric power by the BPA to, or from, the region's electric utilities and the BPA's direct service industrial customers.[3] Section 5(c) of the Act provides for power exchanges for service to the residential customers of regional electric utilities.

Under section 5(c), after October 1, 1981, any regional utility can sell electric power to the BPA at the utility's "average system cost" of producing that power, that cost to be determined by the Administrator of the BPA on the basis of a methodology developed for this purpose.[4] In return, the BPA is required to sell an equivalent amount of power back to the utility at a rate identical to that which preference cutomers pay BPA for power to meet general requirements. The rate charged by the BPA to the utility would generally be lower than the rate charged by the utility to the BPA.

It is anticipated that this exchange agreement will be used primarily by the region's investor-owned utilities. The exchange will allow residential and some small electric power consumers to purchase power from participating investor-owned utilities at a lower rate than they would otherwise pay. In this manner, these consumers will "share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers of preference utilities in the region."[5] The BPA's direct-service industrial customers will bear the costs of the exchange in return for the opportunity to purchase long term power from the BPA.[6]

Under the terms of the Northwest Power Act, the Commission has a limited, but important, role to play in implementing the residential power exchange agreement provisions. First the Commission must review and approve the average system cost methodology developed by the Administrator of BPA.[7] Second, under the Federal Power Act, the Commission must exercise its jurisdiction over the rates charged by public utilities selling power to the BPA under the exchange agreement and the average system cost methodology developed for that exchange.

After the initial consultation process, the BPA developed, and noticed for public comment, a proposed average system cost methodology.[8] In addition, the BPA held a public hearing on the proposed methodology on June 8, 1981 in Portland, Oregon. After the comment process, the proposed methodology was revised in light of the comments. The revised methodology was then filed with the Commission on August 27, 1981.

On September 24, 1981, the BPA petitioned the Commission for the interim approval of the average system cost methodology filed on August 27, 1981, requesting that the approval be effective on October 1, 1981. In the petition, the BPA also requested waiver of the 60-day notice provision of the Federal Power Act (16 U.S.C. 8240) for rates that relied on that methodology to be filed by investor-owned utilities with the Commission, the suspension of such rates for one day, and the approval of such rates, subject to adjustment, as of October 1, 1981.

In support of its petition, the BPA stated that its offer of residential purchase and sales contracts to investor-owned utilities had been

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[1] Pub. L. No. 96-501, 94 Stat. 2697 (1980).

[2] Section 2(2) of the Northwest Power Act, 94 Stat. 2697 (1980).

[3] The "region" is defined under section 3(14) of the Northwest Power Act to mean:

(T)he area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and * * * which are a part of the service area of a rural electric cooperative customer serviced by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

[4] *See* Section 5(c) of the Northwest Power Act, 94 Stat. 2711 (1980). The methodology is to be developed with a Council (defined under Section 4(a)(1) of the Act, 94 Stat. 2700-2701 (1980)), BPA customers and appropriate State regulatory bodies. *Id.*

[5] S. Rep. No. 96-976, Part III, 96th Cong., 2d Sess. at 35; *See also* H.R. Rep. No. 96-976, Part II, 96th Cong., 2d Sess. at 35.

[6] *Id.* The specific provision for this is section 7(c) of the Northwest Power Act, 94 Stat. 2725 (1980).

[7] In anticipation of the BPA's filing, and pursuant to section 209 of the Federal Power Act and regulations promulgated thereunder, (18 CFR 1.37), the Commission, by letter dated May 15, 1981, appointed members to the Joint State Board from nominations submitted by each of the participating states. The State representatives to the Joint State Board are: Thomas J. Schneider, of Montana PSC, Member; Howard L. Ellis, of Montana PSC, Alternate; Richard S. High, of Idaho PUC, Member; Conley Ward, Jr., of Idaho PUC, Alternate; John J. Lobdell, of Oregon PUC, Member; Gene Maudlin, of Oregon PUC, Alternate; A. J. Benedetti, of Washington UTC, Member; and Robert W. Bratton, of Washington, UTC, Alternate. In addition, the Commission appointed Judge Ernst Liebman, Commission Administrative Law Judge, as its representative on, and presiding federal member of, the Board.

On July 9, 1981, the members of the Board met in Seattle, Washington to discuss procedural matters and to receive a briefing from representatives of the BPA on the proposed average system cost methodology. Notice of the meeting, which was open to the public, was issued on June 17, 1981.

[8] 46 FR 32727 (June 24, 1981).

accepted by some of these utilities who have either filed, or are about to file, those contracts with the Commission, to be effective October 1, 1981. The contracts will implement the residential sales exchanges of section 5(c) of the Northwest Power Act. In addition, BPA states that contracts to certain direct-service industries, as well as BPA's rate for power delivered to investor-owned utilities under the exchange contracts, are not in effect, the latter in effect on an interim basis.[9]

C. Discussion

For the reasons discussed below, the Commission has determined to conditionally grant the BPA's petition with respect to interim approval of the average system cost methodology and to deny the petition with respect to waiver of notice of rate filing requirements, advance suspension of rates and approval of rates subject to refund. Although the Commission is inclined to agree in principle with the BPA's requests relating to notice, suspension, and approval of rates, it will consider such requests only in connection with rates actually filed with the Commission.

1. *The average system cost methodology.* The Commission is unable to finally approve the average system cost methodology by October 1, 1981. The Commission has determined to seek the advice of a Joint Board in its review of the methodology. In addition, the methodology itself must be fully reviewed by the Commission before final approval can be given. These procedures could not be completed during the short time period in which the methodology has been before the Commission.

Because the Commission cannot grant final approval by October 1, 1981, its alternatives are to grant the BPA's petition for interim approval of the methodology or to deny the petition. To grant the petition would be to approve the methodology without conducting the type of in-depth review that the Commission believes is its responsibility under the statute; to deny the petition would be to delay in whole or in part the implementation of the residential exchange provided for under the statute. On balance, the Commission has decided to grant the petition, with certain conditions, for the following reasons.

First, such approval is necessary to further the intent of the Northwest Power Act. An approved (by the Commission) average system cost methodology is fundamental to the residential exchange of section 5 of the Act. The methodology defines the rates at which sales will be made to the BPA which, if made, permit the exchange to go forward. The Act provides that these sales (and therefore the exchange) can take place as early as October 1, 1981. The BPA has shown in its petition that it, as well as affected utilities, stand ready to inaugurate exchanges by that date.

Second, an approved average system cost methodology will serve to protect the BPA and its customers from monetary losses that may be occasioned through the exchange sales made between the BPA and the utilities who sell under rates established by the methodology. The differences in rates charged by, and to, the BPA under the exchanges will be recouped through BPA sales of electric power made to participating direct service industrials. Those differences will be predicated, in no small part, upon the average system cost methodology. It is that methodology which principally governs the rates charged the BPA by utilities which, in turn, is a prime determinant of the differences to be recouped by the BPA from its direct service industrial customers. If the BPA does not make such recoupment, it stands to lose what could become a large sum of money.

These two reasons warrant the immediate approval of the BPA's average system cost methodology. However, the Commission is obligated to review and approve that methodology in accordance with certain procedures and its responsibilities to protect the public interest. The Commission has yet to finish its review of the methodology as filed. For these reasons, the approval granted in this rule is interim only.

Moreover, that interim approval must be conditioned to ensure that the public interest is protected during the time period the interim approval is in place. The average system cost methodology will affect rates paid by, and to, the BPA. To the extent that the methodology finally approved by the Commission differs from that filed by the BPA on August 24, 1981, and which is herein approved on an interim basis, the rates paid may be different. The Commission must be assured that such difference is corrected, through reimbursement or refund, to the extent of the difference. There should be no disparity between rates paid under the interim-approved methodology and those that would have been paid had the final methodology been used instead. To ensure this result, the Commission makes the approval of the methodology conditional upon there being, through contract or the methodology itself, a system for refund or reimbursement.

The Commission attaches this condition with full awareness that, by so doing, uncertainty is injected into the exchange process. Rates paid may be too high or too low, depending upon the average system cost methodology finally approved by the Commission. However, under the circumstances, some uncertainty is unavoidable. The Commission staff has completed a preliminary review of the methodology and is satisfied that such uncertainty is minimal. Moreover, the methodology is a product not only of the statutorily prescribed process of consultation between the BPA and affected entities, but also of notice and comment procedures. This too should serve to minimize any uncertainty and, in addition, provides good grounds for finding that, for purposes of interim approval, due process has been observed.

2. *Rate approval.* The BPA seeks advanced approval of rates that will be filed with the Commission by jurisdictional utilities who sell power to the BPA and whose rates are based upon the average system cost methodology. The Commission cannot grant such approval in advance of the actual filing of a rate. The Commission will act promptly on such rate filings.

In addition, the Commission is amending its regulations under Part 35 to allow for the consideration of rates filed under the average system cost methodology. These amendments are being made effective immediately and on an interim basis. Through them, such rate filings may be expeditiously handled. They provide for waivers of such parts of the Commission's regulations as may be inconsistent with a rate filed under the average system cost methodology.

D. Public Comment Procedures

The Commission seeks public comment on this interim rule, including the interim approval of the BPA's average system cost methodology. All comments will be considered before issuance of a final rule and final approval of an average system cost methodology.

Copies of all the materials submitted by the BPA to the Commission include: (1) Administrator's Record of Decision—Average System Cost Methodology; (2) Residential Purchase and Sale

[9] BPA also points out that at least two investor-owned utilities, in reliance on BPA's filing and in contemplation of reduced rates for their customers under the exchange contracts, have filed for reductions in retail residential tariffs with their state regulatory authorities and that their reductions have been granted effective October 1, 1981.

Agreement; (3) Exhibit A—Wholesale Power Rate Schedules and General Rate Schedule Provisions; (4) Exhibit B—General Contract Provisions; and, (5) Exhibit C—Average System Cost Methodology. Copies of these materials are available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.[19]

In addition, copies of all materials described above are available from the BPA by contacting Donna L. Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; the telephone number is (503) 234-3361, ext. 4261. BPA maintains toll-free lines for use by persons within the region. Oregon callers may use 1-800-452-8429; callers in Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California may use 1-800-547-6048. Messages and requests for information received after normal business hours (after 4:30 p.m. and before 7:30 a.m.) may be recorded on the toll-free lines. These materials are also available for public inspection at the BPA Office of Public Involvement, 1002 Northeast Holladay, Area 494, Portland, Oregon 97232.

Copies of all materials described above are available for public inspection at the state commissions listed below:

Idaho Public Utilities Commission, Commission Secretary's Office, 472 West Washington Street, Boise, Idaho 83720
Washington Utilities and Transportation Commission, Office of the Secretary, 7th Floor, Highways-Licenses Building, Olympia, Washington 98504
Montana Public Service Commission, Office of the Secretary, 1227 Eleventh Avenue, Helena, Montana 59601
Oregon Public Utilities Commissioner, Room 330, Labor and Industries Building, Salem, Oregon 97310

A summary of issues regarding the methodology is attached as Appendix A. Interested persons are invited to submit written comments on the interim rule, the interim methodology and the Residential Purchase and Sale Agreement to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should refer to Docket No. RM81-41.

Each of the issues presented in the written comments should appear in a separate section. Fourteen copies should be submitted with the original. All comments received by the Commission by November 13, 1981, will be considered prior to the promulgation of the final rule.

In addition, two copies of comments should be filed by November 13, 1981, with each of the members of the Joint Board listed below:

Hon. A. J. Benedetti, Commissioner, Washington Utilities and Transportation Commission, Mail Stop PB&2, Highways-Licenses Building, Olympia, Washington 98504
Hon. Thomas J. Schneider, Commissioner, Montana Public Service Commission, 1227 Eleventh Avenue, Helena, Montana 59601
Hon. Richard S. High, Commissioner, Idaho Public Utilities Commission, 472 West Washington Street, Boise, Idaho 83720
Hon. John J. Lobdell, Oregon Public Utilities Commissioner, 300 Labor and Industries Building, Salem, Oregon 97310
Hon. Ernst Liebman, Administrative Law Judge, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426

The Joint Board shall have until December 14, 1981, to file its recommendation and responses, either individually or as the Board, or both, with the Commission.

Written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

E. Effective Date

In accordance with the provisions of 5 U.S.C. 553 (b) and (d), the Commission finds good cause, for the reasons discussed above, to make this rule effective upon issuance without prior notice and comment.

(Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. No. 96-501, 94 Stat. 2697 (1980); Federal Power Act, as amended, (16 U.S.C. 792-828c); Department of Energy Organization Act, (42 U.S.C. 7101-7552); E. O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission amends Part 35, Chapter I of Title 18 of the *Code of Federal Regulations* as set forth below, effective upon issuance.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 35—FILING OF RATE SCHEDULES

1. Part 35 is amended in the table of contents to add, in the appropriate numerical order, a new section number and heading to read as follows:

Section 35.13a Filing of rate schedules for sales of electric power under the Pacific Northwest Electric Power Planning and Conservation Act.

2. Part 35 is amended in § 35.1 by adding a new paragraph (f) at the end thereof to read as follows:

§ 35.1 Application; obligation to file rate schedules.

* * * * *

(f) A rate schedule applicable to the sale of electric power by a public utility to the Bonneville Power Administration under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. No. 96-501 (1980)) shall be filed in accordance with § 35.13a.

3. Part 35 is amended by adding a new § 35.13a to read as follows:

§ 35.13a Filing of rate schedules for sales of electric power under the Pacific Northwest Electric Power Planning and Conservation Act.

(a) *Applicability.* This section applies to all sales of electric power by a public utility to the Bonneville Power Administration pursuant to section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. No. 96-501 (1980)).

(b) *Definitions.* For purposes of this section the following definitions apply.

(1) "Existing direct service industrial customers" means existing direct service customers as defined in section 5(d)(4)(A) of the Pacific Northwest Electric Power Planning and Conservation Act and to whom electric power is sold under the provisions of section 5(d) of that Act.

(2) "Final approved average system cost methodology" means the average system cost methodology which is finally approved by the Commission in accordance with section 5(c)(7) of the Pacific Northwest Electric Power Planning and Conservation Act.

(3) "Interim approved average system cost methodology" means the average system cost methodology set forth in paragraph (d) of this section; *Provided:*

(i) That the Bonneville Power Administration and Pacific Northwest electric utilities contracting with the Bonneville Power Administration have agreed to make complete adjustments, as appropriate, for rates charged during the time period that the interim approved average system cost methodology was in effect, to the extent that the rates charged during that period differ from rates that would have been charged if the final approved average system cost methodology had been in effect during that period; and

[19] Exhibit D—Residential Load Definition was filed by the BPA separately.

(ii) That the Bonneville Power Administration agrees to take such action as necessary to provide for complete adjustments between it and the existing direct service customers, as appropriate, for rates charged during the time period that the interim approved average system cost methodology was in effect, to the extent that the rates charged during that period differ from the rates that would have been charged if the final approved average system cost methodology had been in effect during that period.

(c) *General rule.* (1) Every public utility filing rates for the sale of electric power described in paragraph (a) of this section shall file such rates in accordance with the interim approved average system cost methodology.

(2) To the extent that any provisions of this section are inconsistent with the provisions of § 35.12 or § 35.13, the provisions of §§ 35.12 and 35.13 are deemed waived.

(d) *Average System Cost Methodology*—(1) *Summary.* This exhibit sets forth the method for computation and payment of "average system cost" for the purpose of an exchange of power between Bonneville and a Utility pursuant to section 5(c) of Pub. L. 96–501 (Regional Act). The method provides that for an exchanging Utility the average system cost (ASC) is: The costs allowed or established for retail ratemaking that are eligible for exchange divided by the kilowatthours of load assumed for retail ratemaking, adjusted consistent with this methodology. Under this method, a separate ASC will be calculated for each exchanging Utility for each jurisdiction in which the Utility does business. Each ASC so calculated will be changed when revised retail rates go into effect. This exhibit sets forth specific procedures for reporting cost items and recognition of those items in determining ASC, including procedures for the exclusion of particular costs as required by statute. The exhibit also sets forth the procedures for the filing of relevant data by the Utility and for the review of that data by Bonneville.

(2) *Definitions.* The following definitions apply to all sections of Exhibit C.

(i) "Average System Cost" or "ASC" means for each Jurisdiction and each Exchange Period the quotient obtained by dividing Contract System Costs by Contract System Load.

(ii) "Commission" means a State regulatory body, preference Utility governing body, or other entity authorized to establish retail electric rates in a Jurisdiction.

(iii) "Contract System Costs" means the Utility's costs for production and transmission resources, including power purchases and conservation measures, which costs are includable in, jurisdictionally allocated by, and subject to the provisions of Appendix 1. Contract System Costs do not include costs required to be excluded from ASC by section 5(c)(7) of the Regional Act; the exclusion of these costs is provided for in Footnote 15 to Appendix 1.

(iv) "Costs" means the aggregate dollar amount or any portion of the amount allowed or relied upon by the Commission to determine the Test Period revenue requirement for the Utility in a Jurisdiction.

(v) "Exchange Period" means the period of time during which a Utility's Jurisdictional retail rate schedules are in effect, commencing with the effective date of these schedules and ending with the effective date of new retail rate schedules in the Jurisdiction; provided that no Exchange Period shall commence prior to or extend beyond the term of the Utility's Residential Purchase and Sale Contract Agreement.

(vi) "Contract System Load" means the firm energy load used by the Commission for the purpose of establishing retail rates, adjusted pursuant to Appendix 1.

(vii) "Jurisdiction" means the service territory of the exchanging Utility within which a Commission has authority to approve the retail rates.

(viii) "New Large Single Load" means that load defined in section 3(13) of the Regional Act, and as determined by Bonneville as specified in power sales contracts with its customers.

(ix) "Regional Power Sales Customer" means any entity that contracts directly with Bonneville for the purchase of power for delivery in the region as defined by section 3(14) of the Regional Act.

(x) "Test Period" means the time period, not to exceed 12 months, used by the Commission to determine Costs for retail ratemaking.

(3) *Procedures for determining average system cost.* The procedures set forth in this section will enable Bonneville to determine the ASC, in accord with the methodology in Appendix 1, for each exchanging Utility for each Jurisdiction within the region where the Utility provides service. The ASC so determined will be in effect during the Exchange Period and will apply to the amount of exchange power acquired by Bonneville from the Utility during the Exchange Period. The amount of exchange power will be equal to the Utility's eligible load within the Jurisdiction. Bonneville will determine and pay a separate ASC for the exchange power related to the Utility's eligible load in each Jurisdiction. The procedures are as follows:

(i) Appendix 1 is a form that identifies Contract System Costs and Contract System Load and permits the calculation of ASC. Appendix 1 is an integral part of this document.

(ii) For each Exchange Period and for each regional Jurisdiction in which a Utility provides service, the Utility shall complete and file with Bonneville five copies of Appendix 1 as follows:

(A) On or prior to the effective date of the Utility's residential exchange contract, the Utility shall file an Appendix 1 reflecting its existing Costs for each Jurisdiction for which it is participating in the exchange. Subject to the provisions of Section IV, the ASC determined from each Appendix 1 shall be the rate applicable to exchange power from that Jurisdiction during the initial Exchange Period.

(B) Thereafter, not later than five working days after filing for a Jurisdictional rate change or otherwise commencing a rate change proceeding, the Utility shall file with Bonneville a preliminary Appendix 1, setting forth the Costs proposed by the Utility. In addition, within five working days from the day a Utility files for a Jurisdictional rate change or otherwise commences a rate change proceeding, the Utility shall deliver to Bonneville all information initially provided to the Commission. The Utility also will provide to Bonneville within a reasonable period of time any other information reasonably requested by Bonneville.

(C) Not later than five working days following the commencement date of a new Exchange Period, the Utility shall file with Bonneville a revised Appendix 1, reflecting its Costs as approved by the Commission. In addition, the Utility shall provide within 20 working days following the commencement date of a new Exchange Period a reconciliation of all differences between the preliminary Appendix 1 and the revised Appendix 1. Subject to the provisions of Section IV, the ASC included in the revised Appendix 1 will be the ASC applicable to exchange power for that Jurisdiction during the Exchange Period: *Provided,* That if a Utility files a revised Appendix 1 after the five-day deadline Bonneville may make the new ASC payable only from the date the revised Appendix 1 was actually filed. However, Bonneville shall not delay as a result of a late filing of an Appendix 1 the effective date of any change in the ASC for power provided to it under this agreement if the late filing was the result of

unavoidable delay or excusable neglect, and the Utility proceeded to correct the filing error in good faith and with diligence.

(iii) If Bonneville or any of its Regional Power Sales Customers have been denied the right to participate in a Jurisdictional rate review proceeding on the basis of standing as an intervenor or otherwise with rights equivalent to any retail customer of the Utility, no change in ASC based on a change of Costs authorized in that proceeding shall be effective until Bonneville has completed its review pursuant to Section IV.

(4) *Bonneville Review Process.* (i) Each Appendix 1 shall be reviewed by Bonneville or its designate to determine whether the Costs are not inconsistent with generally accepted accounting principles for electric utilities, whether Contract System Costs contains only allowed Costs, and whether the Appendix 1 complies with the requirements of this Exhibit C including applicable definitions and requirements incorporated from the FERC Uniform System of Accounts. If a retail rate change is authorized without substantive Commission findings as to Costs or if Bonneville or any of its Regional Power Sales Customers are denied the right to participate in a Jurisdictional rate review proceeding on the basis of standing as an intervenor or otherwise with rights equivalent to any retail customer of the Utility, the review by Bonneville or its designate also may consider whether Contract System Costs have changed by the amount of the retail rate change, and Bonneville shall not be obligated to pay an ASC different than the ASC based on Contract System Costs as determined by Bonneville.

(ii) The Appendix 1 described in Section III(B)(1) shall be subject to review for a period of 180 days following the effective date of the contract. A revised Appendix 1 described in Section III(B) (2) and (3) shall be subject to review for a period of 120 days from the start of the relevant Exchange Period.

(iii) Bonneville or its designate will conduct its review as promptly as reasonably possible, shall make a written report of its determinations, and shall make any resulting increase or decrease in the ASC for the relevant Exchange Period: *Provided,* That if Bonneville has not issued a report as of the last date of the review period, then the ASC rate shown on the revised Appendix 1 described in Section III(B)(3) filed by the Utility shall be the ASC for the Exchange Period.

(iv) Bonneville will afford its Regional Power Sales Customers and other interested persons an opportunity to comment in writing on each Appendix 1 filed by a Utility. To facilitate this process, a Utility filing an Appendix 1 shall mail written notice thereof to each of Bonneville's Regional Power Sales Customers or their designates, in accordance with a list provided by Bonneville. This notice shall summarize the adjustment to costs proposed, make reference to the customers' right to comment thereon, and specify where materials relevant to the Cost adjustment process may be examined. The Utility and Bonneville shall permit Regional Power Sales Customers and interested parties to examine each Appendix 1 submitted to Bonneville. The utilities shall respond to reasonable information requests revelant to ASC from Bonneville and its Regional Power Sales Customers: *Provided,* That the furnishing of proprietary or confidential information to Bonneville or to a Regional Power Sales Customer may be made contingent on the granting of proper safeguards to prevent unauthorized use or disclosure. All comments from Bonneville's Power Sales Customers and interested parties must be received in writing by Bonneville no later than 20 days prior to the end of Bonneville's review period. All such comments will be included as part of the record supporting the ASC determined by Bonneville.

(v) If Bonneville determines that the ASC computed by the Utility in Appendix 1 was excessive or inadequate, the injured party shall recover the excess or deficiency with interest which shall be computed from time to time on the outstanding balance at the rate or rates of interest charged to Bonneville by the U.S. Treasury during the period unless another form of refund is ordered by the Joint State Board, the FERC, or a reviewing court. If a final order of the Joint State Board, the FERC or a reviewing court revises Bonneville's ASC determination, the difference between this revised ASC and the ASC determined by Bonneville, together with the interest at the above rate, shall be paid to the party entitled thereto by the other party, unless another interest rate is so ordered.

(vi) If costs associated with a generating facility are included in ASC and that generating facility is later terminated prior to the date of initial commercial operation, Bonneville shall be entitled to recover revenues as follows.

(A) For any exchange period in which Construction Work in Progress (CWIP) was included in the rate base:

(1) If the CWIP included in the rate base was identified with a particular generating facility terminated prior to the date of initial commercial operation, Bonneville shall recover revenue based on the amount of CWIP identified with that terminated facility that was included in the ASC rate base.

(2) If the terminated facility was among a group of facilities for which CWIP was allowed in the ASC rate base, Bonneville shall recover revenues based on the amount that the CWIP included in the ASC rate base exceeded the utility's total available jurisdictional CWIP for the same group of facilities, after exclusion of any CWIP for generating facilities subsequently terminated prior to the date of initial commercial operation.

When a generating plant is terminated prior to the date of initial commercial operation, the Utility will submit to Bonneville a calculation of the recoverable revenue attributable to the inclusion of the amount of CWIP specified above, if any, for each exchange period, including a reconciliation with the final Appendix 1 for that period. This calculation shall include the effect of any inclusion of Allowance For Funds During Construction (AFUDC) as an offset to test year revenue requirement and the impact on related taxes. The interest rate on revenue to be recovered shall be calculated as in Section IV(E). Bonneville shall bill the Utility in equal monthly installments over a period of the same length as the period during which costs of the terminated facility were included in ASC unless another arrangement is mutually agreed upon.

(5) *FERC Procedure (Applicable Only to Utilities Subject to Part II of the Federal Power Act).*

(i) Each Utility that is subject to the FERC's jurisdiction under Part II of the Federal Power Act shall file Bonneville's written report, the ASC determined by Bonneville, and the Utility's Appendix 1 with the FERC, its delegate or successor, within 15 working days of Bonneville's determination of ASC according to Section IV(C) above. During the period between the date of Bonneville's determination of ASC and the date of the final order issued by the FERC, its delegate or successor, the ASC determined by Bonneville shall be in effect.

This filing with the FERC shall be deemed to be compliance by the Utility with Section 205(c) of the Federal Power Act. The ASC ordered by the FERC, its delegate or successor, shall be the lawful ASC in effect from the start of the relevant Exchange Period, and the FERC shall be deemed to have so ordered under Section 205(d) of the Federal Power Act. The Utility may contest any

ASC adjustment made by Bonneville in any ASC review proceeding before the FERC, its delegate or successor, and may argue for an ASC to be effective from the start of the relevant Exchange Period calculated pursuant to the Appendix 1 described in Section III(B)(3) it filed with Bonneville.

(ii) The Utility shall notify all parties that made comment to Bonneville on the Utility's Appendix 1 of its ASC filing with the FERC. The FERC shall publish notice of the filing in the **Federal Register.** The notice shall specify that parties will be allowed an opportunity to comment in writing and to respond in writing to comments filed by any other party. If one or more members of the FERC, its delegate or successor, determine that a substantial issue of fact or law exists, an opportunity for oral presentation of arguments shall be provided.

(iii) The FERC's review of ASC shall ascertain whether Bonneville's ASC was determined in accord with the methodology described in this Exhibit C. If the FERC, its delegate or successor, should determine that Bonneville's ASC rate was not determined in accord with the methodology, it shall order that such ASC be changed, specifying in the order the necessary changes. The FERC shall publish its final order approving or disapproving the ASC in the **Federal Register.**

(6) *Change in average system cost methodology.* The Administrator, at his or her discretion, or upon written request from three-quarters of the utilities who are parties to contracts pursuant to section 5(C) of the Regional Act or from three-quarters of his preference customers, or from three-quarters of Bonneville's direct-service industry customers, shall initiate a consultation process as provided for in section 5(c) of the Regional Act. After completion of this process, the Administrator may propose a new ASC methodology, provided that any consultation process may not be initiated sooner than 1 year after the immediately previous ASC methodology has been adopted by Bonneville and approved by the FERC.

Appendix 1—Average System Cost Methodology; Instructions

Exhibit C—Appendix 1 is the form on which a Utility participating in a Residential Purchase and Sale Agreement shall report its Contract System Costs and other necessary data for the calculation of ASC.

The form consists of six schedules that shall be completed by the Utility in accord with these instructions and the provisions of the footnotes following the schedules. Any items not applicable to the Utility shall be so identified.

The schedules are as follows:

Schedule:
1—Plant Investment/Rate Base/Rate-of-Return
2—Capital Structure and Cost of Capital
3—Expenses
4—Income Taxes
5—Average System Cost
6—Total Utility and Jurisdictional Results of Operations

The filing Utility shall reference and attach workpapers that support Costs, including details of allocation and functionalization.

All references to the FERC accounts are to the FERC Uniform System of Accounts as of October 1, 1981. The Costs includable in the attached schedules are those includable by reason of the definitions in the FERC accounts. If the FERC accounts are later revised or renumbered, any changes shall be incorporated into this form by reference, except to the extent that Bonneville, upon a showing of good cause, demonstrates that a particular change results in a substantial change in the type of Costs allowable for exchange purposes. If the Utility does not follow the FERC accounts, its filing must include a reconciliation between its accounts and the items allowed as Contract System Costs.

Bonneville may require the Utility to account for purchase power transactions with affiliated entities as though the affiliated entities were owned in whole or in part by the utility, if necessary to properly determine and/or functionalize the utility's costs.

A Utility operating in more than one Jurisdiction shall allocate its total system costs among Jurisdictions in accord with the same allocation methods and procedures used by the Commission to establish jurisdictional Costs and resulting revenue requirements. Appendix 1 shall include details of the allocation. This allocation also accomplishes the exclusion of the Costs of additional resources to meet loads outside the region, as required by section 5(c)(7) of the Regional Act.

All schedule entries and supporting data shall be in accord with generally accepted accounting principles and practices as these principles and practices apply to the electric utility industry.

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Appendix 1
Schedule 1

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Plant Investment/Rate Base/Rate-of-Return
Jurisdiction -

Line No.	Items/FERC Accounts/Footnotes (1)	Jurisdiction Total (2)	Excluded Account 15b & c/ (3)	Total To Be Functionalized (4)	Functionalization			
					Production (5)	Transmission (6)	Total for Exchange (7)	Other (8)
1	Plant-in-Service/310-373 1/ 7/ 8/							
2	General Plant/389-399 2/							
3	Intangible Plant/301-303 3/							
4	CWIP/107, 120.1 3/							
5	Acquisition Adjustment/114 1/							
6	Total Gross Plant							
7	Less:							
8	PIS Depreciation Reserve/108 1/ 4/							
9	General Plant Depreciation Reserve/108 4/							
10	Accumulated Amortization/111, 115 4/							
11	Total Plant Deductions							
12	Total Net Plant							
13	Plant Held for Future Use/105 3/							
14	Nuclear Fuel/120.2-120.4 Less 120.5 1/							
15	Accumulated Deferred Debits/186 3/							
16	Less:							
17	Customer Advances/252 19/							
18	Accumulated Deferred Investment Tax Credits/255 3/							
19	Accumulated Deferred Income Taxes/281-283 3/							
20	Other Accumulated Deferred Credits/253, 256-257 3/							
21	Total Net Accumulated Deferred Debits/Credits							
22	Cash Working Capital/Various 6/							
23	Materials and Supplies/151-157, 163 3/							
24	Other/106, 124, 184, Various 3/ 20/							
25	Total Rate Base							
26	Times Rate-of-Return @ _____ % 16/ 23/							

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Appendix 1
Schedule 1A

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Line No.	Items (1)	Jurisdiction Total (2)	Excluded Amount 15b & c/ (3)	Total To Be Functionalized (4)	Functionalization: Production (5)	Transmission (6)	Total for Exchange (7)	Other (8)
	Rate Base Summary Jurisdiction -							
1	Utility Plant-in-Service							
2	Less: Accumulated Provision for Depreciation and Amortization							
3	Net Utility Plant-in-Service							
4	Construction Work in Progress							
5	Plant Held for Future Use							
6	Utility Plant Acquisition Adjustments							
7	Nuclear Fuel							
8	Customer Advances for Construction							
9	Materials and Supplies							
10	Cash Working Capital							
11	Unamortized Leasehold Improvements and Other Miscellaneous Deferred Items							
12	Weatherization-Interest Free Loans							
13	Extraordinary Property Losses							
14	Total Rate Base							
	Electric Plant-in-Service Jurisdiction -							
1	Intangible Plant							
	Production Plant:							
2	Steam Production Plant							
3	Nuclear Production Plant							
4	Hydraulic Production Plant							
5	Other Production Plant							
6	Total Production Plant							
7	Transmission Plant							
8	Distribution Plant							
9	General Plant							
10	Total Electric Plant-in-Service							
	Reserve for Depreciation and Amortization of Electric Plant-in-Service Jurisdiction -							
	Depreciation Reserve							
	Production Plant:							
1	Steam Production							
2	Nuclear Production							
3	Hydraulic Production							
4	Other Production							
5	Transmission							
6	Distribution							
7	General							
8	Total Depreciation Reserve							
9	Amortization Reserve							
10	Total Depreciation and Amortization Reserve							

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 1 will be relied upon in determining ASC.

Appendix 1
Schedule 2

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Capital Structure and Cost of Capital
Jurisdiction -

Line No.	Items/Footnotes (1)	Amount (2)	Ratio (3)	Component Cost (4)	Weighted Cost (5)
1	Debt				
2	Preferred Stock				
3	Common Equity				
4	Deferred Income Taxes 10/				
5	Deferred Investment Tax Credit 10/				
6	Total Weighted Cost				

Schedule 2A

Debt Summary 11/
Jurisdiction -

Line No.	Items	Date of Issue (1)	Date of Maturity (2)	Interest Rate (3)	Face Amount (4)	Premium (5)	Discount (6)	Issue Expense (7)	Net Proceeds (8)	Interest Expense (9)

Schedule 2B

Preferred Stock Summary
Jurisdiction -

Line No.	Items	Shares Issued (1)	Dividend Rate (2)	Outstanding Balance (3)	Premium (4)	Issue Expense (5)	Net Proceeds (6)	Dividends (7)

Appendix 1
Schedule 3

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Expenses
Jurisdiction -

Line No.	Items/FERC Accounts/Footnotes (1)	Jurisdiction Total (2)	Excluded Amount 15b & c/ (3)	Total To Be Functionalized (4)	Functionalization			
					Production (5)	Transmission (6)	Total for Exchange (7)	Other (8)
1	Production:							
2	Fuel/501, 518, 547 1/							
3	Purchased Power/555 1/							
4	Other/500, 502-517, 519-546, 548-577 1/							
5	Transmission/560-573 1/ 4/							
6	Distribution/580-598 1/ 4/							
7	Customer Accounting/901-905 19/							
8	Customer Assistance/907-910 21/							
9	Admin. & General/920-932 12/							
10	Total Operations & Main.							
11	Depreciation & Amortization/ 403-407 1/ 4/							
12	Taxes Other than Federal Income/ 408, 409.1 3/ 4/ 13/ 14/							
13	Federal Income Tax/409.1, 410.1, 411.1, 411.4 9/							
14	Other/411.6, 411.7 3/							
15	Less:							
16	Nonfirm Sales for Resale Rev./447 22/							
17	Other Operating Rev./450-456 3/ 25/							
18	Billing Credits 5/							
19	Total Operating Expenses							
20	Return from Schedule 1							
21	Less Subsidiary Income							
22	Total Cost 18/							

Appendix 1
Schedule 3A

Electric Operating Expenses
Jurisdiction -

	POWER PRODUCTION EXPENSES
	Steam Power Generation:
1	Operation
2	Fuel
3	Other
4	Maintenance
5	Total Steam Power Generation
	Nuclear Power Generation:
6	Operation
7	Fuel
8	Other
9	Maintenance
10	Miscellaneous Nuclear Research
11	Total Nuclear Power Generation
	Hydraulic Power Generation:
12	Operation
13	Maintenance
14	Total Hydraulic Power Generation
	Other Power Generation:
15	Operation
16	Maintenance
17	Total Other Power Generation

Appendix 1
Schedule 3A

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Electric Operating Expenses
Jurisdiction -

Line No.	Items	Jurisdiction Total	Excluded Amount 15b & c/	Total To Be Functionalized	Functionalization: Production	Transmission	Total for Exchange	Other
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Other Power Supply Expenses:							
18	Purchased Power							
19	Other							
20	Total Other Power Supply Expenses							
21	Total Power Production Expenses							
	TRANSMISSION EXPENSES							
22	Operation							
23	Wheeling							
24	Other							
25	Maintenance							
26	Total Distribution Expenses							
	DISTRIBUTION EXPENSES							
27	Operation							
28	Maintenance							
29	Total Distribution Expenses							
30	CUSTOMER ACCOUNTS EXPENSES							
31	CUSTOMER SERVICE AND INFORMATION EXPENSES							
	ADMINISTRATIVE AND GENERAL EXPENSES							
32	Operation							
33	Maintenance							
34	Total Administrative and General Expenses							
35	TOTAL ELECTRIC OPERATING EXPENSES							

Appendix 1
Schedule 3B

Depreciation and Amortization Accrual
Jurisdiction -

Line No.	Items
	Depreciation:
1	Steam Production Plant
2	Nuclear Production Plant
3	Hydraulic Production Plant
4	Other Production Plant
5	Transmission Plant
6	Distribution Plant
7	General Plant
8	Total Depreciation
9	Amortization of Limited-Term Plant
10	Amortization of Utility Plant Acquisition Adjustments
11	Amortization of Property Losses
12	Total Depreciation and Amortization Accrual

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

Appendix 1
Schedule 3C

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Taxes Other Than Federal Income Taxes
Jurisdiction -

Line No.	Items (1)	Jurisdiction Total (2)	Excluded Amount 15b & c/ (3)	Total To Be Functionalized (4)	Functionalization: Production (5)	Transmission (6)	Total for Exchange (7)	Other (8)
1	FEDERAL - Insurance Contributions							
2	- Unemployment							
	STATE							
3	California - Property							
4	- Unemployment							
5	Oregon - Property							
6	- Tri-Met							
7	- Lane County							
8	- Unemployment							
9	- Regulatory Commission							
10	Washington - Property							
11	- Unemployment							
12	- Generating Tax							
13	- Pollution Control Credit							
14	Idaho - Property							
15	Montana - Property							
16	- Unemployment							
17	Wyoming - Property							
18	- Unemployment							
19	Utah - Property							
20	LOCAL - Occupation and Franchise							
21	STATE INCOME TAXES							
22	IN-LIEU TAXES							
23	OTHER							
24	TOTAL							

Note: 1. Supporting workpapers are to be attached.
2. * Footnotes referenced on Schedule 3 will be relied upon in determining ASC.

Appendix 1
Schedule 4

Income Taxes
Jurisdiction -

1	Federal Income Taxes
2	Deferred Income Taxes
3	Income Taxes Deferred In Prior Years
4	Investment Tax Credit Adjustment
5	Total Federal Taxes

Appendix 1
Schedule 4A

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Federal Taxes on Income
Jurisdiction -

Line No.	Items (1)	Jurisdiction Total (2)	Excluded Amount (3)	15b & c/	Total To Be Functionalized (4)	Functionalization: Production (5)	Transmission (6)	Total for Exchange (7)	Other (8)
	INCOME								
1	Operating Revenues								
	Deductions								
2	Operating and Maintenance Expense								
3	Depreciation Expense								
4	Amortization Expense								
5	Taxes Other Than Federal Income Taxes								
6	Interest Expense								
7	Total Deductions								
8	Net Income Before Federal Income Tax								
	TAX ADJUSTMENTS								
9	Book Depreciation								
10	Tax Depreciation								
11	Charges to Construction								
12	Coal Depletion								
13	Other Adjustments								
	1.								
	2.								
	.								
	.								
	.								
14	Total Tax Adjustments								
15	Taxable Income								
16	Preferred Dividends Paid - Credit								
17	Total Taxable Income								
18	Federal Income Tax								
19	Less Investment Credit								
20	Net Federal Income Tax								

Appendix 1
Schedule 4B

Other Included Items
Jurisdiction -

	Operating Revenues:	
1	Nonfirm Sale for Resale/447	
2	1.	
3	2.	
4	3.	
	Other Operating Revenues/450-456	
5	Acct. 450	
6	Acct. 451	
7	Acct. 452	
8	Acct. 453	
9	Acct. 454	
10	Acct. 455	
11	Acct. 456	
12	Total Revenues	
	Other Items:	
13	Investment Tax Credit Adjustment/411.5	
14	Deferred Current Year	
15	Restored Current Year	
16	Restored from Prior Years	
17	Total ITC Adjustment	
18	Deferred Income Tax - Current/410.1	
19	Deferred Income Tax from prior years/411.1	
20	Other Accounts	

Note: 1. Supporting workpapers are to be attached.
2. Footnotes referenced on Schedule 4 will be relied upon in determining ASC.

Appendix 1
Schedule 5

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Average System Cost
Jurisdiction -

Line	Items	Amount
1	Contract System Costs:	
2	Production Cost (from Schedule 3)	
3	Transmission Cost (from Schedule 3)	
4	Total Contract System Costs	
5	Contract System Load:	
6	Total Load (MWh)	
7	Less:	
8	Nonfirm Adjustment (MWh)	
9	Other Adjustments (MWh)	
10	Net Load (MWh)	
11	Plus:	
12	Distribution Losses (MWh) 17/	
13	Total Net Load (MWh)	
14	Less:	
15	Excluded Load (MWh)	
16	Excluded Load Distribution Losses (MWh)	
17	Total Contract System Load (MWh)	
18	Average System Cost (mills/kWh)	
	(Line 4 ÷ Line 17)	

Appendix 1
Schedule 6A

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Electric Plant-In-Service
Jurisdiction -

Line No.	Items (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
1	Intangible Plant			
	Production Plant:			
2	Steam Production Plant			
3	Nuclear Production Plant			
4	Hydraulic Production Plant			
5	Other Production Plant			
6	Total Production Plant			
7	Transmission Plant			
8	Distribution Plant			
9	General Plant			
10	Total Electric Plant-in-Service			

Appendix 1
Schedule 6B

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Reserve for Depreciation and Amortization of Electric Plant-In-Service
Jurisdiction -

Line No.	Items (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
	Depreciation Reserve			
	Production Plant:			
1	Steam Production			
2	Nuclear Production			
3	Hydraulic Production			
4	Other Production			
5	Transmission			
6	Distribution			
7	General			
8	Total Depreciation Reserve			
9	Amortization Reserve			
10	Total Depreciation and Amortization Reserve			

Appendix 1
Schedule 6C

Rate Base Summary
Jurisdiction -

1	Utility Plant-in-Service
2	Less: Accumulated Provision for Depreciation and Amortization
3	Net Utility Plant-in-Service
4.	Construction Work in Progress
5	Plant Held for Future Use
6	Utility Plant Acquisition Adjustments
7	Nuclear Fuel
8	Customer Advances for Construction
9	Materials and Supplies
10	Cash Working Capital
11	Unamortized Leasehold Improvements and Other Miscellaneous Deferred Items
12	Weatherization-Interest Free Loans
13	Extraordinary Property Losses
14	Total Rate Base

Appendix 1
Schedule 6D

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Electric Operating Expenses
Jurisdiction - _____

Line No.	Items (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
	POWER PRODUCTION EXPENSES			
	Steam Power Generation:			
1	Operation			
2	Fuel			
3	Other			
4	Maintenance			
5	Total Steam Power Generation			
	Nuclear Power Generation:			
6	Operation			
7	Fuel			
8	Other			
9	Maintenance			
10	Miscellaneous Nuclear Research			
11	Total Nuclear Power Generation			
	Hydraulic Power Generation:			
12	Operation			
13	Maintenance			
14	Total Hydraulic Power Generation			
	Other Power Generation:			
15	Operation			
16	Maintenance			
17	Total Other Power Generation			
	Other Power Supply Expenses:			
18	Purchased Power			
19	Other			
20	Total Other Power Supply Expenses			
21	Total Power Production Expenses			
	TRANSMISSION EXPENSES			
22	Operation			
23	Wheeling			
24	Other			
25	Maintenance			
26	Total Distribution Expenses			
	DISTRIBUTION EXPENSES			
27	Operation			
28	Maintenance			
29	Total Distribution Expenses			
20	CUSTOMER ACCOUNTS EXPENSES			
31	CUSTOMER SERVICE AND INFORMATION EXPENSES			
	ADMINISTRATIVE AND GENERAL EXPENSES			
32	Operation			
33	Maintenance			
34	Total Administrative and General Expenses			
35	TOTAL ELECTRIC OPERATING EXPENSES			

Appendix 1
Schedule 6E

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Depreciation and Amortization Accrual
Jurisdiction -

Line No.	Items (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
1	Depreciation:			
2	Steam Production Plant			
3	Nuclear Production Plant			
4	Hydraulic Production Plant			
5	Other Production Plant			
6	Transmission Plant			
7	Distribution Plant			
8	General Plant			
9	Total Depreciation			
10	Amortization of Limited-Term Plant			
11	Amortization of Utility Plant Acquisition Adjustments			
12	Amortization of Property Losses			
13	Total Depreciation and Amortization Accrual			

Appendix 1
Schedule 6F

Taxes Other Than Federal Income Taxes
Jurisdiction -

1	FEDERAL	- Insurance Contributions
2		- Unemployment
	STATE	
3	California	- Property
4		- Unemployment
5	Oregon	- Property
6		- Tri-Met
7		- Lane County
8		- Unemployment
9		- Regulatory Commission
10		- Excise
11	Washington	- Property
12		- Unemployment
13		- Generating Tax
14		- Pollution Control Credit
15	Idaho	- Property
16	Montana	- Property
17		- Unemployment
18	Wyoming	- Property
19		- Unemployment
20	Utah	- Property
21	LOCAL	- Occupation and Franchise
22	IN-LIEU TAXES	
23	TOTAL	

Appendix 1
Schedule 6G

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Federal Taxes on Income
Jurisdiction -

Line No.	Items (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
	INCOME			
1	Operating Revenues			
	DEDUCTIONS			
2	Operating and Maintenance Expense			
3	Depreciation Expense			
4	Amortization Expense			
5	Taxes Other Than Federal Income Taxes			
6	Interest Expense			
7	Total Deductions			
8	Net Income Before Federal Income Tax			
	TAX ADJUSTMENTS			
9	Book Depreciation			
10	Tax Depreciation			
11	Charges to Construction			
12	Coal Depletion			
13	Other Adjustments			
	1.			
	2.			
	.			
	.			
	.			
14	Total Tax Adjustments			
15	Taxable Income			
16	Preferred Dividends Paid - Credit			
17	Total Taxable Income			
18	Gross Federal Income Tax			
19	Less Investment Credit			
20	Net Federal Income Tax			

WP-PLB-0016a

Appendix 1
Schedule 6H

BONNEVILLE POWER ADMINISTRATION
RESIDENTIAL PURCHASE AND SALE AGREEMENT
Average System Cost Methodology

Other Included Items
Jurisdiction -

Line No.	Items/FERC Accounts (1)	Total Utility (2)	Allocation Basis 15a/ (3)	Jurisdictional Amount (4)
1	Operating Revenues:			
2	Nonfirm Sale for Resale/447			
3	1.			
4	2.			
5	3.			
6	Other Operating Revenues/450-456			
7	Acct. 450			
8	Acct. 451			
9	Acct. 452			
10	Acct. 453			
11	Acct. 454			
12	Acct. 455			
13	Acct. 456			
14	Total Revenues			
15	Other Items:			
16	Investment Tax Credit Adjustment/411.5			
17	Deferred Current Year			
18	Restored Current Year			
19	Restored from Prior Years			
20	Total ITC Adjustment			
21	Deferred Income Tax - Current/410.1			
22	Deferred Income Tax from prior years/411.1			
23	Other Accounts			

Average System Cost Methodology Footnotes

1/ Functionalized directly from the FERC Uniform System of Accounts.

2/ Unless it can be determined that a plant item or plant related item is associated directly with regional generation, transmission, distribution, customer or other directly functionalized category, the item shall be functionalized on the following basis in the following order:

(a) If the location codes of the plant item can be used to identify a principal generation, transmission, distribution or customer-related facility at that location, the plant item shall be functionalized based on the functionalization of such principal facility.

(b) For plant items not otherwise functionalized, the functionalization formula in footnote 24 shall apply.

3/ (a) The utility shall functionalize these items according to an analysis it performs that demonstrates the actual and/or intended functional use of the items, or the plant item related thereto, and include a detailed showing of the factors used to determine the functionalization as a supplement to Exhibit C, Appendix 1. Costs incurred only because the utility is engaged in the retail distribution of electricity shall be functionalized to Other. These items include, for example, retail revenue taxes and uncollectible amounts for retail sales.

(b) In cases where items included are not directly assigned to a particular function, these items shall be separately identified, and a statement shall be provided as to why the items are not directly functionalized by the 3(a) procedure. The functionalization formula described in footnote 24 herein shall apply to these items.

4/ Calculation of functionalized amount is to be consistent with property items included in functionalized Total Gross Plant.

5/ The offset against Contract System Costs for billing credit revenue arising from implementation of conservation measures and retail rate structures that induce conservation shall be limited to the costs included in Contract System Cost of the related conservation measures and retail rate structures. These billing credit revenues shall be functionalized on the same basis as the cost of the related conservation measure.

6/ Functionalization is to be directly related to the functional nature of the items included in the Working Capital calculation approved by the Commission. Should items included in the approved Working Capital calculation not be directly assignable to a function and should there be no footnote in this methodology directing the functionalization of the item, these items shall be separately identified and the functionalization formula in footnote 24 shall apply.

7/ Transmission plant means all land, conversion structures, and equipment employed at a primary source of supply (i.e., generating station or point of receipt in the case of purchased power) to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; all land, structures, lines, switching and conversion stations, high tension apparatus and their control in protection of equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and all lines and equipment whose primary purpose is to augment, integrate or tie together the sources of power supply. The entrance to a distribution center means all land, structures, conversion equipment, lines, line transformers and other facilities utilized to deliver power to specific customers or distribution substations.

8/ Distribution plant means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e, generating station, or point of receipt in the case of purchased power) and of delivery to customers, which are not includable in transmission system, as defined in footnote 7, whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system.

Note: Stations that change electricity from transmission to distribution voltage shall be classified as distribution stations.

Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission system. The conductors, crossarms, braces, grounds, tiewire, insulators, etc., shall be classified as transmission or distribution facilities, according to the purpose for which they are used.

Where underground conduit contains both transmission and distribution conductors, the underground conduit and right-of-way shall be classified as distribution facilities. The conductors shall be classified as transmission or distribution facilities according to the purpose for which they are used.

Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to their major use.

9/ Functionalized as specified in Schedule 4.

10/ If these items are treated in Schedule 1 as deductions from gross plant investment in determining rate base, these items shall not be included in the capital structure.

11/ Should a Commission approve a method for determining debt costs by a means other than that shown here, Schedule 2A shall be modified in a manner that shows the approved method, including accompanying explanatory material.

12/ Expenses related to the FERC Accounts 920-932 shall be functionalized in accord with the following:

FERC Account	Functionalization Method
920	Footnote 3
921	3
922	3
923	3
924	3(a) or 24(a)
925	3
926	13
927	19
928	19
929	3
930.1	19
930.2	3
931	3
932	4

13/ Functionalization is to be determined on a pro rata percentage basis using the salary and wage data for production, transmission, and distribution/other functions included in the Test Period costs on which Appendix 1 is based. If, however, this information is unavailable, comparable data shall be used for the most recent calendar year as reported on the FERC Form 1 (at page 355), or similar document. Furthermore, a portion of this expense shall be included in Schedule 3, column 3, Excluded Amount, based on the amount of labor-related costs included therein.

14/ A tax-exempt Utility may include in-lieu taxes up to an amount that is comparable, for each unit of government paid in-lieu taxes, with taxes that would have been paid by a non-tax exempt Utility to that unit of government, but in no event shall the jurisdictional total in column 2 be greater than the actual amount paid.

15/ Excluded Resources

(a) The cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after December 5, 1980, will be determined by utilizing allocation notes of multi-State utilities as assigned and utilized in State retail rate filings.

(b) The cost of additional resources sufficient to serve any New Large Single Load that was not contracted for, or committed to, prior to September 1, 1979, is to be determined as follows:

(1) To the extent that any New Large Single Loads are served by dedicated resources, at the cost of those resources, including applicable transmission;

(2) In the amount that New Large Single Loads are not served by dedicated resources, at Bonneville's New Resource rate as established from time to time pursuant to section 7(f) of the Regional Act and as applicable to the Utility, and applicable Bonneville transmission charges if transmission costs are excluded in the determination of Bonneville's New Resource rates, to the extent such costs are recovered by the Utility's retail rates in the applicable jurisdiction; and

(3) To the extent that New Large Single Loads are not served by dedicated resources plus the Utility's purchases at the New Resource rate, the costs of such excess load shall be determined by multiplying the kilowatthours not served under subsections (1) and (2) above by the cost (annual fixed plus variable cost, including an appropriate portion of general plant, administrative and general expense and other items not directly assignable) per kilowatthour of all baseload resources and long term power purchases (five years or more in duration), as allowed in the regulatory jurisdiction to establish retail rates during the Exchange Period, exclusive of the following resources and purchases: (a) purchases at the New Resources rate pursuant to section 7(f) of the Act; (b) purchases at the Federal Base System rate, pursuant to section 5(c) of the Act; (c) resources sold to Bonneville, pursuant to section 6(c)(1) of the Act; (d) dedicated resources specified in footnote 15(b)(1) of this agreement; (e) resources and purchases committed to the Utility's load as of September 1, 1979 under a power requirements contract or that would have been so committed had the Utility entered into such a contract; and (f) experimental or demonstration units or purchases therefrom. Transmission needed to carry

power from such generation resources or power purchases shall be priced at the average cost of transmission for the Jurisdiction during the Exchange Period.

(4) Any kilowatthours of New Large Single Loads not met under subsections (1), (2), or (3) above will be assumed to be supplied from the most recently completed or acquired baseload resource(s) or long term power purchase(s), exclusive of dedicated resources and experimental or demonstration resources or purchases therefrom, that are committed to the Utility's load as of September 1, 1979, under a power requirements contract with Bonneville or would have been so committed had the Utility entered into such a power requirements contract. The cost of these generation resources and long-term power purchases and the transmission cost associated with these resources or purchases will be calculated as specified in subsection (3) above.

(5) If the New Large Single Load is served on an energy or capacity interruptible basis, the Utility shall prepare a calculation subject to review by Bonneville of the fixed (if any) and variable costs of providing such service, except that the amount excluded from ASC for the New large Single Load shall not be less than the transmission and generation costs included in the retail rate charged the New Large Single Load.

(c) Any costs associated with a generation facility that is terminated prior to initial commercial operation shall be excluded if termination occurred after December 5, 1980.

16/ Authorized Jurisdictional rate of return as specified in Schedule 2.

17/ The losses shall be the distribution energy losses occurring between the transmission portion of the Utility's system and the meters measuring firm energy load used by the Commission for the purpose of establishing retail rates. Losses shall be established according to a study (engineering, statistical or other) that is submitted to Bonneville by the exchanging Utility subject to review by Bonneville. This study shall be in sufficient detail so as to accurately identify average distribution losses associated with the Utility's total load, excluded loads, and the Residential load. Distribution losses shall include losses associated with distribution substations, primary distribution facilities, distribution transformers, secondary distribution facilities and service drops.

18/ This amount is to be reduced by revenues from firm sales for resale (to the extent that these sales are included in the Jurisdictional allocation factors) to be determined by the firm resale revenue for the Test Period as used for retail ratemaking purposes.

19/ Functionalize entirely to distribution/other unless Utility demonstrates that other functionalization treatment is appropriate.

20/ "Other" rate base items may include Unclassified Plant-In-Service (106), Extraordinary Property Losses (182), Other Investments (124), or other investments approved for rate base treatment by a Commission consistent with the provisions of this Exhibit.

21/ Only the conservation-related portion is to be functionalized to production.

22/ These revenues shall be divided proportionally between Excluded Amount and Total To Be Functionalized based on the total expenses in those two categories shown on Schedule 3 (sum of lines 1 to 13, 19, and 20), less all terminated plant expenses excluded pursuant to footnote 15(c). The portion to be functionalized shall be functionalized to production.

23/ Public Agencies shall be allowed a total return (operating income) on Schedule 1, line 26, column 2, equal to their demonstrated need for revenues exceeding Total Operating Expenses shown on Schedule 3 to cover the cost of capital. These demonstrated capital costs generally will be in the form of coverage requirements or the need to maintain an equity ratio consistent with favorable bond ratings for that Utility. In order to receive an operating income in addition to interest expense, the utility must submit evidence of the specific coverage or equity ratio needed by that utility and a calculation of the corresponding minimum operating income. Assignment to excluded resources and functionalization of the operating income shall be based on the assignment and functionalization of the rate base.

24/ Functionalization of these items shall be based on a formula that averages on an equal weighting basis the percentages for generation, transmission, distribution, and customer-related functions for (a) the gross plant in each function, including general plant and other plant items functionalized in step 1 of footnote 2 and, (b) the functionalized operations and maintenance (O&M) expenses shown in Schedule 3, except that the fuel cost included in O&M shall not include the cost of fuel acquired from non-Utility sources. Material detailing the application of this functionalization formula shall be included as a supplement to Appendix 1.

25/ Revenues from the transmission of electricity for others shall be functionalized to transmission.

[FR Doc. 81-29725 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-C

18 CFR Part 282

[Docket No. RM81-28; Order No. 181]

Incremental Pricing; Elimination of 31 Metropolitan Regions

Issued: October 6, 1981.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations concerning incremental pricing under Title II of the Natural Gas Policy Act of 1978 (NGPA). The NGPA authorizes FERC to institute and administer an incremental pricing program to pass through, by surcharge, a portion of the increases in the wellhead prices of natural gas allowed under Title I of the Natural Gas Policy Act to certain industrial facilities that use natural gas as boiler fuel. This amendment removes the 31 metropolitan regions established by FERC in an effort to more accurately reflect the actual market prices which must be paid by these facilities. FERC is taking this action because of the difficulty the Energy Information Administration was experiencing in calculating statistically accurate price ceilings for the regions because of insufficient oil data.

DATE: Effective October 6, 1981.

FOR FURTHER INFORMATION CONTACT:
Thomas P. Gross, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8171, or
Sandra Delude, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, (202) 357-5522.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) is amending its regulations on incremental pricing (18 CFR Part 282) under Title II of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432). Specifically, § 282.404 is amended to eliminate the 31 metropolitan area incremental pricing regions.

I. Background

Title II of the NGPA requires the Commission, within certain guidelines, to institute and administer an incremental pricing program. The program is designed to pass through, by surcharge, a portion of the increases in the wellhead prices of natural gas allowed under Title I of the NGPA to certain industrial facilities that use natural gas as boiler fuel.

Generally, under Title II of the NGPA the incremental pricing surcharge applicable to a particular facility is the difference between the price that otherwise would have been paid for natural gas by that facility and the price at which the facility can purchase alternative fuel. The price of the alternative fuel (the alternative fuel price ceiling) is determined in accordance with section 204(e) of the NGPA.

Section 204(e) of the NGPA provides that the Commission is to designate the incremental pricing regions for which alternative fuel price ceilings are to be determined. In Order No. 50, 44 FR 57754 (October 5, 1979), the Commission established that there are 48 incremental pricing regions corresponding to the 48 contiguous states. It also provided that, as of October 20, 1980, the number of regions would be expanded to 79 regions, consisting of the 48 states and 31 metropolitan regions.

The Commission's purpose in establishing 31 metropolitan regions in addition to the 48 state regions was to accurately reflect actual market prices which must be paid by incrementally priced facilities located in large metropolitan areas. The Commission believed that, due to circumstances peculiar to large metropolitan areas, the price at which alternative fuel would be available to facilities located in those areas might differ significantly from the price at which the fuel would be available to facilities located in other areas in the state.

However, the Commission could not implement the metropolitan regions immediately, because the Energy Information Administration (EIA) was experiencing difficulties in calculating statistically accurate price ceilings for those regions due to insufficient oil price data.[1] The Commission therefore postponed implementation of the metropolitan regions until October 1980 to give the EIA time to develop a satisfactory methodology for making the necessary calculations. When it became clear that the EIA would not be able to meet the October 1980 date, the Commission postponed implementation of the metropolitan regions until October 20, 1981 (44 FR 5774 (October 5, 1979)).

In the meantime, the Commission explored the various difficulties associated with obtaining this data and sought comment in a related docket on the advisability, in light of these difficulties, of continuing its attempts to implement the metropolitan regions as incremental pricing regions. (*See*, Notice of Inquiry, Docket No. RM79-21, issued November 4, 1980, 45 FR 75405 (November 10,1980)). Although some comments urged implementation of the metropolitan regions based upon the different circumstances for facilities located in those regions as compared to facilities located elsewhere in the state, other commenters, including a large trade association representing the natural gas industry, urged the Commission to eliminate the metropolitan regions.

The trade association, previously an advocate of use of the metropolitan regions, reassessed its position and concluded that lack of available data on oil prices militates against adoption of the metropolitan areas.

On April 22, 1981, the Commission issued a Notice of Proposed Rulemaking (Notice) (46 FR 23950, April 29, 1981) in this docket, proposing to eliminate the 31 metropolitan regions altogether. The Commission received 11 written comments in response to this Notice. There were no requests for a public hearing.

II. Discussion

All but one comment [2] supported the proposed rule. Three comments suggested that a supplementary rule be implemented to accomodate special circumstances that the proposed rule would not cover. Specifically, the comments were concerned with a situation in which, either for geographic, transportation, or other reasons, the statewide price ceiling does not fairly reflect the local competitive situation and consequently major load loss may be threatened. One of the commenters cites, as examples, three metropolitan regions—Buffalo, Pittsburgh, and Cleveland—where prices may differ materially from the average price for the state as a whole. These commenters therefore suggest that the Commission use the metropolitan regions in those special situations where significant disparities in fuel price ceilings occur within a state or in contiguous states.

After carefully considering the suggestion for a supplementary rule, the Commission declines to adopt it. The Commission observes that the NGPA itself provides a mechanism to deal with the special circumstances to which the comments refer. Section 502(c) of the

[1] The Energy Information Administration of the Department of Energy is responsible for the collection of data and the calculation and publication of the alternative fuel price ceilings.

[2] That commenter did not address itself to the issue of the proposed rule, but merely reiterated its interest in the so-called "contiguous state approach" which the Commission has already considered in Docket No. RM79-21.

NGPA is specifically designed to alleviate situations of special hardship, inequity, or unfair distribution of burdens. In fact, one company, Berkshire Gas Company, has filed an application under section 502(c) (Docket No. SA81-53-000) to obtain the very type of relief that the comments have proposed. The Commission believes that, if a disparity in the alternative fuel price ceilings occurs that may result in special hardship, inequity, or an unfair distribution of burdens, section 502(c) of the NGPA is available to any person. The Commission therefore concludes that no need exists for a supplementary provision as suggested by the above comments.

After more than a year of experience in administering the program with 48 incremental pricing regions, and more than two years effort in studying the advantages and disadvantages associated with implementation of the 31 metropolitan regions, the Commission believes that no benefit will be gained by adding the 31 metropolitan areas as incremental pricing regions. The lack of statistically significant data upon which to base calculations of alternative fuel price ceilings for the metropolitan regions makes the purpose for adding the regions (more accurate price ceilings) unattainable. Accordingly, the Commission is eliminating the 31 metropolitan regions, and retaining the 48 state regions, as incremental pricing regions.

III. Summary of the Rule

This rule amends § 282.404 and Appendix I to Subpart D of Part 282 of the Commission's regulations. Paragraph (a) of § 282.404, which sets forth the general rule for publishing alternative fuel price ceilings and lists corrections to previously published price ceilings, is not changed by this rule.

Paragraph (b)(1) of § 282.404, which establishes the date upon which the monthly price ceilings will be published, remains unchanged in substance by this rule. Paragraph (b)(2), which established the date for publication of price ceilings for the metropolitan regions, is deleted.

Prior to issuance of this rule, paragraph (c)(1) of § 282.404 provided that, until publication of price ceilings for the metropolitan regions, the 48 state regions are the incremental pricing regions. This rule deletes the clause referring to the metropolitan regions, thus removing the metropolitan region limitation on the 48 state regions as incremental pricing regions. Paragraph (c)(2) which provided that, after the date of publication of price ceilings for the metropolitan regions, the incremental pricing regions will be the 48 state regions and the 31 metropolitan regions, is deleted.

Appendix I to Subpart D of Part 282 listed the 31 metropolitan regions and eight multistate regions. This rule deletes the list of metropolitan regions.

Finally, the map at the end of Appendix I, on which the metropolitan regions were represented, is deleted by this rule.

IV. Effective Date

In Order Nos. 50 and 81, the Commission temporarily deferred implementation of the metropolitan regions and used the 48 contiguous states as incremental pricing regions. This rule maintains the status quo established by Order Nos. 50 and 81 by continuing to use the 48 contiguous states as incremental pricing regions and eliminating the 31 metropolitan regions. Moreover, to implement the metropolitan region alternative fuel price ceilings for 30 days would be very disruptive and costly, and would serve no useful purpose. Accordingly, in accordance with 5 U.S.C. 553(d), the Commission finds that good cause exists to make this rule effective upon issuance.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*, Department of Energy Organization Act, 42 U.S.C. 7701 *et seq.*, E.O. 12009, 42 CFR 46267 (1978))

In consideration of the foregoing, the Commission amends Part 282, Subchapter I of Chapter I, Title 18 of the Code of Federal Regulations, as provided below, effective upon issuance.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 282—INCREMENTAL PRICING

1. Section 282.404 is amended by revising paragraphs (b) and (c) to read as follows:

§ 282.404 Alternative fuel price ceilings.

* * * * *

(b) *Publication.* Alternative fuel price ceilings shall be published for each of the contiguous 48 states of the continental United States on or before the twentieth day of each month.

(c) *Incremental pricing regions.* The incremental pricing regions used for purposes of this part shall be each of the contiguous 48 states within the continental United States. The alternative fuel price ceilings applicable to the District of Columbia shall be the ceilings published for the State of Maryland.

2. Appendix I to Subpart D of Part 282 is amended by removing the map of the continental United States illustrating the 31 metropolitan incremental pricing regions and is further revised to read as follows:

Appendix I—Incremental Pricing Regions

The following are multistate regions which may be used by the Commission in deriving alternative fuel price ceiling for state incremental pricing regions (1) for which statistically valid samples of oil prices may be unavailable, or (2) where the Commission determines that the public interest requires use of the regional ceiling in place of the state ceiling.

Region A. New England Multistate Region

Maine
New Hampshire
Vermont
Massachusetts
Connecticut
Rhode Island

Region B. Mid-Atlantic Multistate Region

New York
Pennsylvania
New Jersey
Delaware
Maryland

Region C. Southeastern Multistate Region

Virginia
North Carolina
South Carolina
Tennessee
Georgia
Florida
Alabama
Mississippi

Region D. Midwestern Multistate Region

West Virginia
Kentucky
Ohio
Indiana
Michigan
Illinois
Wisconsin

Region E. Great Plains Multistate Region

Minnesota
Iowa
Missouri
Kansas
Nebraska
North Dakota
South Dakota

Region F. South Central Multistate Region

Arkansas
Louisiana
Texas
Oklahoma
New Mexico

Region G. Rocky Mountain Multistate Region

Montana
Idaho
Wyoming
Utah
Colorado

Region H. Pacific Coast Multistate Region

Washington
Oregon
Nevada

California
Arizona
[FR Doc. 81-29767 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6043

[W-71342]

Wyoming; Revocation of Executive Order No. 6819, Withdrawal for the City of Rawlins Waterworks Projects

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a withdrawal affecting 600 acres of public lands temporarily withdrawn in connection with waterworks projects for the City of Rawlins, Wyoming, and restores the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: November 6, 1981.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307-778-2220, extension 2336.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 6819 of August 11, 1934, which temporarily withdrew the following described public lands in connection with waterworks projects for the City of Rawlins, Wyoming, is hereby revoked in its entirety:

Sixth Principal Meridian

T. 17 N., R. 88 W.,
Sec. 11, W½NW¼;
Sec. 12, NE¼, E½NW¼, SW¼, W½SE¼, and SE¼SE¼.
The area described contains 600 acres in Carbon County.

The remainder of the lands described in Executive Order No. 6819 were patented prior to the date thereof and erroneously included in the withdrawal order.

2. At 10 a.m. on November 6, 1981, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 6, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location for nonmetalliferous minerals at 10 a.m. on November 6, 1981. They have been and will continue to be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws for metalliferous minerals.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
October 1, 1981.
[FR Doc. 81-29641 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-109; RM-3697]

FM Broadcast Station in Anchorage and Eagle River, Alaska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 298 to Anchorage, Alaska, as that community's seventh FM assignment. This action is in response to a petition, filed by Lynn Blair, proposing the assignment of Channel 298 to Eagle River, Alaska.

DATE: Effective November 16, 1981.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Anchorage and Eagle River, Alaska), BC Docket 81-109 RM-3697. Report and order (Proceeding Terminated).

Adopted: September 4, 1981.

Released: September 15, 1981.

By the Chief, Policy and Rules Division:

1. Before the Commission is a *Notice of Proposed Rule Making*, 46 Fed. Reg. 15754, published March 9, 1981, proposing three alternative assignment plans: (1) assign Channel 298 to Anchorage, Alaska, (2) assign Channel 285A to Eagle River, Alaska, or (3) assign Channel 298 to Eagle River. Lynn Blair ("petitioner") filed comments supporting the assignment of Channel 298 to either Anchorage or Eagle River. John Lindauer ("Lindauer") filed comments supporting the assignment of Channel 298 to Anchorage. Northern Television ("Northern") filed comments opposing the assignment of Channel 285A to Eagle River. Petitioner filed reply comments.

2. Eagle River (population 2,437)[1] is located in Anchorage County, approximately 21 kilometers (12.9 miles) east of Anchorage, Alaska (population 48,029). Eagle River has no local broadcast service. Anchorage is presently assigned six commercial FM channels.

3. Petitioner, in her comments, states that while her original request was for the assignment of Channel 298 to Eagle River, she would also support, as an alternative, the assignment of Channel 298 to Anchorage and, under § 73.203(b), apply for Eagle River, if the channel were assigned to Anchorage. Petitioner states that she will not apply for Channel 285A, if assigned to Eagle River. In support of the Eagle River assignment, petitioner argues that Eagle River is a growing and thriving community, located 12 miles from Anchorage with a distinct and rural character. This distinctiveness is said to provide assurance that as an Eagle River station, it would not be necessary to rely on Anchorage. Petitioner also urges that the Commission not misinterpret the case of *Communication Investment Corp.*, 48 RR 2d 1291 (1981), as it relates herein, to require the designation of a transmitter site and thereby overemphasize that factor over the eight other factors cited in that case. Petitioner states that she is considering several possible transmitter locations.

4. Lindauer, in his comments, states that he supports the assignment of Channel 298 to Anchorage. He further notes that the needs of Eagle River could be more appropriately addressed by a Class A channel. Lindauer states his intent to apply for the channel, if assigned to Anchorage.

5. Northern, in its comments, voices opposition to the proposal to assign Channel 285A to Eagle River. Northern states that such an assignment will interfere with Northern's background SCA operation. Northern states that it does not oppose the assignment of Channel 298 to either Eagle River or Anchorage.

6. In her reply comments, petitioner states that Northern's opposition is only to the proposal of Channel 285A to Eagle

[1] Population figures are taken from the 1970 U.S. Census.

River. However, she states that there is no interest shown in such an assignment and therefore Northern's position is consistent with her position.

7. Since Eagle River is located approximately 20.7 kilometers (12.9 miles) from Anchorage, the assignment of Channel 298 to either Anchorage or Eagle River makes the channel available for use at Eagle River as requested in any case. *See* § 73.203(b) of the Commission's Rules. However, we do have another interest in using the channel at Anchorage and only an Anchorage assignment will permit its use there. On that basis alone, we would prefer the Anchorage assignment and defer to the application processing, the issue of which community should be favored so as not to foreclose either possibility. Nevertheless, we find that the proper location for the assignment of Channel 298 is Anchorage, as the larger community. Eagle River, based on its population figures, provided by petitioner, is not large enough to qualify for a Class C assignment. We make exceptions where outlying areas are in need of service which can be provided by the requested assignment. However, no such showing has been submitted and it is unlikely that any significantly populated areas would be reached by the Eagle River assignment that are not already reached by the six commercial FM stations already licensed to Anchorage. Hence, the needs of Eagle River for a local station could be satisfied, in our opinion, by a Class A station. A further difficulty that we have with the Eagle River Class C proposal was expressed by us in the Notice—that being the proximity of Eagle River to the much larger city of Anchorage and, as such the inevitable consequence of the station seeking advertising from and service to Anchorage in order to compete in the larger market. We gave petitioner an opportunity to dispel this purpose by indicating her proposed transmitter location. The purpose of this information was to then evaluate petitioner's intent under the factors set forth in *Communication Investment Corp. v. F.C.C., supra.* We did not intend to place undue weight on the transmitter location, it was just that the transmitter location was the only piece of information missing to enable us to make an analysis of the pertinence of that case to the present situation. Since petitioner has not provided that information, our concerns of the Eagle River station becoming nothing more than another Anchorage station are not diminished. Therefore, we find no basis for favoring Eagle River over Anchorage as the desired location of a first Class C assignment. Rather, petitioner may make her case when applying for Eagle River under the 15-mile rule.

8. The assignment of Channel 298 to Anchorage will cause preclusion on Channels 295, 296A, 297, 298, 299 and 300. Petitioner indicates that there are no alternative channels for the precluded communities of 1,000 or more population within 65 miles.[2] Each of these communities are located within 15 miles of Anchorage and may also apply for Channel 298 or for the recently assigned Channel 293 in BC Docket 80-281, under the 15-mile rule.

9. Accordingly, it is ordered, That effective November 16, 1981, the FM Table of Assignments, § 73.202(b) of the Commission's rules is amended as follows:

City	Channel No.
Anchorage, Alaska	263, 267, 271, *276A, 281, 288A, 293, 298

10. Authority for the action taken herein is contained in §§ 4(i), 5(d)(1) and 307(b) of the Communication's Act of 1934, as amended, and § 0.281 of the Commission's Rules.

11. Assignment of Channel 298 is conditioned on noninterference to the Federal Communications Commission monitoring station in Anchorage.

12. For further information concerning the proceeding, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

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

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-29740 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 81-281; RM-3707]

FM Broadcast Station in Deer Park, Washington; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 296A to Deer Park, Washington, in response to a petition filed by Gerald E. Carpenter, Eric E. Carpenter, and Louis Musso III, d/b/a Tri-County Broadcasting. The assignment could provide Deer Park with a first local aural service.

DATE: Effective December 4, 1981.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Deer Park, Washington), BC Docket No. 81-281, RM-3707. Report and order (Proceeding Terminated).

Adopted: September 28, 1981.

Released: October 2, 1981.

By the Acting Chief, Policy and Rules Division.

1. Before the Commission is a *Notice of Proposed Rule Making*, 46 FR 25488, published May 7, 1981, proposing the assignment of FM Channel 296A to Deer Park, Washington, as that community's first FM assignment, at the request of Gerald E. Carpenter, Eric E. Carpenter, and Louis Musso III, d/b/a Tri-County Broadcasting ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intent to file for the channel, if assigned. No oppositions to the proposal were received.

2. Deer Park (population 2,140),[1] in Spokane County (population 341,835), is located approximately 368 kilometers (230 miles) east of Seattle, Washington, and 32 kilometers (20 miles) north of Spokane, Washington. This community presently has no local aural service.

3. Petitioner has submitted information with respect to Deer Park which is persuasive as to its need for a first local FM assignment.

4. We believe the public interest would be served by the assignment of Channel 296A to Deer Park, Washington. An interest has been shown for its use, and such an assignment would provide the community with an FM station which could render a first local aural broadcast service.

5. The Canadian Government has given its concurrence to the assignment of Channel 296A to Deer Park, Washington.

6. Authority for the adoption of the amendment contained herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of

[2] Those communities include: Spenard (population 18,089); Fort Richardson (population 8,860); Palmer (population 1,140); Birdswood (population 1,219), and Sand Lake (population 4,168).

[1] Population figures are extracted from the 1980 U.S. Census.

1934, as amended, and § 0.281 of the Commission's Rules.

7. Accordingly, it is ordered, That effective December 4, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, IS AMENDED with regard to the following community:

City	Channel No.
Deer Park, Washington	296A

8. It is further ordered, That this proceeding Is Terminated.

9. For further information concerning the above, contact Nancy V. Joyner, Broadcast Bureau, (202) 632–7792.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81–29748 Filed 10–13–81; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 46, No. 198
Wednesday, October 14, 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.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-118]

Energy Conservation Program for Consumer Products; Test Procedures for Refrigerators and Refrigerator-Freezers, and Freezers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy is issuing this notice of further rulemaking concerning proposed amendments to the test procedures for refrigerators and refrigerator-freezers, and freezers. The present notice is a modification of the proposed amendments published July 14, 1980. The test procedures appear at 10 CFR Part 430, Subpart B. They are part of the Energy Conservation Program for Consumer Products established pursuant to the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619, 92 Stat. 3266). Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products. The rule changes being proposed reduce the test burden on manufacturers.

DATES: Written comments in response to this notice by November 30, 1981.

ADDRESSES: Comments to Ms. C. Snipes, U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, CE-62, 1000 Independence Ave. S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James A. Smith, U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Building Energy Research and Development, Test and Evaluation Branch, Room GH-065, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-9127, Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC-33, Room 6B-144, 1000 Independence Ave. S.W., Washington, D.C. 20585, (202) 252-9510.

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1977, the Department of Energy (DOE) assumed the authority of the Federal Energy Administration (FEA) for the Energy Convservation Program for Consumer Products under Section 301 of the Department of Energy Orgnization Act (Pub. L. 95-91). The Energy Conservation Program for Consumer Products was established by FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA). References in this notice to "the Act" or to section of the Act, refer to the Energy Policy and Conservation Act, as amended by NECPA.

The Act requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers, and freezers. Test procudures were proposed for refrigerators and refrigerator-freezers, and freezers by notice issued April 12, 1977 (42 FR 21576, April 27, 1977). A public hearing on the proposed test procedures was held on June 14, 1977. Final test procedures were prescribed on September 8, 1977 (42 FR 46140, September 14, 1977).

Subsequently, a Petition for Rulemaking was submitted by the Association of Home Appliance Manufacturers (AHAM). This petition requested that DOE examine shortened test procedures for refrigerators and refrigerator-freezers, and freezers. AHAM stated that its alternate test procedures were much less burdensome and would give results that would differ by less than four percent from those obtained under the existing DOE test procedures. Upon the request of DOE, the National Bureau of Standards (NBS) experimentally evaluated the alternate test procedures suggested by AHAM. After study, NBS recommended to DOE revised test procedures which incorporated many of the AHAM suggestions. On July 14, 1980, DOE proposed these revised test procedures as an amendment to the existing procedures (45 FR 47396).

Information received by DOE during the public hearing on September 9, 1980, and in written comments in response to the July 14, proposal revealed certain inadequacies with the definition of steady state conditions and with the requirements for the test chamber ambient air temperature gradient. Insufficient information was available in the rulemaking record to address these areas satisfactorily. Today, DOE is proposing certain additional changes to the refrigerator and refrigerator-freezer, and freezer proposed test procedures of July 14, to satisfy concerns raised by commenters.

B. Discussion

(1) Temperature Controls. For products with a single temperature control knob, the existing test procedures require that energy consumption be measured at three control settings (warm, mid, and cold). The July 14 proposal required only two settings, one at the midpoint and the other at either the warm or cold setting so that the temperatures of the two settings bracket the standardized temperature. Standardized temperatures are 15° F in the freezing compartment for refrigerators, 5° F in the freezing compartment for refrigerator-freezers, 0° F for freezers, and 38° F in the fresh food compartment for all-refrigerators.

On products with two temperature controls, the present test procedures require that products be tested at each of the extreme positions of the controls (warm/warm, warm/cold, cold/warm, and cold/cold). The July 14 proposal reduced the number of test points from four to two. The first test is made with both controls set at their midpoints, and the second test is made at either the warm/warm or cold/cold setting as required so that the compartment temperatures bracket the standardized temperature.

(2) Three-year Period. The July 14 proposal would have eliminated the existing test procedures for refrigerators and refrigerator-freezers, and freezers. Since the proposed and existing test procedures give almost identical results, several commenters requested that a three-year period be allowed during which the use of either test procedure would be allowed. The commenters

stated that manufacturers should have the option to test their products under either test procedure during this three-year period so they would not have to retest immediately all models which are currently labeled. Since the differences in results obtained between the two test procedures should be small and would not mislead consumers, DOE is proposing use of either procedure during a three-year period.

(3) Test Chamber Ambient Temperature Gradient. Commenters noted that the DOE revised procedure did not contain a requirement that the test chamber vertical ambient air temperature gradient be maintained when tests are in progress. DOE and NBS agree this requirement is advisable. Therefore, both the requirement and a method for measuring ambient gradient are included in today's proposed amendment.

(4) Definition of "Steady-state" Conditions. The July 14 proposal required that a test period could not start until the unit being tested reached "steady-state" (non-varying) temperature conditions. However, a precise definition of "steady-state" conditions was not included. Commenters requested that DOE incorporate the definition used in AHAM Standard HRF-1-1979. NBS and DOE evaluated this suggestion but found that the AHAM definition would not completely define steady state conditions for all products under all circumstances. Consequently, today's proposed rule includes a new definition of "steady-state" conditions that is designed to be compatible with the July 14 test methods under all circumstances.

(5) Accuracy of Temperature Measurements. While analyzing public comments, NBS discovered that the AHAM standard (AHAM-HRF-1-1979), referenced by the July 14 proposal, did not clearly define the required accuracy of temperature measurements. Consequently, today's proposed rule specifies the same accuracy requirement contained in the existing DOE test procedure.

(6) Non-time Initiated (Demand) Defrost. Many commenters objected to the inclusion in the July 14 proposed rule of a procedure for measuring the energy consumption of refrigeration products with non-time initiated (demand) defrost. They stated that this type of system, although technologically feasible, is not currently marketed in the United States. After publication of the proposed rule, the "Provisions for the Waiver of Consumer Product Test Procedures," which allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular covered product, became effective (45 FR 64108, September 26, 1980). Consequently, DOE has concluded that test procedures for non-time initiated defrost products are not currently needed. If such products are produced in the future and the then existing test procedures do not accurately measure the true energy consumption of the machines, the manufacturer may petition for a waiver from the test procedures (10 CFR 430.27). Accordingly, today's proposed rule does not include test procedures for non-time initiated defrost products.

(7) Long-time Initiated Defrost. One commenter, when reviewing the non-time initiated defrost procedures, noted that these procedures could be adapted very easily to newly-designed automatic defrost products which operate for unusually long time periods, i.e., greater than 24 hours, between defrosting. NBS investigated this method and found that such a procedure could greatly reduce test time, since a test point that currently required four days of testing might be obtained in less than 24 hours with almost with no loss of accuracy. Today's proposal incorporates an alternate procedure for testing of automatic defrost refrigerator-freezers and freezers which require more than 14 hours of compressor-operating time between defrost periods. NBS and DOE chose the fourteen hour period because a product whose compressor runs 60% of the time would require a test period of greater than 24 hours. A longer test period could be burdensome and does not result in significantly increased accuracy since units which operate for more than 14 hours between defrost cycles use only about 1.5% of their electrical energy consumption to perform the defrost function.

(8) Special Cases for Refrigerators and Refrigerator-freezers. NBS review of the July 14 proposal has indicated that there are two cases, though occurring infrequently, where the calculation procedures need to be defined more precisely. The first case occurs when the freezer compartment (or in the case of an all-refrigerator, the fresh food compartment) temperatures are always below the standardized temperatures for reporting energy consumption. In this case, the energy consumption to be reported is that which occurs at the warmest control settings; hence there is no need to perform a test at the colder settings. The second case occurs when the compartment temperatures are always above the standardize temperatures. These conditions usually characterize a product whose refrigeration system is underdesigned. For these products, the medium and cold temperature control settings will likely result in compartment temperatures very close together since the compressor will probably be running almost constantly at both control settings. Since energy use is determined by extrapolating the results of these two test points, small errors in each point could result in large errors in the extrapolated result. Consequently, a test with the temperature controls set in the warm positions should be performed so the energy use may be determined much more precisely by an extrapolation from the warm test point to the cold test point. Today's proposed test procedures include the above provisions for treating these two special cases.

(9) All-refrigerators. The July 14 proposal defined an all-refrigerator as a refrigerator whose freeezing compartment volume was less than 0.25 cubic feet. Due to the small size of this compartment, no load of frozen food packages was required in the freezer. A manufacturer requested that this definition be changed to include models whose freezer volume was less than 0.30 cubic feet. The company makes a product with a freezer volume greater than 0.25 cubic feet but less than 0.30 cubic feet. The commenter stated that the freezer unit is still too small to have the frozen food packages properly arranged. NBS analyzed these comments and concluded that refrigerators whose freezer volumes are smaller than 0.50 cubic feet would probably not offer enough space to arrange properly a test load in the freezer. In today's proposed rule, DOE has changed the definition of an all-refrigerator to include units with freezer volumes less than 0.50 cubic feet. These units will be tested without a load in the freezer. DOE invites comment and data from interested parties concerning the definition of an all-refrigerator.

Commenters also requested that DOE provide a method to calculate the adjusted volume of an all-refrigerator. Adjusted volume is used to compensate for the fact that of two similar products with equal total volumes, the unit with the larger ratio of freezing compartment volume to total volume will consume more energy. For refrigerators, refrigerator-freezers, and freezers, the adjusted volume is calculated by the freezer volume multiplying by an adjustment factor, and the resulting product is added to the fresh food volume. This adjusted volume, which is a measure of useful output of services, is divided by the electrical consumption to determine the energy factor of the product. For the all-refrigerators, adjustment factor values of 1.12 and 1.0

were suggested by commenters. The 1.12 factor is based on an assumed freezing compartment temperature of 32° F, which cannot be confirmed since no freezer compartment temperature measurements are required. Even if the temperature were known to be kept at 32° F, the 1.12 adjustment factor would only be appropriate if the freezing compartment in all-refrigerators was configured in the same geometrical fashion as in refrigerators and refrigerator-freezers. Typically, this is not the case since all-refrigerator freezing compartments do not usually occupy the entire upper portion of the storage volume. Consequently, today's proposed rule includes an adjustment factor of 1.0, and the adjusted volume of an all-refrigerator would be equal to the sum of the volumes of the fresh food and freezer compartments.

(10) Freezer Two-point Test. A commenter complained that the two-point freezer test procedure proposed on July 14, 1980, would cause a decrease in intra-laboratory repeatability of test results, which due to the statistical sampling plan, would increase the number of actual tests required to maintain the same statistical confidence level. Data from a single product were provided by the commenter and were reviewed by NBS and DOE. These data were found to be insufficient to support the commenter's position.

Consequently, today's proposed freezer test procedure contains the two-point test procedure as proposed on July 14.

(11) Freezer Performance. Storage volume, in addition to estimated annual operating cost, is the only measure of performance for freezers in the existing test procedures. One manufacturer requested that DOE include another measure of freezing performance in the freezer test procedure. Freezing performance would quantify the rate at which the freezer could lower the interior termperature. The commenter stated that without such a requirement it is possible to design products with low energy consumption which do not freeze food at acceptable rates. DOE acknowledges such designs are technically possible but has no knowledge of their actual existence. Accordingly, DOE is not proposing freezing rate at this time as a measure of performance.

(12) Miscellaneous. After consideration of all the comments and consultation with NBS, DOE has incorporated certain minor technical and editorial changes that were not specifically discussed above. For example, the test period for non-cycling products was changed from 30 minutes to 32 minutes to be evenly divisible by the maximum 4 minute interval between readings.

An analysis of technical issues raised during the comment period of the July 14 proposal was performed by NBS. The technical analysis entitled "Revisions to the Proposed Refrigerator, Refrigerator-freezer, Freezer Test Procedure" is available for inspection at the DOE Freedom of Information Reading Room, Room 1E-190 (Docket No. CAS-RM-80-118), 1000 Independence Ave., SW., Washington, D.C. 20585.

C. Written Comment Procedure

Interested persons are invited to participate in this rulemaking by submitting data, views or comments with respect to the proposed amendments set forth in this notice.

Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Refrigerators, Refrigerator-freezers, and Freezers—Proposed Test Procuedure Revision; Docket No. CAS-RM-80-118." Fifteen copies should be submitted if possible. All comments received by the date specified at the beginning of this notice, and all other relevant information, will be considered by DOE before final action is taken on the proposed regulation. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempted from public disclosure.

D. Regulatory and Environmental Review

Pursuant to Section 7(a)(1) of the Federal Energy Administration Act of 1974, a copy of the July 14 proposed rule was submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of the proposal on the quality of the environment. No comments were received from the Administrator.

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, DOE has evaluated the proposed revision of test procedures for refrigerators and refrigerator-freezers, and freezers to determine if an environmental assessment (EA) or an environmental impact statement (EIS) is required. The test procedures will be used only to standardize the measurement of energy usage for refrigerators and refrigerator-freezers, and freezers. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that the proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, DOE has determined that neither an EA nor an EIS is required.

The proposed rule has been reviewed in accordance with Executive Order 12291 and it has been determined that the proposal is significant in nature but does not have major impacts to manufacturers and consumers (i.e., would not impose annual economic costs of $100 million or more). Consequently, a regulatory analysis has not been prepared for this proposed rule.

Today's proposed rule has also been reviewed in accordance with the Regulatory Flexibility Act. Since the rule is intended to reduce testing burden for both small and large businesses alike, DOE has determined that no further specific impact analyses are required.

In consideration of the foregoing, (1) the proposal, set forth at 45 FR 47396 *et seq.*, July 14, 1980, to amend Chapter II of Title 10, Code of Federal Regulations, is withdrawn and (2) it is proposed to amend Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., September 22, 1981.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Provisions of 10 CFR Part 430, Subparts A and B and Appendices A and B are amended as follows:

Subpart A—General Provisions

1. Section 430.2 definitions of "electric refrigerator," "electric refrigerator-freezer," "freezer," "refrigerator," and "refrigerator-freezer" are revised to read as follows:

§ 430.2 [Amended]

* * * * *

"Electric refrigerator" means a cabinet designed for the refrigerated storage of food at temperatures above 32°F., and having a source of refrigeration requiring single phase, alternating current electric energy input only. An electric refrigerator may include a compartment for the freezing and storage of food at temperatures below 32°F., but does not provide a

separate low temperature compartment designed for the freezing of and the long term storage of food at temperatures below 8°F.

* * * * *

"Electric refrigerator-freezer" means a cabinet which consists of two or more compartments with at least one of the compartments designed for the refrigerated storage of foods at temperatures above 32°F. and with at least one of the compartments designed for the freezing of and the storage of frozen foods at temperatures of 8°F. or below which may be adjusted by the user to a temperature of 0°F. or below. The source of refrigeration requires single phase, alternating current electrical energy input only.

* * * * *

"Freezer" means a cabinet designed as a unit for the storage of food at temperatures of 0°F. or below, having the ability to freeze food and having a source of refrigeration requiring single phase, alternating current energy input only.

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"Refrigerator" means an electric refrigerator.

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"Refrigerator-freezer" means an electric refrigerator-freezer.

Subpart B—Test Procedures

2. Section 430.22 paragraphs (a) and (b) are revised and (b)(6) is added to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

(a) *Refrigerators and refrigerator-freezers.* (1) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers without an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, and (iii) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for electric refrigerators and electric refrigerator-freezers with an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, and (iii) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for any other specified cycle type for electric refrigerators and electric refrigerator-freezers shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the specified cycle type, determined according to 4.1 of Appendix A or 6.2 of Appendix A1 to this subpart, and (iii) the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for electric refrigerators and electric refrigerator-freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be—

(i) For electric refrigerators and electric refrigerator-freezers not having an anti-sweat heater switch, the quotient of (A) the adjusted total volume in cubic feet, determined according to 4.2 of Appendix A or 6.1 of Appendix A1 of this subpart, divided by (B) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix A of this subpart, the resulting quotient then being rounded off to the second decimal place, and

(ii) For electric refrigerators and electric refrigerator-freezers having an anti-sweat heater switch, the quotient of (A) the adjusted total volume in cubic feet, determined according to 4.2 of Appendix A or 6.1 of Appendix A1 of this subpart, divided by (B) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory, each in kilowatt-hours per cycle, determine according to 4.1 of Appendix A or 6.2 of Appendix A1 of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) Other useful measures of energy consumption for electric refrigerators and electric refrigerator-freezers shall be those measures of energy consumption for electric refrigerators and electric refrigerator-freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix A or Appendix A1 of this subpart.

(6) The alternative uniform test method for measuring the energy consumption of electric refrigerators and electric refrigerator-freezers set forth in Appendix A1 of this subpart may be used instead of the procedure set forth in Appendix A of this subpart until 36 months from the effective date of this amendment. After that date, Appendix A of this subpart may not be used and only Appendix A1 (alternative uniform test method) may be used.

(b) *Freezers.* (1) The estimated annual operating cost for freezers without an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, and (iii) the representative average unit cost in dollars pe kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for freezers with an anti-sweat heater switch shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat heater switch in the position set at the factory, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, and (iii) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(3) The estimated annual operating cost for any other specified cycle type for freezers shall be the product of the following three factors: (i) The representative average-use cycle of 365 cycles per year, (ii) the average per-cycle energy consumption for the specified cycle type, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart and (iii) the representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(4) The energy factor for freezers, expressed in cubic feet per kilowatt-hour per cycle, shall be—

(i) For freezers not having an anti-sweat heater switch, the quotient of (a) the adjusted net refrigerated volume in cubic feet, determined according to 4.2 of Appendix B or 6.1 of Appendix B1 of this subpart, divided by (B) the average per-cycle energy consumption for the standard cycle in kilowatt-hours per cycle, determined according to 6.2 of Appendix B of this subpart, the resulting quotient then being rounded off to the second decimal place, and

(ii) For freezers having an anti-sweat heater switch, the quotient of (A) the adjusted net refrigerated volume in cubic feet, determined according to 4.2 of Appendix B or 6.1 of Appendix B1 of this subpart, divided by (B) half the sum of the average per-cycle energy consumption for the standard cycle and the average per-cycle energy consumption for a test cycle type with the anti-sweat switch in the position set at the factory just prior to shipping, each in kilowatt-hours per cycle, determined according to 4.1 of Appendix B or 6.2 of Appendix B1 of this subpart, the resulting quotient then being rounded off to the second decimal place.

(5) Other useful measures of energy consumption for freezers shall be those measures of energy consumption for freezers which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix B or Appendix B1 of this subpart

* * * * *

(6) The alternative uniform test method for measuring the energy consumption for freezers set forth in Appendix B1 of this subpart may be used instead of the procedure set forth in Appendix B of this subpart until 36 months from the effective date of this amendment. After that date, Appendix B of this subpart may not be used and only Appendix B1 (alternative uniform test method) may be used.

* * * * *

3. Subpart B of Part 430 is amended by adding after Appendix A, Appendix A1, as follows:

Appendix A1 (Alternative) to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

1. Definitions

1.1 "HRF-1-1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a revision of ANSI B 38.1-1970.

1.2 "Adjusted total volume" means the sum of (i) the fresh food compartment volume as defined in HRF-1-1979 in cubic feet, and (ii) the product of an adjustment factor and the net freezer compartment volume as defined in HRF-1-1979, in cubic feet.

1.3 "Anti-sweat heater" means a device incorporated into the design of a refrigerator or refrigerator-freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity.

1.4 "All-refrigerator" means an electric refrigerator which does not include a compartment for the storage of frozen food at temperatures below 32°F (0.0°C). It may include a compartment of 0.50 cubic feet (14.2 liters) or less for freezing and storage of ice.

1.5 "Cycle" means the period of 24 hours for which the energy use of an electric refrigerator or electric refrigerator-freezer is calculated as though the consumer activated compartment temperature controls were set so that the desired compartment temperatures were maintained.

1.6 "Cycle type" means the set of test conditions having the calculated effect of operating an electric refrigerator or electric refrigerator-freezer for a period of 24 hours, with the consumer activated controls other than those that control compartment temperatures set to establish various operating characteristics.

1.7 "Standard cycle" means the cycle type in which the antisweat heater control, when provided, is set in the highest energy consuming position.

1.8 "Automatic defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.9 "Long-time Defrost" means an automatic defrost system where the timed interval between defrosts is always greater than 14 hours.

1.10 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

2. Test Conditions

2.1 Operational conditions. the electric refrigerator or electric refrigerator-freezer shall be installed and its operating conditions maintained in accordance with HRF-1-1979, section 7.2 through section 7.4.3.3, except that the vertical ambient temperature gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test. Other exceptions are noted in 2.3 and 5.1 below.

2.2 Ambient temperature. The ambient temperature of the air surrounding the unit being tested shall be 90.0 ± 1°F (32.3 ± 0.6°C) during the time while the unit is stabilizing to steady state conditions and during the test period.

2.3 Conditions for automatic defrost refrigerator-freezers. For automatic defrost refrigerator-freezers, the freezer compartments shall not be loaded with any frozen food packages. Cylindrical metallic masses of dimensions 1.12 ± 0.25 inches (2.9 ± 0.6 cm) in diameter and height shall be attached in good thermal contact with each temperature sensor within the refrigerated compartments. All temperature measuring sensor masses shall be supported by non-thermally conductive supports in such a manner that there will be at least one inch (2.5 cm) of air space separating the thermal mass from contact with any surface. In case of interference with hardware at the sensor locations specified in section 5.1, the sensors shall be placed at the nearest adjacent location such that there will be a one inch air space separating the sensor mass from the hardware.

2.4 Conditions for all-refrigerators. There shall be no load in the freezer compartment during the test.

2.5 Steady State Condition. Steady state conditions exist if the temperature measurements in all measured compartments taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.1°F (0.05°C) per hour as determined by the applicable condition of A or B.

A. The average of the measurements during a two hour period if no cycling occurs or during a number of complete repetitive compressor cycles through a period of no less than two hours is compared to the average over the next equivalent time period.

B. If A above can not be used, the average of the measurements during the last two or more (complete cycles if cycling) hours prior to a defrost period are compared to the same averaging period prior to the following defrost period.

3. Test Control Settings

3.1 Model with no user operable temperature control. A test shall be performed during which the compartment temperatures and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Model with user operable temperature control. A first test shall be performed with all compartment temperature controls set at their median position midway between their warmest and coldest setting. Knob detents shall be mechanically defeated if necessary to attain a median setting. A second test shall be performed with all controls set either at their warmest or their coldest setting (not electrically or mechanically bypassed), whichever is needed to cause the compartment temperatures measured by the two tests to bracket (i.e., one is above and one is below) the standardized temperature for calculating energy consumption. If the standardized compartment temperature at the warmest control setting(s) is below the specified temperature and the fresh food compartment temperature is always below 45.0°F (7.22°C), only one test need be performed. If the standardized compartment

temperature is always greater than that specified, a third test shall be performed using the warmest control setting(s) and the result shall be used to determine energy consumption in place of the median control(s) setting test results. The standardized temperatures shall be:

3.2.1 All-refrigerator, 38°F (3.8°C) fresh food compartment temperature.

3.2.2 Refrigerator, 15°F (−9.4°C) freezer compartment temperature.

3.2.3 Refrigerator-freezer, 5°F (−15°C) freezer compartment temperature.

4. Test Period

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in Section 2. and using control settings as set forth in Section 3. above.

4.1.1 Nonautomatic Defrost. If no automatic freezer defrost provisions are provided on the model being tested, the test time period shall start after steady state conditions have been reached and be of not less than three hours in duration. During the test period, the compressor motor shall complete two or more whole compressor cycles (a compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be three hours. If incomplete cycling (less than two compressor cycles) occurs during a 24 hour period, the results of the 24 hour period shall be used.

4.1.2 Timed Automatic Defrost. If a time-initiated defrost is provided in the device being tested, the test time period shall start after stabilization has been completed and be from one point during a defrost period to the same point during the next defrost period.

4.1.3 Long-time Defrost. If a long-time defrost system is provided in the model being tested, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is manually initiated during a compressor "on" cycle and terminate at the second turn "on" of the compressor motor or after four hours, whichever comes first.

5. Test Measurements

5.1 Temperature Measurements. Compartment temperatures shall be measured at the locations prescribed in Figures 7.1 and 7.2 of HRF-1-1979 and shall be accurate to within ±0.5°F (0.3°C) of true value. No freezer temperature measurements need be taken in an all-refrigerator model.

If the interior arrangements of the cabinet do not conform with those shown in Figure 7.1 and 7.2 of HRF-1-1979, measurements shall be taken at selected locations chosen to represent approximately the entire refrigerated compartment. The locations selected shall be a matter of record.

5.1.1 Measured Temperature. The measured temperature of a compartment is to be the average of all sensor temperature readings taken in that compartment at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken in a compartment during a complete cycle or several complete cycles of the compressor motor (one compressor cycle is one complete motor "on" and one complete motor "off" period). For long-time defrost models, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.3.

5.1.2.1 The number of complete compressor motor cycles over which the compartment temperature is to be averaged shall be equal to the number of minutes between measured temperature readings, rounded up to the next whole minute or a number of complete cycles over a time period exceeding one hour. One of the cycles shall be the last complete compressor motor cycle during the test period.

5.1.2.2 If no compressor motor cycling occurs, the compartment temperature shall be the average of readings taken during the last thirty-two minutes of the test period.

5.1.2.3 If incomplete cycling occurs, the compartment temperatures shall be the average of all readings taken during the last three hours of the last complete "on" period.

5.2 Energy Measurements

5.2.1 Per-day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24 hour period. The adjustment shall be determined as follows:

5.2.1.1 Non automatic and time-initiated automatic defrost refrigerators and refrigerator-freezer models. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = EP \times 1440/T$

where

ET = test cycle energy expended in kilowatt-hours per day,

EP = energy expended in kilowatt-hours during the test period,

T = length of time of the test period in minutes,

1440 = conversion factor to adjust to a 24 hour period in minutes per day.

5.2.1.2 Long-time initiated defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day may be calculated equivalent to:

$ET = (1440 \times EP1/T1) + ((EP2 - (EP1 \times T2/T1)) \times 12/CT)$

where

ET = Defined in 5.2.1.1

EP1 = energy expended in kilowatt-hours during the first part of the test,

EP2 = energy expended in kilowatt-hours per day during the second part of the test,

T1 and T2 = length of time in minutes of the first and second test parts respectively,

CT = Defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle,

12 = conversion factor to adjust for a 50% run time of the compressor and

1440 = conversion factor to adjust to a 24-hour period.

5.3 Volume measurements. The electric refrigerator or electric refrigerator-freezer total refrigerated volume, VT, shall be measured in accordance with HRF-1-1979, section 3.20 and section 4.2 through 4.3 and equivalent to:

$VT = VF + VFF$

where

VT = total refrigerated volume in cubic feet,

VF = freezer compartment volume in cubic feet, and

VFF = fresh food compartment volume in cubic feet.

6. Calculation of Derived Results from Test Measurements

6.1 Adjusted Total Volume.

6.1.1 Electric refrigerators. The adjusted total volume,

VA, for electric refrigerators under test shall be defined as:

$VA = (VF \times CR) + VFF$

where

VA = adjusted total volume in cubic feet,

VF and VFF are defined in 5.3, and

CR = adjustment factor of 1.44, dimensionless.

6.1.2 Electric refrigerator-freezers. The adjusted total volume, VA, for electric refrigerator-freezers under test shall be calculated as follows:

$VA = (VF \times CFR) + VFF$

where

VF and VFF are defined in 5.3 and VA is defined in 6.1.1,

CRF = adjustment factor of 1.63, dimensionless,

6.1.3 Electric all-refrigerator. The adjusted total volume, VA, for all-refrigerators under test shall be calculated as:

$VA = (VF \times CAR) + VFF$

where

VF and VFF are defined in 5.3 and VA is defined in 6.1.1.

CAR = Adjustment factor of 1.00, dimensionless.

6.2 Average Per-Cycle Energy consumption.

6.2.1 All-refrigerator Models. The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) kilowatt-hour and shall depend upon the temperature attainable in the fresh food compartment as shown below.

6.2.1.1 If the fresh food compartment temperature is always below 38.0°F (3.3°C), the average per-cycle energy consumption shall be equivalent to:

$E = ET1$

where

E = Total per-cycle energy in kilowatt-hours per day,

ET is defined in 5.2.1, and Number 1 indicates the test period during which the highest fresh food compartment temperature is measured.

6.2.1.2 If one of the fresh food compartment temperatures measured for a test period is greater than 38.0°F (3.3°C), the average per-cycle energy consumption shall be equivalent to:

$EE = ET1 + ((ET2 - ET1) \times (38.0 - TR1)/(TR2 - TR1))$

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1,

TR = Fresh food compartment temperature determined according to 5.1.2 in degrees F,

Number 1 and 2 indicate measurements taken during the first and second test period as appropriate, and

38.0 = Standardized fresh food compartment temperature in degrees F.

6.2.2 Refrigerators and refrigerator-freezers. The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per-cycle to the nearest one hundredth (0.01) kilowatt-hour and shall be defined in the applicable following manner:

6.2.2.1 If the fresh food compartment temperature is at or below 45°F (7.2°C) in both of the tests and the freezer compartment temperature is always at or below 15°F (−9.4°C) in both tests of a refrigerator or at or below 5°F (−15°C) in both tests of a refrigerator-freezer, the per-cycle energy consumption shall be:

E = ET1

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1, and

Number 1 indicates the test period during which the highest freezer compartment temperature was measured.

6.2.2.2 If the conditions of 6.2.2.1 do not exist, the per-cycle energy consumption shall be defined by the higher of the two values calculated by the following two formulas:

E = ET1 + ((ET2 − ET1) × (45.0 − TR1)/(TR2 − TR1))

and

E = ET1 + ((ET2 − ET1) × (k − TF1)/(TF2 − TF1))

where

E is defined in 6.2.1.1,

ET is defined in 5.2.1,

TR and number 1 and 2 are defined in 6.2.1.2,

TF = Freezer compartment temperature determined according to 5.1.2 in degrees F,

45.0 is a specified fresh food compartment temperature in degree F, and

k is a constant 15.0 for refrigerators or 5.0 for refrigerator-freezers each being standardized freezer compartment temperature in degrees F.

4. Subpart B of Part 430 is amended by adding after Appendix B, Appendix B1, as follows:

Appendix B1 (Alternative) to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

1. Definitions.

1.1. "HRF-1-1979" means the Association of Home Appliance Manufacturers standard for household refrigerators, combination refrigerator-freezers, and household freezers, also approved as an American National Standard as a version of ANSI B38.1-1970.

1.2 "Anti-sweat heater" means a device incorporated into the design of a freezer to prevent the accumulation of moisture on exterior surfaces of the cabinet under conditions of high ambient humidity.

1.3 "Cycle" means the period of 24 hours for which the energy use of a freezer is calculated as though the consumer-activated compartment temperature controls were preset so that the desired compartment temperatures were maintained.

1.4 "Cycle type" means the set of test conditions having the calculated effect of operating a freezer for a period of 24 hours with the consumer-activated controls other than the compartment temperature control set to establish various operating characteristics.

1.5 "Standard cycle" means the cycle type in which the anti-sweat heater switch, when provided, is set in the highest energy consuming position.

1.6 "Adjusted total volume" means the product of, (1) the freezer volume as defined in HRF-1-1979 in cubic feet, times (2) an adjustment factor.

1.7 "Automatic Defrost" means a system in which the defrost cycle is automatically initiated and terminated, with resumption of normal refrigeration at the conclusion of defrost operation. The system automatically prevents the permanent formation of frost on all refrigerated surfaces. Nominal refrigerated food temperatures are maintained during the operation of the automatic defrost system.

1.8 "Long-time Defrost" means an automatic defrost system where the timed interval between defrosts is always greater than 14 hours.

1.9 "Stabilization Period" means the total period of time during which steady-state conditions are being attained or evaluated.

2. Test Conditions.

2.1 Operational conditions. The freezer shall be installed and its operating conditions maintained in accordance with HRF-1-1979, section 7.2 through section 7.4.3.3, except that the ambient gradient at locations 10 inches (25.4 cm) out from the centers of the two sides of the unit being tested is to be maintained during the test. Unless the area is obstructed by shields or baffles, the gradient is to be maintained from 2 inches (5.1 cm) above the floor or supporting platform to a height one foot (30.5 cm) above the unit under test.

2.2 Ambient temperature. The ambient temperature shall be 90.0 ± 1.0°F (32.2 ± 0.6°C) during the time when the unit is stabilizing to steady state conditions and during the test period.

2.3 Steady State Condition. Steady state conditions exist if the temperature measurements in all measured compartments taken at four minute intervals or less during a stabilization period are not changing at a rate greater than 0.1°F (0.05°C) per hour as determined by the applicable condition of A or B.

A—The average of the measurements during a two hour period if no cycling occurs or during a number of complete repetitive compressor cycles through a period of no less than two hours is compared to the average over the next equivalent time period.

B—If A above cannot be used, the average of the measurements during the last two or more (complete cycles if cycling) hours prior to a defrost period are compared to the same averaging period prior to the following defrost period.

3. Test Control Settings.

3.1 Model with no user operable temperature control. A test shall be performed during which the compartment temperatures and energy use shall be measured. A second test shall be performed with the temperature control electrically short circuited to cause the compressor to run continuously.

3.2 Model with user operable temperature control. A first test shall be performed with temperature control set at its median position midway between the warmest and coldest setting. A second test shall be performed with the control set either at the warmest or coldest setting, not electrically or mechanically bypassed, whichever is needed to cause the compartment temperatures measured by the two tests to bracket (one above and one below) 0.0°F (−17.8°C). If the freezer compartment temperature at the warmest control setting is below 0.0°F (−17.8°C), only one test need be performed. If the freezer compartment temperature is always greater than 0.0°F (−17.8°C), a third test shall be performed using the warmest control setting and the result shall be used to determine energy consumption in place of the median control setting test results.

4. Test Period.

4.1 Test Period. Tests shall be performed by establishing the conditions set forth in Section 2 and using control settings as set forth in Section 3 above.

4.1.1 Nonautomatic Defrost. If no automatic freezer defrost provisions are provided on the model being tested, the test time period shall start after steady state conditions have been reached and be of not less than three hours duration. During the test period the compressor motor shall complete two or more whole cycles (a compressor cycle is a complete "on" and a complete "off" period of the motor). If no "off" cycling will occur, as determined during the stabilization period, the test period shall be three hours. If incomplete cycling (less than two compressor cycles) occurs during a 24 hour period, the results of the 24 hour period shall be used.

4.1.2 Timed Automatic Defrost. If a time-initiated defrost is provided in the device being tested, the test time period shall start after stabilization has been reached and be from one point during a defrost period to the same point during the next defrost period.

4.1.3 Long-time Initiated Defrost. If a long-time initiated defrost system is provided in the model being tested, the test time period may consist of two parts. A first part would be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part would start when a defrost period is manually initiated during a compressor "on" cycle and terminate at the second turn "on" of the compressor motor or after four hours, whichever comes first.

5. Test Measurements.

5.1 Temperature measurements shall be made in accordance with HRF-1-1979 section 7.4.3.3 and shall be accurate to within ±0.5° F (0.3°C) of true value.

5.1.1 Measured Temperature. The measured temperature is to be the average of all sensor temperature readings taken at a particular time. Measurements shall be taken at regular intervals not to exceed four minutes.

5.1.2 Compartment Temperature. The compartment temperature for each test period shall be an average of the measured temperatures taken during a complete cycle or several complete cycles of the compressor motor (one compressor cycle is one complete

motor "on" and one complete motor "off" period). For long-time initiated defrost models, compartment temperatures shall be those measured in the first part of the test period specified in 4.1.3.

5.1.2.1 The number of compresssor motor cycles over which the compartment temperature is to be averaged shall be equal to the number of minutes between measured temperature readings rounded up to the next whole minute. One of the cylces shall be the last complete compressor motor cycle during the test period.

5.1.2.2 If no compressor motor cycling occurs, the compartment temperature shall be the average of readings taken during the last thirty-two minutes of the test period.

5.1.2.3 If incomplete cycling occurs (less than one cycle) the compartment temperature shall be the average of all readings taken during the last three hours of the last complete "on" period.

5.2 Energy Measurements:

5.2.1 Per-day Energy Consumption. The energy consumption in kilowatt-hours per day for each test period shall be the energy expended during the test period as specified in section 4.1 adjusted to a 24 hour period.

The adjustment shall be determined as follows:

5.2.1.1 Nonautomatic and automatic defrost models. The energy consumption kilowatt-hours per day shall be calculated equivalent to:

$ET=(EP\times1440\times k)/T$ where

ET = test cycle energy expended in kilowatt-hours per day,

EP = energy expended in kilowatt-hours during the test period,

T = length of time of the test period in minutes,

1440 = conversion fator to adjust to a 24 hour period in minutes per day, and

K = correction factor of 0.7 for chest freezers and 0.85 for upright freezers to adjust for average household usage, dimensionless.

5.2.1.3 Long-time initiated defrost. If the two part test method is used, the energy consumption in kilowatt-hours per day may be calculated equivalent to:

$ET=(1440\times DP1/T1)+((EP2-(EP1\times T2/T1))\times12/CT)$

where

ET, 1440, and K are defined in 5.2.1.1

EP1 = energy expended in kilowatt-hours during the first part of the test,

EP2 = energy expended in kilowatt-hours per day during the second part of the test,

CT = Defrost timer run time in hours required to cause it to go through a complete cycle, to the nearest tenth hour per cycle,

12 = conversion factor to adjust for a 50% run time of the compressor, and

T1 and T2 = length of time in minutes of the first and second test parts respectively.

5.3 Volume measurements. The electric freezer total refrigerated volume, VT, shall be measured in accordance with HRF-1-1979, section 3.2 and section 5.1 through 5.3.

6. Calculation of Derived Results From Test Measurements.

6.1 Adjusted Total Volume:

6.1.1 Electric freezers. The adjusted total volume, VA, for electric freezers under test shall be defined as:

$VA=VT\times CF$

where

VA = adjusted total volume in cubic feet,

VT = total refrigerated volume in cubic feet, and

CF = Correction factor of 1.73, dimensionless.

6.2 Average Per-Cyle Energy Consumption:

6.2.1 The average per-cycle energy consumption for a cycle type is expressed in kilowatt-hours per cycle to the nearest one hundredth (0.01) (0.1) kilowatt-hour and shall depend upon the temperature attainable in the freezer compartment as shown below.

6.2.1.1 If the freezer compartment temperature is always below 0.0°F (−17.8°C), the average per-cycle energy consumption shall be equivalent to:

$E=ET1$

where

E = Total per-cycle energy in kilowatt-hours per day,

ET is defined in 5.2.1, and

Number 1 indicates the test period during which the highest freezer compartment temperature is measured.

6.2.1.2 If one of the freezer compartment temperatures measured for a test period is greater than 0.0° F (17.8° C), the average per-cycle energy consumption shall be equivalent to:

$EE=ET1+(ET2-ET1\times(0.0-TF1)/(TF2-TF1))$

where

E is defined in 6.2.1.1

ET is defined in 5.2.1

TF = Freezer compartment temperature determined according to 5.1.2 in degrees F,

Numbers 1 and 2 indicate measurements taken during the first and second test period as appropriate, and

0.0 = Standardized freezer compartment temperature in degrees. F.

[FR Doc. 81-29681 Filed 10-13-81; 8:45 am]

BILLING CODE 6450-01-M

CIVIL AERONAUTICS BOARD

[ER Docket: 40092; EDR 432]

14 CFR Parts 202 and 213

Terms, Conditions and Limitations of Certificates Authorizing Scheduled Route Service and of Foreign Air Carrier Permits; Proposed Rule to Discontinue Airport Notice and Service Plan Requirements and Unnecessary Operating Restrictions

Dated: October 1, 1981.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes to discontinue its airport notice and approved service plan requirements and several unnecessary operating restrictions contained in its regulations. This action is being taken on the Board's initiative to eliminate unnecessary administrative burdens on carriers and on the Board's staff.

DATES: Comments by: December 14, 1981. Comments and other 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: October 29, 1981.

The Dockets 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 40092, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Ira Leibowitz, Bureau of International Aviation, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5203.

SUPPLEMENTARY INFORMATION: The Board proposes to repeal the airport notice, approved service plan and other reporting requirements provided for in Parts 202 and 213 of our Economic Regulations. We also proposed to eliminate several provisions from Part 202 which restrict carrier operations. These regulatory requirements should be repealed because they either no longer serve any useful CAB purpose or impose costs and administrative burdens which can no longer be justified under the competitive air transportation system established by the Airline Deregulation Act of 1978 (ADA), Pub. L. 95-504, and the International Air Transportation Competition Act of 1979 (IATCA), Pub. L. 96-192.

1. *Notice Requirements.* Part 202 sets forth certain regulations applicable to the exercise of certificate authority held by U.S. carriers under section 401 of the Federal Aviation Act of 1958, as amended. Part 213 applies to permits held by foreign air carriers. The airport notice requirements and provisions regarding applications for permission to use an airport are contained in sections 202.13 and 213.4. These regulations require carriers to apply to the Board for permission to initiate service to a point, to serve two points by the same airport, or to change the airport used to serve a point, and to wait to implement proposed changes until 30 days after the notice is filed, or until the Board

approves the change, whichever occurs first. The Board is required to consider these airport notices and to determine whether proposed changes are in the public interest. Section 202.13 also requires U.S. carriers to notify the Board if foreign governments require them to serve a point through an airport not regularly used by the carrier.

Many certificates authorizing foreign air transportation between points in the United States and unspecified points in foreign countries require the holder to submit a service plan. A service plan provides the Board with detailed flight information and must be approved by the Board before the carrier may operate the service in question. Section 202.15 establishes procedures and standards for permitting carriers to deviate from approved service plans.

Section 202.16 requires U.S. carriers to notify the Board if foreign governments require them to make stops or serve points not named in their certificates or approved service plans.

Section 202.21 sets forth the requirements for filing and service of documents under Part 202, and provides for petitions for reconsideration of Board decisions under this part. Section 202.22 lists the persons upon whom notices and applications under this part must be served. Appendices A and B to Part 202 contain recommended forms for airport notices and termination of service notices.

Enforcement of §§ 202.13, 202.15, 202.16, and 213.4 imposes unnecessary costs and administrative burdens on the carriers, the Board and ultimately on travelers and shippers. We have tentatively determined that these costs and burdens can no longer be justified.[1] Each of these provisions was adopted at a time when the Board had a statutory mandate to regulate closely many aspects of carrier operations, including entry into and exit from aviation markets. They were designed to provide the Board with the information necessary to enforce mandatory service requirements imposed by carriers' certificates. The Board's regulatory mandate has changed dramatically since these regulations were adopted, primarily through the enactment of the ADA and IATCA. This legislation reduced or eliminated the Board's responsibility to regulate many aspects of carrier operations and lowered regulatory barriers to entry and exit. The Board has been working to implement the goals of the ADA and IATCA by removing certificate and permit restrictions, realigning routes, and eliminating unnecessary and unduly burdensome regulations. Repeal of the notice requirements of Parts 202 and 213 would be consistent with these actions.

The Board is still responsible for ensuring that the carriers do not perform air transportation beyond the authority contained in their certificates and permits. However, it can perform this function without the burdensome prior-notice and approval mechanisms of Parts 202 and 213. Much of the information required to be submitted under Parts 202 and 213 is available to the Board through the carriers' schedules published in the Official Airline Guide (OAG) and similar publications. Insofar as the Board needs any additional information to prevent abuses, it is consistent with the reduced scope of the Board's oversight to rely upon the public and other carriers to provide it instead of relying upon the burdensome reporting requirements of the past.

2. *Restrictions.* Part 202 imposes restrictions on carrier operations. Section 202.12 limits the period of time aircraft may spend at "intermediate" stops. It also establishes rules such as capacity restrictions to ensure that carriers comply with certificate restrictions which permit flights to originate only at specified points. Section 202.13(c) provides that where a carrier has been authorized to serve a point located in the United States through two or more airports, failure to provide regularly scheduled air transportation through one of those airports for 60 days shall automatically revoke any authorization to regularly use that airport.

Restrictions imposed years ago in certificates for local service require the holder to serve each point named in the certificate. Under section 202.14, a carrier can obtain relief from that requirement by submitting detailed information demonstrating that the proposed changes are in the public interest and consistent with its responsibilities for providing local service.

Continuation of the § 202.12 limitations on the period of time that aircraft may spend at intermediate points no longer appears to be necessary or consistent with Board policy. We have long since ended the practice of closely monitoring carrier operations. We intend to let market forces determine the quality and quantity of service carriers provide with minimum regulations. Similarly, there no longer appears to be any reason to retain §§ 202.13(c) or 202.14, since authority to serve individual points is permissive, subject only to the provisions of section 401(j) and 419 of the Act.

[1] The Board no longer requires approved service plans in certificates it now issues for foreign air transportation. In a forthcoming order, we will request interested persons to show cause why we should not delete the approved service plan requirement from all certificates authorizing foreign air transportation.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96-354, took effect on January 1, 1981. This Act is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analysis for rules that, if adopted, will have a "significant economic impact on a substantial number of small entities."

This rule may have a significant economic impact on small certificated carriers and small communities and airports. The reasons, objectives, and legal basis for the proposed rule are described above. The Board has considered alternatives to the proposed rule, including allowing the present system of regulation to remain in place. If adopted, the proposed rule will reduce the reporting requirements for carriers. Communities and airports will still receive the notices they need under other provisions of the Board's rules, *e.g.*, Part 323. There are no other Federal rules that duplicate, overlap or conflict with this proposed rule.

Proposal

Accordingly, the CAB proposes to amend Chapter II of 14 CFR, as follows:

§§ 202.12—202.16, 202.21, 202.22, Apendices A and B [Removed]

1. In Part 202, *Certificates Authorizing Scheduled Route Service: Terms, Conditions and Limitations,* §§ 202.12, 202.13, 202.14, 202.15, 202.16, 202.21, and 202.22, and accompanying appendices A and B, would be removed.

§ 202.11 [Redesignated § 202.3]

2. Section 202.11 would be redesignated as § 202.3.

§ 213.4, Appendix A and B [Removed, § 213.5 redesignated § 213.4; § 213.6 redesignated § 213.5]

3. In Part 213, *Terms, Conditions and Limitations of Foreign Air Carrier Permits,* § 213.4 and accompanying appendices A and B would be removed, and § 213.5 would be redesignated as § 213.4, and § 213.6 would be redesignated as § 213.5.

(Secs. 204, 401 and 402, Pub. L. 85-726, as amended; 72 Stat. 743, 754, 757; 49 U.S.C. 1324, 1371 and 1372).

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-29769 Filed 10-13-81; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 231, and 249

[Release Nos. 33-6354 and 34-18161; File No. S7-908]

Proposed Revision of Guide 60 and Related Disclosure Provisions

AGENCY: Securities and Exchange Commission

ACTION: Proposed amendments to Guide and related rulemaking.

SUMMARY: As the result of a cooperative effort with a subcommittee of the North American Securities Administrators Association, the Commission is publishing for public comment three proposals concerning disclosure by public real estate programs in registration statements and periodic reports. The proposed amendments to Guide 60, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Guides for Preparation and Filing of Registration Statements and Reports would simplify and standardize disclosure concerning the prior performance of the general partner and affiliates and would reduce the requirement for financial statements of significant properties acquired by a real estate program from three years to one year if certain conditions are met by the issuer. Because of the changes to financial statement disclosure, coordinating changes are proposed to Regulation S-X and Form 8-K. The proposals are intended to standardize and streamline disclosure for public real estate programs.

DATE: Comments should be received on or before November 30, 1981.

ADDRESSES: Comments should be addressed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comment letters should refer to File No. S7-908. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William L. Larsen, (202) 272-2604, Office of Disclosure Policy, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: As a part of a major cooperative effort with the Subcommittee on Financial Statement and Track Record Disclosure (the "Subcommittee") of the North American Securities Administrators Association ("NASAA"),[1] the Commission is proposing certain amendments to Guide 60, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships," of the Guides for the Preparation and Filing of Registration Statements and Reports under the Securities Act of 1933 (the "Securities Act")[2] which would comprehensively revise current disclosure requirements concerning the prior performance of the general partner and its affiliates ("track record"). The proposal would replace the current provisions of Item 8A of Guide 60 with a new Item 8 which would standardize and simplify the track record disclosure that now appears in registration statements of real estate limited partnerships. In conjunction with the proposed revision of track record disclosure standards, Rule 3-14 of Regulation S-X (17 CFR 210.3-14), "Special instructions for real estate operations to be acquired," is proposed to be amended to allow, under certain circumstances, presentation of one year of audited financial statements for individual properties acquired by the partnerships instead of the current three year requirement. The Commission also is proposing an amendment to Undertaking D in Item 21 of Guide 60 and a new Instruction 2(e) to Item 7 of Form 8-K (17 CFR 249.308) to coordinate with the proposed change in Rule 3-14 of Regulation S-X. Other minor conforming amendments to Guide 60 Items 3 and 9 are also proposed.

I. Background

In the early 1970's, the real estate limited partnership emerged as an increasingly popular investment device. In the typical public real estate limited partnership program, the sponsor (who also serves as promoter and, later, general partner) organizes and registers the offering of limited partnership shares under the Securities Act.[3] At the time they are offered to the public most real estate programs are "blind pools," i.e., the properties to be purchased by the program have not been identified. Thus, investors must usually make their real estate limited partnership investment decision without knowing exactly what the specific assets of the program will be. After the partnership interests are sold to the public, the program is "closed" and the operational phase of the program commences with the acquisition of properties. As a public company, the real estate limited partnership is subject to the continuous reporting obligations of the Securities Exchange Act of 1934 (the "Exchange Act"), including annual and periodic reports such as Form 10-K, 10-Q and 8-K.[4] Depending on the investment objectives of the program, at some future point, the program is "completed" as the partnerships assets are liquidated and the partnership wound down. The length of a program cycle varies according to investment objective.

Due to the popularity of real estate limited partnerships among investors, the number of offerings and sponsors proliferated in the last decade. The Commission and the states began, independently at first, to develop a regulatory format for the burgeoning public real estate program investment area. Aware of the relative novelty of this area of investment, both the states and the Commission sought to maximize investor protection, while minimizing disclosure burdens on sponsors. A number of states approved regulations governing real estate limited partnerships.[5]

The Commission approved the issuance of Guide 60 in March 1976.[6]

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[1] NASAA is a voluntary organization composed of the securities regulatory agencies of 49 states, the Commonwealth of Puerto Rico, Guam, and 13 provinces of Canada and Mexico.

[2] In Release No. 33-6276 (December 23, 1980) [46 FR 78], and subsequently, in Release No. 33-6332 (August 6, 1981) [46 FR 41925], the Commission proposed the withdrawal of all Guides except those which pertain to disclosure by certain industries. The releases proposed that Guide 60 remain as an Industry Guide. In addition, the Commission noted that Guide 60 would be subject to re-evaluation in a joint effort with the North American Securities Administrators Association. The proposals contained in today's release are the result of that cooperative re-evaluation.

[3] Securities issued by public real estate limited partnerships are primarily registered pursuant to the Securities Act on Form S-11 (17 CFR 239.18), which is specifically designed for such registration statements.

[4] 17 CFR 249.310, 249.308a, and 249.308. *See* Exchange Act Sections 15(d), 13(a) and 12(g) and the rules and regulations thereunder.

[5] In 1973, the Midwest Securities Commissioners Association adopted rules and standards known as the Statement of Policy Regarding Real Estate Programs. Commonly referred to as the Midwest Guidelines, these regulations were amended in 1974 and 1975.

[6] *See* Release Nos. 33-5465 (March 1, 1974) [39 FR 10278] and 33-5692 (March 17, 1976) [41 FR 17374]. Guide 60 was last amended in Release No. 33-5745 (September 27, 1976) [41 FR 43398]. Guide 60 currently contains 21 Items, each addressing a separate aspect of disclosure for real estate offerings. These items include risk factors [Item 8],

Continued

The Guide was designed to reflect the experience of the Division of Corporation Finance in processing the growing numbers of registration statements filed by real estate limited partnerships. While not promulgated as an official Commission rule, the Guide was published to minimize delay in the review of registration statements relating to real estate limited partnerships and also to assist issuers, accountants, attorneys and others in the preparation of such filings. At the time of Guide 60's publication, the Commission noted that the area of real estate limited partnerships was still evolving and that, as developments occurred, changes might be made in the Guide as necessary.[7]

As the number of public real estate programs has increased both the Commission and the states, through their state securities administrators, have become concerned about the length and complexity of prospectus disclosure in this area. In early 1980, the Midwest Securities Commissioners Association,[8] on the basis of its members' experience in administering their detailed disclosure and substantive guides for real estate syndications, decided to form a subcommittee to study regulatory needs. At the outset, the Subcommittee was particularly concerned with the often unnecessarily voluminous nature of disclosure made by sponsors of public real estate programs regarding their prior experience. The Subcommittee also sought to harmonize state and federal guidelines in the public real estate program area. Since early 1980, the Subcommittee and the Commission's staff have worked together in a cooperative effort to standardize, streamline and reduce the burdens of disclosure for real estate limited partnerships, for the benefit of investors and sponsors. These efforts have resulted in proposals concerning track record disclosure and presentation of financial statements for properties acquired, which today are being published for public comment.[9]

II. Synopsis of Proposals

A. Track Record Disclosure in Guide 60

In light of the fact that at the time of offering most real estate programs are "blind pools" lacking specific program asset information, the federal and state guidelines as well as the sponsors themselves have recognized that the experience of the sponsor of the program being offered is a critical area of disclosure for investors. In particular, this disclosure includes information regarding the sponsor's past experience in forming and managing programs and the performance and success of the sponsor's previous programs. The sponsor's past experience in forming and managing programs is known as the sponsor's "track record." [10] Item 8.A. of Guide 60 currently requires the presentation of "a reasonable summary of the experience of the General Partner and its affiliates during the last five years in the investment of investor funds in real estate, including both registered and exempted offerings." The Guide also sets forth a table (Table II) which can be used to show the operations of previous partnerships.

While current Item 8.A. appears, on its face, to be a simple and straightforward directive to sponsors to present a summary of their prior experience, the reality of track record disclosure bears little resemblance to the brevity of Item 8.A. Instead, in the past few years, the typical track record for an experienced sponsor of public programs has grown to consist in many instances of 50 to 80 prospectus pages—fully half the total volume of the prospectus. The causes of this development are not difficult to describe. First, since the adoption of Guide 60 in 1976, there has been a steady accretion of requirements for the presentation of further information in the track record. As the Commission continued to develop new approaches to disclosure, the staff has sometimes sought the presentation of additional information in the track record. In addition, the state securities administrators and the National Association of Securities Dealers (the "NASD") have taken great interest in the disclosure of real estate limited partnerships—the state securities administrators because of their concern, where they exercise responsibilities under "fair, just and equitable" standards about compensation and conflicts of interest, and the NASD because of the involvement of its members in sponsoring and developing real estate limited partnership programs.

Second, the sponsors have used certain types of information in their sales efforts. The sponsors have thus included more information about these areas than might have been requested by the regulators.

Third, inevitably over time there has been a steady increase in the experience of most syndicators who sponsor public programs. When investment in public real estate limited partnerships began to increase a decade ago, there were few seasoned sponsors and their track records were not lengthy. Today, there are many more seasoned sponsors and track records cover every program, public and nonpublic, they have sponsored.

The result of these developments is a track record for experienced sponsors which has become so lengthy and complex as to confuse investors or discourage the reading of the prospectus. The complexity is further heightened by the fact that there is no standard format for the presentation of track record information.

It is in this context that the Commission, working with the NASAA Subcommittee, seeks to shorten and focus the track record disclosure requirements of Guide 60 to meet the regulatory needs of the states and the Commission. The proposed track record disclosure amendment is designed to ease registration burdens on sponsors of public real estate programs and to make prospectuses easier for investors to follow and understand, without sacrificing meaningful track record disclosure, in order to provide investors with a basis for simple analysis and evaluation of comparable programs.

There are three important features of the Commission's proposed Item 8 which would revise track record disclosure: (1) A description of terms used in the Guide, which, in large part, determine the type and content of track record disclosure for sponsors; (2) a narrative summary of the sponsor's track record, described in proposed Item 8, which would be located in the body of the prospectus; and (3) the prior performance tables which are proposed to be added to the Guide as Appendix II, and which would be located at the back of the prospectus or in Part II of the registration statement, as specified. As noted above, the major rationale for new Guide 60 track record disclosure guidelines is to streamline disclosure

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Federal taxes (Item 12) and use of proceeds (Item 23 and Table 1).

[7] See Release No. 33-5692, *supra*.

[8] This Association was later absorbed by NASAA in the fall of 1980.

[9] In addition to its cooperative effort with the Commission, on July 21, 1981, NASAA published proposed changes in its Statement of Policy Regarding Real Estate Programs. These guidelines had superseded the Midwest Guidelines, *supra*, note 5. Item VIII.B. of the NASAA proposals would replace the current provision with one that would require the prospectus to meet the requirements of Guide 60. For the most part, the remaining NASAA proposals relate to compliance with the "fair, just and equitable" standard embodied in a number of state securities statutes. The comment period for the NASAA proposals ended September 4, 1981.

[10] The track record concept is integral to limited partnership and related offerings (oil and gas as well as real estate) where each program is a "new issuer," a sponsor may form and manage a number of issuers, and the initial investment is in a blind pool.

requirements and reduce disclosure burdens. To this end, the proposed narrative summary and prior performance tables set forth specific topics and time limits for prospectus discussion. As stated in proposed Item 8, sponsors are urged not to include in the prospectus additional information about prior performance beyond that required by the Guide unless it is material information necessary to make any required statements, in light of the circumstances under which they were made, not misleading.

1. Description of Terms Used in the Guide

Proposed Item 8 contains descriptions of three key terms which would determine the type and amount of track record disclosure. First, "public" programs include all offerings registered under the Securities Act of 1933, all programs required to report under Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), all programs with a class of equity security registered pursuant to Section 12(g) of the Exchange Act, and all other programs with at least 300 security holders of record that initially raised at least $1 million. Second, the term "similar investment objectives" refers to those prior and on-going programs of the sponsor which have investment objectives comparable to those stated in the prospectus. Since the sponsor is generally in the best position to make this comparison, the determination of similar investment objectives is proposed to be made by the registrant.

Building on the terms "public" and "similar investment objectives," the third description, "public track record," is particularly important because it is the term which would determine the amount of disclosure called for by the tables. If a sponsor has a public track record, the tables would require only information about public programs in the relevant time period. Track record information regarding nonpublic programs would normally not be required in the tables except in the case of sponsors who do not meet the public track record criteria. To have a public track record, three elements would be required. First, the sponsor must have sponsored at least three programs which are subject to the periodic reporting requirements of Section 13(a) of the Exchange Act that have investment objectives similar to those of the registrant. Second, at least two public programs with similar investment objectives must have had three years of operations after investment of 90% of the proceeds available for investment. Third, at least two public offerings for programs with similar objectives must have closed in the three years prior to the instant registration statement. This proposed description is designed to ensure that sponsors meeting the criteria of the "public track record" have both recent and historical information available for presentation in the tables.

The description would apply to many existing sponsors of public programs. By limiting tabular disclosure by sponsors with a public track record to public programs, the Commission expects to reduce the prospectus volume of track record disclosure by these experienced sponsors while ensuring that investors receive material information about programs that are most similar to the one offered in the prospectus. A reduction in the volume of track record disclosure by such sponsors is also anticipated because the most experienced sponsors generally file the most extensive track record disclosure.

The Commission is not proposing a special glossary of terms for use in the proposed tables at this time. Registrants are directed to current Item 13 of Guide 60, which provides that sponsors should, where appropriate, set forth definitions to terms in the prospectus that are technical in nature or are susceptible to varying methods of computation.

2. The Narrative Summary

The narrative summary described in the four sub-paragraphs of proposed Item 8.A. is a new provision intended to provide investors with a comprehensible prospectus description of the sponsor's overall experience. Paragraph A.1. would require the narrative summary to contain general information to convey a sense of the scope of the sponsor's operations and its experience within the last ten years, regardless of investment objectives, or the public or nonpublic nature of the sponsor's programs. To provide guidance in the preparation of the narrative summary, a non-exclusive listing of eight factors is included in paragraph A.1.[11] Sponsors would be required to indicate the approximate percentage of the overall data that represents activities of programs with similar investment objectives and to present aggregate figures for public and nonpublic programs separately.

Sponsors' narratives would also be required to cross-reference the detailed track record tables located at the back of the prospectus.

To ensure that investors receive a fair and accurate picture of the prior experience of a sponsor, proposed Item 8.A.2. would require a discussion of major adverse business developments or conditions experienced by any prior public or nonpublic program that would be material to investors in the program being registered. Such discussion need not include every negative development ever experienced by the registrant, but only those developments which would be material to a potential investor in the current offering. The proposal also provides that appropriate cross-references should be made to proposed Table III (Operating Results of Prior Programs) in Appendix II.

To enable investors to seek more detailed information regarding the sponsor's prior public programs, paragraph A.3. of proposed Item 8 would require the narrative summary to include a list of all prior public programs sponsored by the General Partner or its affiliates. In addition, the sponsor would undertake to provide free, upon request, the most recent Form 10-K Annual Report filed pursuant to the Exchange Act with the Commission by any prior public program that has reported to the Commission in the last twenty-four months and to provide, for a reasonable fee, the exhibits to such Form 10-K.

Finally, paragraph A.4. of proposed Item 8 would require that the narrative summary include a summary of acquisitions of properties by programs in the most recent three years as set forth in proposed Table VI. As discussed below, Table VI is proposed to be included in Part II of the registration statement and thus would not appear in the prospectus. Registrants would be required to undertake to provide without charge more detailed information from Part II to investors upon request.

3. The Prior Performance Tables

An integral part of the track record disclosure of proposed Item 8.B. of Guide 60 is Appendix II of the Guide, which would be comprised of six track record tables.[12] Although Guide 60 currently contains one track record table, the proposed tables developed by

[11] The eight areas are: (a) The number of programs sponsored; (b) the total amount of money raised from investors; (c) the total number of investors; (d) the number of properties purchased and location by region; (e) the aggregate dollar amount of property purchased; (f) the percentage (based on purchase prices rather than on number) of properties that are commercial (broken out by shopping centers, office buildings and other properties) and residential; (g) the percentage (based on purchase prices) of new, used or construction properties; and (h) the number of properties sold.

[12] The Tables cover the following subjects: (I.) Experience in Raising and Investing Funds; (II.) Compensation to Sponsor and Affiliates; (III.) Operating Results of Prior Programs; (IV.) Results of Completed Programs; (V.) Sales or Disposals of Properties; and (VI.) Acquisition of Properties by Programs.

the NASAA Subcommittee reflect the table presentation in many public offerings. With the exception of Table VI, which would appear only in Part II of the registration statement, the tables would be located in the back of the prospectus. This location would prevent interruption of the flow of the narrative summary for readers of the prospectus. As noted above, however, cross-references to the tables would be required in the narrative summary. Thus, readers could easily refer from the summary to the tables if desired.

To further assist investors in understanding the tables, the proposed Instructions to Appendix II would require each table to be introduced by a brief explanatory narrative that cross-references the narrative summary in the text; to explain the significance of the track record and the table; to explain where additional information can be obtained; to define pertinent terms, if appropriate; and to set forth any further material information necessary to prevent the required tabular data from being misleading in light of the circumstances under which the data was provided.

To the extent permitted by the subject matter of the tables, the proposed tables would utilize similar instructions designed to reduce the volume of track record disclosure by limiting the number of programs sponsors are required to discuss in the tables. A three year standard is proposed in each of the tables. Thus, Tables I–III require disclosure for programs the offering of which closed in the most recent three year period. Table IV would require disclosure regarding programs that have completed operations in the last three years, while Table V pertains to sales or disposals of property and Table VI concerns acquisitions during a similar three year period. The three year standard is intended to limit the number of prior programs that the sponsor can include in the prospectus and to present investors with information about the sponsor's most recent experience.

Similar instructions to the six proposed tables would provide that sponsors with public track records should include only public programs with similar investment objectives. As previously noted, this proposed instruction is crucial to reducing the quantity of track record disclosure.

Another similar instruction to the tables would provide that if a sponsor has no public track record it should include all programs with similar investment objectives, both public and nonpublic. However, with respect to proposed Tables I–IV, if five such programs have not been sponsored, then the sponsor would include information about all prior programs even if the investment objectives are not similar. The sponsor would aggregate by year such dissimilar nonpublic programs by their investment objective, noting the number of programs aggregated and describing the dissimilar investment objectives.

The proposed tables are not only designed to elicit disclosure of comparable programs, but, consistent with streamlined track record disclosure, to limit the number of programs required to be described in the tables. The six proposed tables are self-explanatory to a large degree. For the particular details of each table, reference should be made to the next of the individual tables. However, the following discussion highlights the basic thrust of each proposed table and raises certain issues for comment.

a. Table I. Experience in Raising and Investing Funds

Proposed Table I is intended to include information on a percentage basis showing how the sponsor has dealt with investors' funds in recent programs, particularly focusing on the percentage of the amount raised available for investment (or total acquisition cost), the percentage of leverage used in purchasing properties, and the time frame for raising and investing funds.

This table combines elements from existing Table I (Use of Proceeds) [13] of Guide 60 as regards raising and investing funds on a dollar basis and from existing Table II (the exemplary prior experience table) as regards raising and investing funds on a percentage basis. However, as previously discussed, proposed Table I would cover only those offering closed in the most recent three years and would be limited by the common instructions concerning sponsors with a public track record.

b. Table III. Compensation to Sponsor and Affiliates

Proposed Table II is intended to provide, in a minimum of space, information that will enable an investor to understand the significance of compensation paid to the sponsor and its affiliates, as well as to gain an understanding of how the compensation is spread over the cycle of the program.

The proposed compensation table is different from the table that many registrants include in their prospectuses. It covers fewer partnerships in detail (only those offerings closed in the most recent three years), and it requires information that provides a context for evaluating the compensation paid. Thus, not only does the table show the amount paid to the sponsor from the proceeds of the offering, it also shows what the proceeds of the offering were. Similarly, it requires a statement of cash generated from operations and of dollar amount of property sales and refinancing in order to provide a context for the disclosure of amounts paid to the sponsor from operations and from property sales and refinancing, respectively.

Proposed Table II calls for separate columns of aggregate payments to the sponsor or its affiliates in the most recent three years from each recent partnership required to be separately discussed. Sponsors required to include nonpublic partnerships would be able to group these programs by investment objective and to present information on an aggregate basis by year. The proposed table also requires disclosure in a separate column of an aggregate figure of all compensation received by the sponsor in the last three years from all other partnerships not otherwise disclosed.

Instruction 4 to proposed Table II makes it clear that the table should include commissions and other fees paid to the sponsor or its affiliates in connection with the program's acquisition or disposition of properties from any entity other than the program. This disclosure is particularly important when the program has purchased a property and the seller, as often occurs, pays the sponsor a commission. Such commissions may constitute the major portion of the sponsor's compensation and thus should be disclosed to investors.

Because the proposed table would include only programs the offering of which closed in the last three years, the Commission is aware that complete data regarding the full range of compensation paid to sponsors and affiliates over the entire life of each program will not appear in Table II as proposed. This would be especially true as regards amounts paid from operations and amounts paid from property sales and refinancing. An instruction that would have required compensation disclosure only about completed programs was also considered. While such an alternative would have provided complete compensation information regarding such programs, it would also have required disclosure of stale information in the case of long-completed programs and would not have required disclosure by sponsors that do not have many completed programs. In

[13] *See* current Item 3 of Guide 60.

this regard, the Commission solicits specific comment on the issue of how to obtain more complete compensation data from sponsors without significantly expanding the requirements of Table II or making the table's disclosure unmanageable in size.

c. Tables III and IV—Operating Results of Prior Programs and Results of Completed Programs

These two proposed tables constitute the area of greatest condensation of track record disclosure. They are discussed under the same heading because, in terms of the information they are designed to elicit for investors, Tables III and IV represent, respectively, the start-up and the completion phases of a program's existence. In the past, sponsors have covered many prospectus pages with operating histories of all of their prior programs, seemingly without regard to prospectus length or clarity. Proposed Tables III and IV would limit track record disclosure in these matters to programs the offering of which closed (Table III) and programs that have completed operations (Table IV) in the most recent three years. The two tables are designed to provide investors with a reasonably complete picture of the financial operations of partnerships with the same sponsor over the existence of the programs. If presented for a sufficient number of programs, the information from the tables can give an appropriate indication of the sponsor's success in meeting its objectives.

Instruction 4 to proposed Table III would permit operating results of nonpublic partnerships to be presented on a tax basis, rather than in accordance with generally accepted accounting principles ("GAAP"), if the program's books have not previously been kept on a GAAP basis. This instruction is designed to permit a small real estate syndicator to present operating results of prior program without spending substantial amounts to convert its bookkeeping system. However, the proposed instruction points out that if there are any significant differences in operating results between accounting on a tax and GAAP basis, such differences should be explained. Further, the sponsor would be specifically required to provide such additional information as is necessary under the circumstances to prevent table data, including accounting data on a tax basis, from being materially misleading.[14]

Proposed Table IV would apply to the results of programs completed in the last three years. Completed operations would mean a program which no longer holds properties, even if it still holds notes on the properties.

d. Table V. Sales or Disposals of Properties

The sales table proposed by the Commission would show details of sales of property by programs with the same sponsor and similar investment objectives in the previous three years. The table is similar, but not identical, to most of the tables currently used by sponsors; however, it does contain an additional column reflecting cash flow from the property during the time it was held by the partnership. The Commission believes that the cash flow column would provide investors with an analytic tool for determining operating results of a program during the period a property is held and for assessing overall program results. In addition, due to high interest rates, many newly acquired properties have minimal or negative cash flow. This information should be considered in assessing the overall results on sale of the property. The Commission believes that cash flow operating information is generally available by property and that the benefits to investors of this information in assessing a program justify the additional burden to a sponsor of presenting such information.

e. Table VI—Acquisitions of Properties by Programs

In order to decrease the volume of prospectus disclosure, the proposed acquisitions table would not appear in the prospectus but would be required in Part II of the registration statement. Prosposed Table VI would not differ significantly from existing purchase tables except that it would include purchases only in the most recent three years by partnerships with similar investment objectives. As noted above, paragraph A.4. of proposed item 8 would require a narrative summary of the purchases of property in the track record in order to provide a general picture of the types, location, and method of financing of properties purchased by programs with the same sponsor and similar investment objectives over the previous three years. The narrative summary would also describe Table VI as it appears in Part II of the registration statement and would contain an undertaking to provide the Table VI data to investors upon request. The instructions to proposed Table VI are similar to those found in proposed Table V with the exception of the location requirement for Table VI in Part II of the registration statement.

B. Conforming Amendments to Guide 60

In relation to the proposed revisions discussed above, the Commission proposes to make conforming changes in Guide 60 Items 3 and 9, the former by adding a reference to Appendix I as the new location for the sample Use of Proceeds Table referred to in that Item, and the latter by adding the current Item 8C to Item 9 as paragraph D. In view of the proposed prior performance tables, current Table II is proposed to be deleted. Since Form S–11 and Item 3 of Regulation S–K (17 CFR 229.20) currently require disclosure regarding the General Partner or any of its officers, directors or affiliates if they are doing business with the partnership, current Item 8B of Guide 60 is proposed to be deleted. While the other items of Guide 60 are not proposed to be revised, the numbering of subparagraphs within items would be conformed. Moreover, the Commission requests specific comment on what, if any, revisions can or should be made to the other items in order to streamline disclosure and to maintain investor protection while reducing the burden of compliance.

C. Financial Statements

In addition to the track record disclosure provision of Guide 60, the Subcommittee and the Commission have concurrently examined another difficult issue in the real estate limited partnership area—the issue of financial statement disclosure. Pursuant to Rule 3–14, "Special Instructions for Real Estate Operations to be Acquired," of Regulation S–X (17 CFR 210.3–14) registrants must furnish, during any period for which income statements are required,[15] audited income statements for the three most recent fiscal years for each significant property (or significant properties in the aggregate) acquired by the partnership.[16] The requirement for

[14] For example, assuming a sponsor kept a program's accounts on a cash basis, the fact that it had accumulated a number of significant overdue bills (but short of an amount that would cause foreclosure) would not be reflected in a cash account statement until the bills were paid. On a GAAP basis, this would not occur, since the bills would be accrued. In this example, the sponsor would have to disclose the existence of the program's significant overdue bills.

[15] Rule 3–14(b) of Regulation S–X provides that the information required by Rule 3–14(a) is not required to be included in filings on Form 10–K (17 CFR 249.310).

[16] Following each such significant acquisition, Rule 3–14 of Regulation S–X also requires presentation of a pro-forma table of operating results based upon the most recent twelve month period and, if appropriate, the estimated cash distribution per unit broken out into taxable income

Continued

real estate programs parallels that applicable to other registrants.[17]

Generally, financial statements of properties acquired must appear in the prospectus (as effective or as supplemented and amended) if the properties are acquired before or during the offering. Current Item 21D of Guide 60 also requires an undertaking to file a sticker supplement during the distribution period describing each property not identified in the prospectus and to file a post-effective amendment consolidating the stickers at least once every three months. Audited financials for properties acquired during the distribution period need only be filed with the post-effective amendment. After the end of the distribution period, the registrant is also required, again pursuant to Item 21D of Guide 60, to undertake to file a current report on Form 8–K to reflect each commitment made involving the use of 10% or more (on a cumulative basis) of the net proceeds and to provide that information to limited partners at least once a quarter.

The requirement of three years of audited financial information has been subject to criticism for several reasons. First, sponsors claim that they usually rely on their own examination of the property and on their own assessment of economic conditions and demographic information in determining whether to purchase it. They assert that historical financial statements for real property do not usually provide significant information about the trends and factors that are most likely to affect future operations, such as demographic information, application of managerial techniques and competition.

Second, sponsors point out that the problems and expense in obtaining audited financial statements can be significant. According to these sponsors, because most real estate managers do not maintain their books on a GAAP basis, or obtain audits themselves, audited financial statements for a property are rarely available from the seller without additional effort and expense. Thus, the program must pay to obtain the audits itself.[18] Moreover, the sponsor must spend considerable time trying to enlist the cooperation of previous owners to obtain their books and access to their accountants.

In light of the above and at the recommendation of the NASAA Subcommittee, the Commission is proposing to amend Rule 3–14 of Regulation S–X. Generally, Rule 3–14 would continue to require three years of audited financial statements but a proposed proviso would permit the presentation of one year, instead of three, if three conditions are met. First, the property cannot have been acquired from a related party. Second, the prospectus would have to contain specific disclosure of the material factors considered by the registrant in assessing the property. Specific discussion is required of such material factors as sources of revenue and expense. Finally, the registrant would be required to indicate that, after reasonable inquiry, it is not aware of any material factor that would cause the reported financial information not to be necessarily indicative of future operating results. The reasonable inquiry envisioned here is in regard to the property itself rather than to general economic conditions.[19] The proposed proviso is intended to reduce burdens on sponsors to the extent feasible without decreasing investor protection and to bring financial statement requirements into accord with actual industry practices.

In conjunction with the proposed amendment to Rule 3–14 of Regulation S–X, the Commission is also proposing a conforming amendment to Undertaking D of Item 21 of Guide 60 and the addition of an Instruction 2(e) to Item 7 of Form 8–K.

Undertaking D, as previously described, relates to information about properties acquired that the sponsor is required to file after the registration statement becomes effective and includes an undertaking to file a current report on Form 8–K under certain circumstances. The proposed amendment would make clear that the Form 8–K should contain the financial and related information required by amended Rule 3–14. Undertaking D would also rearranged for clarity. The order of the second and third paragraphs of the Undertaking would be reversed to reflect the fact that the filings described in the sticker supplement paragraph usually take place during the distribution period and those described in the current report paragraph take place after the distribution period.

Finally, in another conforming amendment, the Commission proposes to add a new instruction to Item 7 of Form 8–K to make clear that the financial information required on Form 8–K with regard to real estate acquisitions is that required by Rule 3–14.

III. Request for Comment

Any interested person wishing to submit comments on the proposed amendments, as well as other matters that might have an impact on the proposals contained herein, is requested to do so. The Commission also solicits comment as to whether the proposed amendments would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in the furtherance of the purposes of the Securities Act and the Exchange Act.

Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraph (a)(1) of § 210.3–14 to read as follows:

§ 210.3–14 Special instructions for real estate operations to be acquired.

(a) * * *

(1) Audited income statements (not including earnings per unit) for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operations of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes: *Provided, however,* That such

and return on capital. These provisions are not proposed to be amended at this time.

Rule 3–14 of Regulation S–X was adopted in the fall of 1980. Release No. AS–281 (September 2, 1980) 45 FR 63682. Rule 3–14 was based on Item 6(b) of Form S–11, which required information regarding operations to be acquired. When the Commission adopted Rule 3–14, it deleted Item 6(b) of Form S–11. Item 6(b) had required a summary of operations for five years, three years of which had to be audited.

[17] Rule 3–02 of Regulation S–X requires the filing of audited income statements and changes in financial position for each of the last three fiscal years preceding the date of the most recent audited balance sheet being filed.

[18] Sponsors estimate that the cost for a standard audit may run from $5,000 to $12,000 a property or more, resulting in overall costs for the partnership of more than $100,000.

[19] In connection with the proposed amendment of Rule 3–14 of Regulation S–X, the Commission wishes to remind sponsors, particularly those new to public real estate programs, that issuers that have identified properties to be purchased are obliged to make necessary disclosures, both during the pre-effective as well as the post-effective period of registration. See footnote to Item 11 of Guide 60. The practice of intentionally delaying the purchase of an identified property to avoid disclosure requirements, also known as "warehousing," is inconsistent with the duty of the issuer to disclose material facts relating to the offering.

audited statements need be presented for only the most recent fiscal year if (i) the property is not acquired from a related party; (ii) material factors considered by the registrant in assessing the property are described with specificity in the prospectus with regard to the property, including sources of revenue (including, but not limited to, competition in the rental market, comparative rents, occupancy rates) and expense (including, but not limited to, utility rates, ad valorem tax rates, maintenance expenses, capital improvements anticipated); and (iii) the registrant indicates in the appropriate filing that, after reasonable inquiry, the registrant is not aware of any material factors relating to that specific property other than those discussed in response to paragraph (a)(1)(ii) of this section that would cause the reported financial information not to be necessarily indicative of future operating results.

Note.—The discussion of material factors considered should be combined with that required by Item 11 of Form S-11.

* * * * *

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By revising Items 3B, 8, 9 and 21D; by redesignating Table I as Appendix I; and by removing Table II and adding Appendix II to Guide 60 of the Guides For Preparation and Filing of Registration Statements and Reports under the Securities Act of 1933 to read as follows:

Guide 60—Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships.

* * * * *

3. Summary of the Partnership and Use of Proceeds

* * * * *

B. *Use of Proceeds.* The use of proceeds tabular summary will vary according to the partnership but should include, where appropriate, estimates of the public offering expenses (both organizational and sales), the amount available for investment, non-recurring initial investment fees, prepaid items and financing fees, cash down payments, reserves, and acquisition fees including those paid by the seller. Estimated amounts to be paid to the General Partner and its affiliates should be identified. The summary should include both dollar amounts and percentages of the maximum and minimum proceeds of the offering. Inclusion of percentages of the estimated maximum and minimum total assets is optional. An example of a summary of Use of Proceeds is attached as Appendix I, but the summary will vary according to the circumstances.

* * * * *

8. Prior Performance of the General Partner and Affiliates

A narrative summary of the "track record" or prior performance of programs sponsored by the General Partner or its affiliates ("sponsors") containing the information set forth below should be included in the text of the prospectus. Tables following the format of those in Appendix II, relating to historical use of proceeds of prior programs, compensation to the sponsors, operations of prior programs, and acquisitions and sales of properties by prior programs, should be included at the back of the prospectus or in Part II of the registration statement as specified in paragraph B "Prior Performance Tables" hereunder.

Sponsors are urged not to include in the prospectus information about prior performance beyond that required by this Guide except for such further material information as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

Terms used in the Guide. "Public" programs include all offerings registered under the Securities Act of 1933, all programs required to report under Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), all programs with a class of equity security registered pursuant to Section 12(g) of the Exchange Act, and all other programs with at least 300 security holders of record that initially raised at least $1 million.

Programs with "similar investment objectives" are those with similar objectives as set forth in the prospectus. Generally, the sponsor has the responsibility to determine which previous programs had "similar investment objectives," taking into consideration the materiality of information about the prior programs in analyzing the registrant's proposed activities.

A sponsor would be considered to have a "public track record" if it has sponsored at least three programs with investment objectives similar to those of the registrant that file reports under Section 13(a) or Section 15(d) of the Exchange Act and at least two public programs with investment objectives similar to those of the registrant that had three years of operations after investment of 90% of the amount available for investment. In addition, at least two of the public offerings for programs with investment objectives similar to those of the registrant must have closed in the previous three years.

A. *Narrative Summary.* 1. The narrative summary in the text of the prospectus should include a description of the sponsor's experience in the last ten years with all other programs, both public and nonpublic, that have invested primarily in real estate, regardless of the investment objectives of the programs. This summary should include at least (a) the number of programs sponsored, (b) the total amount of money raised from investors, (c) the total number of investors, (d) the number of properties purchased and location by region, (e) the aggregate dollar amount of property purchased, (f) the percentage (based on purchase prices rather than on number) of properties that are commercial (broken out by shopping centers, office buildings and others) and residential, (g) the percentage (based on purchase prices) of new, used or construction properties, and (h) the number of properties sold. Aggregate figures should be presented separately for public and nonpublic programs. In addition, the narrative should indicate the approximate percentage of the overall data that represents activities of programs with investment objectives similar to those of the registrant. The summary also should cross-reference the prior performance tables.

2. The narrative summary should include a discussion of those major adverse business developments or conditions experienced by any prior program, either public or nonpublic, that would be material to investors in this program. The narrative summary also should include a cross-reference to further information that may be found in Appendix II as part of Table III.

3. The narrative summary should include a list of all prior public programs sponsored by the General Partner or its affiliates and an undertaking to provide upon request, for no fee, the most recent Form 10-K Annual Report filed with the Commission by any prior public program that has reported to the Commission within the last twenty-four months and to provide, for a reasonable fee, the exhibits to each such Form 10-K.

4. The narrative summary should include a summary of acquisitions of properties by programs in the most recent three years as set forth in Table VI of Appendix II. The summary should include the number of properties purchased, the type, location and method of financing. Reference should be made to the more detailed description of these acquisitions in Part II of the registration statement, and the registrant should undertake to provide the more detailed description from Part II without fee upon request.

B. *Prior Performance Tables.* The information required by the tables set forth in Appendix II should be included in the format shown. Tables should appear at the back of the prospectus except for Table VI, which should appear only in Part II of the registration statement. The instructions to the tables specify the programs and time periods about which information is required.

9. Management

* * * * *

D. The amount of, and reason for, any contingent liabilities of the General Partner with regard to prior programs now in existence should be disclosed. If this information appears in the financial statements it may be incorporated hereunder by reference.

* * * * *

21. Undertakings

* * * * *

D. The following undertakings relating to investment of the proceeds of an offering in which a material portion of the maximum net proceeds (allowing for reasonable reserves) is not committed (i.e., subject to a binding

purchase agreement) to specific properties should be included in the registration statement:

The registrant undertakes to file a sticker supplement pursuant to Rule 424(c) under the Act during the distribution period describing each property not identified in the prospectus at such time as there arises a reasonable probability that such property will be acquired and to consolidate all such stickers into a post-effectvie amendment filed at least once every three months, with the information contained in such amendment provided simultaneously to the existing Limited Partners. Each sticker supplement should disclose all compensation and fees received by the General Partner(s) or its affiliates in connection with any such acquisition. The post-effective amendment shall include audited financial statements meeting the requirements of Rule 3-14 of Regulation S-X only for properties acquired during the distribution period.

The registrant also undertakes to file, after the end of the distribution period, a current report on Form 8-K containing the financial statements and any additional information required by Rule 3-14 of Regulation S-X, to reflect each commitment (i.e., the signing of a binding purchase agreement) made after the end of the distribution period involving the use of 10 percent or more (on a cumulative basis) of the net proceeds of the offering and to provide the information contained in such report to the Limited Partners at least once each quarter after the distribution period of the offering has ended.

Note.—Offers and sales of the interests may continue after the filing of a post-effective amendment containing information previously disclosed in sticker supplements to the prospectus, as long as the information disclosed in a current sticker supplement accompanying the prospectus is as complete as the information contained in the post-effective amendment.

* * * * *

APPENDIX I—Example of Summary of the Use of Proceeds Section

* * * * *

APPENDIX II—Prior Performance Tables

Instructions to Appendix II

1. The prior performance tables should be preceded by a narrative introduction that cross-references the narrative summary in the text, explains the significance of the track record and the tables, explains where additional information (Part II of the registration statement or Form 10-K Annual Reports for prior programs) can be obtained on request and includes a glossary of terms used in the tables.

This introduction also should include a discussion of the factors the sponsor considered in determining which previous programs had "similar investment objectives" to those of the registrant.

2. Each of the tables should be introduced by a brief narrative explaining the objective of the table and what it covers so that the investor will be able to understand the significance of the information presented. There also should be set forth with or in each table any further material information as may be necessary to make the required tabular data, in light of the circumstances under which it is presented, not misleading.

Table I. Experience in Raising and Investing Funds

(on a percentage basis)

Instructions: 1. Include information only for programs the offering of which closed in the most recent three years.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objectives and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

	Program X	Program Y
Dollar amount offered		
Dollar amount raised (100%)		
Less offering expenses:		
Selling commissions and discounts retained by affiliates.		
Organizational expenses		
Other (explain)		
Reserves		
Percent available for investment.		
Acquisition costs:		
Prepaid items and fees related to purchase of property.		
Cash down payment		
Acquisition fees		
Other (explain)		
Total acquisition cost		
Percent leverage (mortgage financing divided by total acquisition costs).		
Date offering began		
Length of offering (in months)		
Months to invest 90% of amount available for investment (measured from beginning of offering).		

Table II. Compensation to Sponsor and Affiliates

Instructions: 1. Include in a separate column for each program aggregate payments made to the sponsor and its affiliates only by real estate programs the offering of which closed in the most recent three years. Include in another separate column aggregate payments to the sponsor or its affiliates in the most recent three years from all other programs and indicate the number of programs involved.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

4. The table should include any real estate commissions and other fees paid to the sponsor or its affiliates in connection with the acquisition or disposition of any properties by the program by entities other than the program itself.

Type of compensation	Program X	Program X	Other programs
Date offering commenced			
Dollar amount raised			
Amount paid to sponsor and affiliates from proceeds of offering:			
Underwriting fees			
Acquisition fees			
—real estate commissions.			
—advisory fees			
—other (identify and quantify).			
Other			
Dollar amount of cash generated from operations before deducting payments to sponsor and affiliates.			
Amount paid to sponsor and affiliates from operations:			
Property management fees.			
Partnership management fees.			
Reimbursements			
Leasing commissions			
Other (identify and quantify)			
Dollar amount of property sales and refinancing before deducting payments to sponsor and affiliates:			
—cash			
—notes			
Amount paid to sponsor and affiliates from property sales and refinancing:			
Real estate commissions			
Incentive fees[1]			
Other (identify and quantify).			

[1] Explain subordinated commissions in a note.

Table III. Operating Results of Prior Programs

Instructions: 1. Include information only for programs the offerings of which closed in the most recent three years. Financial data for each program should be presented separately for each year.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives tht are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

4. Information should be presented on the basis of generally accepted accounting principles ("GAAP") where indicated. However, where information about nonpublic programs is required to be included, such information may be presented on a tax basis if the program's books have not been kept on a GAAP basis. If there are any significant differences in operating results between accounting on a tax and GAAP basis, they should be explained. This explanation should provide the reader with such additional information about the particular programs presented as may be necessary to make the information contained in the Table not materially misleading in light of the circumstances under which the information was given.

	Program X		
	Year 1	Year 2	Year 3
Gross Revenues			
Profit on sale of properties			
Less:			
Operating expenses			
Interest expense			
Depreciation			
Net Income—GAAP Basis			

	Program X		
	Year 1	Year 2	Year 3
Taxable Income			
Cash generated from operations[1].			
Cash generated from sales			
Cash generated from refinancing.			
Cash generated from operations, sales and refinancing.			
Less: Cash distributions to investors			
—from operating cash flow			
—from sales and refinancing			
—from other			
Cash generated (deficiency) after cash distributions.			
Less: Speical items (not including sales and refinancing) (identify and quantify).			
Cash generated (deficiency) after cash distributions and special items.			
Tax and Distribution Data Per $1000 Invested			
Federal Income Tax Results:			
Ordinary income (loss)			
—from operations			
—from recapture			
Capital gain (loss)			
Cash Distributions to Investors:			
Source (on GAAP basis):			
—Investment income			
—Return of capital			
Source (on cash basis):			
—Sales			
—Refinancing			
—Operations			
—Other			
Amount (in percentage terms) remaining invested in program properties at the end of the last year reported in the Table (original total acquisition cost of properties retained divided by original total acquisition cost of all properties in program).			

[1] Indicate in a note what amount is from sources other than operations, such as guaranteed rents or interest.

Table IV. Results of Completed Programs

Instructions: 1. Include programs that have completed operations (no longer hold properties) in the most recent three years, even if they still hold notes.

2. Sponsors with a "public track record" should include information relating only to public programs with investment objectives similar to those of the registrant.

3. If the sponsor does not have a "public track record," information must be given for each prior program, public or nonpublic, with investment objectives similar to those of the registrant. If the sponsor has not sponsored at least five such programs, then information must be given for each prior program, public or nonpublic, even if the investment objectives for those programs are not similar to those of the registrant. In that case, nonpublic programs with investment objectives that are not similar to those of the registrant should be grouped together according to investment objective and information about those programs presented on an aggregate basis by year. If so presented, the number of programs that have been aggregated should be disclosed. The sponsor also should indicate by note if the investment objectives of any program are not similar to those of the registrant and should briefly describe those investment objectives.

Program Name
- Dollar Amount Raised
- Number of Properties Purchased
- Date of Closing of Offering
- Date of First Sale of Property
- Date of Final Sale of Property

Tax and Distribution Data Per $1000 Investment Through . . .
- Federal Income Tax Results:
  - Ordinary income (loss)
    - —from operations
    - —from recapture
  - Capital Gain (loss) [1]
  - Deferred Gain [2]
    - Capital
    - Ordinary

Cash Distributions to Investors
- Source (on GAAP basis)
  - —Investment income
  - —Return of capital
- Source (on cash basis)
  - —Sales
  - —Refinancing
  - —Operations
  - —Other

Receivable on Net Purchase Money Financing [3]

Table V. Sales or Disposals of Properties

Instructions: 1. Include all sales or disposals of property by programs with similar investment objectives within the most recent three years.

2. Sponsors with a "public track record" should only include information relating to public programs. If the sponsor does not have a "public track record," then information should be given about sales or disposals of properties by public and nonpublic programs. Where properties held by nonpublic programs are included, information should be on a GAAP basis where feasible without undue effort or expense.

[1] Note 60 percent capital gain exclusion.
[2] Explain in a note deferred capital gain.
[3] Explain in a note the terms of notes taken back and annual payments, and the fact that the amounts presented are face amounts and do not represent discounted current value.

Property	Date acquired	Date of sale[1]	Selling price, net of closing costs and GAAP adjustments					Cost of properties including closing and soft costs			Excess (deficiency) of property operating cash receipts over cash expenditures[6]
			Cash received net of closing costs	Mortgage balance at time of sale	Purchase money mortgage taken back by program[3]	Adjustments resulting from application of GAAP[2]	Total[4]	Original mortgage financing	Total acquisition cost, capital improvement, closing and soft costs[5]	Total	

[1] Note if sales of properties are to related parties.
[2] Indicate in a note that the amounts shown are face amounts and do not represent discounted current value. In addition, describe the terms of purchase money mortgages taken back by the partnership, including the interest rate, any balloon payment requirements and other special provisions. Also, describe those sales made with a leaseback or any other guarantees which require continued seller involvement.
[3] Include an explanation of any GAAP adjustments.
[4] Note the allocation of the taxable gain between ordinary and capital, and identify those sales that are being reported for tax purposes on the installment basis.
[5] Identify real estate commissions carned but not taken. Indicate that the amounts shown do not include pro rata share of original offering costs.
[6] Do not include amounts otherwise included under "Selling Price, Net of Closing Costs and GAAP Adjustments" or "Cost of Properties including Closing and Soft Costs." Costs incurred in the administration of the partnership not related to the operation of properties need not be included if so indicated in a note to the Table.

Table VI. Acquisitions of Properties by Programs

Instructions: 1. Include the following table only in Part II of the registration statement.

2. Include all properties acquired by any prior programs with similar investment objectives in the most recent three years.

3. Sponsors with a "public track record" should only include information relating to public programs. If the sponsor does not have a "public track record," then information should be given about properties acquired by public and nonpublic programs.

Program X

Name, location, type of property
Gross leasable space (sq. ft.) or number of units and total square feet of units
Date of purchase
Mortgage financing at date of purchase
Cash down payment
Contract purchase price plus acquisition fee
Other cash expenditures expensed
Other cash expenditures capitalized
Total acquisition cost

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By adding Instruction 2(e) to Item 7 of § 249.308 to read as follows:

§ 249.308 Form 8-K, for current reports.

* * * * *

Item 7. Financial Statements and Exhibits.

List below the financial statements and exhibits, if any, filed as part of this report.

(a) * * *

Instructions.

* * * * *

2. * * *

(e) With regard to the acquisition of one or more real estate properties, only the financial statements and any additional information specified by Rule 3-14 of Regulation S-X shall be filed.

* * * * *

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, prepared in accordance with 5 U.S.C. 603, relates to proposed changes in Guide 60, "Preparation of Registration Statements Relating to Interests in Real Estate Limited Partnerships" and related financial statement regulations under the Securities Act of 1933 and the Securities Exchange Act of 1934.

Reasons for Proposed Action

Since the publication of Guide 60 in the spring of 1976, the Securities and Exchange Commission (the "Commission") has become increasingly concerned over unnecessary and overly complex prospectus presentation of information relating to the prior real estate program experience ("track record") of real estate limited partnerships. The states, through their state securities administrators, many of whom are members of the North American Securities Administrators Association, ("NASAA") have become aware of the same track record disclosure problem. Since early 1980, the Commission has been working in conjunction with a NASAA subcommittee ("the Subcommittee") to develop uniform proposals for reducing the amount of track record disclosure, thus benefiting both sponsors of public real estate programs, by reducing their disclosure burdens, and investors, who would receive a more readable prospectus. As the culmination of this cooperative effort with the states, the Commission is publishing for public comment this release proposing reduction of the track record disclosure required by Guide 60 and amendment of related financial statement provisions.

Objective

As discussed in more detail in the release, the proposal is expected to achieve a reduction in voluminous track record disclosure by real estate limited partnerships in prospectuses, resulting in more streamlined prospectus presentation. The objectives of the proposals are, first, to provide investors with sufficient information to evaluate investment in public real estate programs presented in the most comprehensible fashion possible and, second, to reduce track record disclosure burdens for sponsors by limiting the amount of required disclosure, imposing a more standardized prospectus presentation format than currently exists, and cooperating with the states to develop a uniform disclosure regulation for public real estate programs. These objectives would be achieved, in large part, by: (1) Using Guide instructions to limit track record disclosure, to the extent possible, to prior public programs of sponsors with investment objectives similar to those of the sponsor's currently offered program; (2) requiring, for clarity and uniformity, presentation of track record disclosure in a readable narrative summary in the body of the prospectus; (3) requiring, for clarity and uniformity, presentation of tabular track record disclosure in six specified tables, examples of which would be included as Appendix II to Guide 60; and (4) limiting where possible, through prior performance table instructions, the time periods from which track record disclosure data should be drawn.

In addition to the proposed amendment of Guide 60, the Commission is also proposing to amend the financial statement disclosure requirements of Rule 3-14 of Regulation S-X, "Special Instructions for Real Estate Operations to be Acquired." The proposed amendment would reduce the financial reporting burden on sponsors by reducing from three years to one year the number of years that audited financial statements for properties to be acquired would be required under Rule 3-14 of Regulation S-X, provided certain conditions designed to protect investors are met.

As part of the Commission's proposals, conforming amendments discussed in detail in the release are also proposed for comment at this time.

Legal Basis

The Commission is proposing these Guide amendments and related rule changes pursuant to Sections 7, 10 and 19(a) of the Securities Act of 1933 and

Sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934.

Small Entities Subject to the Rule

If the proposed amendments discussed above and in the release become effective, it is believed that certain small entities will have their regulatory burdens decreased. In the Commission's experience, sponsors of public real estate programs vary across a broad range of size and assets. However, utilizing the Commission's proposed $2.5 million "small business" parameter,[1] it appears likely that a substantial number of small business entities would be affected by the proposed amendments. The Commission is unable to determine the cost savings associated with reduced track record disclosure requirements. Such savings would depend on the experience of the sponsor in offering prior public real estate programs. As regards reduced financial statement disclosure, sponsors which do not keep property accounts on a generally accepted accounting principles ("GAAP") basis would not have to change accounting systems to GAAP in order to comply with track record disclosure and financial statement requirements. This cost-saving provision is aimed specifically at small entities which sponsor real estate limited partnerships. Moreover, the proposed amendment to Rule 3–14 will allow registrants, regardless of their size, to file audited income statements for real estate operations to be acquired covering only one year instead of the currently required three years, provided specified conditions are met. Thus registrants would be able to reduce their audit expenses accordingly.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission does not believe that amending the track record disclosure guidelines and related financial disclosure provisions as proposed would result in any new reporting, recordkeeping or other compliance requirements. As noted, in certain cases, the proposals would reduce such requirements.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed amendments duplicate or conflict with any existing rule provisions.

[1] *See* Securities Act Release No. 6302 [March 20, 1981] [46 FR 19251].

Significant Alternatives

Since the proposed amendments do not increase the regulatory burden on any registrant, but rather serve to reduce it, the establishment of different requirements for small entities was not considered necessary. By streamlining track record disclosure requirements and reducing financial statement filing burdens where possible, consistent with the protection of investors, the Commission expects that all registrants will benefit. However, as pointed out above, at least one of the proposed changes in track record disclosure guidelines is intended to benefit small entities, which are less likely than larger sponsors to maintain their property accounts on a GAAP basis. Such sponsors are not required by the proposals to change their bookkeeping systems.

Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed amendments are adopted. Persons wishing to submit written comments should file three copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7–908 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, L Street, N.W., Washington, D.C. 20549.

Authority

These amendments are being proposed pursuant to Sections 7, 10 and 19(a) of the Securities Act of 1933 and Sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 13, 15(d), 23(a), 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 4, 6, 78 Stat. 570–574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77g, 77j, 77s(a), 78m, 78o(d), 78w(a))

By the Commission.

George A. Fitzsimmons,
Secretary.

October 7, 1981.

[FR Doc. 81-29775 Filed 10-13-81; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76 (Colorado-18)]

Colorado; High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commision determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formation as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Dakota Formation be designated as a tight formation under § 271.703(d)

DATE: Comments on the proposed rule are due on November 9, 1981.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 23, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8307, or Victor Zabel, (202) 357–8616.

I. Background

In the matter of high-cost gas produced from tight formations; Docket No. RM79–76 (Colorado–18); notice of proposed rulemaking by Director, OPPR, Issued October 8, 1981.

On September 15, 1981, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Dakota

Formation located in La Plata and Archuleta Counties, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Dakota Formation is located in La Plata and Archuleta Counties, Colorado, in Townships 32, 33, and 34 North (South of Ute Line), Ranges 6 through 11 West, NMPM, on the northern flank of the San Juan Basin, in the Ignacio-Blanco Field within the Southern Ute Indian Reservation. The average depth to the top of the Dakota Formation is 7,950 feet. The formation is approximately 225 to 250 feet in thickness. The recommended area is subject to Colorado Order No. 112–46, issued July 16, 1979, which authorizes infill drilling in the Ignacio-Blanco Field. Accordingly, certain portions within the proposed area may be subject to exclusion pursuant to § 271.703(c)(2)(i)(D) of the regulations.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG–23 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 9, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado–18), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 23, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter 1, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(70) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(56) through (69) [reserved]

(70) *Dakota Formation in Colorado.* RM79–76 (Colorado–18).

(i) *Delineation of formation.* The Dakota Formation underlies portions of Townships 32, 33, and 34 North (South of Ute Line), Ranges 6 through 11 West, in La Plata and Archuleta Counties, Colorado, and it is within the Ignacio-Blanco Field.

(ii) *Depth.* The Dakota Formation is below the Graneros Shale and above the Morrison Formation. The average depth to the top of the Dakota Formation is 7,950 feet. The formation is approximately 225 to 250 feet in thickness.

[FR Doc. 81–29710 Filed 10–13–81; 8:45 am]

BILLING CODE 6717–02–M

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18 CFR Part 271

[Docket No. RM79–76 (Colorado–19)]

Colorado; High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Mesaverde Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 9, 1981.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 23, 1981.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8307, or Victor Zabel, (202) 357-8616.

I. Background

In the matter of high-cost gas produced from tight formations; Docket No. RM79-76 (Colorado-19); notice of proposed rulemaking by Director, OPPR (Issued October 8, 1981).

On September 15, 1981, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Mesaverde Formation located in La Plata and Archuleta Counties, Colorado be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Mesaverde Formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Mesaverde Formation is located in LaPlata and Archuleta Counties, Colorado, in Townships 32, 33, and 34 North (South of Ute Line), Ranges 6 through 11 West, NMPM, on the northern flank of the San Juan Basin, in the Ignacio-Blanco Field within the Southern Ute Indian Reservation. The average depth of the top of the Mesaverde Formation is 5,380 feet. The formation is approximately 900 feet in thickness. The recommended area is subject to Colorado Order No. 112-46, issued July 16, 1979, which authorizes infill drilling in the Ignacio-Blanco Field. Accordingly, certain portions within the proposed area may be subject to exclusion pursuant to § 271.703(c)(2)(i)(D) of the regulations.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-24 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Mesaverde Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 9, 1981. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-19) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than October 23, 1981.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter 1, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—CEILING PRICES

Section 271.703 is amended by adding new paragraph (d)(71) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(71) *Mesaverde Formation in Colorado.* RM79-76 (Colorado-19).

(i) *Delineation of formation.* The Mesaverde Formation underlies portions of Townships 32, 33, and 34 North (South of Ute Line), Ranges 6 through 11 West, in La Plata and Archuleta Counties, Colorado. The formation is within the Ignacio-Blanco Field.

(ii) *Depth.* The Mesaverde Formation is below the Lewis Shale Formation and above the Mancos Shale Formation. The average depth to the top of the Mesaverde Formation is 5,380 feet. The formation is approximately 900 feet in thickness.

[FR Doc. 81-29711 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 43e

Preparation of a Role of Mohave Descendants Enrolled as Members of the Colorado River Indian Tribes

September 23, 1981.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to add a new part to its regulations to establish procedures to govern the preparation of a role of Mohave descendants enrolled as members of the Colorado River Indian Tribes. A judgment plan for the use and distribution of Mohave judgment funds awarded in Indian Claims Commission Dockets Nos. 283 and 295, which was prepared pursuant to the Act of October 19, 1973 (87 Stat. 466), directed the Secretary of the Interior to prepare a separate roll of those members of the Colorado River Indian Tribes of the Colorado River Indian Reservation who are lineal descendants of the aboriginal Mohave Tribe, who did not share in the funds distributed by the Chemehuevi Distribution Act of September 25, 1970 (84 Stat. 868), and who were born on or prior to and living on April 12, 1976. The roll to be prepared will serve as a basis for the distribution of the Mohave judgment funds.

DATE: Comments must be received on or before November 13, 1981.

ADDRESS: Written comments should be directed to the Chief, Division of Tribal Government Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Mitchell L. Bush, Jr., Chief, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, telephone number: 703–235–8323.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The Indian Claims Commission in Dockets Nos. 283 and 295 awarded a judgment to the "Mohave Indians who are members of the Colorado River Indian Tribes" and the "Mohave Tribe of Indians of Arizona, California, and Nevada." Funds to satisfy the award were appropriated by Congress.

In accordance with a judgment plan for the use and distribution of the funds which was prepared pursuant to the Act of October 19, 1973 (87 Stat. 466), and which became effective April 12, 1976, two rolls are to be prepared in order to apportion the funds. One is a membership roll of the Fort Mohave Tribe and the other, which the regulations being proposed in this Part will govern, is a roll of lineal descendant of the aboriginal Mohave Tribe who are members of the Colorado River Indian Tribes, who did not share in the funds distributed by the Chemehuevi Distribution Act of September 25, 1970 (84 Stat. 868), and who were born on or prior to and living on April 12, 1976. Persons whose names appear on the roll prepared under the regulations proposed in this Part will be eligible to participate in a per capita distribution of a portion of the Mohave judgment funds. Basically, no new information collection by the Secretary will be required because those persons who are potentially eligible beneficiaries must be enrolled members of the Colorado River Indian Tribes. The Tribes are currently in the process of preparing a membership roll as of April 12, 1976, which will be approved by the Phoenix Area Director. Information which has been submitted to the Tribes by individuals in order to establish their eligibility for enrollment as members of the Colorado River Indian Tribes will, for the most part, be sufficient to determine whether they meet the qualifications for enrollment under the judgment plan. We are proposing that the Colorado River Agency Superintendent, with the assistance of the Colorado River Indian Tribes, review the enrollment records of the members of the Tribes and prepare a proposed roll of persons determined to meet the qualifications for enrollment. In order to provide notice to all potentially eligible participants, the proposed regulations provide for the Superintendent to mail a notice to each enrolled member of the Tribes at their last known address advising them of the preparation of the roll of Mohave descendants and the procedures to be followed.

A listing of the names of persons who are included on the proposed roll will be placed on public display throughout the local community and the service area of the Phoenix Area Office and Sacramento Area Office to afford interested persons the opportunity to view the list and appeal the omission of any name from the proposed roll. In accordance with the provisions specified in the regulations, persons who believe they meet the qualifications for enrollment, but whose names are not included on the proposed roll, may appeal the omission of their name and submit information or evidence for consideration to support their claim to eligibility. A deadline of the thirtieth (30th) day after the list of names is placed on display for filing appeals is provided.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed rule.

The primary authors of this document are: Mitchell L. Bush, Jr., Chief, Branch of Tribal Enrollment Services, and Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, telephone number: 703–235–8323.

Note.—The Department of the Interior has determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

It is proposed to amend Subchapter F of Chapter I of Title 25 of the Code of Federal Regulations by the addition of a new part to read as follows:

PART 43e—PREPARATION OF A ROLL OF MOHAVE DESCENDANTS ENROLLED AS MEMBERS OF THE COLORADO RIVER INDIAN TRIBES

Sec.

43e.1 Definitions.
43e.2 Purpose.
43e.3 Qualifications for enrollment.
43e.4 Notice.
43e.5 Preparation of a proposed roll and display of a listing of names included thereon.
43e.6 Appeals.
43e.7 Filing appeals and the deadline.
43e.8 Supporting evidence and burden of proof.
43e.9 Notification and action by the Tribes.
43e.10 Action by the Superintendent.
43e.11 Action by the Director.
43e.12 Decision of the Secretary on appeals.
43e.13 Preparation, certification, and approval of roll.
43e.14 Special instructions.

Authority: 5 U.S.C. sec. 1301, R.S. secs. 463 and 465; 25 U.S.C. secs. 2 and 9, and 87 Stat. 466.

§ 43e.1 Definitions.

As used in these regulations:

(a) "Secretary" means the Secretary of the Interior or his/her authorized representative.

(b) "Assistant Secretary" means the Assistant Secretary for Indian Affairs or his/her authorized representative.

(c) "Director" means the Area Director, Phoenix Area Office, Bureau of Indian Affairs or the Area Director, Sacramento Area Office, Bureau of Indian Affairs or their authorized representatives.

(d) "Superintendent" means the Superintendent, Colorado River Agency, Bureau of Indian Affairs, or his/her authorized representative.

(e) "Staff Officer" means the Enrollment Officer or other person authorized to prepare the roll.

(f) "Plan" means the plan for the use and distribution of Mohave judgment

funds awarded in Dockets Nos. 283 and 295 before the Indian Claims Commission, which was prepared pursuant to the Act of October 19, 1973 (87 Stat. 466), and became effective April 12, 1976.

(g) "Tribes" mean the Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.

(h) "Tribal Council" means the governing body of the Colorado River Indian Tribes.

(i) "Living" means born on or prior to and living on the date specified.

(j) "Lineal Descendants" mean those persons who are related by direct descent from the ancestor through whom eligibility is claimed, namely the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc.

(k) "Sponsor" means parents, recognized guardian, next friend, next of kin, spouse, executor or administrator of estate, the Superintendent, or other person who files an appeal on behalf of another person.

§ 43e.2 Purpose.

The regulations in this part are to govern the compilation of a roll of certain members of the Colorado River Indian Tribes who are lineal descendants of the aboriginal Mohave Tribe eligible to share in the distribution of judgment funds awarded the Mohave Indians by the Indian Claims Commission in Dockets Nos. 283 and 295.

§ 43e.3 Qualifications for enrollment.

The roll shall contain the names of persons who meet the following requirements:

(a) They were living on April 12, 1976;

(b) They are enrolled members of the Colorado River Indian Tribes and their name appears on the approved membership roll prepared by the Tribes as of April 12, 1976;

(c) They are lineal descendants of a Mohave Indian; and

(d) They did not share in the funds distributed by the Chemnehuevi Distribution Act of September 25, 1970 (84 Stat. 686).

§ 43e.4 Notice.

The Superintendent shall mail a notice to each person whose name appears on the approved membership roll as of April 12, 1976, of the Colorado River Indian Tribes advising him/her of the preparation of the roll of Mohave descendants and the relevant procedures to be followed.

§ 43e.5 Preparation of a proposed roll and display of a listing of names included thereon.

The Superintendent shall prepare, with the assistance of the Tribes, a proposed roll of persons who meet the requirements specified in § 43e.3. The proposed roll shall contain for each person a roll number, name, sex, date of birth, date of death if applicable, and name and relationship to the Mohave ancestor through whom eligibility was established. A listing of only the names of the persons included on the proposed roll shall be placed on public display for 30 days at the Colorado River Agency, local community buildings, local post office, Phoenix Area Office, and other Agency offices under the jurisdiction of the Director and the Sacramento Area Office and other Agency offices under the jurisdiction of the Director. The listing shall indicate prominently the deadline for filing appeals contesting the omission of a name, as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 43e.6 Appeals.

Persons who believe they meet the qualifications specified in the plan and the regulations in this Part and whose names are not included on the proposed roll may file or have filed by a sponsor an appeal with the Secretary contesting the omission of their names in accordance with the procedures provided in this Part.

§ 43e.7 Filing appeals and the deadline.

(a) The appeal shall be in writing and addressed to the Secretary but filed with the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Parker, Arizona 85344.

(b) The appeal must be received by the Superintendent no later than the close of business on the thirtieth (30th) day after the listing of the names of persons included on the proposed roll is placed on public display as provided for in § 43e.4. If the appeal deadline falls on a Saturday, Sunday, legal holiday or other nonbusiness day, the deadline will be the next working day thereafter.

§ 43e.8 Supporting evidence and burden of proof.

(a) The appeal should be accompanied by any supporting evidence relied upon as a basis for the appeal, including copies of Bureau or tribal records having a direct bearing on the appellant's contentions. The appellant may furnish affidavits from persons having personal knowledge of the facts at issue. Criminal penalties are provided by statute for knowingly filing false information in such statements (18 U.S.C. 1001).

(b) The appellant may request additional time to submit supporting evidence. A time period considered reasonable for such submissions may be granted by the official receiving the appeal.

(c) The burden of proof for establishing the improper omission of any name from the proposed roll is on the appellant.

§ 43e.9 Notification and action by the Tribes.

(a) The Superintendent shall notify the Tribal Council of the receipt of an appeal and shall give the Tribal Council the opportunity to examine the appeal and to present such evidence as it may consider pertinent.

(b) The Tribal Council shall have not more than 15 days from receipt of notification of the appeal in which to present, in writing, such statements as it may deem pertinent supported by tribal records which have a bearing on the case, along with the complete enrollment file on the appellant, to the Superintendent.

§ 43e.10 Action by the Superintendent.

The Superintendent shall consider each appeal. If after review of the evidence the Superintendent determines that the omission of any name is improper and eligibility has been established, the appellant shall be so notified in writing and the name entered on the roll. If the Superintendent determines that the omission of any name is proper and eligibility has not been established, the appellant shall be so notified in writing and the appeal together with the complete record and the recommendation of the Superintendent shall be forwarded to the Director.

§ 43e.11 Action by the Director.

The Director shall consider each appeal. If after a review of the evidence the Director determines that the omission of any name is improper and eligibility has been established, the appellant shall be so notified in writing and the Superintendent directed to enter the name on the roll. If the Director determines that the omission of the name is proper and eligibility has not been established, the appellant shall be so notified in writing and the appeal together with the complete record and the recommendation of the Director shall be forwarded to the Secretary for final determination.

§ 43e.12 Decision of the Secretary on appeals.

The Secretary shall conside the record as presented, together with any additional information he/she may consider pertinent. Any such additional information shall be specifically identified in the decision. The decision of the Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the appellant. When so directed by the Secretary, the Assistant Secretary shall cause to be entered on the roll the name of any person whose appeal has been sustained.

§ 43e.13 Preparation, certification, and approval of the roll.

(a) The staff officer shall prepare a minimum of 5 copies of the roll of those persons determined to be eligible for enrollment, including those who established their eligibility by appeal. The completed roll shall contain, for each person, a roll number, name, sex, date of birth, date of death if applicable, and name and relationship to the Mohave ancestor through whom eligibility was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his/her knowledge the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The Director shall approve the roll.

§ 43e.14 Special instructions.

To faciliate the work of the Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part.

Kenneth Smith,

Assistant Secretary, Indian Affairs.

[FR Doc. 81-29707 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 385; Ref: Notice No. 356]

Finger Lakes Viticultural Area

Correction

In FR Doc. 81-29089 appearing on page 49597, in the issue of Wednesday, October 7, 1981, make the following correction.

On page 49597, third column, in the **"DATE:"** paragraph, "January 5, 1981" should read: "January 5, 1982".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-632]

Overseas Communications Services; Order Extending Time for Filing Reply Comments

Correction

In FR Doc. 81-29129 appearing on page 49617, in the issue of Wednesday, October 7, 1981, make the following corrections:

1. On page 49617 first column the **"DATE:"** paragraph should have read: **"DATE:** Reply comments *now* due on October 28, 1981."

2. In the same column, the fifth line under **"FOR FURTHER INFORMATION CONTACT:"**, the date reading "11-19-89" should have read "11-19-80".

BILLING CODE 1505-01-M

47 CFR Ch. I

[Gen. Docket 78-369]

Radio Frequency Interference (RFI) to Electronic Equipment; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Further notice of inquiry; extension of comment and reply comment period.

SUMMARY: The Commission extends the dates for filing both comments and reply comments to the Further Notice of Inquiry in General Docket No. 78-369, Radio Frequency Interference to Electronic Equipment, released on July 16, 1981. This action is taken in response to a petition filed by Marvin T. Tunis, the Executive Chairman of the Missouri Radio Enthusiasts.

DATES: Comments must now be filed on or before November 30, 1981. Reply comments must now be filed on or before January 15, 1982.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael D. Kennedy, Technical Planning Staff, Office of Science and Technology, 2025 M Street NW., Washington, D.C. 20554, 202-632-7073, Room 7334.

In the matter of radio frequency interference (RFI) to electronic equipment, General Docket No. 78-369 (8-13-81; 46 FR 40899). Order extending time for filing comments.

Adopted: September 30, 1981.

Released: October 2, 1981.

1. On September 10, 1981, the Commission received a request to extend the time for filing comments in the above-captioned matter. Marvin T. Tunis, the Executive Chairman of the Missouri Radio Enthusiasts, requested that the final date for responding to the Further Notice of Inquiry released July 16, 1981, be extended to January 31, 1982. Presently comments in this matter are due September 30, 1981, and reply comments are due November 16, 1981.

2. Mr. Tunis argues that considering the complex issues involved in this matter and its potential impact on a large segment of the public, the present period for filing comments is insufficient. He indicates that many of the parties who might be affected by this proceeding are simply unaware of the Commission's Inquiry.

3. The Commission is aware that this proceeding involves complex technical and policy issues. Moreover, RFI is a concern not only for Commission licensees but also equipment manufacturers and members of the general public. By developing the fullest record practicable, the Commission can insure that the issues will be examined and evaluated thoroughly. The Commission is not persuaded, however, that a 120 day extension of time is warranted but it believes that an extension of 60 days is appropriate.

4. Therefore, for the above reasons and because we do not anticipate harm to any party, it is ordered, pursuant to § 0.241(d) of the Commission's Rules and Regulations, that the dates for filing comments and reply comments in this proceeding are extended. Comments must now be filed on or before November 30, 1981. Reply comments must now be filed on or before January 15, 1982.

Federal Communications Commission.

Stephen J. Lukasik,

Chief Scientist.

[FR Doc. 81-29752 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 15

[Gen. Docket No. 81-461; RM-3797]

Request of General Electric Co. To Exempt Medical Diagnostic Equipment From a Certain Part of the Commission's Rules; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: This Order extends the date for filing comments and reply comments for the Notice of Proposed Rule Making in Docket 81-461, Request of General Electric Co. to exempt medical diagnostic equipment from a cetain part of the Commission's Rules, in response to a request from the Health Industry Manufacturers Association.

DATES: Comments due October 19, 1981. Reply Comments due November 3, 1981.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Art Wall, Office of Science and Technology, Washington, DC 20554, (202) 653-8247, Room 8302.

In the matter of request of General Electric Co. to exempt medical diagnostic equipment from Subpart J of Part 15 of the rules of the Federal Communications Commission. GEN Docket 81-461 RM-3797 (9-8-81; 46 FR 44790). Order extending time for filing comments and reply comments.

Adopted: October 1, 1981.

Released: October 6, 1981.

By the Chief Scientist:

1. The Health Industry Manufacturers Association (HIMA) had requested a 14-day extension of time within which to file comments in the above-captioned docket.

2. HIMA requests the extension of time in order to permit HIMA to consider whether to undertake studies of radio frequency interference by medical computing devices used outside hospitals.

3. Because of the importance of this proceeding to both manufacturers and consumers, and to facilitate receiving the most definitive responses possible, an extention of time to October 19, 1981 for filing Comments and to November 3, 1981 for filing Reply Comments is hereby ordered pursuant to the authority granted by § 0.241(d) of the Commission's Rules.

S. J. Lukasik,

Chief Scientist.

[FR Doc. 81-29753 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-702; RM-3920]

FM Broadcast Station in Wishek, North Dakota; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Class C Channel 262 to Wishek, North Dakota, in response to a petition filed by Wishek Broadcasting, Inc. The assignment would provide Wishek with its first local FM service.

DATES: Comments must be filed on or before December 4, 1981, and reply comments on or before December 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: September 28, 1981.

Released: October 5, 1981.

By the Acting Chief, Policy and Rules Division.

In the matter of an amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Wishek, North Dakota); BC Docket No. 81-702, RM-3920; notice of proposed rule making.

1. The Commission herein considers a petition for rule making [1] filed by Wishek Broadcasting, Inc. ("petitioner"), proposing the assignment of Class C FM Channel 262 to Wishek, North Dakota, as its first FM assignment. Petitioner states that it will apply for the channel, if assigned. No oppositions to the proposal were received.

2. Wishek (population 1,345)[2], in McIntosh County (population 4,800), is located approximately 112 kilometers (70 miles) southeast of Bismarck, North Dakota. It has no local aural broadcast service.[3]

3. According to the petitioner, Wishek, McIntosh's largest community, is located in a very productive agricultural area, and serves as a farm trade center, with retail and wholesale outlets. The economy is also supported by energy and manufacturing companies. Petitioner contends that Wishek has a healthy and growing economy, and a sustained future growth is expected, warranting a first FM assignment.

4. The study submitted by the petitioner indicates that the assignment of Channel 262 to Wishek will cause preclusion on Channels 260, 261A, 262, 263, 264 and 265A. Twenty-two communities [4] with a population in excess of 1,000 people, having no FM service, would be affected by the assignment. Petitioner states that at least three alternate channels are available to each community in the precluded area.

5. Petitioner has demonstrated that the Class C channel would provide a first nighttime aural service to 1,830 square kilometers (715 square miles) for 3,700 persons and a second nighttime aural service to 2,920 square kilometers (1,141 square miles) for 5,681 people. Although it has been general Commission policy to assign Class C channels only to large communities, exceptions have been made where, as here, the assignment would provide substantial first or second service to the outlying area. The channel can be assigned in compliance with the minimum distance separation requirements.

6. Since Wishek, North Dakota, is located within 420 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 262 to Wishek, North Dakota, requires coordination with the Canadian Government.

7. In view of the above, the Commission proposes to amend the FM Table of Assignments (§ 73.202(b)) of the Commission's Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Wishek, North Dakota		262

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is

[1] Public Notice of the petition was given on June 19, 1981, Report No. 1293.

[2] Population figures are taken from the 1980 U.S. Census.

[3] There is an application pending for a daytime-only AM station (in hearing BC Docket 81-435).

[4] South Dakota: Sisseton, Groton, Britton, Gettysburg and Ipswich. North Dakota: Ellendale, New Rockford, Linton, Carrington, Larimore, Mott, Velva, Ashley, Garrison, Beulah, Hazen, Napoleon, Glen Ullin, Parshall, Fort Gates, Belfield, and Hebron.

required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 4, 1981, and reply comments on or before December 24, 1981.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. *See, Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 81-29731 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-700; RM-3919]

FM Broadcast Station in Lufkin, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 297 to Lufkin, Texas, in response to a petition filed by Jalene Manske. The proposal would provide a third FM broadcst service to Lufkin.

DATES: Comments must be filed on or before December 4, 1981, and reply comments on or before December 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lufkin, Texas). BC Docket No. 81-700; RM-3919. Notice of proposed rulemaking.

Adopted: September 28, 1981.

Released: October 5, 1981.

By the Acting Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making [1] filed by Jalene Manske ("petitioner"), which seeks the assignment of Class C FM Channel 297 to Lufkin, Texas, as that community's third FM assignment. Petitioner stated that he would apply for the channel, if assigned. No oppositions to the proposal have been received.

2. Lufkin (population 28,562),[2] seat of Angelina County (population 64,172), is located approximately 184 kilometers (115 miles) north of Houston, Texas. It is served locally by fulltime AM Stations KLUF and KRBA, also FM Stations KYKS (Channel 286) and KDEY (Channel 257A).

3. Petitioner asserts that Lufkin is and will continue to be the hub of commerce and industry for the region. He claims that the population has increased from 19,600 to 40,696 in the past twenty years, with further growth expected. Based on population growth Lufkin is said to justify a third FM assignment. Manske also states that his proposal is contingent on the outcome of BC Docket

[1] Public Notice of the petition was given on June 19, 1981, Report No. 1293.

[2] Population figures are taken from the 1980 U.S. Census.

No. 81-234,[3] which if adopted, would result in the creation of a triangular area northwest of Lufkin, providing for the proposed Class C facility.

4. *Comments:* Petitioner did not submit a preclusion study, but is requested to do so in comments to this proposal, indicating alternate channels available to the precluded communities in order to justify exceeding our population criteria. See *Waycross, Georgia*, 47 RR 2d 319 (1980). A site restriction of 43.4 kilometers (27.1 miles) west of Lufkin must be imposed to meet the mileage separation requirements for Station KWLV, Many, Louisiana, and KGOL, Lake Jackson, Texas. Petitioner should furnish information demonstrating that a transmitter site located at this distance could provide a 70 dBu signal over Lufkin.

5. Petitioner submitted economic and demographic information demonstrating the need for the proposed assignment. Therefore we shall issue the *Notice* to afford the petitioner an opportunity to further justify the need for a third FM assignment to Lufkin.

6. In view of the foregoing, the Commission proposes to amend to the FM Table of Assignments, Section 73.202(b) of the Commission's Rules, as follows for the community listed:

City	Channel No.	Proposed
	Present	
Lufkin, Tex.	257A, 286	257A, 286, 297

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

8. Interested parties may file comments on or before December 4, 1981, and reply comments on or before December 24, 1981.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, Section 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Montrose Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-29754 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

[3]The *Notice* proposed substitution of Channel 300 for Channel 299 at Beaumont, Texas, and substitution of Channel 298 for Channel 297 at Lake Jackson, Texas.

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47 CFR Part 73

[BC Docket No. 81-701; RM-3883]

TV Broadcast Station in Bozeman, Montana; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 22 to Bozeman, Montana, as its second commercial television

assignment, in response to a petition filed by Garryowen Corporation.

DATES: Comments must be filed on or before December 4, 1981, and reply comments on or before December 24, 1981.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the mattter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Bozeman, Montana). BC Docket No. 81-701 RM-3883. Notice of proposed rulemaking.

Adopted: September 28, 1981.

Released: October 5, 1981

By the Acting Chief, Policy and Rules Division:

1. The Commission herein considers a petition for rule making [1] filed by Garryowen Corporation ("petitioner"),[2] which seeks the assignment of UHF television Channel 22 to Bozeman, Montana. Petitioner stated that it would apply for the Channel, if assigned. No oppositions to the proposal were received.

2. Bozeman (population 21,645),[3] seat of Gallatin County (population 42,865) is located in southwestern Montana, approximately 200 kilometers (125 miles) south of Great Falls, Montana. It is presently assigned Channel 7 (application pending) and Channel *9 (unoccupied).

3. Petitioner states that the proposed station operating as a 1000 watt translator would serve the communities of Bozeman, Belgrade, and Manhattan, Montana, and the entire Gallatin Valley area, providing service for approximately 38,000 persons (4.7 percent of Montana's population). It could provide viewers with a stronger signal, insure better coverage of the mountainous regions surrounding the Gallatin Valley, and at the same time eliminate the need for several transmitters to serve the area. Petitioner states that it intends to modify its pending application for Channel 18 (unassigned) at Bozeman, to specify Channel 22, if that channel is assigned.[4] The channel could also be used to provide a second commercial television service to Bozeman.

4. Since Bozeman is located within 402 kilometers (250 miles) of the U.S. Canadian border, the proposed assignment of UHF television Channel 22 to Bozeman, Montana, requires coordination with the Canadian Government.

5. In view of the foregoing, the Commission finds that it could be in the public interest to seek comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the city of Bozeman, Montana, as follows:

City	Channel No.	
	Present	Proposed
Bozeman, Mont.	7-, *9	7-, *9, 22

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before December 4, 1981, and reply comments on or before December 24, 1981.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b)) of the Commission's Rules. *See, Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

Federal Communications Commission.

Martin Blumenthal,

Acting Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponents(s) will be expected to answer whatever questions are presented in initial comments. The propoonent of a proposed assingment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advance in this proceeding itself will be considered, if advance in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Pubic Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

[1] Public Notice of the petition was given on April 17, 1981, Report No. 1281.

[2] Licensee of television Stations KTVQ, Billings, Montana; KRTV, Great Falls, Montana; KXLF-TV, Butte, Montana; KPAZ-TV, Missoula, Montana, and translator stations serving Lewiston, Montana (K13IX); Miles City, Montana (K10GF); Sheridan, Wyoming (KO7HC); Helena, Montana (KO6GK); Hartin, Montana (KO6KF); Castle Rock and Lame Deer, Montana (K7OER); Heath, Montana (K55AJ); Joplin, Montana (K48AI); and Big Timber, Montana (K69CM).

[3] Population figures are taken from the 1980 U.S. Census.

[4] Garryowen currently has an application pending for a 100 watt translator station on Channel 18 (unassigned) at Bozeman, Montana. A Channel 18 assignment is precluded by existing Channel 18 at Butte, Montana.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parites may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rulles.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceedng will be avilable for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 81-29751 Filed 10-13-81; 8:45 am]
BILLING CODE 6712-01-M

[47 CFR Parts 81 and 83]

[PR Docket No. 81-657; FCC 81-416]

Amendment of the Commission's Rules To Make a Certain Frequency Band Available Exclusively for Vessel Traffic Service (VTS) Communications in the Houston VTS Radio Protected Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the adoption of Channel 11 (156.55 MHz) exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area. This rule making was initiated in response to an informal request by the Commandant, United States Coast Guard (USCG). These rules will enable the USCG to service the increased vessel traffic in this area.

DATES: Comments must be received by November 9, 1981. Reply comments must be received by November 24, 1981.

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

FOR INFORMATION CONTACT: Linda R. Figueroa, Federal Communications Commission, Washington, D.C. 20554, telephone 632-7175.

SUPPLEMENTARY INFORMATION:

In the matter of amendments of Parts 81 and 83 of the Rules to make the frequency 156.55 MHz available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area. PR Docket No. 81-657, notice of proposed rulemaking.

Adopted: September 22, 1981.

Released: October 2, 1981.

By the Commission:

1. In this Notice, we propose to amend Parts 81 and 83 of the Commission's rules to make VHF Channel 11 (156.55 MHz) available exclusively for Vessel Traffic Service (VTS) communications in the Houston VTS radio protected area.

Background

2. The United States Coast Guard (USCG) has established a VTS system for a number of the largest and busiest port areas in the United States. This program was initiated in order to implement the provisions of the "Ports and Waterways Safety Act of 1972." [1] A VTS is a vessel movement reporting system which is designed to prevent damage to or loss of vessels, bridges or other structures in United States navigable waters, and to protect these waters and associated natural resources from environmental harm resulting from such damage or loss. At the request of the Commandant, USCG the Commission amended the rules so as to designate up to three frequencies exclusively for VTS communications within the designated VTS radio protected areas.[2] The frequencies available for VTS communications, under specified conditions, are recorded in Sections 81.357 and 83.361 of the Rules. These frequencies are 156.550 MHz (previously a commercial frequency), 156.600 MHz and 156.700 MHz (previously port operations frequencies). Sections 81.357(b)(3) and 83.361(b)(3) presently designate frequency 156.6 MHz exclusively for USCG VTS communications in the Houston VTS radio protected area.

Discussions

3. We have been requested by the Commandant, USCG to amend the Rules to make Channel 11 (156.55 MHz) available exclusively for VTS communications within the Houston VTS radio protected area described in the Rules.[3] The USCG's request for an additional VTS frequency arises from an increase in vessel traffic served in the Houston VTS area, which necessitated a revision of VTS operations sector configuration. This new arrangement requires four sectors and an additional operating frequency.

4. Channel 11 is one of the three frequencies made available for assignment in USCG VTS areas. Currently only Channel 12 is assigned exclusively for VTS purposes in Houston. Channel 11 is a commercial channel on which there are eleven limited coast station licensees and associated ship stations. The USCG has indicated that local coordination with user groups in Houston implies a strong local support in favor of also making Channel 11 available exclusively for VTS communications in the Houston VTS radio protected area.

5. In the case that the USCG preferred Channel 11 should not be acceptable to commenters, Channel 5 may provide a viable alternative. Channel 5 is available for maritime mobile use in the New Orleans and Houston port areas.[4] There is presently one limited coast station licensee using Channel 5. Commenters who oppose the use of Channel 11 for VTS communications should comment on the viability of using Channel 5 as well as the rationale for opposing Channel 11.

Proposal

6. Accordingly, we propose to amend Sections 81.357 and 83.361 of the Commission's rules in order to make Channel 11 (156.55 MHz) available exclusively for VTS communications in the Houston radio protected area.

7. The proposed amendments to the Commission's rules as set forth in the attached Appendix, are issued under the authority contained in Sections 4(i) and 303(c) and (r) of the Communications Act of 1934, as amended.

Comments

8. Under procedures set out in Section 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before November 9, 1981, and reply comments on or before

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[1] Pub. L. 92-340, 86 Stat. 424, 46 U.S.C. 1551.

[2] *Report and Order.* Docket No. 20444 adopted December 2, 1975, 40 FR 57673, 56 FCC 2d 1089.

[3] Sections 81.357(b)(3) and 83.361(b)(3) of the Commission's rules state: "Houston: The rectangle between north latitudes 28° 30' and 30° 20' and west longitudes 93° 30' and 96° . . ."

[4] Channel 5 (156.205 MHz) is on the band edge between land mobile and maritime mobile allocations. It was made available for VTS use in *Report and Order.* Docket No. 21370, adopted December 7, 1977, 42 FR 64896, 67 FCC 2d 903.

November 24, 1981. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

9. In accordance with the provisons of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

10. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, and *ex parte* presentation is any written or oral communication (other than formal written comment/pleadings and formal oral arguments) between a person outside the Commission and a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

11. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 [5] do not apply to this rule making proceeding. The USCG VTS system is operated as part of a Congressional mandate in the "Port and Waterways Safety Act of 1972". Further, the burden imposed on the eleven limited coast station licensees by making Channel 11 available for VTS communications would at most entail the buying of a new crystal. In the event that the licensees' equipment is synthesized no expense would be incurred. Therefore, making Channel 11 available for VTS communications in the Houston VTS radio protected area would not have a significant impact on a substantial number of small entities.

12. Regarding questions on matters covered in this document contact, Linda R. Figueroa (202) 632-7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[5] Pub. L. 96-354.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 81—Stations on Land in the Maritime Services and Alaska—Public Fixed Stations.

Section 81.357(b)(3) is amended by adding frequency 156.55 MHz.

§ 81.357 Frequencies available for use in Vessel Traffic Services Systems.

* * * * *

(b) * * *

(3) Houston: The rectangle between north latitudes 28°30′ and 30°20′ and west longitudes 93°30′ and 93°; frequencies 156.6 MHz and 156.55 MHz

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B. Part 83—Stations on Shipboard in the Maritime Service.

Section 83.361(b)(3) is amended by adding frequency 156.55 MHz.

§ 83.361 Frequencies available for use in Vessel Traffic Services Systems.

* * * * *

(b) * * *

(3) Houston: The rectangle between north latitudes 28°30′ and 30°20′ and west longitudes 93°30′ and 93°; frequencies 156.6 MHz and 156.55 MHz

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[FR Doc. 81-29773 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 46, No. 198
Wednesday, October 14, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Missouri; Irish Wilderness; Cancellation of Environmental Inpact Statement

In the matter of cancellation of environmental impact statement for Irish Wilderness Rare II Further Planning Area Prospecting Permit, Mark Twain National Forest, Oregon County, Missouri.

A notice of intent to prepare an environmental impact statement was published in the **Federal Register** of January 23, 1981, by the Forest Service, Department of Agriculture for a proposal to prospect for hard rock minerals within a part of the Irish "Wilderness".

I am terminating the preparation of an EIS, because based on an environmental analysis, it was determined that the wilderness option would not be precluded by the proposed action and there would be no other significant impacts.

The environmental analysis will be documented and a decision notice along with a finding of no significant impact (FONSI), will be issued. The public will be notified when the environmental assessment is available.

Questions about the environmental assessment should be directed to Gary Cole, District Ranger, Doniphan, Missouri, telephone (313) 996–2153.

Dated: October 5, 1981.

James H. Freeman,

Director of Planning, Programming, and Budgeting.

[FR Doc. 81-29721 Filed 10-13-81; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Application of Trans Western Airlines for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 81–10–52 application of Trans Western Airlines of Utah, Inc., d.b.a. Trans Western Airlines under Subpart Q for certificate of public convenience and necessity for certain points listed in its application, Docket 39706.

SUMMARY: The Board is proposing to grant a certificate of public convenience and necessity to Trans Western to authorize it to provide service to the points listed in its application, and is tentatively determining that it is fit, willing, and able to provide this service.

DATES: Objections: All interested persons having objections to the Board's issuing the proposed authority or to its tentative finding shall file, and serve upon all persons listed below no later than October 28, 1981, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Dockets 39706, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5345.

SUPPLEMENTARY INFORMATION: Objections should be served upon the persons listed in paragraph 5 of Order 81–10–52. The complete text of Order 81–10–52 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan area may send a post card request for Order 81 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 8, 1981.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-29760 Filed 10-13-81; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10 a.m. and will end at 3 p.m. on November 2, 1981, at the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604. The purpose of this meeting is to continue with the planning of the December 1981 consultation on housing in Chicago and to hear a report of the annual Conference of Advisory Committee Chairpersons.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Thomas Pugh, 500 West Melbourne Avenue, Peoria, Illinois, 61604, 309–686–3121 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, 312–353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. October 7, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-29700 Filed 10-13-81; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 7:00 p.m. on October 28, 1981, at the Holiday Inn-Downtown, Hickory Room, 200 East Amite, Jackson, Mississippi 39205. The purpose of this meeting is to discuss the follow-up to three completed studies: (1) police-community relations in Jackson, (2) the status of minorities and women who work for the state government, and (3) Laurel and Laurel.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mary L. Ramberg, 1514 Gay Street, Jackson, Mississippi 39211,

(601) 355–1175 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E., Atlanta, Georgia 30303, (404 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C. October 8, 1981.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 81-29701 Filed 10-13-81; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on November 5, 1981, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 3:45 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and major budget program developments; (2) election of Committee Chairperson and Chairperson-elect; (3) update on 1980 census; (4) development of a world data base; (5) overview of population projects; (6) evaluation studies for the 1982 economic censuses; (7) small area data programs in the 1982 economic censuses; (8) treatment of leased departments in retail trade in the 1982 economic censuses; (9) Committee discussion and recommendations; and (10) plans and date for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Office at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Bobby Russell, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–7644.

Dated: October 8, 1981.

Bruce Chapman,

Director, Bureau of the Census.

[FR Doc. 81-29728 Filed 10-13-81; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Kraft Condenser Paper From Finland; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on kraft condenser paper from Finland. The review covers the only known exporter of this merchandise to the United States, Tervakoski Osakeyhito, for all periods through August 31, 1980. This review indicates the existence of dumping margins.

As a result of this review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the shipments during the periods of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 14, 1980.

FOR FURTHER INFORMATION CONTACT: F. Patrick Pope or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–4697/2657).

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1979, a dumping finding with respect to kraft condenser paper from Finland was published in the **Federal Register** as Treasury Decision *79–245* (44 FR 54696–7). On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). The Department published in the **Federal Register** of March 26, 1980 (45 FR 20511–2) a notice of intent to conduct administrative reviews of all outstanding dumping findings. As required by section 751 of the Tariff Act, the Department has conducted an administrative review of the finding on kraft condenser paper from Finland. The substantive provisions of the 1921 Act and the appropriate Customs Service Regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by this review are shipments of kraft condenser paper, meaning capacitor tissue or condenser paper containing 80% or more by weight chemical sulphate or soda wood pulp based on total fiber content. Kraft condenser paper is currently classifiable under items 252.4000, 252.4200 and 256.3080 of the Tariff Schedules of the United States Annotated (TSUSA). Tervakoski Osakeyhito is the only known exporter to the United States of Finnish kraft condenser paper. This review covers two consecutive time periods from February 20, 1979, the date of suspension of liquidation, through August 31, 1980.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price, as defined in section 772 of the Tariff Act or section 203 or 204 of the 1921 Act, as appropriate.

Purchase price was based on the packed price to an unrelated purchaser in the United States. Exporter's sales price was based on the packed price to the first unrelated purchaser in the United States. Where applicable, deductions were made for ocean freight, insurance, U.S. and foreign inland freight, U.S. duty, brokerage charges, selling expenses and or the cost of slitting the merchandise in the United States including "broke" (wastage due to slitting), in accordance with § 353.10 of the Commerce Regulations.

Foreign Market Value

In calculating foreign market value the Department used the price to purchasers in third countries, as defined in section 773 of the Tariff Act or section 205 of the 1921 Act, because sufficient sales did not exist in the home market. Where applicable, the foreign market values were adjusted for credit expenses and commissions in accordance with

§ 353.15 of the Commerce Regulations and § 153.10 of the Customs Regulations; for slitting costs in accordance with § 353.16 of the Commerce regulations and § 153.11 of the Customs Regulations, and for inland freight and differences in packing.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value we preliminarily determine that the following margins exist on shipments by Tervakoski Osakeyhito:

Time period	Percent margin
Feb. 20, 1979 to Dec. 31, 1979	2.837
Jan. 1, 1980 to Aug. 31, 1980	0.7381

Interested parties may submit written comments on these preliminary results on or before November 13, 1981, and may request disclosure and/or a hearing within 15 days of the date of publication. Any request for administrative protective order must be made no later than 5 days after the date of publication.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing. The Department shall determine and the Customs Service shall assess, dumping duties on all entries made with purchase dates or export dates, as appropriate, during the time periods involved. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions separately on each exporter directly to the Customs Service.

Further, as provided for by § 353.48 (b) of the Commerce Regulations, a cash deposit based upon the most recent of the margins calculated above shall be required on all shipments of kraft condenser paper entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with sections 751 (a) (1) of the Tariff Act (19 U.S.C. 1675 (a) (1)), and § 353.53 of the Commerce regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary, Import Administration.

October 7, 1981.

[FR Doc. 81-29638 Filed 10-13-81; 8:45 am]

BILLING CODE 3510-25-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 2119 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 81-00143. Applicant: University of Chicago, Department of Radiology, 900 East 59th Street, Chicago, Illinois 60637. Article: Radiographic Digital Image Processing System. Manufacturer: Fuji Film Co., Ltd., Japan. Intended use of article: See Notice on page 42985 in the Federal Register of August 25, 1981.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides drum scanning, a 14" x 14" format and 1024 grey scale levels. The Department of Health and Human Services advises in its memorandum dated July 9, 1981 that (1) the characteristics of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 81-29702 Filed 10-13-81; 8:45 am]

BILLING CODE 3510-25-M

Motorcycle Batteries from Taiwan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We have preliminarily determined that there is a reasonable basis to believe that motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Therefore, we have directed the U.S. Customs Service to suspend the liquidation of entries of this merchandise. A cash deposit, bond, or other security in an amount equal to the estimated dumping margin applicable to each manufacturer will be required at the time of each entry, or withdrawal from warehouse, for consumption in the United States.

Interested parties are invited to submit oral or written views concerning this determination. Unless we extend this investigation, we will make our final determination within 75 days of the signing of this determination.

EFFECTIVE DATE: October 14, 1981.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230 (202-377-2613).

SUPPLEMENTARY INFORMATION:

Case History

On May 1, 1981, we received a petition from Yuasa-General Battery Corporation of Reading, Pennsylvania. The petition, which was filed on behalf of the U.S. industry producing motorcycle batteries, alleged that various producers in Taiwan are selling this merchandise in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the "Act"). The petition also alleged that these imports are materially injuring a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. Therefore, we initiated the

investigation on May 27, 1981, (46 FR 28465–66) and notified the U.S. International Trade Commission (the "ITC") of our decision.

On June 9, 1981, the ITC found that there is a reasonable indication that imports of motorcycle batteries from Taiwan are threatening to materially injure a U.S. industry. The ITC published its determination in the **Federal Register** on June 24, 1981, (46 FR 32696–8).

Scope of Investigation

For purposes of this investigation, the term "motorcycle batteries" means lead-acid storage batteries, principally dedicated for use in motorcycles, having a nominal output of either 6 or 12 volts, and rated between 2 and 28 ampere-hours (10 hour discharge rate). Motorcycle batteries are currently classified under item 683.10 of the Tariff Schedules of the United States.

This investigation covers sales made between December 1, 1980 and May 31, 1981. Our investigation covered six Taiwanese manufacturers:

(1). Cheng Kwang Storage Battery Co., Ltd. ("Cheng Kwang"),

(2). China Storage Battery Co., Ltd. ("CSB"),

(3). Great King Electricity Co., Ltd. ("Great King"),

(4). Tahming Battery Co., Ltd. ("Tahming"),

(5). Yuasa Battery Taiwan Co., Ltd. ("Yuasa"),

(6). Ztong Yee Industrial Co., Ltd. ("Ztong Yee").

These six manufacturers account for about 90 percent of the exports of this merchandise to the United States.

Methodology of Fair Value Comparisons

Five of the manufacturers (all but Great King) had home market sales in sufficient quantities to form an adequate basis of comparison. For these five manufacturers, we compared either purchase price or exporter's sales price, as applicable, with the price of such or similar merchandise sold for consumption in the home market of Taiwan. In the case of Great King, the quantity sold for home consumption was so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison. Therefore, in the case of Great King, we compared purchase price with the price of such or similar merchandise sold to a third country (Greece). We selected sales to Greece because the batteries exported to Greece have a greater degree of similarity to the batteries exported to the United States than those exported to other countries, and the volume of sales to Greece is deemed adequate.

Purchase Price

We calculated purchase price on the basis of the FOB or CIF prices to unrelated U.S. importers or Taiwanese exporters. We made deductions, where applicable, for royalty fees, shipping and FOB charges and commissions. We made additions, as applicable, for both import duties which were rebated, and taxes which were not collected, by reason of the exportation of the merchandise to the United States.

Exporter's Sales Price

Exporter's sales price was calculated in the same manner as purchase price, except that further deductions were made for inland freight in the United States, indirect selling expenses in the United States, and, where applicable, the amount of increased value added in the United States.

Foreign Market Value

Foreign market value based on home market sales was calculated by deducting, where applicable, inland freight, royalty fees, sales bonus, and insurance. Adjustments were made, where applicable, for differences in circumstances of sale. (Differences in credit costs, and technical services, advertising directed at consumers warranty, and sales promotion expense), differences in the merchandise, and differences in packing costs.

Foreign market value based on sales to a third country, Greece, was calculated by deducting shipping and FOB charges and sales commission.

One manufacturer, cheng Kwang, did not provide adequate information for us to make a sufficient number of fair value comparisons. For the purposes of this preliminary determination, we are assigning this manufacturer the highest weighted-average margin (19.8 percent) found applicable to any of the other manufacturers investigated.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making this preliminary determination to the extent possible. We were granted access to the books and records of the six foreign manufacturers and of a related importer. We used traditional verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents containing relevant information.

Preliminary Determination

We have preliminarily determined that exports of motorcycle batteries from Taiwan are being, or are likely to be, sold in United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). We found that the margins ranged from .1 percent to 45 percent and the weighted average margin was 9.6 percent. In the case of one manufacturer, CSB, no dumping margins were found. However, before we will consider excluding this manufacturer from the investigation, we need to gather more information in order for us to make fair value comparisons on a greater percentage of this manufacturer's exports to the United States. Therefore, for the purposes of this preliminary determination, we are suspending liquidation on this manufacturer but we are not requiring the posting of additional security.

The estimated average amount by which the foreign market value exceeds the United States price for each manufacturer we investigated is listed in the table in the section headed "suspension of liquidation".

Public Comment

If requested, we will hold a public hearing in accordance with 19 CFR 353.47, to afford interested parties an opportunity to comment orally on this preliminary determination. All requests for a hearing must be submitted, within 10 days of this notice's publication, to the Deputy Assistant Secretary for Import Administration, Room 2800, at the address shown above. 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.

Any written views must be filed in accordance with the instructions contained in § 353.46(a), Commerce Regulations (19 CFR 353.46(a)), at the above address, within 30 days of this notice's publication.

Suspension of Liquidation

In accordance with section 733(d) (1) and (2) of the Act (19 U.S.C. 1673b(d) (1), (2)), we are directing the U.S. Customs Service to suspend, upon this notice's publication, the liquidation of this merchandise entered into the United States, or withdrawn from warehouse, for consumption. As of that date, a cash deposit, bond, or other security in the amount listed below, expressed as a percentage of the F.O.B. value of the motorcycle batteries, must be posted. This suspension of liquidation will remain in effect until further notice.

Manufacture	Amount of security to be posted (percent)
Tahming Battery Co., Ltd	19.8
Cheng Kwang Storage Battery Co., Ltd	19.8
Ziong Yee Industrial Co., Ltd	18.5
Yuasa Battery Taiwan Co., Ltd	7.1
Great King Electricity Co., Ltd	0.9
China Storage Battery Co., Ltd	NONE
All Others	9.6

ITC Notification

As section 733(d) (3) of the Act requires, we are making available to the U.S. International Trade Commission all nonprivileged and nonconfidential information relating to this investigation in our files. We will also make available to the ITC all privileged and confidential information in our files relating to this investigation, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

This determination is published in accordance with § 353.39, Commerce Regulations (19 CFR 353.39).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-29729 Filed 10-13-81; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton Textile Products from Thailand

October 7, 1981.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint for Categories 315 (cotton printcloth) to 10 million square yards, 320 (other cotton fabrics, such as lawn and voile) to 27 million square yards, and 613 (man-made fiber woven fabrics, wholly of noncontinuous, non-cellulosic fibers) to 19 million square yards during the agreement year which began on January 1, 1981.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121) and October 5, 1981 (46 FR 48963)).

SUMMARY: The Governments of the United States and Thailand have exchanged letters amending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, to increase the designated consultation levels established for Categories 315, 320 and 613 during the agreement year which began on January 1, 1981 and extends through December 31, 1981. In addition, the United States Government has decided to control imports of cotton and man-made fiber textile products in Categories 315 and 613 at the increased levels during that agreement period in the same manner as imports in other categories, including Category 320, are now being controlled.

EFFECTIVE DATE: October 15, 1981.

FOR FURTHER INFORMATION CONTACT: Gordana Slijepcevic, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 24, 1980, there was published in the **Federal Register** (45 FR 85141) a letter dated December 19, 1980 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which establish levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981. In accordance with the terms of the bilateral agreement, as amended, the United States Government has agreed to increase the previously established levels of restraint for cotton and man-made fiber textile products in Categories 315, 320, and 613, produced or manufactured in Thailand and exported to the United States during that twelve-month period. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 315, 320 and 613, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1981, in excess of the designated levels of restraint. The levels of restraint for Categories 315 and 613 have not been adjusted to account for any imports after December 31, 1980. Imports during the January–August 1981 period have amounted to 2,412,500 square yards in Category 15 and to 1,168,453 square yards in Category 613 and will be charged. As the data become available, further charges will be made to account for the period which began on September 1, 1981 and extends to the effective date of this action.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

October 7, 1981.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on October 15, 1981 and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Category 320, produced or manufactured in Thailand and exported on and after January 1, 1981, in excess of the amended twelve-month level of restraint of 27,000,000 square yards.[1]

Also effective on October 15, 1981, you are directed to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 315 and 613, produced or manufactured in Thailand and exported on and after January 1, 1981, in excess of the following levels of restraint:

Category	12-month level of restraint [2]
315	[2] 10,000,000
613	[2] 19,000,000

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1980. Imports during the January–August 1981 period have amounted to 2,412,500 square yards in Category 315 and to 1,168,453 square yards in Category 613.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1980. Imports during the January-August 1981 period have amounted to 2,412,500 square yards in Category 315 and to 1,168,453 square yards in Category 613.
[2] Square yards.
[3] Square yards.

Textile products in Categories 315 and 613 which have been exported to the United States prior to January 1, 1981 shall not be subject to this directive.

Textile products in Categories 315 and 613 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C 1448(b) or 1484 (a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption in the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton and man-made fiber textile products from Thailand, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 81-29727 Filed 10-13-81; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Ad Hoc Cost Discipline Advisory Committee: Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of Committee: U.S. Army Ad Hoc Cost Discipline Advisory Committee.
Date of Meeting: November 4-5, 1981.
Place: Room 2E-715B, Pentagon, Washington, D.C..
Time: 0900-1700 each day.

In accordance with the provisions set forth in Section 522b(c), Title 5, U.S. Code exception 4 of Pub. L. 92-463, the meeting will be closed to the public. The committee will review actual cost data on specific programs. These date are considered privileged and are provided to the government for management purposes.

Jack E. Hobbs,

Executive Director, Cost Discipline Advisory Committee.

[FR Doc. 81-29646 Filed 10-13-81; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board; Task Force on Electronic Warfare (EW); Advisory Committee Meeting

The Defense Science Board Task Force on EW will meet in closed session 4 November 1981 at the Pentagon, Washington, D.C.

The mission of the defense Science Board Task Force is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The Task Force will provide an analysis of the electro-magnetically controlled weapons employed or projected for employment by potentially hostile forces and identify electronic warfare countermeasures that might be of significant help if the Department of Defense were required to counter those forces.

In accordance with 5 U.S.C. App. I section 10(d)(1976), it has been determined that the Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 8, 1981.

[FR Doc. 81-29771 Filed 10-13-81; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Task Force on Embedded Computer Resources (ECR) Acquisition and Management; Advisory Committee Meeting

The Defense Science Board Task Force on Embedded Computer Resources Acquisition and Management will meet in closed session 4-5 November 1981 at the Washington D.C. offices of the RAND Corporation, 2100 M Street, NW, Washington, D.C. 20037.

The mission of the Defense Science Board Task Force is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research, engineering and acquisition issues and to provide long-range guidance in these areas to the Department of Defense.

The Task Force will provide an evaluation of the current and proposed policies of the Department relative to management, standardization, current and planned research and development programs and will advise upon improvements which appear possible and practical drawing upon the related practices in the private sector. They will also consider the effect of expected changes in the Public Law and the possibilities for improvement in the internal management process which these changes may offer.

In accordance with 5 U.S.C. App. I section 10(d)(1976), it has been determined that the Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(4)(1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 8, 1981.

[FR Doc. 81-29772 Filed 10-13-81; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Vocational Education; Meeting

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of public meeting of the Council and its Legislative, Special Populations, and the Federal Programs Committees.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Advisory Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: October 30, 31, 1981.

ADDRESS: The Shenandoah Room of the Rosslyn West Park Hotel, 1900 North Ft. Meyer Drive, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576. The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations

for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to the Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

The meetings of the National Advisory Council on Vocational Education and its Committees are open to the public. The proposed Agenda are as follows:

Friday, October 30, 1981, 9 a.m.–5 p.m., FY '82 Budget and Implications; FY '82 Program of Work

Saturday, October 31, 1981, 9 a.m.–10:30 a.m., Continuation of Friday Agenda

10:30 a.m.–12:30 p.m., Legislative Committee: Review of Vocational Education Act; Reauthorization Issues/Process

Special Populations Committee/Federal Programs Committee: Activities for FY '82

Records are kept of the Council's proceedings, and are available for public inspection at the office of the National Advisory Council on Vocational Education from 9 a.m. to 5 p.m., 425 13th Street NW, Suite 412, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Virginia Solt, NACVE Staff, at above address: Telephone (202) 376–8873.

Signed at Washington, D.C., on October 8, 1981.

Raymond C. Parrott,

Executive Director, National Advisory Council on Vocational Education.

[FR Doc. 81-29704 Filed 10-13-81; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct Standards; Supervisory Employees; Waiver of Divestiture Requirements for Guy W. Fiske

In the matter of waiver pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91) and 18 U.S.C. 208(b) for Guy W. Fiske.

Section 602(a) of the Department of Energy Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Guy W. Fiske has been nominated by the President and confirmed by the Senate to be Under Secretary of the Department of Energy. Mr. Fiske has interests in three oil and gas drilling limited partnerships: Kenai Partners 1980 Drilling Fund—Series I, Forest Exploration Inc. (1980 Drilling Program), and Can-Am Drilling Programs, Inc. He also owns common stock and options for the purchase of common stock of General Dynamics Corporation.

It has been established to my satisfaction that requiring immediate divestiture of the aforementioned interests in the oil and gas drilling limited partnerships and in common stock and options for the purchase of common stock of General Dynamics Corporation would impose exceptional hardship on Mr. Fiske within the meaning of section 602(c) of the Act. Accordingly, I have granted him a waiver of the divestiture requirements of section 602(a) of the Act with respect to such interests subject to the following schedule of divestitures:

1. With respect to shares of General Dynamics common stock currently owned by Mr. Fiske and received by him in consideration of his employment with the company, he will sell such stock no later than February 28, 1982.

2. With respect to Mr. Fiske's options to purchase shares of General Dynamics common stock, which must be exercised within 3 months of termination of his employment with General Dynamics, Mr. Fiske will divest himself of all such stock no later than 180 days after he assumes the office of Under Secretary.

3. With respect to the interests in Kenai Partners 1980 Drilling Fund—Series I, Forest Exploration Inc. (1980 Drilling Program), and Can-Am Drilling Programs, Inc., Mr. Fiske will divest himself of such interests no later than January 31, 1982.

4. With respect to shares of General Dynamics common stock which will be distributed to Mr. Fiske upon termination of his accounts in the General Dynamics Savings and Stock Investment Plan, he will divest himself of such stock within 45 days after receipt of such stock.

5. With respect to shares of General Dynamics common stock that Mr. Fiske will receive under the terms of the General Dynamics Corporation Incentive Compensation Plan in four installments beginning on the date of termination of his employment with General Dynamics and ending in January, 1984, Mr. Fiske will divest himself of such stock within 30 days of acquiring ownership.

Mr. Fiske will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect on General Dynamics Corporation, or on the three oil and gas drilling limited partnerships (so long as he or his spouse retains an interest therein), unless the Secretary and the counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

In addition, Mr. Fiske has interests in a pension plan of the General Dynamics Corporation and in a pension plan of the General Electric Company. I am satisfied that Mr. Fiske's interests in the General Dynamics Corporation pension plan and in the General Electric Company pension plan are vested interests within the meaning of section 602(c) of the Act. Accordingly, I am waiving the divestiture requirements of section 602(a) with regard to these interests for the duration of Mr. Fiske's employment with the Department.

I have also determined, pursuant to section 208(b), Title 18, United States Code, that Mr. Fiske's interest in the General Electric Company pension plan is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him. Accordingly, I grant him a waiver of the provisions of section 208(a) for this interest.

The waivers granted herein will take effect upon Mr. Fiske's assumption of office.

Dated: October 6, 1981.

James B. Edwards,

Secretary.

[FR Doc. 81-29658 Filed 10-13-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and Japan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42

U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves the reprocessing of the U.S.-supplied fuel at the Tokai reprocessing facility in Japan. This subsequent arrangement supersedes the agreement between the Government of the United States of America and the Government of Japan of September 12, 1977 which was extended four times and which permitted the reprocessing of U.S.-supplies fuel up to October 31, 1981. The proposed subsequent arrangement would permit reprocessing of U.S.-supplied fuel in amounts up to the design capacity of the Tokai facility (210 tonnes per year) through December 31, 1984.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: October 8, 1981.
For the Department of Energy.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Programs.

[FR Doc. 81-29659 Filed 10-13-81; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Mandatory Petroleum Price Regulations; Adjustments to Lower and Upper Tier Crude Oil Price Ceilings to Reflect Impact of Inflation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA), of the Department of Energy (DOE) hereby issues Crude Oil Price Schedule No. 24 which sets forth the amounts by which producers would have been permitted to increase their selling price for old and new crude oil in the month of September 1981 in the absence of the Executive Order that exempted all domestic crude oil from price controls. This is the last price schedule which will be issued.

FOR FURTHER INFORMATION CONTACT:

Charles P. Little (Crude Oil Pricing Branch), Economic Regulatory Administration, 2000 M Street NW., Room 6128-P, Washington, D.C. 20461, 202-653-3459.

Ben McRae (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A 127, Washington, D.C. 20585, 202-252-6739.

SUPPLEMENTARY INFORMATION:

A. *Introduction*
B. *Crude Oil Price Schedule No. 24*

A. Introduction

On January 28, 1981, the President signed Executive Order No. 12287 (46 FR 9909, January 30, 1981) that exempted all crude oil from the price regulations adopted pursuant to the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA", Pub. L. 93-159). As a result of this Order, producers have been free since January 28, 1981 to sell all crude oil at the market price regardless of whether the crude oil is old or new crude oil under the price regulations. Even though price controls have been removed, the ceiling prices for old and new crude oil in the months after January 1981 may be relevant to the Front-End Tertiary Oil provisions of the Crude Oil Windfall Profit Tax Act of 1980. We have continued to calculate these amounts for subsequent months pending a resolution of the issue of whether the Front-End Tertiary Oil provisions of the Crude Oil Windfall Profit Tax apply to crude oil sold after January 27, 1981. Accordingly, we are issuing Crude Oil Price Schedule No. 24 that sets forth the amounts by which ceiling prices for old and new crude oil would have increased in the month of September 1981. This is the last price notice which will be issued since crude oil price contols would have terminated in the absence of Executive Order No. 12287 with the expiration of the EPAA on September 30, 1981.

B. Crude Oil Price Schedule No. 24

We have utilized the same methodology in determining the amounts of the price increases set forth in Crude Oil Price Schedule No. 24 as we did in all prior price schedules. Specifically, the determinations for September 1981 are based on the estimated average ceiling price for old or new crude oil in August 1981[1] and on the first revision of the GNP deflator published on August 21, 1981, which reflects an annual rate of inflation of 6.6 percent.[2]

On the basis of these determinations, we would have amended the Appendix to 10 CFR 212.77 to include the following schedule in the absense of Executive Order No. 12287 and the resulting rescission of 10 CFR 212.77 (46 FR 20508, April 3, 1981).

SCHEDULE NO. 24 OF MONTHLY PRICE ADJUSTMENTS—EFFECTIVE SEPTEMBER 1, 1981

Month	Lower tier—may 15, 1973, posted price[3] (plus)	Upper tier—Sept. 30, 1975, posted price[4] (plus)
1976:		
February	1.35	−1.32
March	1.38	−1.25
April	1.41	−1.18
May	1.45	−1.11
June	1.48	−1.05
July	1.48	−1.05
August	1.48	−1.05
September	1.48	−1.05
October	1.48	−1.05
November	1.48	−1.05
December	1.48	−1.05
1977:		
January	1.48	−1.25
February	1.48	−1.25
March	1.48	−1.70
April	1.48	−1.70
May	1.48	−1.70
June	1.48	−1.70
July	1.48	−1.70
August	1.48	−1.70
September	1.51	−1.44
October	1.54	−1.18
November	1.57	−.92
December	1.59	−.67
1978:		
January	1.61	−.82
February	1.63	−.77
March	1.66	−.71
April	1.69	−.65

[1] As a result of a technical error, Crude Oil Price Schedule No. 23 stated the upper tier adjustments for July and August 1981 would have been $3.22 and $3.35, respectively. The Correct adjustments would have been $3.23 and $3.36. We have used the correct adjustment in estimating the average ceiling price for old and new crude oil in August 1981. Price Schedule No. 24 contains the correct lower tier and upper tier adjustments for July and August 1981.

[2] Adjustment to the ceiling price for old crude oil in September 1981 was determined as follows:

A. ERA determined that the estimated average ceiling price for old crude oil in August 1981 was $7.19.

B. ERA computed a monthly adjustment factor of .00534 which when applied over a twelve-month period yields an effective annual rate of adjustment of 6.6 percent.

C. September 1981 adjustment equals:

($7.19) (.00534) per barrel

$.038 per barrel rounded to $.04 per barrel

Adjustment to the ceiling price for new crude oil in September 1981 was determined as follows:

A. ERA determined that the estimated average ceiling price for new crude oil in August 1981 was $16.03.

B. Adjustment factor (explained above) = .00534

C. September 1981 adjustment equals:

($16.03) (.00534) per barrel

$.086 per barrel rounded to $.09 per barrel

SCHEDULE NO. 24 OF MONTHLY PRICE ADJUSTMENTS—EFFECTIVE SEPTEMBER 1, 1981—Continued

Month	Lower tier—may 15, 1973, posted price[3] (plus)	Upper tier—Sept. 30, 1975, posted price[4] (plus)
May	1.72	−.59
June	1.75	−.52
July	1.78	−.45
August	1.81	−.38
September	1.86	−.28
October	1.91	−.17
November	1.96	−.06
December	1.99	.01
1979:		
January	2.02	.08
February	2.05	.15
March	2.09	.23
April	2.13	.31
May	2.17	.39
June	2.21	.48
July	2.25	.57
August	2.29	.66
September	2.33	.76
October	2.37	.86
November	2.41	.96
December	2.45	1.05
1980:		
January	2.49	1.14
February	2.53	1.23
March	2.57	1.33
April	2.61	1.43
May	2.66	1.53
June	2.71	1.64
July	2.76	1.75
August	2.81	1.86
September	2.87	1.98
October	2.93	2.10
November	2.99	2.23
December	3.04	2.35
1981:		
January	3.09	2.47
February	3.14	2.59
March	3.20	2.72
April	3.26	2.85
May	3.32	2.98
June	3.38	3.10
July	3.44	3.23
August	3.50	3.36
September	3.54	3.45

[3] The price referred to in 10 CFR 212.73(b)(1) or 212.73(c)(1), 212.73(c)(3), and 212.73(c)(4), as those provisions existed on January 27, 1981.
[4] The price referred to in 10 CFR 212.74(b)(1), as that provision existed on January 27, 1981.

Issued in Washington, D.C., September 2, 1981.

Barton R. House,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 81-29781 Filed 10-13-81; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP81-497-000]

Bridgeline Gas Distribution Co.; Application

October 7, 1981.

Take notice that on September 3, 1981, Bridgeline Gas Distribution Company (Applicant), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. CP81-497-000 an application pursuant to Section 1(c) of the Natural Gas Act for exemption from the provisions of the Natural Gas Act and the Regulations of the Commission thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that Applicant is a wholly-owned subsidiary of Texaco, Inc. (Texaco) and owns and operated three natural gas pipeline segments in Louisiana: one approximately 7.6 miles long connecting the Riverway Gas Pipeline Company (Riverway) with an electric-generating facility in Jefferson Parish, Louisiana, a second approximately 50 feet in length connecting Riverway with another electric-generating plant in St. Charles Parish, Louisiana, and a third approximately 250 feet long connecting riverway with a line owned by the Cajun Electric Power Cooperative, Inc. (Cajun). It is asserted that all gas received by Applicant is received, delivered and ultimately consumed within Louisiana.

Applicant states that it entered into a gas sales agreement with Natural Gas Pipeline Company of America (Natural) for the purchase of approximately 100,000 Mcf of natural gas per day at an initial price of $2.84 per million Btu. Applicant further states that pursuant to a transportation agreement between Applicant and United Gas Pipe Line Company (United) United would receive and transport the gas from Natural on behalf of Applicant at a cost of approximately 25.0 cents per Mcf. It is submitted that approximately 30,000 Mcf of natural gas per day would be delivered by United to Riverway at a point on its line near Texaco's Paradis Gas Processing Plant in St. Charles Parish, Louisiana, while the remaining 70,000 Mcf per day would be delivered by United to Riverway at a point on its line near Opelousas, St. Landry Parish, Louisiana. Riverway, it is asserted, would transport the gas pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

It is further submitted that the Applicant has also entered into a sales agreement with Columbia Gas Transmission Corporation (Columbia) for the purchase of approximately 115,000 Mcf of natural gas per day at an initial price of 2.90 per million Btu. Pursuant to such agreement, Applicant states, such gas would be delivered by Columbia or on its behalf to Riverway at a point on its line near Texaco's Paradis Plant in St. Charles Parish, Louisiana, or other locations agreed upon by the parties. It is stated that Riverway would then deliver the gas pursuant to Section 311(a) of the NGPA to any of Applicants three facilities for its system supply for resale to its customers.

It is explained that Applicant serves only two electric utility plants of Louisiana Power & Light Company and the single electric utility plant of Cajun so all gas purchased from Natural and from Columbia would be transported and consumed entirely within the State of Louisiana. It is further asserted that the Commissioner of Conservation of the State of Louisiana has certified to the Commission that the natural gas rates, service and facilities of Applicant are subject to the regulatory jurisdiction of the Commissioner of Conservation of the State of Louisiana and that the Commissioner is exercising such jurisdiction.

Applicant, therefore, requests a declaration of exemption pursuant to Section 1(c) of the Natural Gas Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-29682 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-02-M

[Project No. 5324-000]

Capital Development Co.; Application for Preliminary Permit

October 5, 1981.

Take notice that Capital Development Company (Applicant) filed on September 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5324 to be known as the South Point Water Power Project located on Johnson Creek and Smith Creek in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Corespondence with the Applicant should be directed to: Mr. John J. Terpstra, Vice President, Development of Energy Facilities, Capital Development Company, #4 South Sound Center, P.O. Box 3487, Lacey, Washington 98503.

Project Description—The proposed project would consist of: (1) two 15-foot high concrete overflow diversion dams; (2) two reservoirs with negligible storage; (3) powerhouse containing a turbine-generator with a rated capacity of 18 MW and average annual energy production of 72,343 MWh; (4) transmission lines; and (5) appurtenant facilities. A potential customer for the power project would be the Lewis County P.U.D. The project is located entirely in Gifford Pinchot National Forest.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time studies would be made to determine the environmental, economic and engineering feasibility of the proposed project, in support of an application for a license for the project. The estimated cost of these studies is $150,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 9, 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 December 9, 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, 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. 81-29683 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 2312-001]

Diamond International Corp.; Application for Amendment of License

October 5, 1981.

Take notice that on September 10, 1981, Diamond International Corporation (Licensee) filed an application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for amendment of its license for its Great Works Project, FERC No. 2312, located near the town of Old Town, Penobscot County, Maine. Correspondence with the Licensee should be directed to: A. J. Moody, Manager, Environmental Services, Diamond International, Route 2, Old Town, Maine 04460.

Licensee requests that its license be amended to authorize the installation of three additional turbine-generator units with a total rated capacity of 3,150 kW in the Licensee's existing powerhouse bays 1, 2 and 3. The new turbine-generators would replace two inoperative 1,200 kW D.C. turbine-generator units in bays 1 and 2. Bay 3 has never had turbine-generators. The installation of new more efficient generating capacity would allow the project to generate an additional 20,000,000 kWh annually. The project will continue to be operated run-of-the-river. In addition, Licensee has requested that its license term be extended to a full 50 year term because of the additional capacity proposed.

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 November 18, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D. C. 20426. That application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-29685 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 5280-000]

Eastern Sierra Energy Department; Application for Preliminary Permit

October 5, 1981.

Take notice that Eastern Sierra Energy Department (Applicant) filed on August 25, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5280 to be known as the Poverty Hills Hydroelectric Power Project located on Birch Creek, Tinemaha Creek, and Goodale Creek in Inyo County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. K. Thomas Miller, President, Fluid Energy Systems Inc., 220 Wilshire Blvd. #699, Santa Monica, California 90403.

Project Description—The proposed project with three developments would consist of: A. (1) a 20-foot to 50-foot high, 500-foot long diversion dam on Birch Creek; (2) a 3-foot to 4-foot diameter, 28,000-foot long penstock; (3) a powerhouse with a total rated capacity of 3,300 kW; and (4) a 4,000-foot long transmission line from the powerhouse to an existing transmission line. The Applicant estimates that the average annual energy production would be 20.24 million kWh. B. (1) a 20-foot to 50-foot high, 1,000-foot long diversion dam on Tinemaha Creek; (2) a 3-foot to 4-foot diameter, 17,200-foot long penstock; (3) a powerhouse with a total rated capacity of 3,880 kW; and (4) a 4,000-foot long transmission line from the powerhouse to an existing transmission line. The

Applicant estimates that the average annual energy production would be 23.79 million kWh. C. (1) a 20-foot to 50-foot high, 1,000-foot long diversion dam on Goodale Creek; (2) a 3-foot to 4-foot diameter, 23,400-foot long penstock; (3) a powerhouse with a total rated capacity of 2,970 kW; and (4) a 5,000-foot long transmission line from the powerhouse to an existing transmission line. The Applicant estimates that the average annual energy production would be 18.21 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which it would conduct technical, environmental and economic studies, and also prepare a FERC license application. No new roads would be needed for conducting these studies. The Applicant estimates that the cost of undertaking these studies would be $150,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 11, 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 December 11, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the tital "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 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. 81-29686 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 3586-001]

Joseph R. Ellen, Jr.; Application for Exemption for Small Hydroelectric Power Project Under 5 MW Capacity

October 5, 1981.

Take notice that on August 10, 1981, Joseph R. Ellen, Jr. (Applicant), filed an application under Section 408 of the Energy Security Act of 1980 (Act) [16 U.S.C. 2705 and 2708 *as amended*], for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric project (FERC Project No. 3586) would be located on the Rocky River in Chatham County, Pittsboro, North Carolina.

Correspondence with the Applicant should be directed to: Mr. Joseph R. Ellen, Jr., Post Office Box 6501, Raleigh, North Carolina 27628.

Project Description—The proposed Rocky River project would consist of: (1) an existing concrete dam approximately 130 feet long and 30 feet high; (2) an existing reservoir with a storage capacity of 420 acre-feet at maximum surface elevation of approximately 295 feet m.s.l. and an approximate surface area of 30 acres; (3) an existing powerhouse located on the western bank of the river; (4) proposed transmission lines; and (5) appurtenant facilities. Applicant estimates that the capacity of the project would be 250 kW with an average annual energy output of 1,100,000 kWh.

Purpose of Project—Applicant would sell its project power to Carolina Power and Light Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the North Carolina State Clearinghouse are requested, for the purposes set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before November 23, 1981 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or 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 January 22, 1982. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions To Intervene—Anyone 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 November 23, 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 document 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.W., Washington, DC. 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, 825 North Capitol 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. 81-29688 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Docket No. CP69-23-009]

El Paso Natural Gas Co.; Petition To Amend

October 7, 1981.

Take notice that on September 18, 1981, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, file in Docket No. CP69-23-009 a petition pursuant to Section 7(c) of the Natural Gas Act to amend the order issued August 21, 1979,[1] as amended, in the instant docket so as to authorize revisions in the existing transportation agreement between Petitioner and Pioneer Natural Gas Company (Pioneer), 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 submitted that by order issued August 21, 1969, as amended, in the instant docket Petitioner was authorized to continue the operation of certain natural gas tap and metering facilities with appurtenances, the sale and delivery of natural gas to 27 distributor customers for resale, and the transportation and delivery of natural gas to 13 direct sale customers. It is further submitted that pursuant to such order, Petitioner was authorized to continue the arrangements under the Gaines County transportation agreement dated April 15, 1961, between Petitioner and Pioneer. Such transportation agreement, it is stated, provided for the delivery of certain quantities of natural gas by Pioneer to petitioner and the transportation and redelivery of certain quantities of natural gas to Pioneer.

Petitioner states that Pioneer has additional quantities of natural gas available for delivery to Petitioner and that Pioneer desires to make up to 50,000 Mcf per day available to Petitioner for transportation and reduction of any imbalances which may occur under existing arrangements under the transportation agreement. Petitioner further states that delivery of such gas would be made at an existing point of interconnection in Ector County, Texas. Accordingly, it is submitted, on July 9, 1981, Petitioner and Pioneer amended their transportation agreement so as to provide for the addition of the Ector County, Texas, delivery point.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 27, 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. 81-29687 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 5320-000]

Hydro Resource Co.; Application for Preliminary Permit

October 5, 1981.

Take notice that Hydro Resource Company (Applicant) filed on September 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5320 to be known as the Summit Falls Creek Hydroelectric Development Project located on Summit Falls Creek, a tributary of the Ohanapecosh River in Lewis County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jerry L. Johnson, Agent, Post Office Box 485, Lynden, Washington 98264.

Project Description—The proposed project would consist of: (1) a concrete gravity diversion dam 100 feet long and 8 feet high with an uncontrolled spillway; (2) reservoir with negligible storage; (3) powerhouse containing a single turbine-generator with a capacity of 12 MW and annual energy output of 80 million kWh; (4) transmission lines; and (5) appurtenant facilities. Potential customers for the power project include the local electric service utility and Bonneville Power Administration. The project is located entirely in Gifford Pinchot National Forest.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time feasibility studies would be conducted to optimize use of the water resource by taking into account all environmental, economic and engineering factors. These studies also would support application for a license for the project. The Applicant estimates that the cost of conducting studies under Preliminary Permit authorization would be $210,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 9, 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

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[1] This proceding was commenced before theFPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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 December 9, 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 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. 81-29080 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 5241-000]

G. A. Jones; Application for Preliminary Permit

October 5, 1981.

Take notice that G. A. Jones (Applicant) filed on August 18, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 5241 to be known as the Wallace Creek Hydroelectric Project located on Wallace Creek in Whatcom County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: G. A. Jones, Anvil Power Inc., 1675 W. Bakerview Road, Bellingham, Washington 98226.

Project Description—The project would consist of: (1) a 50-foot high dam on Wallace Creek; (2) a 36-inch diameter, 1.5-mile long diversion conduit; (3) 2,000-foot long penstock; (4) a powerhouse with a total rated capacity of 3,000 kW; and (5) a 9.5-mile long, 12-kV transmission line from the powerhouse to an existing Puget Power Company transmission line. The Applicant estimates that the average annual energy production would be 13 million kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months during which it would conduct technical, environmental and economic studies, and also prepare an FERC license application. The Applicant estimates that the cost of undertaking these studies would be $150,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 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, protests, or petitions to intervene must be received on or before December 8, 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 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. 81-29089 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 2809-002]

Maine Hydro Electric Development CORP. & Swift River Co.; Application for Transfer of Minor License

October 5, 1981.

Public notice is hereby given that an application was filed on September 21, 1981, under the Federal Power Act, 16 U.S.C. 791(a)—825(r), by Maine Hydro Electric Development Corporation (Licensee) and Swift River Company (Transferee) for transfer of the minor license for the American Tissue Project No. 2809. The project is located on the Cobbosseecontee Stream in the town of Gardiner, Kennebec County, Maine. Correspondence should be directed to: John W. Gulliver, Pierce, Atwood, Scribner, Allen, Smith and Lancaster, One Monument Square, Portland, Maine 04101.

The American Tissue Project would consist of an existing dam, a new penstock and a new powerhouse containing a turbine-generator unit with a total rated capacity of 900 kW. No new facilities have been constructed as yet. Transferee has proposed to purchase the project lands and dam from the American Tissue Mills (the current owner) and rights under the license from the Licensee.

Transferee has proposed to operate the project, when constructed, in accordance with the license.

Swift River Company is a private corporation organized under the laws of Massachusetts and authorized to do business in the State of Maine.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commssion will consider all protests or other comments filed, but a person who merely files a

protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 19, 1981. The Commission's address is: 825 North Capitol Street, N.W., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-29691 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Project No. 5311-000]

Mark Nielsen; Application for Preliminary Permit

October 5, 1981.

Take notice that J. Mark Nielsen (Applicant) filed on September 2, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for Project No. 5311 to be known as the Quick Bucks Project located on Bucks Creek in Plumas County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: (1) an intake structure in Bucks Lake; (2) a 10-foot diameter, 2,000-foot long pressure tunnel through the right abutment of the dam; (3) a powerhouse containing one generating unit with a rated capacity of 3,500 kW; and (4) transmission facilities. The Applicant estimates that the average annual energy output would be 8.0 million kWh.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would conduct engineering, environmental, economic, and feasibility studies, and prepare an FERC license application. No new roads woud be required to conduct the studies. The cost of the work to be performed under the preliminary permit is estimated to be $80,000.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 11, 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 December 11, 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, 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. 81-29692 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Docket No. CP81-515-000]

Northern Natural Gas Co.; Application

October 7, 1981.

Take notice that on September 15, 1981, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-515-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to accommodate the delivery of natural gas to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), a utility customer of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate three new delivery points and to modify one existing delivery point for Peoples. It is stated that the three new delivery points would be used to provide service to fuel compressor stations on the carbon dioxide gathering system of Peoples' customer, Transpetco, in Hansford and Ochiltree Counties, Texas. It is further asserted that the existing delivery point located in Hayfield, Minnesota, would require modification of existing measuring facilities to serve the increased agricultural requirements of Peoples' market area.

It is asserted that additional volumes to be delivered to Peoples through the proposed facilities are within the present entitlements of Peoples and would be delivered pursuant to the effective service agreement between Applicant and Peoples.

Applicant estimates the cost of the proposed facilities to be $19,375 which would be financed from cash on hand. Peoples, it is stated, would then reimburse Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 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 particpate 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. 81-29693 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-02-M

[Docket No. ER81-653-000]

Northern States Power Co. (Wisconsin); Order Accepting for Filing and Suspending Proposed Rates, Granting Summary Disposition in Part, Granting Intervention, Granting Waiver of Notice Requirements, Denying Motions To Reject, and Establishing procedures

Octoer 2, 1981.

On August 3, 1981, Northern States Power Company, Wisconsin (NSP-W) submitted for filing proposed revisions to its rate schedules for firm power service to twelve municipal wholesale customers [1] which provide for an increase in jurisdictional revenues of approximately $1,487,000 (17.69%) based on the twelve-month test period ending December 31, 1982. The proposed rates consist of (1) a revised Schedule W-1 full requirements rate applicable to ten customers; (2) a revised Schedule LP-1 partial requirements rate applicable to the City of Barron; and (3) a revised Schedule W-1 (BRF) rate to be applicable to the City of Black River Falls until its current contract with NSP-W expires on February 27, 1982.[2] NSP-W requests an effective date 60 days after filing for these rates. In addition, NSP-W has submitted for filing a new Schedule PS-1 partial requirements peak-shaving rate to be applicable to Black River Falls when its present contract expires. NSP-W states that this rate is also to be available to other municipal customers that may wish to use it. For this proposed rate, NSP-W requests waiver of the 120-day notice requirements to allow an effective date of February 28, 1982.

Notice of the filing was issued August 10, 1981, with responses due on or before August 31, 1981. The Public Servcie Commission of Wisconsin filed a timely notice of intervention, but did not request a hearing. On Ausugt 31, 1981, the Wisconsin Public Power Incorporated SYSTEM [3] and seven of NSP-W's twelve municipal customers (Municipals) [4] filed a petition to intervene, collectively requesting that the filing be rejected or suspended for five months and set for hearing. Municipals state that NSP-W and NSP-Minnesota share the costs of their integrated generation and transmission system by means of a Coordinating Agreement. Since NSP-Minnesota owns most of the System's generation, a large part of NSP-W's fixed costs are incurred as fixed charges through the Coordinating Agreement, which in effect allocates a portion of the system's return on rate base to NSP-W. Municipals assert that NSP-W's projected payments to NSP-Minnesota under the Coordinating Agreement for the 1982 test year (which NSP-W includes in its cost of service as purchased power expense) include a return on $145,612,000 of production-related construction work in progress (CWIP) and on $5,379,000 of Transmission-related CWIP. Municipals contend that inasmuch as neither NSP-W no NSP-Minnesota has requested permission to include CWIP in rate base, NSP-W's filing should be rejected.[5]

In support of their alternative request that the filing be suspended for five months and set for hearing, Municipals contend that NSP-W has improperly treated a variety of cost of service items.[6]

In addition, Municipals request summary disposition with respect to NSP-W's (1) allocation to wholesale customers of EPRI and EEI contributions; (2) inclusion of accumulated deferred investment tax credits (ADITC) in capitalization for tax purposes; and (3) inclusion in O&M expense of an amount purportedly representing a return on NSP-Minnesota's CWIP. Several of the issues raised by Municipals with respect to the proposed rates and service are the same as those that are subject ot litigation in Docket No. ER80-181, NSP-W's most recent prior rate increase filing to the same customers.[7] Municipals contend that the decision in that docket with respect to such issues should be binding in the instant docket. Specifically, Municipals object to the availability clauses in the proposed rates which limit service to individual systems, precluding sales to the SYSTEM for resale to the Municipals, and to certain terms and conditions of the proposed partial requirements services.[8]

Municipals allege price squeeze although they indicate that they do not know at this time whether the rates eventually found to be just and reasonable will result in a price squeeze.

On September 15, 1981, Municipals filed, out of time, an amendment to their petition to intervene, requesting intervention on behalf of three more municipalities (Cadott, Cornell, and Banjor, Wisconsin). Municipals also request rejection of the filing on the additional ground that the proposed Schedule PS-1 and LP-1 rates are not full and complete rate schedules as required by the regulations. Municipals point out that these schedules require the execution of an individual contract with the affected customer. The Municipals have attached to their pleading contracts purportedly offered by NSP-W to Black River Falls and River Falls (not currently an NSP-W customer) for service under the PS-1 and LP-1 rates, respectively. According to Municipals, such contracts contain certain standard and important terms and conditions which are not contained

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[1] *See* Attachment A for the rate schedule designations and customer identification.

[2] Black River Falls owns and operates diesel generating units and purchases its additional requirements from NSP-W. The present contract provides capacity credits in recognition of the fact that NSP-W may request that the city opeate its diesel units. NSP-W is phasing out its own diesel generation and no longer desires the backup of the city's diesel capacity. NSP-W has given the city notice that it will not renew the present contract when it expires on February 27, 1982. NSP-W states that the city may contract to take service under either of the other two scedules (W-1 or LP-1) if it so chooses.

[3] The SYSTEM is an association of 29 Wisonsin municiapl electric utilities, five of which are within NSP-W's service area.

[4] The Cities and Villages of Black River Falls, Bloomer, New Richmond, River Falls, Spooner, Westby, and White-hall, Wisconsin.

[5] Municipals states that this issue represents a cost of service impact of $326,000, or approximately 20% of the proposed increase.

[6] Twelve specific items in NSP-W's cost of service are questioned, including a five-year property loss amortization for the cancelled Tyrone Energy Park nuclear plant project (Tyrone project). The appropriate amortization period for this loss and the related cost of service adjustments are subjects of ongoing proceedings in Docket No. ER79-616. An Initial Decision was issued in that docket on December 4, 1980.

[7] The hearing in that docket was completed in May of 1981, but an Initial Decision has not yet been issued.

[8] On September 11, 1981, NSP-W filed a response to Municipals' petition to intervene, denying improper return on CWIP, responding to each specific cost of service issue raised, and requesting denial of summary disposition.

in the proposed PS–1 and LP–1 schedules and which should have been filed by NSP–W with its instant submittal.

Discussion

Initially, the Commission finds that participation by each of the petitoners is in the public interest. Further, we find that good cause exists to permit amendment of the petiton to intervene and to permit the additional Municipals to intervene out of time. Accordingly, the petitioners will be permitted to intervene. The timely notice filed by the Public Service Commission of Wisconsin is sufficient to initiate its participation as an intervenor.

Our review of NSP–W's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as directed below.

In a number of suspension orders,[9] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. Although the intervenors have raised a number of matters which warrant further inquiry at hearing, including price squeeze and certain terms and conditions of service, our preliminary review suggests that NSP–W's rates may not produce excessive revenues, particularly considering the summary dispositions ordered below. Under these circumstances, a nominal suspension and a refund obligation should adequately protect the affected customers pending a hearing. Therefore, with the exception of NSP–W's new peak-shaving rate, we shall accept the proposed rates for filing and suspend them for one day to become effective on October 4, 1981, subject to refund.

As noted above, with regard to the propposed peak-shaving rate, NSP–W has requested waiver of the 120-day notice requirements to allow the proposed Schedule PS–1 rate to become effective on February 28, 1982, for Black River Falls, and to allow those rates to become available for other potential customers. However, NSP–W has not submitted for filing a service schedule for any potential customer specifically providing for service under Schedule PS–1. In order to facilitate availability of the peak-shaving service to interested customers and to enable such customers to pursue their concerns regarding terms and conditions of service at hearing, we shall grant the request for waiver of notice and we shall suspend the PS–1 rate schedule for one day from the proposed effective date to become effective subject to refund, as of March 1, 1982. In view of the fact that no customer (including Black River Falls whose existing contract will continue in effect through February 27, 1982) can be placed under the PS–1 rates in the absence of an appropriate submittal of a superseding service agreement for such customer containing all pertinent terms and conditions of service, we believe that the Municipals' motion to reject NSP–W's filing is premature. At such time as NSP–W does file one or more superseding service schedules under the PS–1 rate, all options will still be available to the Commission, including the opportunity to evaluate any submittal to assure completeness and the authority to suspend if appropriate.

Municipals' allegations concerning the inclusion of a return on CWIP in NSP-Minnesota's fixed charges to NSP–W cannot be confirmed by the material submitted by NSP–W in the instant docket or by the material recently filed by NSP-Minnesota in Docket No. ER81–651–000. Because we believe that this is an issue which should be considered on the basis of an evidentiary hearing, we shall decline to reject the filing on this basis or to grant summary disposition.

Municipals have asked that the Commission summarily reject NSP–W's inclusion of contributions to EEI and EPRI in its wholesale cost of service. In several litigated rate cases, we have consistently excluded EPRI expenses from wholesale costs of service.[10] At this juncture, it appears that the EPRI issue has been resolved with sufficient clarity and in sufficiently generic terms to render further litigation on the issue inappropriate. Accordingly, the motion for summary disposition will be granted insofar as it relates to EPRI. We shall not, however, summarily reject amounts contributed by NSP–W to EEI which are not channeled through to EPRI or the Liquid Metal Fast Breeder Reactor (LMFBR) programs.

In addition, Municipals seek summary disposition of NSP–W's inclusion of ADITC as a separate component of capitalization in calculating a long-term debt interest expense for income tax purposes. Consistent with established Commission policy on this issue,[11] we shall grant the request for summary disposition. However, in light of the relatively small impact on total revenue requirements of this summary disposition and our conclusion concerning EPRI expenses, NSP–W will not be required at this time to refile its cost of service and rates to reflect these determinations.

Because the appropriate amortization period and related cost of service treatment for the Tyrone project loss are at issue in the proceedings in Docket No. ER79–616, for purposes of the instant docket these matters shall be subject to the outcome of the proceedings in the earlier case. Similarly, issues regarding the availability clauses of the proposed rates and the terms and conditions of partial requirements service that are identical to the issues being litigated in Docket No. ER80–181 shall be subject to the outcome of those proceedings.

In accordance with the Commission's policy established in *Arkansas Power and Light Company*, Docket No. ER79–339, order issued August 6, 1979, we shall phase the price squeeze issue raised by the Municipals. As we have noted in previous orders, this procedure will allow a decision first to be reached on the cost of service, capitalization, rate of return, and remaining issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission Orders

(A) Municipals' motions to reject the filing are hereby denied.

(B) Summary disposition is hereby ordered with respect to (1) NSP–W's treatment of ADITC in computing interest expense for tax purposes, and (2) NSP–W's inclusion of EPRI expenses in its wholesale cost of service, in accordance with the discussion of these matters above. NSP–W shall reflect these determinations in its compliance

[9] *E.g., Boston Edison Company*, Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Company*, Docket Nos. ER80–506, *et al.* (August 29, 1980) (one day suspension) *Cleveland Electric Illuminating Company*, Docket No. ER80–488 (August 22, 1980) (one day suspension).

[10] *E.g., Illinois Power Company*, Docket No. ER77–531 (April 10, 1981).

[11] *E.g., Public Service Company of New Mexico*, Docket Nos. ER79–478 and ER79–479 (December 18, 1979).

cost of service at the conclusion of this proceeding.

(C) All other motions for summary disposition are hereby denied.

(D) NSP–W's request for waiver of the notice requirements is hereby granted with respect to Schedule PS–1. Proposed Schedule PS–1 is hereby accepted for filing and suspended for one day from the proposed effective date, to become effective on March 1, 1982, subject to refund pending hearing and decision.

(E) NSP–W's proposed Schedule W–1, LP–1, and W–1 (BRF) rates are hereby accepted for filing and suspended for one day from sixty days after filing to become effective on October 4, 1981, subject to refund pending hearing and decision.

(F) The issues concerning cost of service treatment of the Tyrone project loss as well as the availability clause of the proposed rates and the terms and conditions of partial requirements service shall be subject to the Commission's determinations with respect to the same issues in Docket Nos. ER79–616 and ER80–181.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization 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), a public hearing shall be held concerning the justness and reasonableness of NSP–W's rates.

(H) The petitioners are hereby permitted to intervene in this proceeding subject to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act; *Provided, however,* that participation by such intervenors shall be limited to the matters set forth in the petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders entered by the Commission in this proceeding.

(I) The Commission staff shall serve top sheets in this proceeding on or before November 3, 1981.

(J) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a 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 designated law 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.

(K) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(L) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT A.—NORTHERN STATES POWER COMPANY (WISCONSIN)

[Docket No. ER81–653–000. Filed: August 3, 1981]

Designation	Other party
SCHEDULE W–1	
(1) Supplement No. 2 to Supplement No. 8 to Rate Schedule FPC No. 51 (Supersedes Supplement No. 1 to Supplement No. 8).	City of Whitehall.
(2) Supplement No. 2 to Supplement No. 8 to Rate Schedule FPC No. 52 (Supersedes Supplement No. 1 to Supplement No. 8).	Village of Trempealeau.
(3) Supplement No. 2 to Supplement No. 10 to Rate Schedule FPC No. 55 (Supersedes Supplement No. 1 to Supplement No. 10).	City of Westby.
(4) Supplement No. 2 to Supplement No. 7 to Rate Schedule FPC No. 56 (Supersedes Supplement No. 1 to Supplement No. 7).	City of Rice Lake.
(5) Supplement No. 2 to Supplement No. 6 to Rate Schedule FPC No. 58 (Supersedes Supplement No. 1 to Supplement No. 6).	City of Bangor.
(6) Supplement No. 2 to Supplement No. 6 to Rate Schedule FPC No. 59 (Supersedes Supplement No. 1 to Supplement No. 6).	City of Cornell.
(7) Supplement No. 2 to Supplement No. 8 to Rate Schedule FPC No. 60 (Supersedes Supplement No. 1 to Supplement No. 8).	City of New Richmond.
(8) Supplement No. 2 to Supplement No. 2 to Rate Schedule FPC No. 61 (Supersedes Supplement No. 1 to Supplement No. 61).	Village of Cadott.
(9) Supplement No. 2 to Supplement No. 1 to Rate Schedule FPC No. 62 (Supersedes Supplement No. 1 to Supplement No. 1).	City of Bloomer.
(10) Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 1 to Supplement No. 3).	City of Spooner

ATTACHMENT A.—NORTHERN STATES POWER COMPANY (WISCONSIN)—Continued

[Docket No. ER81–653–000. Filed: August 3, 1981]

Designation	Other party
SCHEDULE W–1 (BRF)	
(11) Supplement No. 2 to Supplement No. 8 to Rate Schedule FPC No. 54 (Supersedes Supplement No. 1 to Supplement No. 8).	City of Black River Falls.
SCHEDULE LP–1	
(12) Third Revised Sheet Nos. 1 and 2, Second Revised Sheet No. 2A, and First Revised Sheet No. 3 under FERC Electric Tariff, Original Volume No. 1.	City of Barron.
SCHEDULE PS–1	
(13) FERC Electric Tariff Original Volume No. 2 (Original Sheet Nos. 1 through 3).	None at this time.

[FR Doc. 81–29694 Filed 10–13–81; 8:45 am]

BILLING CODE 6712–85–M

[Docket No. EL81–20]

Pacific Northwest Electric Power Planning and Conservation Act; Rates for Sales to Bonneville Power Administration; Order Convening Joint State Board and Requesting Comments on Average System Cost Methodology

October 1, 1981.

On October 1, 1981, in Docket No. RM81–41, the Commission issued an interim rule inviting comments on the "average system cost methodology" filed by Bonneville Power Administration (BPA) on August 27, 1981, pursuant to section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (the Act).[1] Pursuant to section 9(g) of the Act, the Commission shall convene a Joint State Board and we shall request that it provide the Commission with comments on the interim methodology in accordance with the Commission's procedures contained in the interim rulemaking.

Background

The Act provides for the Administrator of BPA (Administrator) to purchase electric power from Pacific Northwest electric utilities at the average system cost of the selling utility.[2] The Act directs the Administrator to develop a methodology for determining average system cost in consultation with interested parties and affected State Commissions, and grants

[1] Pub. L. No. 96–501, 94 Stat. 2697, *et seq.* (1980).

[2] Section 5(c)(1).

this Commission authority to review and approve the methodology so developed.[3]

Section 9(g) of the Act directs the Commission to convene a Joint State Board pursuant to section 209 of the Federal Power Act when reviewing the rates based on the average cost methodology for the sale of power to the Administrator by an investor-owned utility customer under section 5(c). Section 9(g) further instructs the Commission to invest the board with such duties and authority as will assist the Commission in its review of those rates.

In anticipation of Bonneville's filing and pursuant to section 209 of the Federal Power Act [4] and regulations promulgated thereunder,[5] the Commission, by letter dated May 15, 1981, appointed members to the Joint State Board from nominations submitted by each of the participating States.[6]

In addition, the Commission appointed Ernst Liebman, FERC administrative law judge, as the Commission's representative on and presiding federal member of the board. On July 9, 1981, the members of the Board met in Seattle, Washington to discuss procedural matters and to receive a briefing from representatives of BPA on the proposed average system cost methodology.[7]

Discussion

While section 9(g) does not specifically require the Commission to convene a Joint State Board while reviewing the average cost methodology, it does require Board review of the rates developed on the basis of that methodology; we find that it is consistent with the intent of the Act and will be of substantial assistance to the Commission to receive the comments of the Joint State Board regarding the proposed methodology.

Therefore, the Commission hereby convenes the Joint State Board and requests that it provide the Commission with its comments regarding BPA's proposed average system cost methodology pursuant to the procedural schedule set out in the interim rulemaking.[8] To the extent possible, meetings of the Board shall be governed by the Commission's Rules of Practice and Procedure.[9] The Commission's representative shall be the presiding officer of the Board, and shall have the powers and authority provided for presiding officers by the Commission's Rules and Regulations, particularly § 1.27. Each Board member shall have an equal vote in any recommendation representing the Board's opinion as well as a right to file dissenting comments. The Commission will grant reasonable allowances for travel and *per diem* expenses for the appointed Board members.[10]

The Commission Orders

(A) Pursuant to section 9(g) of the Pacific Northwest Electric Power Planning and Conservation Act, and section 209 of the Federal Power Act, the Commission hereby convenes a Joint State Board and invests the board with the duties and the authority as described above.

(B) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 81-29695 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

[Project No. 5327-000]

L. MacRae Rood; Application for Preliminary Permit

October 5, 1981.

Take notice that L. MacRae Rood (Applicant) filed on September 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5327 known as the Barnet Project located on the Stevens River in the town of Barnet, Caledonia County, Vermont. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: L. MacRae Rood, Box 142, Warren, Vermont 05674-0142.

Project Description—The proposed project would consist of: (1) a 1 to 4-foot high, 500-foot long, concrete diversion dam to be rebuilt; (2) a reservoir with no appreciable storage capacity; (3) a new 3-foot diameter penstock 500-foot long; (4) a new powerhouse with turbine-generators with a total rated capacity of 370 kW; (5) a short transmission line; and (6) appurtenant facilities. Energy from the project would be sold to Green Mountain Power Corporation. The project site is owned by Harold Dunbar, Harold Kimball, John Whitehill and Bob Forman all of Barnet, Vermont.

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 $59,000. Applicant has proposed a preliminary permit term of 36 months.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 9, 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

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[3] Section 5(c)(7) of the Act provides, in pertinent part, that:

"The 'average system cost' for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council [Pacific Northwest Electric Power and Conservation Planning Council provided for in subsection 4(a)(1) of the Act], the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission."

[4] 16 U.S.C. § 824h.

[5] 18 CFR 1.37.

[6] The State representatives to the Joint State Board are as follows:

Appointee, Affiliation and Position

Thomas J. Schneider, Montana PSC, Member.
Howard L. Ellis, Montana PSC, Alternate.
Richard S. High, Idaho PUC, Member.
Conley Ward, Jr., Idaho PUC, Alternate.
John J. Lobdell, Oregon PUC, Member.
Gene Maudlin, Oregon PUC, Alternate.
A. J. Benedetti, Washington UTC, Member.
Robert W. Bratton, Washington UTC, Alternate.

[7] Notice of the meeting, which was open to the public, was issued on June 17, 1981.

[8] *See* no. 2, *supra.*

[9] 18 CFR Chapter I (1980).

[10] Allowances will be granted in accordance with Department of Energy Travel Policy and Procedures Manual, DOE Order No. 1500.2, March 16, 1981.

Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before December 9, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the titel "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 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. 81-29806 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

[Project No. 5332-000]

City of Seattle; Application for Preliminary Permit

October 5, 1981.

Take notice that City of Seattle (Applicant) filed on September 4, 1981, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 5332 to be known as the Diobsud Creek Waterpower Project located on Diobsud Creek in Skagit County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Joseph P. Recchi, Superintendent, City of Seattle, City Light Department, City Light Building, 1015 Third Avenue, Seattle, Washington 98104.

Project Description—The proposed project would consist of: (1) a 200-foot long, 10-foot high concrete-gravity diversion dam creating; (2) a small pondage covering an area of 1 acre; (3) a 48-inch diameter, 7,500-foot long steel pipeline; (4) a 48-inch diameter, 500-foot long steel penstock; (5) a powerhouse containing a single generating unit with a rated capacity of 5.5 MW; (6) transformers and switching equipment located adjacent to the powerhouse; and (7) a .8-mile long transmission line. The estimated average annual energy production of the project is 27.2 GWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The applicant seeks issuance of a preliminary permit for a period of 36 months during which time the applicant would conduct engineering, environmental, and economic feasibility studies as well as prepare an application for an FERC license. The estimated cost for conducting these studies is $250,000.

Competing Applications—This application was filed as a competing application to the Diobsud Creek Waterpower Project No. 4437 filed on March 30, 1981, by Glacier Energy Company, under 18 CFR 4.33 (1980). Public notice of the filing of the initial application has already been given and the due date for filing competing applications or notices of intent has passed. Therefore, no further competing applications or notices of intent to file competing applications will be accepted for filing.

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 November 3, 1981.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", of "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, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Regulatory Commission, Room 208 RB at the above address. 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. 81-29684 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

[Docket No. ST81-186-001]

Transok Pipe Line Co.; Petition for Rate Approval

October 7, 1981.

Take notice that on September 8, 1981, Transok Pipe Line Company (Petitioner), P.O. Box 3008, Tulsa, Oklahoma 74101, filed in Docket No. ST81-186-001 a petition pursuant to § 284.123(b) (2) of the Commission's Regulations for approval of an increase in rates for the transportation of natural gas on behalf of Lone Star Gas Company (Lone Star), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner proposes to increase the transportation rate previously approved of 18.18 cents per million Btu to 23.2 cents per million Btu. Petitioner states that its most recent cost of service study reflects an increase in overall system costs in the backbone transmission system, increases in operation and maintenance costs due to inflation, increased capital costs arising from a refinancing of long-term dept which matured in late 1980, and an increase in the cost of the common equity component of capitalization as reasons for its proposed increase. It is asserted that petitioner and Lone Star amended the original gas transportation agreement on June 1, 1981, to provide contractual authority to restructure Petitioner's transportation rates so long as such rates were fair and equitable. Petitioner submits that the 23.2 cents per million Btu rate is fair and equitable.

Any person desiring to be heard or to make a protest with reference to said petition should on or before October 27, 1981, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party

to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 81-29697 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

[Docket No. CP81-526-000]

United Gas Pipe Line Co.; Application

October 7, 1981.

Take notice that on September 21, 1981, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-526-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain natural gas facilities in the Tyler, Texas, area in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that one of the segments of its system that has been operated so that gas entering it cannot leave the state of production is located in Wood, Smith, Gregg and Rusk Counties, Texas. It is explained that the noncertificated facilities are the gas supply facilities that are used to transport gas from points of purchase from producers. Applicant submits that due to its gas purchase activities it anticipates that the operational requirements on this segment would change as Applicant is engaged in negotiations which should lead to the acquisition of significant new gas supplies. It is asserted that as a result of such acquisitions the volumes of producer supplies connected to this segment may exceed volumes needed for deliveries in the area. Applicant, therefore, proposes to change its method of operations of the segment so that gas can be delivered from the segment into Applicant's general pipeline system.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 27, 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. 81-29698 Filed 10-13-81; 8:45 am]

BILLING CODE 6717-85-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 81-677, File No. BPCT-790629KH, et al.]

Carolina Christian Broadcasting, Inc., et al.

In the matter of Applications of Carolina Christian Broadcasing, Inc., Nashville, Tennessee (BC Docket No. 81-677, File No. BPCT-790629KH), American Television and Communications Corporation, Nashville, Tennessee (BC Docket No. 81-678, File No. BPCT-790910KF), T.S.T.V., Incorporated, Nashville, Tennessee (BC Docket No. 81-679, File No. BPCT-791019KG), Domedia of Tennessee, Inc., Nashville, Tennessee (BC Docket No. 81-680, File No. BPCT-791025KF), Choice of Tennessee, Inc., Nashville, Tennessee (BC Docket No. 81-681, File No. BPCT-791026KO), Consolidated Broadcasting Corporation, Nashville, Tennessee (BC Docket No. 81-682, File No. BPCT-791026KQ), Golden West Broadcasters, Nashville, Tennessee (BC Docket No. 81-683, File No. BPCT-791026KT), Music City Thirty, Inc., Nashville, Tennessee (BC Docket No. 81-684, File No. BPCT-791026KV), Nash Broadcasting, Inc., Nashville, Tennessee (BC Docket No. 81-685, File No. BPCT-791026KW), Page Broadcasting Corporation, Nashville, Tennessee (BC Docket No. 81-686, File No. BPCT-791026KX), Satellite Broadcasting Systems, Inc., Nashville, Tennessee (BC Docket No. 81-687, File No. BPCT-791026KY), Tillis Nashville Television, Inc., Nashville, Tennessee (BC Docket No. 81-688, File No. BPCT-791026KZ), Television Corporation of Tennessee, Nashville, Tennessee (BC Docket No. 81-689, File No. BPCT-791026LA); For construction permit; Hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: September 29, 1981.

Released: October 2, 1981.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station to operate on Channel 30, Nashville, Tennessee.

Procedural Matters

2. American Television and Communications Corporation, T.S.T.V., Incorporated, Domedia of Tennessee, Inc., Choice of Tennessee, Inc., Golden West Broadcasters and Nash Broadcasting, Inc. contemplate operating subscription television (STV) over their proposed facilities. All of these parties, except Nash Broadcasting, Inc., have applications for STV authority pending before the Commission. STV is essentially an entertainment format comparable to other entertainment packages, except that it is supported directly by viewers' subscriptions, rather than by advertising revenues. In the *Second Report and Order, Docket 21502,* FCC 81-13, released March 25, 1981, the Commission decided that, in those proceedings involving mutually exclusive applications where some applicants propose STV operation and others only conventional facilities, the STV proposals would not be consolidated for hearing. Accordingly, the above-mentioned STV applications will not be consolidated in this proceeding.

3. The deadline for filing amendments to the above-captioned applications was September 22, 1980 ("B" cut-off date). However, on February 4 and March 2, 1981, Music City Thirty, Inc. filed motions for leave to amend and accompanying amendments to its application, pursuant to Section 1.65 of the Commission's Rules. Similary, Tillis Nashville Television, Inc. filed a motion for leave to amend and an

accompanying amendment on May 22, 1981. In addition, American Television and Communications Corporation, Choice of Tennessee, Inc., Satellite Broadcasting Systems, Inc. and Television Corporation of Tennessee also amended their applications after September 22, 1980, although no accompanying motions for leave to amend were filed. No oppositions to any of these amendments were filed. We have reviewed the above-referenced motions and the amendments submitted by these parties and conclude that, in each case, good cause exists for acccepting these amendments. However, it is not our intention to allow any comparative advantage to these parties as a result of our action herein. Accordingly, the motions for leave to amend filed by Music City Thirty, Inc. and Tillis Nashville Television, Inc. shall be granted and the amendments filed after September 22, 1980, by all of the above-mentioned applicants shall be accepted for filing.

Carolina Christian Broadcasting, Inc.

4. Analysis of the financial data submitted by applicant reveals that it will require at least $598,110 to construct and operate the proposed station for three months, itemized as follows:

Equipment	$519,025
Land	(1)
Buildings	40,000
Legal fees	825
Engineering fees	1,260
Installation costs	4,200
Miscellaneous	2,800
Operation costs, 3 months	30,000

[1] To be determined.

5. Applicant's land cost estimate was based on an option to purchase land executed on June 29, 1979. Examination of the option terms reveals that this option expired on September 25, 1980. However, no information has been filed indicating that the option is still viable, or specifying the terms of a new land lease or purchase agreement. Therefore, we cannot determine whether applicant will incur land acquisition expenses and if so, the cost of acquiring that land. Accordingly, an appropriate issue will be specified.

6. Applicant also indicates that it will spend approximately $825 in legal fees. This estimate seems unreasonably low, in light of the fact that this application is herein designated for comparative hearing. Accordingly, an appropriate issue will be specified to determine the legal expenses applicant will incur in prosecuting its application.

7. To meet the proposed expenses, applicant originally relied upon several credit agreements and funding sources. However, through an amendment dated April 22, 1980, applicant withdrew its original funding plan and stated that a new plan would be forthcoming. Our records do not indicate that the new plan has been filed. Therefore, an issue will be specified to determine whether applicant has funds to construct and operate as proposed.

8. Applicants seeking authority to construct a commercial television station are required to afford equal employment opportunity to all qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunity for women. Applicant must also establish a similar program for minority groups, unless those groups are represented in the area in such insignificant numbers that such program would be meaningless. Although applicant intends to employ at least five full-time employees, it has failed to submit its proposed equal employment opportunity program for women. In addition, applicant did not show that the minority groups in the Nashville area are represented in such insignificant numbers that an EEO program would be ineffective. Therefore, we cannot conclude that applicant has complied with § 73.2080 and that the required EEO program adequately meets the guidelines delineated in that rule and in FCC Form 301, Section VI. Accordingly, an appropriate issue will be specified.

American Television and Communications Corporation

9. In response to Item 8(h), Section II, FCC Form 301, applicant (ATCC) provided a synopsis of nine legal actions involving ATCC, Time Incorporated (which owns 100% of applicant's stock) and several of its subsidiaries: Little Brown and Company, Home Box Office, Inc. (HBO), Eastex Packaging and Inland Container Corporation. See applicant's FCC Form 301, Exhibit II-2. The actions reported deal with alleged antitrust violations. Violations of antitrust laws, under appropriate circumstances, can bear upon an applicant's qualifications. Therefore, we have examined the information provided to determine whether it warrants the specification of issues against ATCC.

10. Several of the actions reported were at different stages of litigation at the time the application was filed: *ATCC v. The Optical Systems Corporation; Harrison Edward Livington v. Little Brown and Company; HBO v. Pay T.V. of Greater New York, Inc.; Orth-O-Vision, Inc. v. HBO, Time Incorporated and Morris Tarshis; ATCC v. San Joaquin Cable T.V.;* and *Folding Cartons Inc. v. American Can Co., et. al.* It is inappropriate to address the circumstances surrounding pending actions. Accordingly, no issue inquiring into these matters will be specified. Another action reported by ATCC involved a cease and desist order issued by the Fedeal Trade Commission against Time in 1960. *United States of America v. Time, Inc. et al.* Since that action is remote in time, we cannot conclude that the type of conduct which lead to that legal action could now be a determining factor in evaluating applicant's qualifications. Accordingly, no issue will be specified concerning that action. The remaining two antitrust suits reported by applicant involved grand jury indictments returned against Time Subsidiaries. *United States of America v. Boise Cascade Corporation, et al. (Boise); United States of America v. Eastex Packaging, Inc. (Eastex).* In both instances, the underlying actions in these cases were settled when the defendents pleased "nolo contendere" to the charges. The *Boise* case does not raise a question about applicant's qualifications. The underlying criminal action was settled prior to Time's acquisition of Inland, the subsidiary involved. The *Eastex* action, however, presents a different situation. The information provided was not sufficient to assess the role of Time and its subsidiaries in the activities which lead to the "nolo contendere" plea. Therefore, we cannot determine the effect of the alleged misconduct upon applicant's basic or comparative qualifications. Accordingly an appropriate issue will be specified.

11. Analysis of the financial data submitted by applicant indicates that it will require $1,749,779 to construct and operate the proposed station for three months, itemized as follows:

Equipment, down payment	$664,500
Equipment payments with interest, 3 months	164,464
Land	54,000
Buildings	185,000
Legal fees	10,000
Engineering fees	10,000
Installation costs	50,000
Miscellaneous	0
Operation cost, 3 months	611,815

To meet these expenses, applicant relies on a $50 million revolving credit term loan from the Morgan Guaranty Trust Company. However, the letter evidencing this agreement indicates that, at the time this application was filed, the trust company was still involved in the final negotiation stages for this loan and expected the agreement to be in place within two weeks. To this date, we have received no documentation confirming the

viability of this loan and therefore, we cannot conclude that the loan will be available. Accordingly, an appropriate financial issue will be specified to determine whether applicant has $1,749,779 available to finance its construction and operation costs for three months.

12. Section 1.1305 of the Commission's Rules states that a Commission action authorizing construction of an antenna tower which exceeds 300 feet in height will be considered a major action within the meaning of the National Environmental Policy Act. A proposal to construct such tower must include a narrative statement containing environmental information specifically requested under § 1.1311 of the Commission's Rules. However, if the applicant proposes to modify existing or authorized facilities and the proposal does not involve a substantial increase in tower height, then the proposal is considered a minor action and the narrative statement is not required. See § 1.1305(b)(2). Applicant proposes to operate from a tower which will be 782 feet above ground and which will replace an existing tower. Presumably, applicant concluded that its proposal would only modify an authorized facility and that, therefore, the submission of the environmental statement was unnecessary. We disagree with applicant's determination. Since the height of the new structure (782 ft.) will more than double the height of the authorized tower (320 ft.), we conclude that applicant's proposal is a major action. Accordingly, applicant will be required to submit the environmental narrative statement required by § 1.1311 within 20 days of the mailing of this Order.

T.S.T.V., Incorporated

13. Section 310(b)(3) of the Communications Act of 1934, as amended, prohibits the grant of a broadcast license to "* * * any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives * * *". Examination of applicant's proposal reveals that Ms. Shelagh N. Davidson, Secretary, Treasurer and 5% share subscriber of applicant corporation, is a citizen of Great Britain. Therefore, we find that applicant's proposal violates the above-mentioned statutory provision. Accordingly, should it be determined that applicant's proposal would best serve the community of Nashville, the construction permit shall be conditioned to require applicant to remove Ms. Shelagh N. Davidson as an officer and to limit any ownership interest she may acquire in the future to one-fifth of the capital stock.

14. Examination of applicant's proposal reveals that Mr. John M. Seigenthaler, one of applicant's stock subscribers (5%), is the owner of *The Tennessean*, a daily newspaper of general circulation published in Nashville. Section 73.636(a)(1) of the Commission's Rules states that no license for television station shall be granted to any party (including all parties under common control) if such party directly or indirectly owns, operates or controls a daily newspaper, and the grant of such license will result in the Grade A contour of the station encompassing the entire community in which such newspaper is published. Applicant did not request a waiver of this rule. Therefore we find no reason or basis to determine whether a waiver is warranted. Accordingly, should it be concluded that applicant's proposal would best serve the community of Nashville, the construction permit shall be conditioned to require Mr. Seigenthaler to divest himself of either his interest in this application or his interest in *The Tennessean* newspaper.[1]

Domedia of Tennessee, Inc.

15. Section 73.3580(a) of the Commission's Rules requires applicants for new broadcast stations to give local notice of the filing of their applications. In addition, pursuant to § 73.3580(h), applicants must file with the Commission a statement describing the text of the notice, the dates on which it was published, and the newspapers in which that notice appeared. Since applicant did not file that statement, we cannot determine whether applicant has published the required local notice. Therefore, applicant will be required to comply with the local notice requirements and to file a statment of publication with the presiding Administrative Law Judge within 40 days of the mailing of this Order.

16. Mr. Frederick Gregg, Jr. holds an option for 32.9% of applicant's stock.[2] Applicant reported that, in 1972, the Securities and Exchange Commission (SEC) filed a suit in the U.S. District Court for the Southern District of New York against Richard Treibick, *et al.*, and that Mr. Gregg also was a defendant in that case (72-Civil Action No. 427). Applicant indicated that this case was ended by consent decree. Since the action arose 9 years ago, and since the alleged misconduct was not related to broadcasting, we conclude that no additional inquiry into the matter is warranted.

17. Analysis of the financial data submitted by applicant reveals that it will require $272,021 to construct and operate the proposed station for three months, itemized as follows:

Equipment, payments with interest 5 months	$63,315
Land, lease included in operation costs:	
Buildings	30,000
Legal fees	5,000
Engineering fees	5,000
Installation costs	30,000
Miscellaneous	6,032
Operation cost, 3 months	132,674

18. To meet these expenses, applicant relies upon $268,000 itemized as follows:

Existing capital	$17,000
New capital, stock subscription agreements	51,000
Anticipated STV revenues	200,000

Analysis of this data leads to the following conclusions:

(a) Since applicant submitted an undated balance sheet, we cannot determine the current availability of the existing capital. See FCC Form 301, Section III, page 2, Item 2(a). We also note, however, that the balance sheet submitted shows net liquid assets of only $7,000.

(b) In relation to the stock subscriptions, none of the subscribers submitted balance sheets evidencing their present ability to meet their commitments. See FCC Form 301, Section III, page 3, Item 4(b). Therefore, we cannot determine whether this new capital is available to the applicant.

(c) Anticipated STV revenues from National Subscription Television of Nashville (NSTV) cannot be categorized as immediate sources of funds to finance applicant's initial expenses. Assuming that applicant's STV application is granted, revenues will be generated only after STV is instituted, which could be several months after applicant commences operation. Even

[1] Section 73.636(a)(1), while also proscribing TV-radio crossownership, provides that applications involving UHF TV-radio combinations will be handled on a case-by-case basis to determine whether common ownership is in the public interest. *See*, § 73.636(a)(1), note 8. This UHF exception, among other things, is the subject of a *Notice of Proposed Rule Making (NPR)* inquiring into the need for this exception. *See*, BC Docket No. 79-233, FCC 79-537, released September 24, 1979, 44 FR 55603. As a result of this proceeding, the Commission has deferred action on applications filed after September 13, 1979, to which the Note 8 exception would apply. We are not precluded from acting on this application, filed October 1979, for its involves UHF TV-newspaper crossownership. The *NPR* makes it clear that the Commission has specifically rejected special treatment for UGH-newspaper combination classifying these as "much more imposing" entities. *See*, *NPR*, *supra*, at note 2.

[2] Mr. Gregg holds that option jointly with his wife, Florence M. Gregg, Secretary of Domedia of Tennessee, Inc.

then, NSTV might not be able to realize sufficient revenues to meet its commitment.

In light of this analysis, we conclude that applicant has not shown the availability of funds to meet its initial expenses. Accordingly, an appropriate financial issue will be specified to determine whether applicant has $272,021 available to finance its construction and operation costs for three months.

Choice of Tennessee, Inc.

19. Analysis of the financial data submitted by applicant indicates that it will require $1,379,704 to construct and operate the proposed station for three months, itemized as follows:

Equipment down payment	$846,500
Equipment, payments with interest, 3 months	222,204
Land lease, included in operation costs:	
Buildings	50,000
Legal fees	25,000
Engineering fees	8,000
Installation	50,000
Miscellaneous	50,000
Operation costs, 3 months	128,000

20. To meet these expenses, applicant relies on stockholder loans and capital contributions totaling $1,500,000. Applicant states that each shareholder is expected to pay a pro rata share of the expenses and that Mr. William G. Baker, Jr., applicant's Treasurer and 30% shareholder, is willing to loan applicant all or any part of the $1,500,000, in the event that any of the other stockholders cannot meet their commitments.[3] Applicant further explains that the Union Bank is willing to lend Mr. Baker up to $1,500,000 to meet his obligation, if necessary. Examination of applicant's financial plan reveals that it is undocumented and, therefore, unacceptable. Firstly, none of the shareholders, including Mr. Baker, submitted subscription agreements to evidence their capital contributions. Secondly, no balance sheets were submitted by the shareholders to demonstrate their current ability to meet their commitments. Thirdly, although applicant stated that a commitment letter from Union Bank would be forthcoming, our records do not show receipt of such letter. Therefore, we cannot conclude that the shareholder loans and capital contributions are available. Accordingly, a limited financial issue will be specified to determine whether applicant has $1,379,704 available to construct and operate as proposed for three months.

[3] Mr. Baker submitted a comment letter to this effect.

Consolidated Broadcasting Corporation

21. Analysis of the financial data submitted by applicant indicates that it will require at least $1,994,550 to construct and operate the proposed station for three months, itemized as follows:

Equipment, cash purchase	$1,885,000
Land, lease included in operation costs:	
Buildings, lease included in operation costs:	
Legal, engineering, and installation costs, included in operation costs:	
Operation costs, 3 months	109,550

22. Examination of applicant's cost estimate and operation budget reveals that it has allocated $10,000 for "legal, consulting and other outside services." Since this estimate includes services other than legal, we cannot determine whether applicant's projection for legal costs is reasonable, in light of the fact that this application is herein designated for comparative hearing. Accordingly, an appropriate issue will be specified to determine the legal expenses applicant will incur in prosecuting its application.

23. To meet its initial expenses, applicant relies on a $2,000,000 loan from the First Union National Bank. However, the bank letter fails to address the terms of payment, collateral or security required, and the rate of interest to be charged. See Form 301, Section III, page 3, Item 4(e). The omission of any one of these elements does not render a bank letter unacceptable. Nonetheless, the application must show that there is reasonable assurance of a loan. In this case, since the bank letter is vague, we cannot conclude that applicant has substantially complied with the above-described requirements and that the $2,000,000 loan is available. Furthermore, it appears that the bank intended to make this loan specifically for the purchase of equipment. If so, applicant would be precluded from using these funds to meet its other construction and operation costs. Accordingly, an appropriate financial issue will be specified to determine whether applicant has funds available to meet its construction and three-month operation costs.

24. Section 1.1305 of the Commission's Rules states that a Commission action authorizing construction of an antenna tower which exceeds 300 feet in height will be considered a major action within the meaning of the National Environmental Policy Act. A proposal to construct such tower must include a narrative statement containing environmental information specifically requested under § 1.1311 of the Commission's Rules. Applicant proposes to construct an antenna structure with an overall height above ground of 780 feet. Although applicant acknowledges that this would constitute a major action, applicant did not submit the required statement in accordance with § 1.1311. Accordingly, applicant will be required to submit that statement within 20 days of the mailing of this Order.

Golden West Broadcasters

25. Analysis of the financial data submitted by applicant reveals that it will require $4,965,560 to construct and operate the proposed station for three months, itemized as follows:[4]

Equipment, cash purchase	$3,044,408
Land	150,000
Buildings	100,000
Legal fees	50,000
Engineering fees	10,000
Installation costs	80,000
Miscellaneous	1,175,400
Operation costs, 3 months	355,752

To meet these expenses, applicant relies on a $12 million line of credit from the Security Pacific National Bank. However, the Commission's records indicate that applicant has relied on that same line of credit to finance a construction permit proposal for Channel 61, Hartford, Connecticut (BPCT–791011KE, estimated cost: $6,843,400), and a commitment to become the STV franchise of Community Service Broadcasting, Inc., applicant for Channel 14, Washington, D.C. (BPCT–800118KH, estimated cost: $6,302,000).[5] It is clear that the $12 million will not cover the three commitments outlined herein. Since we cannot determine the amount of funds specifically allocated to the instant proposal, we cannot conclude that there are sufficient funds available to meet applicant's initial expenses, estimated at $4,965,560. Accordingly, an appropriate financial issue will be specified.

Music City Thirty, Inc.

26. Analysis of the financial data submitted by applicant reveals that it

[4] The financial data provided comingled the cost estimates for conventional facilities and for STV operation. Since the STV proposal is not consolidated in this proceeding, we segregated the two estimates by briefly analyzing the financial data submitted in the STV proposal (Table in response to Paragraphs 32 and 33, *Fifth Report and Order, Docket 11279*, 19 F.C.C. 2d 559, 568 (1969)). Thus, the original equipment cost estimate ($3,554,408) was reduced by $510,000, the related STV expenses computed through the third month of operation. Similarly, the combined original estimate for engineering, installation and miscellaneous expenses ($1,223,000) was reduced by $47,600, the related STV expenses computed through the third month of operation.

[5] The competing applicants for Channel 14, Washington, D.C. were designated for hearing on July 31, 1981; applicants for Channel 61, Hartford, Connecticut were designated for hearing on August 10, 1981.

will require $242,357 to construct the proposed station and operate for three months, itemized as follows:

Equipment, land and buildings, leases included in operation costs:	
Legal fees	$12,000
Engineering fees	5,000
Installation costs	11,000
Miscellaneous	10,000
Operation costs, 3 months	204,357

To meet these expenses, applicant relies upon $480,122, itemized as follows:

Existing capital	$10,342
New capital, stock subscriptions	290,000
Net bank loan	179,780

(a) Examination of applicant's balance sheet reveals that the current liabilities ($13,801), exceed the current liquid assets ($10,339). Therefore, we cannot conclude that existing capital in the amount of $10,342 is available.

(b) Concerning the stock subscriptions, review of the balance sheets submitted by the subscribers indicates that only Messrs. Galloway, Reed and Storey have sufficient net liquid assets to meet their commitments. However, since none of the balance sheets submitted are dated, we are unable to determine whether these subscribers currently possess sufficient funds to meet their commitments. See Form 301, Section III, page 3, Item 4(b). Therefore, we cannot conclude that the $290,000 in stock subscriptions is available to the applicant.

(c) We find that applicant has shown the availability of the bank loan.

In summary, applicant has demonstrated the availability of only $179,780 to meet its initial costs, estimated at $242,357. Accordingly, an appropriate financial issue will be specified to determine whether applicant has an additional $62,577 available to meet its construction and initial operation costs.

Page Broadcasting Corporation

27. Analysis of the financial data submitted by applicant reveals that it will require $889,339 to construct and operate the proposed station for three months, itemized as follows:

Equipment down payment	$528,250
Equipment, 3 months	146,589
Land and buildings, leases included in operation costs	
Legal fees	15,000
Engineering fees	3,500
Miscellaneous	10,000
Operation costs, 3 months	186,000

To meet these expenses, applicant relies on a $3,000,000 loan from The Chase Manhattan Bank. The bank letter specifically refers to applicant's intention to file both construction permit and STV applications, and states that if these are granted, the bank will extend loans to the applicant in the amount of $3,000,000 "* * * for construction and operation of the station and subscription television systems." Examination of applicant's proposal and of the Commission's records indicates that applicant plans to operate a conventional station. In light of this fact, we cannot determine whether the bank will finance the construction permit proposal absent an STV authorization and if so, whether applicant can still rely on the full $3,000,000 loan. Consequently, we cannot conclude that the bank loan will be available to the applicant. Accordingly, an appropriate financial issue will be specified to determine whether applicant has $889,339 available to finance its construction and initial operation costs.

Satellite Broadcasting Systems, Inc.

28. Analysis of the financial data submitted by applicant reveals that it will require $444,043 to construct and operate the proposed station for three months, itemized as follows:

Equipment down payment	$215,880
Equipment payments with interest, 3 months	44,283
Land and buildings, leases included in operation costs	
Legal fees	10,000
Engineering fees	1,500
Miscellaneous	60,000
Operation costs, 3 months	112,400

To meet these expenses applicant relies on an equity contribution from Satellite Syndicated Systems, Inc., applicant's parent company, in the amount of $450,000. The company's balance sheet shows current assets of $721,640, of which only $244,875 can be classified as net liquid assets available to finance applicant's proposal. Therefore, we cannot conclude that Satellite Syndicated Systems, Inc. has sufficient net liquid assets to meet its $450,000 commitment to the applicant. Accordingly, an appropriate financial issue will be specified to determine whether applicant has an additional $199,168 available to finance its proposal.

Conclusion and Order

29. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since these applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

30. Accordingly, *it is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Carolina Christian Broadcasting, Inc.:

(a) The land acquisition costs;

(b) The legal expenses applicant will incur in prosecuting its application;

(c) In light of the evidence adduced pursuant to the foregoing issues, the total cost estimate for construction and three-month operation expenses;

(d) The availability of financial resources to meet the estimated construction and three-month operation costs;

(e) Whether, in light of the evidence adduced pursuant to the foregoing issues, applicant is financially qualified to construct and operate as proposed;

(f) Whether applicant has complied with the requirements specified in § 73.2080 of the Commission's Rules and whether the required Equal Employment Opportunity program adequately meets the guidelines delineated in that rule and in FCC Form 301, Section VI; and

(g) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is qualified.

2. To determine, with respect to American Television and Communications Corporation:

(a) The facts and circumstances concerning the suit filed by the United States against Eastex Packaging, Inc. (1976), and its effect upon applicant's basic or comparative qualifications;

(b) Whether applicant has $1,749,779 available to meet the estimated construction and three-month operation costs; and

(c) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified to construct and operate as proposed.

3. To determine, with respect to Domedia of Tennessee, Inc.:

(a) Whether applicant has $272,021 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified to construct and operate as proposed.

4. To determine, with respect to Choice of Tennessee, Inc.:

(a) Whether applicant has $1,379,704 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced above, applicant is financially qualified to construct and operate as proposed.

5. To determine, with respect to Consolidated Broadcasting Corporation:

(a) The legal expenses applicant will incur in prosecuting its application;

(b) In light of the evidence adduced above, the total cost estimate for construction and three-month operation expenses;

(c) The availability of financial resources to meet the estimated construction and three-month operation costs; and

(d) Whether, in light of the evidence adduced pursuant to the foregoing issues, applicant is financially qualified to construct and operate as proposed.

6. To determine, with respect to Golden West Broadcasters:

(a) Whether applicant has $4,965,560 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced above, applicant is financially qualified to construct and operate as proposed.

7. To determine, with respect to Music City Thirty, Inc.:

(a) Whether applicant has an additional $62,577 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced above, applicant is financially qualified to construct and operate as proposed.

8. To determine, with respect to Page Broadcasting Corporation:

(a) Whether applicant has $889,339 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced above, applicant is financially qualified to construct and operate as proposed.

9. To determine, with respect to Satellite Broadcasting Systems, Inc.:

(a) Whether applicant has an additional $199,168 available to meet the estimated construction and three-month operation costs; and

(b) Whether, in light of the evidence adduced above, applicant is financially qualified to construct and operate as proposed.

10. To determine which of the proposals would, on a comparative basis, best serve the public interest.

11. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

31. It is further ordered, That, the motions for leave to amend filed by Music City Thirty, Inc. ARE GRANTED, and the amendments accompanying those motions ARE ACCEPTED FOR FILING.

32. It is further ordered, That, the motion for leave to amend filed by Tillis Nashville Television, Inc. IS GRANTED, and the amendment accompanying that motion IS ACCEPTED FOR FILING.

33. It is further ordered, That, the amendments filed after September 22, 1980, by American Television and Communications Corporation, Choice of Tennessee, Inc., Satellite Broadcasting Systems, Inc. and Television Corporation of Tennessee ARE ACCEPTED FOR FILING.

34. It is further ordered, That within 20 days of the mailing of this Order, American Television and Communications Corporation and Consolidated Broadcasting Corporation shall submit environmental narrative statements supplementing their applications pursuant to § 1.1311 of the Commission's Rules.

35. It is further ordered, That, in the event of a grant of T.S.T.V., Incorporated's application, the construction permit shall be conditioned to require applicant to remove Ms. Shelagh N. Davidson as an officer and to limit any ownership interest she may acquire in the future to one-fifth of the capital stock; and to require Mr. John M. Seigethaler to divest himself of either his interest in this application or his interest in *The Tennessean* newspaper.

36. It is further ordered, That, within 40 days of the mailing of this Order, Domedia of Tennessee, Inc. shall publish local notice of its application and shall file a statement of publication with the presiding Administrative Law Judge.

37. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, File with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

38. It is further ordered, That, the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

By: Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-29715 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 81-693, File No. BPCT-801106KG, et al.]

Channel 50, Inc., et al.; Applications

In the matter of applications of Channel 50, Inc., Manchester, New Hampshire (BC Docket No. 81-693, File No. BPCT-801106KG), Golden Triangle Broadcasting Corp., Manchester, New Hampshire (BC Docket No. 81-694, File No. BPCT-801229KI), CTV of Derry, Inc., Derry, New Hampshire (BC Docket No. 81-695, File No. BPCT-810121KF); For Construction permit; Hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: September 29, 1981.

Released: October 2, 1981.

By the Chief, Broadcast Bureau.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications, filed by Channel 50, Inc., Golden Triangle Broadcasting Corp. and CTV of Derry, Inc. for a new commercial television station on Channel 50, Manchester, New Hampshire.[1]

Channel 50, Inc.

2. The applicant contemplates the following expenditures relative to its proposal:

Equipment	$461,500
Equipment payments, interest only three months	32,502
Buildings	25,000
Legal costs	25,000
Engineering costs	10,000
Installation costs	50,000
Miscellaneous	[1] 53,000
Total construction costs	677,002
Operating costs, three months	250,000
Total proposed expenditures	927,002

[1] STL costs of $22,000, which were included as miscellaneous costs by applicant, are included in the equipment installment sales agreement.

Applicant has omitted $90,280 in payments on principal as per RCA installment sales letter. So, applicant's costs to construct and operate as proposed will be $1,017,282.

3. Applicant appears to have $1,699 available in capital to finance the proposal. This is derived by adding cash

[1] CTV of Derry, Inc. specified Derry, New Hampshire, as the principal community to be served, pursuant to § 73.607(b) of the Commission's Rules (the "15-mile rule").

on hand ($5,322) to organizational expenses ($11,048)[2] and subtracting the note payable ($14,671). Also available as a source of funds is a net loan of $962,500 from State Street Bank and Trust Company. These sources of funds total $964,179. Since $1,017,282 is required to construct and operate as proposed, applicant will require an additional $53,083 and an appropriate issue will be specified.

4. The proposal of CTV of Derry, Inc. specifies a different community than the others. Consequently, it will be necessary to determine, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service. However, since these proposals would serve substantial areas in common, in addition to the 307(b) issue, a contingent comparative issue will also be specified.

5. Channel 50, Inc. and Golden Triangle Broadcasting Corp., propose to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) in excess of 1000 kilowatts. The proposals pose no interference threat to United States television stations; they do contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of either application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

Golden Triangle Broadcasting Corporation

6. Since no determination has been reached that the tower height and location proposed would not constitute a hazard to air navigation, an issue regarding this matter is required.

Conclusion and Order

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since these applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues;

1. To determine with respect to Channel 50, Inc:

(a) The source and availability of an additional $53,083;

(b) Whether in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified.

2. To determine, with respect Golden Triangle Broadcasting Corporation, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio services.

4. To determine, in the event that it is concluded that a choice among the applicants should not be based on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding with respect to issue 2.

10. It is further ordered, That in the event of a grant of Channel 50, Inc.'s application, the construction permit shall contain the following condition:

Operation with effective radiated power in excess of 1000 kW after July 1, 1983, is subject to a further extension of consent by Canada.

11. It is further ordered, That in the event of a grant of Golden Triangle's application, the construction permit shall contain the following condition:

Operation with effective radiated power in excess of 1000 kW after July 1, 1983, is subject to a further extension of consent by Canada.

12. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, That the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules shall give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g).

Federal Communications Commission.

Larry D. Eads,

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-29718 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

[2] On its 10-1-81 balance sheet, applicant does not segregate liabilities into current and long-term amounts; therefore, we must assume that the liabilities shown are current. In this instance, applicant's net liquid assets, plus its organizational expenses, equal its capital.

[BC Docket No. 81-690, File No. BPCT-801010KE, et al.]

Clay Television, Inc., et al.; Applications

In matter of applications of Clay Televison, Inc., Orange Park, Florida (BC Docket No. 81-690, File No. BPCT-801010KE), Christian Communications of Clay, Inc., Orange Park, Florida (BC Docket No. 81-691, File No. BPCT-801229KH), Orange Park Florida T.V., Inc., Orange Park, Florida (BC Docket No. 81-692, File No. BPCT-801229KK), for construction permit, hearing designation order designating applications for consolidated hearing on stated issues.

Adopted: September 29, 1981.
Released: October 2, 1981.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications filed by Clay Television,Inc., Christian Communications of Clay Inc. and Orange Park Florida T.V., Inc., for authority to construct a new commercial television broadcast station on Channel 25, Orange Park, Florida.

Short-Spacing

2. None of the applications meets the minimum mileage separation requirements of § 73.610 of the Commission's Rules. The transmitter site proposed by Clay would be 54.4 miles from the site proposed by Life Style Broadcasting, Inc., an applicant (now in comparative hearing) for a new station to operate on Channel 26, Daytona Beach, Florida. Section 73.610

of the Rules requires a separation of at least 55 miles between adjacent channel UHF stations, so that Clay would be short-spaced 0.6 miles to the site proposed by Life Style. The transmitter site proposed by Christian Communications of Clay would be 204.8 miles from the site co-channel Station WACS (TV), Dawson, Georgia, whereas the rules require a minimum separation of 205 miles between co-channel UHF stations. Christian would be 0.2 miles short-spaced. In both cases, we believe that it is apparent that the potential interference would be insignificant. Although neither applicant has requested a waiver, we think that a waiver *sua sponte* is warranted.

3. The transmitter site proposed by Orange Park TV would be 49.5 miles from the site proposed by Life Style Broadcasting for a proposed new station in Daytona Beach. Orange Park would therefore, be short-spaced 5.5 miles. This represents substantial short-spacing and we are unable to conclude that the potential interference would be insignificant. Accordingly, an issue will be specified to determine whether the potential interference would be significant and, if not, whether circumstances exist which would warrant a waiver.

Clay Television, Inc.

4. The applicant estimates that it will require $341,847 to construct and operate for three months, itemized as follows:

Equipment down payment	$59,157
Payments (3 months)	44,790
Land	15,000
Buildings	40,000
Legal costs	50,000
Engineering costs	10,000
Installation costs	10,000
Miscellaneous	10,000
Operating costs (3 months)	102,900
Total	341,847

To finance its proposal, the applicant relies upon: (1) existing capital (cash) of $3,000; (2) new capital of $17,000; and (3) additional purchases of stock or loans from three stockholders[1], totalling $500,000. The $3,000 in cash is clearly available. With respect to the $17,000 in new capital, however, the applicant has submitted stock subscriptions and demand promissory notes totalling only $10,000. The source of the remaining $7,000 cannot be ascertained, of the stockholders who acquired stock with demand promissory notes, only William Bazley, Napolean Leano and W. Raleigh Thompson, Jr., submitted balance sheets or financial statements showing their ability to redeem their notes on demand. Their notes total $3,300, so that only this amount appears to be avilable in new capital. The $500,000 in loans or additional paid-in capital is to be obtained from Bazley, Leano and Thompson (see Footnote 1, *supra*). Leano, Thompson and Bazley, show liquid assets of $1,500, $15,810 and $18,000 respectively, totalling $35,310.[2] The applicant, therefore, appears to have available $41,610 to meet costs of $341,847. An issue will be specified to determine whether the applicant can obtain an additional $300,237.

5. Section 73.613 of the Commission's Rules requires that the main studio for a TV station be located within the city of license, but that on a showing of good cause, the main studio may be located outside that community. Clay proposes to locate its main studio approximately 8 miles outside the city limits of Orange Park. Justification has not been provided. Accordingly, an appropriate issue will be specified.

Christian Communications of Clay, Inc.

6. The applicant will require $345,139 to construct and operate for 3 months, itemized as follows:

Equipment lease payments	$124,839
Cash purchases	30,000
Buildings	10,000
Legal costs	20,000
Engineering costs	2,000
Installation costs	5,000
Miscellaneous	10,000
Operating costs (3 months)	133,300
Total	345,139

To finance its proposal, applicant relies upon: (1) a $250,000 loan from Wayne Wetzel Mobile Homes, Inc.; (2) a $250,000 loan from Orange Park Assembly of God; (3) pre-paid advertising agreements with Christian Television Corporation ($13,650 will be paid 30 days before date of first telecast); and (4) a $300,000 loan (net) from Robert D'Andrea. With respect to (1) and (2) above, balance sheets have not been submitted as required by page 3, Section III, FCC Form 301. Furthermore, these letters state they "would consider" lending the funds, but they are not commitments to lend funds. Consequently, a question arises as to whether these loans will be available. With respect to (3) above, applicant has not submitted information to support the ability of Christian Television Corporation (CTC) to make these advance payments (a balance sheet or financial statement), nor has CTC, licensee of TV Station WCLF, Clearwater, Florida, submitted its advertising budget or an account of its past advertising history. So, the pre-paid advertising cannot be considered as available. With respect to (4) above, applicant has not submitted the balance sheet of D'Andrea nor has it indicated the net value (fair market value minus encumbrances) of property Robert D'Andrea undertakes to sell or mortgage to supply the loan. Therefore, the D'Andrea loan cannot be considered as a source of financing. In sum, applicant has failed to demonstrate that any funds are available, and an appropriate financial issue will be specified.

7. Since no determination has been reached that the tower height and location proposed by Christian Communications of Clay Inc. would not constitute a hazard to air navigation, an issue regarding this matter is required.

8. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Christian Communications published the required notice. To remedy this deficiency, Christian Communications will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

Orange Park Florida TV, Inc.

9. Since no determination has been reached that the tower height and location proposed by Orange Park Florida TV, Inc. would not constitute a hazard to air navigation, an issue regarding this matter is required.

Conclusion and Order

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place before an Administrative Law Judge to be specified in a subsequent Order, upon the following issues:

[1] William S. Bazley, Napoleon Leano, and W. Raleigh Thompson, Jr., each have undertaken to purchase additional stock or make loans in such amounts as may be necessary to assure completion of construction.

[2] Each of these three stockholders has listed as liquid assets "marketable securities", but these securities have not been identified as required by Section III, page 3, paragraph 4(b), FCC Form 301. Consequently, these securities cannot be considered as liquid assets.

1. To determine with respect to Clay Television, Inc.:

(a) Whether the applicant has available an additional $300,237;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified;

(c) Whether it has complied with § 73.613 of the Commission's Rules with respect to location of main studio, and if not, whether circumstances exist which justify approval of the location proposed.

2. To determine with respect to Christian Communications of Clay, Inc.:

(a) Whether the applicant has available $345,139;

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified;

(c) Whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

3. To determine, with respect to Orange Park TV, Inc.:

(a) Whether, operating as proposed, the potential interference would be insignificant and, if so, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules.

(b) Whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

12. It is further ordered, That, with respect to the applications of Clay Television and Christian Communications of Clay, § 73.610 of the Commission's Rules IS WAIVED *sua sponte*.

13. It is further ordered, That Christian Communications of Clay, Inc. file a statement of publication of local notice of its application with the presiding Administrative Law Judge in accordance with § 73.3580(f) of the Commission's Rules.

14. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding with respect to issues 2(c) and 3(b).

15. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

By: **Larry D. Eads,**

Acting Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 81-29717 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 81-709, File No. 21322-CD-P-(2)-79; CC Docket No. 81-710, File No. 21862-CD-P-79]

Message Center, Inc. and Radio Relay New York Corp.; Applications; Memorandum, Opinion and Order

In the matter of applications of Message Center, Inc. for a construction permit to establish additional one-way facilities for Station KDS295 to operate on frequency 43.22 MHz in the Domestic Public Land Mobile Radio Service at Waterbury and New Haven, Connecticut (CC Docket No. 81-709, File No. 21322-CD-P-(2)-79) and Radio Relay New York Corporation for a construction permit to establish additional one-way facilities for Station KEC745 to operate on frequency 43.22 MHz in the Domestic Public Land Mobile Radio Service at Danbury, Connecticut (CC Docket No. 81-710; File No. 21862-CD-P-79); Memorandum opinion and order designating applications for consolidated hearing on stated issues.

Adopted: October 1, 1981.

Released: October 8, 1981.

By the Common Carrier Bureau.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the above-captioned applications of Message Center, Inc. (Message Center) and Radio Relay New York Corporation (Radio Relay). These applications are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the pubic interest. We find the applicants otherwise qualified.

2. Accordingly, it is ordered, That the above-referenced applications of Message Center, Inc., File No. 21322-CD-P-(2)-79, and Radio Relay New York Corporation, File No. 21862-CD-P-79 are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dbu contours,[1] based upon the standards set forth in § 22.504(a) of the Commission's Rules,[2] and to determine and compare the need for the proposed services in said area; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the above-referenced applications would best serve the public interest, convenience and necessity.

3. We note that these applications request authority to construct a one-way paging facility on frequency 43.22 MHz. The Commission has received a large number of complaints from the public across the country due to interference to television reception from stations operating on 43.22 MHz and 43.58 MHz. Therefore, pursuant to § 22.401(a) of our Rules (47 CFR 22.401(a)), it is ordered, that any authorization granted as a result of the comparative hearing discussed above will be on a development basis for one year. Thus, we find that the public interest, convenience, and necessity will best be served by granting this application subject to the conditions set out below:

(a) Pursuant to Rules § 22.406, quarterly surveys of possible interference with television reception in the geopraphic area within a two-mile radius of the base station(s) authorized herein shall be made during the first year of operation. The local representative of the Field Operations Bureau, Federal Communications Commission, shall receive prior notice of the commencement date of service to the public, on which date the first survey will start.

(b) Each quarter, a different sample of at least 25 television viewers distributed approximately evenly throughout the geographic area described above shall

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[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from section 22.504 in which the ratio of desired-to-undesired signal is always equal to or greater than R in FCC Report No. R-6406, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 43.22 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours (F50, 50) for the facilities involved in this proceeding. (The applicants should consult with Bureau counsel in an effort to submit joint technical exhibits).

be contacted to determine whether they have experienced TV interference. If interference complaints are received either as a result of the interviews or in the normal course of business, the licensee shall determine the source and extent of such interference.

(c) The licensee shall promptly report all interference complaints to the Mobile Services Division (MSD) and act to correct any problems. In any event, the licensee shall submit to the MSD a written report, soon after the completion of each quarter, fully evaluating the continued existence of interference. A copy of any report submitted to the Mobile Services Division must be submitted at the same time to the local field office. Quarterly reports shall include but shall not be limited to, the following information:

(1) Survey date(s).

(2) Method (telephone/on-site/other).

(3) Names, addresses and telephone numbers of persons contacted.

(4) Time of day survey conducted (morning/afternoon/night).

(5) Technical solutions tested and results.

(6) Names and telephone numbers of technical representatives consulted and/or employed.

(d) The local representative of the Field Operations Bureau may notify you that your station is causing interference. You must follow all instructions in such notices.

(e) Any grant made in this proceeding is subject to the provision of Rules § 22.404(c) that no interference may be caused to the regular services of stations operating in accordance with the Commission's Table of Allocations. If interference from the operation of the authorized base stations is brought to our attention, the Commission has the authority to order the station to cease operations immediately.

(f) Pursuant to § 22.404(a) of the Rules, the developmental authority granted is subject to cancellation without a hearing by the Commission at any time upon notice to the licensee. Although we are waiving § 22.404(d) of the Rules to permit the licensee to offer the service for hire, the licensee is directed to inform its customers that service on these channels is developmental and therefore subject to cancellation at any time.

(g) Pursuant to § 22.32(d) of the Rules, any conditional developmental grant made in this proceeding shall be considered final unless the Commisison should revise its action in repsonse to a petition for reconsideration which: (1) is filed by the applicant within 30 days from the date of the grant; (2) rejects the grant as made and explains the reason why the application should be granted as originally requested; and (3) returns the instrument of authorization. In the event that the Commisison releases an order making a developmental grant in this proceeding, that order will serve as an interim authorization until such time as the grantee receives final developmental authorization, and it must be posted at the authorized control point of the station. Prior to the expiration of the developmental authorization, the grantee must submit an application (FCC Form 403) for permanent authorization under Subpart G of Part 22, otherwise the developmental authorization will automatically expire. This authorization is subject to the provisions of the Communications Act of 1934, as amended, subsequent acts, treaties, and all regulations made by this Commission, and is further subject to the conditions and requirements set forth in this authorization.

4. It is further ordered, That any authorization granted to Radio Relay New York Corporation as a result of the comparative hearing designated herein shall be without prejudice to and conditioned upon whatever action, if any, the Commission may take as a result of allegations raised in petitions against Digital Paging Systems of New York, Inc.

5. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

6. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

7. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

Sheldon M. Guttmann,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 81-29718 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1311]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

October 2, 1981.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed on or before October 29, 1981. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Glendale and Phoenix, Arizona). (BC Docket No. 81-38, RM's 3602 and 3661)

Filed By: Donald C. Jerome, Francis M. Blythe and Erwin W. Speakman on 9-23-81.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 81-29713 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 3, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2590-9.

Filing Party: Francis D. Barrett, Esquire, Curry and Dolan, Counselors at

Law, 733 15th Street, N.W., Washington, D.C. 20005.

Summary: Agreement No. T-2590-9, between the Albany Port District Commission (Port) and United Brands Company (United) modifies the parties' basic agreement which provides for the use, by United, of certain office space and the preferential use of certain storage space at Transit Shed No. 2, Albany, New York.

The purpose of the modification is to exercise the eighth option to renew the initial term of the agreement by: (1) extending the term from December 1, 1981, until November 30, 1982; and (2) increasing the amount of compensation paid to Port from $27,750 to $29,250.

Agreement No.: T-3991.

Filing Party: Mr. Marion S. Moore, Jr., Traffic Manager, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402.

Summary: Agreement No. T-3991, between South Carolina State Ports Authority (Authority) and Trans Freight Lines, Inc. (TFL), provides that the Authority will assign TFL certain marine terminal land areas and grant TFL preferential use of a berth and container crane(s) on a preferential basis. The premises and equipment are to be used for the handling and storage of containers and related equipment, the maintenance of offices and other purposes incidental to TFL's marine transportation operations at Charleston, South Carolina. TFL will compensate the Authority according to a formula as set forth in the agreement. The term of the agreement is five years, with an option to renew for an additional five year period.

Agreements Nos. 14-47 & 5700-30.

Filing Party: George A. Quadrino, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Summary: Agreements Nos. 14-47 and 5700-30 amend respectively the basic agreements of the Trans Pacific Freight Conference (Hong Kong) and the New York Freight Bureau to comply with the self policing provisions of General Order 7.

Agreement No. 9845-1.

Filing Party: E. F. Brimo, Treasurer, Global Terminal & Container Services, Inc., P.O. Box 273, Jersey City, New Jersey 07303.

Summary: Agreement No. 9845-1, between Schiffahrtsgesellschaft Columbus Line M.B.H. (Columbus), Dart Containerline Company Limited and Universal Express Container Services Inc. (Universal), amends the basic agreement which provides for the establishment of Global Container Services, Inc. Agreement NO. 9845-1 provides for: (1) the transfer of common stock from Dr. August Oetker Naehrmittelfabrik GMBM to Columbus and from Compagnie Fabre/SGTM to Universal; (2) administrative changes reflecting the changes of stockholders; and (3) the designation of sections in the basic agreement having historical significance only.

Agreement No. 10430.

Filing Party: Alan P. Sherbrooke, Esquire, Garvey, Schubert, Adams & Barer, 30th Floor, The Bank of California Center, Seattle, Washington 98164.

Summary: Agreement No. 10430 establishes a nonexclusive equipment interchange agreement between Totem Ocean Trailer Express, Inc. and Mitsui O. S. K. Lines providing for the interchange of empty and loaded equipment in the U.S./Far East trade.

Agreement No. 10431.

Filing Party: Alan P. Sherbrooke, Esquire, Garvey, Schubert, Adams & Barer, 30th Floor, The Bank of California Center, Seattle, Washington 98164.

Summary: Agreement No. 10431 establishes a nonexclusive equipment interchange agreement between Japan Line and Totem Ocean Trailer Express, Inc. providing for the interchange of empty and loaded equipment in the U.S./Far East trade.

By order of the Federal Maritime Commission.

Dated: October 8, 1981.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29776 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-63]

Erich H. Trendel—Independent Ocean Freight Forwarder Application; Investigation and Hearing

Erich H. Trendel has applied for an independent ocean freight forwarder license as a sole proprietorship. During the period from August 13, 1976 and December 31, 1980, Mr. Trendel was the President and qualifying officer of Rohde & Liesenfeld, Inc. (R&L), an independent ocean freight forwarder operating pursuant to FMC License No. 1832, issued on August 13, 1976.

Information has been developed by the Commission's staff which indicates that R&L may have engaged in conduct which is in violation of section 16, Initial Paragraph, Shipping Act, 1916 (46 U.S.C. 815) and § 510.23(d) of the Commission's General Order 4 (46 CFR 510.23(d)) during the period from December 15, 1976 to November 8, 1978. During this period, Mr. Trendel was R&L's President and qualifying officer. Pursuant to § 510.5(a)(4) of the Commission's General Order 4, R&L originally was licensed based upon the qualifications of Mr. Trendel and, as R&L's President and qualifying officer, Mr. Trendel apparently was the active managing officer of the licensee during the time period it may have violated the Shipping Act, 1916, and the Commission's General Order 4.

Commission information indicates that R&L may have been involved in forwarding transactions in which bills of lading were marked for transshipment to Kiel, West Germany, a Baltic seaport, in order to receive transportation for property at less that the rates or charges which would otherwise have been applicable. On forty-eight occasions between December 15, 1976 and November 8, 1978, it appears that R&L marked consolidated export shipments for transshipment to Kiel in order to obtain lower freight charges applicable to shipments destined for Baltic seaports although the shipments apparently were discharged in Bremen or Hamburg without further transshipment. On these shipments, R&L paid the ocean freight charges to the carriers and apparently realized unwarranted freight savings amounting to $43,654.

Further information discloses that R&L may have declared false cubic measurements to common carriers by water as a means of obtaining or attempting to obtain ocean transportation for property at less than the rates or charges which would otherwise be applicable. On eleven bills of lading issued between December 31, 1976 and June 27, 1977, covering shipments of fiberglass boats carried between Baltimore and Hamburg, the cargo measurements listed on the bills of lading were less than the measurements on the packing lists for those shipments. R&L performed the forwarding services on these shipments and paid the ocean freight, apparently obtaining transportation for $14,661 less than if the cube on the packing lists had been declared.

Additional information indicates that R&L may have falsely declared the cubic measurements on five export shipments of cotton gin machinery to Paraguay during the period from January 24, 1977 to September 8, 1977. R&L performed the ocean freight forwarding services on these shipments and paid the ocean freight, apparently obtaining transportation for $24,350 less than if the cube on the packing lists had been declared.

Section 44(b), Shipping Act, 1916, requires that applicants be found fit, willing and able properly to carry on the

business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements, rules and regulations of the Commission. Otherwise, their applications shall be denied.

Because Mr. Trendel was the President, qualifying officer, and the active managing officer of R&L during the time period in which it may have engaged in conduct violative of the Shipping Act, 1916 and the Commission's General Order 4, Mr. Trendel may lack the degree of fitness required to carry on the business of ocean freight forwarding and necessary to conform with the Commission's governing statutes, rules, and regulations.

Pursuant to § 510.8 of the Commission's General Order 4 (46 CFR 510.8), on July 15, 1981 the Commission advised Mr. Trendel of its intent to deny his application for a license and also advised him of his opportunity to request a hearing. By letter dated August 6, 1981, Mr. Trendel, through his counsel, requested the opportunity to demonstrate at a hearing that such denial is unwarranted.

Therefore, it is ordered, That pursuant to sections 22, 32 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 831, and 841(b)) and § 510.8 of the Commission's General Order 4 (46 CFR 510.8), a proceeding is hereby instituted to determine whether Erich H. Trendel should be found fit, willing, and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and rules and regulations of the Commission as issued thereunder in view of the activities of R&L, which may have violated the Shipping Act, 1916 and the Commission's General Order 4, during which time Mr. Trendel was R&L's President, qualifying officer, and active managing officer;

It is further ordered, That Erich H. Trendel be made Respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence within the time limits specified in Rule 61 of the Commission's rules of practice and procedure (46 CFR 510.61);

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue are such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in acccordance with Rule 42 of the Commission's rules of practice and procedure (46 CFR 502.42), the Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon the Respondent and the Bureau of Hearings and Field Operations;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene and accordance with Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That, all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure (46 CFR 502.118), as well as being mailed directly to all parties of record

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29763 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-66]

Jose Torrente d.b.a. Network Express, Independent Ocean Freight Forwarder Application; Investigation and Hearing

The Commission has before it the license application of Jose Torrente, a sole proprietor, d/b/a Network Express (Applicant), to operate as an independent ocean freight forwarder.

Mr. Torrente was formerly President and 50 percent owner of T & T International Freight Forwarders, Inc. (T&T) which was issued FMC License No. 2010 on November 21, 1977. T&T is a Florida corporation with its principal place of business in Miami. Mr. Torrente was one of the qualifying officers of the firm,[1] and was approved as manager of its New York branch office on December 1, 1978. On August 14, 1979, the 11th Judicial Circuit Court in Dade County, Florida, ordered T&T's involuntary dissolution. The court-appointed receiver surrendered T&T's FMC License on August 30, 1979 for voluntary revocation.

Prior to T&T's voluntary license revocation, it appeared that T&T engaged in the following activities:

(1) collected insurance premiums on at least 37 occasions without placing such insurance on behalf of the shipper;

(2) shared compensation on forwarding fees with employees of, or persons associated with, a shipper on at least 12 occasions; and

(3) did not pay over to Manaure Line ocean freight of $21,028 received from a shipper.

In addition, during an October 2, 1980 interview with a member of the Commission's staff, Mr. Torrente stated that he had provided freight forwarding services to T&T customers subsequent to the voluntary revocation of T&T's license on August 30, 1979, through September, 1979. Thereafter, although still using the address of T&T's New York office, Mr. Torrente claimed to have operated as a branch office of Seaflet, Inc., an IOFF with its principal office in Miami, performing forwarding services exclusively for Seaflet's clients. However, Seaflet, Inc., a licensed freight forwarder (FMC No. 2132), did not receive approval for a New York branch office with Mr. Torrente as manager until October 4, 1979, and the Commission has reason to believe that contrary to Mr. Torrente's statements, the clients he handled as Seaflet's branch manager were the same as those he handled at T&T.

During the October 2, 1980 interview, Mr. Torrente also disclosed that: 1) he did not draw a salary from Seaflet; 2) he opened the Seaflet New York account with $5,000 of his own money as the sole signatory; and 3) he sent Seaflet's Miami office copies of all bills of lading and the ocean carrier compensation for the shipments he handled in New York. These facts indicate that Mr. Torrente may not actually be in Seaflet's employ and may instead be involved in activity that constitutes unlicensed freight forwarding.

In his application for a freight forwarder license dated October 10, 1981, Mr. Torrente failed to mention his association with Seaflet.

Section 44(b) of the Shipping Act, 1916 (46 U.S.C. 841(b)), requires that

[1] An application for an independent ocean freight forwarder license by the other qualifying officer, Reinaldo Torrente, was denied by the Commission on March 11, 1981.

applicants be fit, willing and able properly to carry on the business of forwarding and to conform to the provisions of the Shipping Act, 1916, and the requirements, rules and regulations of the Commission issued thereunder. Otherwise, such application shall be denied.

Both the Applicant's activities as qualifying officer of T&T and his alleged unlicensed forwarding would appear to reflect adversely upon his fitness.

By letter dated July 10, 1981, the Commission notified Mr. Torrente of its intent to deny his application for a license unless he requested a hearing on the matter. In a letter dated July 20, 1981, the applicant, through his attorney, requested that it be given an opportunity to show that such denial is not warranted.

Therefore, it is ordered, That pursuant to sections 22, 32 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 831 and 841(b)), and § 510.8 of the Commission's General Order 4 (46 CFR 510.8), a proceeding is hereby instituted to determine:

1. Whether Jose Torrente violated section 44(a), Shipping Act, 1916 by engaging in unlicensed forwarding activities; and if so, the nature and extent of these activities, including the number of any unlicensed shipments handled and the compensation received therefore;

2. Whether Jose Torrente's conduct as qualifying officer of T&T during November 21, 1977 through the voluntary revocation of T&T's license was in conformance with the Shipping Act and applicable regulations.

3. Whether in light of the issues above, the Applicant lacks the degree of fitness required to carry on the business of ocean freight forwarding;

4. Whether civil penalties should be assessed against Jose Torrente, pursuant to 46 U.S.C. 831(e), for unlicensed forwarding in violation of the Shipping Act, 1916, and, if so, the amount of any such penalty which should be imposed, taking into consideration factors in possible mitigation of such a penalty; and

It is further ordered, That Jose Torrente d/b/a Network Express be named Respondent in this proceeding; and

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an administrative law judge at a date and place to be hereafter determined by the Presiding Administrative Law Judge, in accordance with the time limits specified by § 502.61 of the Commission's rules (46 CFR 502.61).

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 42 of the Commission's rules of practice and procedure (46 CFR 502.42), the Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, That this Order be published in the **Federal Register**, and a copy be served upon all parties of record.

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, That, all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29768 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

Lillick, McHose and Charles, Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notice that on September 29, 1981, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub. L. 96-325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No.: LM-81.

Filing Party: R. Frederick Fisher, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

SUMMARY: Agreement No. LM-81 is a collectively-bargained labor agreement between the Pacific Maritime Association (PMA) and the International Longshoremen's and Warehousemen's Union (ILWU). The purpose of the agreement is to provide for the establishment by PMA of a fund for the reimbursement of PMA member employers operating container stuffing and stripping facilities under the ILWU-PMA Pacific Coast Longshore and Clerks' Agreement, or the Container Freight Station Supplement thereto, for certain payments made to ILWU-PMA benefit plans.

By Order of the Federal Maritime Commission.

Dated: October 8, 1981.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29782 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-64]

Midland Pacific Shipping Co., et al.; Order of Investigation and Hearing

Based upon information developed by the Commission's staff, it appears that Midland Pacific Shipping Company, Inc., (Midland), a licensed independent ocean freight forwarder (F.M.C. License No. 1299) may have violated section 44(e), Shipping Act, 1916 (46 U.S.C. 841(b)) and provisions of the Commission's General Order 4 (46 CFR Part 510) which regulate the conduct of independent ocean freight forwarders. It also appears that two other licensed ocean freight forwarders, Leyden Shipping Corp. (Leyden Shipping) (F.M.C. License No. 829) and Person and Weidhorn, Inc. (Person and Weidhorn) (F.M.C. License No. 112) may have violated provisions of the Commission's General Order 4. Midland, Leyden Shipping, and Person and Weidhorn share office space at One World Trade Center, Suite 2661, New York, New York and are related by common ownership and common officers.

Midland is one hundred percent owned by Leyden Shipping. Bernard Leyden, President and Treasurer of Midland, is the President and Treasurer (55 percent stockholder) of Leyden Shipping and the Vice President of Person and Weidhorn. Walter Katzman is Vice President of both Midland and Leyden Shipping. Brian Leyden is Vice President and forty-five percent stockholder of Leyden Shipping. Person and Weidhorn is owned one-hundred

percent by Leyden Customs Expeditors, Inc. of which Bernard Leyden is fifty percent stockholder. Finally, Brian Leyden is President, Secretary, and Treasurer and one hundred percent owner of Brisley Ocean Transport, Ltd. (Brisley) a tariffed nonvessel operating common carrier. Brisley and Leyden Customs Expeditors also share office space in Suite 2661 at One World Trade Center in New York City. Bernard Leyden is a qualifying officer for all three licensees.

Information developed by the Commission indicates that Midland and/or Bernard Leyden, its President and qualifying officer, permitted Transocean Shipping Inc. (Transocean), a nonvessel operating common carrier, to falsely represent to ocean carriers that Midland had performed ocean freight forwarding services on certain Transocean shipments. Midland apparently allowed Transocean to utilize its ocean freight forwarding certification stamp on one thousand seventy-four (1074) ocean bills of lading during the period May 17, 1977 to March 17, 1979. As a result of the false certification, it appears that Midland realized unwarranted compensation from ocean common carriers in the amount of $116,755 for services Midland did not perform. Such conduct would be violative of section 44(e), Shipping Act, 1916 and section 510.24(e) of General Order 4, which provides that before a licensee may receive compensation from an ocean common carrier, it shall certify in writing to the ocean common carrier that it is licensed by the Federal Maritime Commission, that it has solicited and secured the cargo for the ship or booked or otherwise arranged for space for such cargo, and that it has performed at least two of five other services enumerated in § 510.24(e).

It further appears that Leyden Shipping has been involved in forwarding transactions in which the actual shipper's name was not disclosed on the shipper line of the ocean bill of lading. On eighty-five occasions between June 27, 1980 and September 19, 1980, Leyden Shipping showed "Brisley as agents" instead of the name of the actual shipper on bills of lading issued on shipments for which Leyden Shipping performed the forwarding services. The Commission's information indicates that on these shipments Leyden Shipping knew the identity of the actual shipper and showed "Brisley as agents" to protect the confidentiality desired by Leyden Shipping's shipper accounts. Brisley apparently was not acting as a nonvessel operating common carrier on these shipments. It appears that Leyden Shipping charged ocean freight forwarding compensation on these shipments totalling $8,488.10. If proven, this activity would appear to violate § 510.24(a) of the Commission's General Order 4 which prohibits a licensee from charging or receiving from an ocean carrier, either directly or indirectly, any compensation or payment of any kind whatsoever, unless the name of the actual shipper is disclosed on the shipper identification line of the ocean bill of lading. In addition, Leyden Shipping may have violated § 510.23(d) of General Order 4 by knowingly imparting to an oceangoing carrier false information relative to a forwarding transaction.

The relationship of Midland, Leyden Shipping, and Person and Weidhorn with Brisley through common officers and owners may have resulted in further General Order 4 violations. Section 510.22(c) of General Order 4 requires a licensee who is related to a nonvessel operating common carrier to make a second certification to ocean carriers on shipments where the licensee is entitled to collect compensation that the related nonvessel operating common carrier has not acted as a nonvessel operating common carrier on the shipments covered by the bills of lading. It appears that since February 28, 1979, the effective date of Brisley's NVOCC tariff, Midland, Leyden Shipping, and Person and Weidhorn may have failed to incorporate the required certification on those shipments in which the licensee would otherwise qualify for independent ocean freight forwarder compensation.

Further information indicates that Midland, Leyden Shipping, and Person and Weidhorn may have violated § 510.5(c) of General Order 4, which requires each licensee to submit to the Commission any change in facts called for in Form FMC–18, the application for a license as an independent ocean freight forwarder, within 30 days after such changes occur. On January 14, 1981, Midland, Leyden Shipping, and Person and Weidhorn submitted updated Form FMC–18's which disclosed that the licensees had been occupying office space with at least seven separete transportation firms under space sharing arrangements for at least one year before the Commission was officially notified. Changes in officers and stock ownership had also occurred which had not been timely reported to the Commission.

In view of the interlocking corporate structures, it is necessary to determine whether, if any respondent's license is revoked or suspended herein, any other respondent retaining its license without suspension must sever its ownership, management, and compensation/fee sharing arrangement with such revoked or suspended licensee pursuant to § 510.23(b) of General Order 4. A further issue to be resolved is whether each of the respondents shall be permitted to retain Bernard Leyden as its qualifying officer pursuant to § 510.5(a) of General Order 4.

Now, therefore, it is ordered, That pursuant to sections 22, 32 and 44 of the Shipping Act, 1916, (46 U.S.C. 821, 831 and 841(b) and section 510.9 of General Order 4 (46 CFR 510.9), a proceeding is hereby instituted to determine:

1. Whether Midland has violated section 44(e), Shipping Act, 1916, and § 510.24(e) of General Order 4 by allowing Transocean Shipping Inc. to represent to ocean carriers on one thousand seventy-four (1074) ocean bills of lading during the period May 17, 1977 to March 18, 1979, that it had performed forwarding services necessary to receive ocean carrier compensation and accepting ocean carrier compensation on such shipments for which it did not provide the required freight forwarding services;

2. Whether Midland, Leyden Shipping, and Person and Weidhorn, have violated § 510.5(c) of General Order 4 by failing to notify the Commission of changes in facts called for in Form FMC–18 within 30 days after such changes occurred;

3. Whether Midland, Leyden Shipping, and Person and Weidhorn have violated § 510.22(c) of General Order 4, by collecting compensation on shipments in which it failed to certify on the "line copy" of the ocean carrier's bill of lading that neither the licensee, nor any related person, has issued a bill of lading covering ocean transportation or otherwise undertaken common carrier responsibility for the ocean transportation of the shipment covered by the bill of lading;

4. Whether Leyden Shipping has violated § 510.23(d) of General Order 4 by knowingly imparting to an oceangoing common carrier false information relative to a forwarding transaction;

5. Whether Leyden Shipping has violated § 510.24(a) of General Order 4 by charging or receiving from an oceangoing common carrier any compensation or payment of any kind whatsoever in connection with any cargo or shipment for which the name of the actual shipper was not disclosed on the shipper identification line on the ocean bill of lading;

6. Whether, if Midland's, Leyden Shipping's, or Person and Weidhorn's

license is suspended or revoked, any other respondent retaining its license without suspension must sever its ownership, management and compensation/fee sharing arrangement with such revoked or suspended licensee pursuant to § 510.23(b) of General Order 4;

7. Whether Midland, Leyden Shipping, and Person and Weidhorn shall be permitted to retain Bernard Leyden as their qualifying officer pursuant to § 510.5(a) of General Order 4;

8. Whether civil penalties should be assessed against Midland, Leyden Shipping, and Person and Weidhorn pursuant to section 32(e), Shipping Act, 1916, for violations of the Shipping Act, 1916, and/or the Commission's rules and regulations, and, if so, the amount of any such penalty which should be imposed taking into consideration factors in possible mitigation of such penalty;

9. Whether Midland's, Leyden Shipping's, and Person's and Weidhorn's independent ocean freight forwarder license should be suspended or revoked pursuant to section 44(d), Shipping Act, 1916 for:

a. Willful violations of the Shipping Act, 1916;

b. Such conduct as the Commission finds renders Midland, Leyden Shipping, and Person and Weidhorn unfit to carry on the business of forwarding in accordance with §§ 510.9(b) and 510.9(e) of General Order 4.

It is further ordered, That Midland Pacific Shipping Company, Inc., Leyden Shipping Corp., and Person and Weidhorn, Inc. be named Respondents in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence within the time limits specified in Rule 61 of the Commission's rules of practice and procedure (46 CFR 502.61). The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue are such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 42 of the Commission's rules of practice and procedure (46 CFR 502.42), the Commission's Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register** and a copy thereof and notice of hearing be served upon Respondents;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72);

It is further ordered, That all future notices issued by or on behalf of the Commission, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29764 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

Pacific Indonesian Conference; Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement and the justification offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street, NW, Room 10427; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, Chicago, Illinois, and San Juan, Puerto Rico. Interested parties may submit comments on the agreement, including request for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before October 26, 1981. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreement and the statement should indicate that this has been done.

Agreement No.: 6060 DR-2.

Filing party: Mr. Scott L. Smith, Pacific/Indonesian Conference, Post Office Box 7411, San Francisco, California 94120.

Summary: Agreement No. 6060 DR-2 modifies the Pacific/Indonesian Conference Exclusive Patronage (Dual Rate) Contract System to suspend the expiration date previously granted and to extend the contract system for an indefinite period.

By order of the Federal Maritime Commission.

Dated: October 7, 1981.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29761 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 81-65]

Rohde & Liesenfeld, Inc. Independent Ocean Freight Forwarder No. 1832; Investigation and Hearing

Rohde & Liesenfeld, Inc. (R&L), located at One World Trade Center, Suite 8345, New York, New York 10048, is an independent ocean freight forwarder operating pursuant to FMC License No. 1832, issued on August 13, 1976. Information has been developed by the Commission's staff which indicates that R&L apparently violated section 16, Initial Paragraph, Shipping Act, 1916 (46 U.S.C. 815) and § 510.23(d) of the Commission's General Order 4 (46 CFR 510.23(d)).

R&L's apparent violations of the Shipping Act and rules of the Commission could render it unfit to carry on the business of forwarding pursuant to section 44(b), Shipping Act, 1916 (46 U.S.C. 841(b)).

Investigative information reveals that R&L may have been involved in forwarding transactions in which bills of lading were marked for transshipment to Kiel, West Germany, a Baltic seaport, in order to receive transportation for property at less than the rates or charges which would otherwise have been applicable. On forty-eight occasions between December 15, 1976 and November 8, 1978, it appears that R&L marked consolidated export

shipments for transshipment to Kiel in order to obtain lower freight charges applicable to shipments destined for Baltic seaports, although the shipments apparently were descharged in Bremen or Hamburg without transshipment. On these shipments, R&L paid the ocean freight charges to the carriers and apparently realized unwarranted freight savings amounting to $43,654.

Such conduct may be violative of section 16, Initial Paragraph, Shipping Act, 1916, which prohibits a forwarder from knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by an other unjust or unfair device or means, obtaining or attempting to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable. In addition, R&L may have violated § 510.23(d) of General Order 4 by knowingly imparting to common carriers by water false information relative to forwarding transactions.

Further information discloses that R&L may have declared false cubic measurements to common carriers by water as a means of obtaining or attempting to obtain ocean transportation for property at less than the rates or charges which would otherwise be applicable. On eleven bills of lading issued between December 31, 1976 and June 27, 1977, covering shipments of fiberglass boats carried between Baltimore and Hamburg, the cargo measurements listed on the bills of lading were less than the measurements on the packing lists for those shipments. R&L performed the forwarding services on these shipments and paid the ocean freight, apparently obtaining transportation for $14,661 less than if the cube on the packing lists had been declared. This alleged conduct on the part of R&L may be violative of section 16, Initial Paragraph, shipping Act, 1916, which prohibits a forwarder from knowingly and willfully, directly or indirectly by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means, obtaining or attempting to obtain transportation by water for property at less than rates or charges which would otherwise be applicable. Further, such conduct may violate section 510.23(d) of General Order 4 which prohibits a licensee from knowingly imparting to an oceangoing common carrier false information relative to forwarding transactions.

Additional information indicates that R&L may have falsely declared the cubic measurements on five export shipments of cotton gin machinery to Paraguay during the period from January 24, 1977 to September 8, 1977. R&L performed the ocean freight forwarding services on these shipments and paid the ocean freight, realizing a total unwarranted freight savings of $24,350. This alleged conduct may have resulted in additional violations of section 16, Initial Paragraph, Shipping Act, 1916 and section 510.23(d) of General Order 4.

Therefore, it is ordered, That, pursuant to section 16, Initial Paragraph, 22, 32, and 44 of the Shipping Act, 1916 (46 U.S.C. 814, 821, 831 and 841(b)) and § 510.9 of General Order 4 (46 CFR 510.9)), a proceeding is instituted to determine:

1. Whether R&L has violated section 16, Initial Paragraph, Shipping Act, 1916, by knowingly and willfully, directly or indirectly, falsely reporting to ocean carriers the destination port on at least 48 shipments be water during the period December 15, 1976 and November 8, 1978, as a means of obtaining or attempting to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable;

2. Whether R&L has violated section 16, Initial Paragraph, Shipping Act, 1916, by knowingly and willfully, directly or indirectly, falsely reporting the cubic measurements of shipments to common carriers by water covering at least 11 shipments between December 31, 1976 and June 27, 1977 as a means of obtaining or attempting to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable;

3. Whether R&L has violated section 16, Initial Paragraph, Shipping Act, 1916, by knowingly and willfully, directly or indirectly, falsely reporting the cubic measurements of shipments to common carriers by water covering at least five shipments between January 24, 1977 and September 8, 1977 as a means of obtaining or attempting to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable;

4. Whether R&L has violated § 510.23(d) of General Order 4 on at least 48 occasions during the period December 15, 1976 and November 8, 1978 by knowingly imparting to ocean carriers false information relative to a forwarding transaction;

5. Whether R&L has violated § 510.23(d) of General Order 4 on at least 11 other occasions during the period December 31, 1976 and June 27, 1977 by knowingly imparting to ocean carriers false information relative to a forwarding transaction;

6. Whether R&L has violated § 510.23(d) of General Order 4 on at least five occasions during the period January 24, 1977 to September 18, 1977 by knowingly imparting to ocean carriers false information relative to a forwarding transaction;

7. Whether civil penalties should be assessed against R&L pursuant to section 32(e), Shipping Act, 1916, for violations of the Shipping Act, 1916, and/or the Commission's rules and regulations, and, if so, the amount of any such penalty which should be imposed, taking into consideration factors in possible mitigation of such penalty;

8. Whether R&L's independent ocean freight forwarder license should be suspended or revoked pursuant to section 44(d), Shipping Act, 1916 for:

a. Willful violations of the Shipping Act, 1916; or

b. Such conduct as the Commission finds renders R&L unfit to carry on the business of forwarding in accordance with §§ 510.9(b) and 510.9(e) of General Order 4.

It is further ordered, That Rohde & Liesenfeld, Inc. be named Respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, shall commence within the time limits specified in Rule 61 of the Commission's rules of practice and procedure (46 CFR 502..61). The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the maters in issue are such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 42 of the Commission's rules of practice and procedure (46 CFR 502.42), the Commission's Bureau of Hearings and Field Operations shall be a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register** and a copy thereof and notice of hearing be served upon Respondent;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition of leave to intervene in accordance with

Rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72);

It is further ordered, That all future notices issued by or on behalf of the Commission, including notice of time and place of hearing, or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party to this proceeding shall be filed in accordance with Rule 118 of the Commission's rules of practice and procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 81-29765 Filed 10-13-81; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Meeting of Consumer Advisory Council; Additional Topic

The Consumer Advisory Council will consider the following additional topic at its previously announced meeting scheduled for Wednesday, October, 28 and Thursday, October 29:

6. *Truth in Lending Coverage of Real Estate Brokers*

Discussion of a proposed amendment to the Regulation Z definition of "arranger of credit" that would clarify its application to real estate brokers involved with seller financing of homes.

Information concerning this meeting may be obtained from Mr. Joseph R. Coyne, Assistant to the Board, at (202) 452-3204.

Board of Governors of the Federal Reserve System, October 7, 1981.

William W. Wiles,

Secretary of the Board.

[FR Doc. 81-29665 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

CB&T Bancshares, Inc.; Acquisition of Bank

CB&T Bancshares, Inc., Columbus, Georgia, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 51 percent or more of the voting shares of First State Bank and Trust Company of Valdosta Georgia, Valdosta, Georgia, upon the merger of First State Bancshares, Inc., Valdosta, Georgia with CB&T Bancshares. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Altanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29666 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bancorporation; Acquisition of Bank

Citizens Bancorporation, Sheboygan, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Citizens Bank of Manitowoc, Manitowoc, Wisconsin (in organization). The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than October 27, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29667 Filed 10-12-81; 8:45 am]

BILLING CODE 6210-01-M

Dakota Bankshares, Inc.; Acquisition of Bank

Dakota Bancshares, Inc., Fargo, North Dakota, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 97 percent or more of the voting shares of The Bank of Kirkwood Plaza, Bismarck, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29668 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

The Girard Co.; Acquisition of Bank

The Girard Company, Bala Cynwyd, Pennsylvania, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Farmers Bank of the State of Delaware, Wilmington, Delaware. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29672 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corporation; Proposed Acquisition of James Talcott Factors, Inc.

The Hongkong and Shanghai Banking Coporation, Hong Kong, has applied, pursuant to sections 4(c)(8) and 4(c)(9) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 1843(c)(9)), § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), and § 211.23(f)(5)(iii)(B)), of the Board's Regulation K (12 CFR 211.23(f) (5)(iii) (B), for permission to acquire indirectly and retain the shares of the subsidiaries of The Royal Bank of Scotland Group Limited ("RBSG") and The Royal Bank of Scotland Limited ("Royal Bank"), both of Edinburgh, Scotland that engage in activities in the United States, following the proposed acquisition by The Hongkong and Shanghai Banking Corporation of all of the outstanding shares of RBSG.

RBSG's subsidiary James Talcott Factors, Inc., New York, New York, and its wholly-owned subsidiary, James Talcott Business Credit, Inc., New York, New York, engage in factoring accounts receivable and in commercial financing activities. These activities would be performed from offices of these subsidiaries in New York, New York, serving the thirty-one most eastern states, and Los Angeles, California, serving the nineteen most western states. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of Individual proposals in accordance with the procedures of § 225.4(b). James Talcott Factors, Inc. and James Talcott Business Credit, Inc. are held by RBSG through Royal Bank, which maintains and operates a branch in New York and an agency in San Francisco.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

In addition, the Hongkong and Shanghai Banking Corporation has requested Board approval to retain the shares of Royal Scot Energy Limited, a proposed subsidiary of Royal Bank. RBSG and Royal Bank have applied to the Board under section 4(c)(9) of the Bank Holding Company Act and § 211.23(f)(5)(iii)(B) of Regulation K for permission to acquire through Royal Scot Energy Limited working and royalty interests in oil and gas lesses in the U.S. and to engage generally in those oil and gas activities in the U.S. which are customary for non-operators of such interests and leases.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 4, 1981.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29673 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

Independence Bank Group, Inc.; Acquisition of Bank

Independence Bank Group, Inc., Waukesha, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Metropolitan National Bank, Monona, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29669 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

The Plains Corp.; Formation of Bank Holding Company

The Plains Corporation, Lubbock, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Plains National Bank of Lubbock, Lubbock, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29674 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

Southeast Banking Corp. Proposal To Engage Directly or Indirectly in Mortgage Banking and To Acquire the Assets of Churchhill Mortgage Company

Southeast Banking Corporation, Miami, Florida, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to engage in mortgage banking and to acquire the assets of Churchhill Mortgage Company, Atlanta, Georgia.

Applicant states that the proposed subsidiary would engage in the activities of originating, selling, and servicing of conventional, FHA, and VA mortgage loans. These activities would be performed from offices in Huntsville,

Alabama; Atlanta, Georgia; Indianapolis, Indiana; Louisville, Kentucky; Charlotte, Fayetteville, and Greensboro, North Carolina; Memphis, Tennessee; and Houston, Texas, and the geographic area to be served are the southeastern United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 22.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than November 4, 1981.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29670 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc.; Acquisition of Bank

Texas American Bancshares, Inc., Fort Worth, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares, less directors' qualifying shares, of Allen State Bank, Allen, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 4, 1981. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 6, 1981.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 81-29671 Filed 10-13-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[E-81-18]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Kentucky Public Service Commission involving electric rates, Docket No. 8284.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Kentucky Public Service Commission involving the application of the Louisville Gas and Electric Company for an increase in its electric rates in Docket No. 8284.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add the General Services Administration to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: September 30, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-29648 Filed 10-13-81; 8:45 am]

BILLING CODE 6820-AM-M

[E-81-19]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in proceedings before the Ohio Public Utilities Commission involving electric rates, Docket No. 81-21-EL-AIR.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486 (d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the exective agencies of the Federal Government before the Ohio Public Utilities Commission involving the application of the Dayton Power and Light Company for an increase in its electric rates in Docket No. 81-21-EL-AIR.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration (GSA), and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall add the General Services Administration to its service list in this case so that GSA will receive copies of testimony, briefs, and other Department of Defense filings.

Dated: September 30, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-29649 Filed 10-13-81; 8:45 am]

BILLING CODE 6820-AM-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Bodies; Meetings

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is make of the following national advisory bodies scheduled to assemble during the month of November 1981.

Basic Behavioral Processes Research Review Committee

November 6; 9:00 a.m., Shoreham Americana Hotel, 2500 Calver Street, N.W., Washington, D.C. 20008
Open—November 6; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Ms. Anita Lipkin, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936

Purpose. The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or activitites in the fields of experimental and physiological psychology and comparative behavior, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda. From 9:00–10:00 a.m., November 6, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health administration, pursuant to the provisions of 5 U.S.C., 552b(c)(6), and Section 10(d) Pub. L. 92–463 (5 U.S.C. Appendix I).

Cognition, Emotion, and Personality Research Review Committee

November 7; 8:30 a.m., Shoreham Americana Hotel, Chef's Corner Conference Room, 2500 Calvert Street, N.W., Washington, D.C. 20008
Open—November 7; 8:30–9:30 a.m.
Closed—Otherwise
Contact: Ms. Jean Pierce, Room 9C–26, Parklawn Building, 5600 Fishers Lane, Bockville, Maryland 20857, (301) 443–3936

Purpose. The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of reseach activities in the fields of personality, cognition, emotion and higher mental processes, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda. From 8:30–9:30 a.m., Novermber 7, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health administration, pursuant to the provisions of 5 U.S.C., 552b (c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee

November 19–21; 9:00 a.m., Shoreham Americana Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008
Open—November 19; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Ms. Mary M. Martin, Room 9C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340

Purpose. The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activites in the fields of clinical psychopathology and clinical biology, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda. From 9:00–10:00 a.m., November 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C., 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendx I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained from Ms. Helen W. Garrett, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4333.

Dated October 5, 1981.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration

[FR Doc. 81–29640 Filed 10–13–81; 8:45 am]
BILLING CODE 4110–88–M

Health Resources Administration

Florida Health Service Areas 3 and 5 Redesignation

On March 23, 1978, a notice of redesignation of Florida Health Service Areas 3 and 5 was published in the **Federal Register** (43 FR 12089). A second notice of redesignation was published in the **Federal Register** on July 18, 1978 (43 FR 30898).

On April 20, 1981, the United States District Court, Jacksonville, Florida, directed the boundaries to be redesignated as originally established under the National Health Planning and Resources Development Act of 1974.

Subsection 122.205 of the governing regulations provides that the Secretary will determine the populations of health services areas based upon the latest available estimate from the Department of Commerce. A determination has been made that the population of the revised Health Service Area 3 is 716,151, and the population of the revised Health Service Area 5 is 1,073,324.

Accordingly, effective April 1, 1982, Florida Health Service Areas 3 and 5 are revised as follows:

Florida

Health Service Area 3 is the geographic area comprised of the following counties:

Baker, Clay, Duval, Flagler, Nassau and St. Johns.

Health Service Area 5 is the geographic area comprised of the following counties:

Brevard, Orange, Osceola, Seminole and Volusia.

The respective health systems agencies have established a timetable for the accomplishment of the directive of the Court which will result in the designation being effective as of April 1, 1982. The HSAs will publish such public notices after October 30, 1981, as required to take the steps necessary to implement the directive of the Court. The HSAs shall maintain on file and shall provide to interested persons the timetable for implementation. Interested persons may obtain information about the transition and about project applications and review schedules, from the respective health systems agencies as follows: Executive Director, Health Systems Agency of Northeast Florida, Area III, Inc., 1045 Riverside Avenue, Suite 260, Jacksonville, Florida 32204, (904) 356–9731; Executive Director, Health Systems Agency of East Central Florida, Inc., Corporate Square, 1000 N. Orlando Avenue, Winter Park, Florida 32790, P. O. Box 459, (305) 628–1292.

Dated: October 1, 1981.

Robert Graham,

Acting Administrator.

[FR Doc. 81–29650 Filed 10–13–81; 8:45 am]
BILLING CODE 4110–83–M

Public Health Service

National Center for Health Care Technology; Cancellation of a Workshop on Reuse of Hemodialyzers

The National Center for Health Care Technology (Center) announces that it is cancelling the workshop on the reuse of hemodialyzers used in treatment of patients suffering from End-Stage Renal

Disease (ESRD). The workshop was to take place at the Lister Hill Center, National Institutes of Health, Bethesda, Maryland, Novermber 2–3, 1981 (9:00 a.m. to 5:00 p.m. each day).

Notice of the Workshop meeting was published in the **Federal Register** Vol. 46, No. 169, September 1, 1981, page 43886.

Any questions regarding this notification should be directed to: Mr. Dennis J. Cotter, Division of Medical and Scientific Evaluation, National Center for Health Care Technology, Room 17A29, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

For further information contact: Mr. Cotter at the above address or by telephone (301) 443–4990.

Dated: October 6, 1981.

Wayne C. Richey, Jr.,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 81-29639 Filed 10-13-81; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

October 1, 1981.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the

Wampanoag Tribal Council of Gay Head, Inc., c/o Mrs. Gladys A. Widdiss, State Road, Gay Head, Massachusetts 02535

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on July 7, 1981. The petition was forwarded and signed by Mrs. Gladys A. Widdiss.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined, by appointment, in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20242.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 81-29647 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with 43 CFR Part 1780 that a subcommittee meeting of the Medford District Advisory Council will be held on Friday, October 23, 1981.

The meeting will begin at 9:00 a.m. and will continue until noon in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon.

The purpose of the meeting is for the Council to make recommendations to the District Manager on the designation of Areas of Critical Environmental Concern.

The meeting is open to the public and news media. Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction at the cost of duplication

William L. Bradley,

Acting District Manager.

October 2, 1981.

[FR Doc. 81-29643 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Managment

[M 51219]

Montana; Realty Action, Noncompetitive Sale of Public Lands in Carter County, Montana

October 2, 1981.

The following described lands have been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the fair market value:

Principal Meridian

T. 1 N, R. 61 E.,
Sec. 11, NW¼NW¼.
Containing 40.00 acres.

The above-described lands will be sold to Vernon W. Knipfer owner of the improvements on the above land. Sale of the land will not be held until 60 days after date of this notice. Fair market value of the land has been determined to be $3,000.

The proposed sale is consistent with the Bureau's planning system. The sale of this land has been discussed with Carter County and Montana government officials. Public interest will be served as the sale will assist the economy of the area by satisfying local government and private needs for land identified for disposal.

The following terms and conditions will be applicable to the sale:

1. All minerals will be reserved to the United States;

2. A right-of-way for ditches and canals will be reserved to the United States; and

3. The sale of these lands will be subject to all valid existing rights and reservations of record.

The decision to conduct the sale is based on information contained in the environmental assessment and land report written for this case. These documents are available for inspection at the Bureau of Land Management, Miles City District Office, Miles City, Montana 59301.

For a period of 45 days from the date of this notice, interested parties submit comments to the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Kannon Richards,

Acting State Director.

[FR Doc. 81-29719 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

[Great Falls 085927]

Montana; Order Providing for Opening of Public Lands

October 1, 1981.

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order restores certain lands acquired by the United States in an exchange under Sec. 8 of the Act of June 28, 1934, 43 U.S.C. 315g, as amended to the operation of the public land laws generally and some of those lands to the operation of the mining and mineral leasing laws. The minerals in part of the lands have always been owned by the Government and open to the mining and mineral leasing laws.

EFFECTIVE DATE: November 15, 1981.

FOR FURTHER INFORMATION CONTACT: Jack McIntosh, District Manager, Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59701 (406–723–6561).

SUPPLEMENTARY INFORMATION: 1. In an exchange of lands made under the provisions of Sec. 8 of the Act of June 28, 1934, as amended, 43 U.S.C. 315g, the following lands were reconveyed to the United States:

Principal Meridian, Montana.

T. 7 N., R. 1 E.,
Sec. 29, SW¼SW¼
Sec. 30, E½SE¼; and
Sec. 31, Lots 1, 2, 3, E½SE¼.

The area described contains 642.32 acres in Broadwater County.

2. The lands are located approximately 6 miles west of Townsend in west central Montana. They are completely surrounded by a large block of public land. Topography is mountainous. Soils are gravelly and shale subject to slight erosion. Vegetation is native grasses with scattered tracts of noncommercial timber. Historic and present use of the land is for grazing purposes and for military manuevers.

3. At 8 a.m. on November 15, 1981, the lands shall be open to the public land laws generally subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All applications received at or prior to 8 a.m., November 15, 1981, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Mineral rights in Lots 1, 2, and 3, E½W½ and SW¼SE¼ of Sec. 31 have always been owned by the Government. They have been open to applications and offers under the mineral leasing laws and to locations under the mining laws. Mineral rights on the balance of the lands were reconveyed to the United States. They will be open to application, offer, and location in accordance with the provisions specified in paragraph 3.

Roland F. Lee

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 81-29720 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Moab District Advisory Council; Meeting

SUMMARY: The Council will conduct committee meetings on November 12, with formal recommendations being made in a meeting on November 13. Both meetings will begin at 9 a.m.

LOCATION: Moab District Office, 125 West Second South, Moab, Utah.

SUPPLEMENTARY INFORMATION: The agenda is scheduled as follows:

November 12

9 a.m. to 11 a.m.—Nuclear Waste Committee and Land and Water Use Evaluation Committees: Presentation by Department of Energy on Current Status of National Waste Terminal Storage (NWTS) Program
11 a.m. to 12 p.m.—Nonrenewable Resources Committee: Tar Sands, Humates, Chevron Pipeline
Range EIS Committee: Proposed Grazing Regulations amendments
12 p.m. to 1 p.m.—Lunch
1 p.m. to 3 p.m.—Land and Water Use Evaluation Committee: Grand RMP, Westwater withdrawal Status, Montezuma Creek Water Quality Assessment, Firewood
Wilderness Committee: Final Wilderness Management Regulations, Current Status of Wilderness Study

November 13

9 a.m. to 11 a.m.—Reports and recommendations from previous day's meetings by committee chairmen
11 a.m. to 12 p.m.—Presentation on need for a highway to Vernal
12 p.m. to 1 p.m.—Lunch
1 p.m. to 2 p.m.—Public Statements
2 p.m. to 3 p.m.—New Business, Including 1982 Annual Work Plan
3 p.m. to 4 p.m.—Recommendations formalized
Statements by Council Chairman and District Manager
Adjournment

FOR FURTHER INFORMATION CONTACT: Mary Plumb, Public Affairs Officer, Bureau of Land Management, 125 West Second South, P.O. Box 970, Moab, Utah 84532, 801–259–6111.

All Advisory Council meetings are open to the public. Written statements may be filed, or verbal statements may be made at 1 p.m. on November 13. Anyone wishing to make a verbal statement must contact the District Manager by November 10. Depending on the number of statements, a per person time limit may be established so that all may be heard. Summary minutes for the meeting will be maintained in the District Office and be available for public inspection within thirty days following the meeting.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 81-29723 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

Moab District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Moab District Grazing Advisory Board.

Notice is hereby given, in accordance with Pub. L. 92–463, that a meeting of the Moab District Grazing Advisory Board will be held December 11, 1981 at 10 a.m. in the Moab District Office Conference Room, 125 West 200 South In Moab, Utah. The meeting is open to the public.

The agenda for the meeting will include:

1. Discussion on Range Improvement (RI) and Policy.
a. Proposed construction of new RI for fiscal year 1982 based on annual work plan funding.
b. Maintenance of existing RI for fiscal year 1982.
c. Review of RI projects completed in District.
2. Report on Monitoring.
a. Number of studies on allotments.
b. Evaluation of some of the allotments.
3. Discuss status of Price River EIS and progress of allotment categorization.
4. Discussion of Allotment Management Plans (AMP) Revision.

Interested persons may make oral statements to the Board between 2 and 3 p.m., or may file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532 by December 9, 1981.

Summary minutes of the board meeting will be maintained in the Moab District Office and will be available for reproduction and inspection (during regular business hours) within 30 days following the meeting.

C. Delano Backus,

Acting District Manager.

October 5, 1981.

[FR Doc. 81-29724 Filed 10-13-81; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 29699]

Aroostook Valley Railroad Co; Abandonment Between Washburn and Caribou, Me; Petition for exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: The Aroostook Valley Railroad Company (AVR) seeks an exemption under 49 U.S.C. 10505 from the requirement of prior approval under 49 U.S.C. 10903 for the abandonment of 11.48 miles of track in Maine. Because there are shippers on the line and because of the status of the record, we are soliciting public comment before considering the merits of the proposed exemption.

DATES: Comments must be received within 30 days after date of publication in the Federal Register.

ADDRESSES: Send comments to:

(1) Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioner's representative: G.E. Mills, President, Aroostook Valley Railroad Company, 32 Parsons Street, P.O. Box 509, Presque Isle, ME 04769.

Comments should refer to Finance Docket No. 29699.

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

SUPPLEMENTARY INFORMATION: On July 21 1981, AVR filed a petition under 49 U.S.C. 10505 to exempt a proposed abandonment of its rail line between Washburn (milepost 11.55) and Caribou (milepost 23.03), 11.48 miles of AVR's trackage.[1]

Petitioner points out that only 6 customers were served by that line in 1979 and 5 in 1980.

Applicant further shows the following traffic and data on the line for years 1979 and 1980:

	1979	1980
1. AVR Revenue for Line	$9,131	$9,983
2. Car Hire Payments	1,927	1,714
3. Line 1 less line 2	7,204	8,269
4. Amount in line 1 expressed as % of total revenue	4.4	4.3
5. No of loaded cars handled	59	52
6. Cars handled expressed as a percentage of the total number of cars handled on line	6.6	6.3

[1] AVR states that the line from Park Siding to Caribou, which includes Washburn to Caribou, was placed under an embargo effective April 23, 1981 because of bridge, track and tie conditions.

AVR reported past and continuing deficits on the line and argues generally that it is operating 42% of its trackage to earn about 4.4% of its gross freight revenue. It concludes that there is no economic justification to continue to operate the line. Additionally, AVR points out that the City of Caribou is served by two railroads: the Bangor and Aroostook Railroad Company (Bangor and Aroostook) and the Canadian Pacific (CP). It understands that the rail transportation needs of the shippers formerly served by the involved track are being met by these two railroads.

The Statute

Rail abandonments require Commission approval under 49 U.S.C. 10903. Under 49 U.S.C. 10505 the Commission is authorized to exempt a rail transaction when it finds that (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a and (2) either the transaction is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Discussion and Conclusions

Based on the evidence, we are unable to make these findings. AVR noted that it served 5 shippers-receivers in 1980 prior to its embargoing the line in 1981, but stated its understanding that their rail needs were currently being met by the Bangor and Aroostook and the CP. The petition fails to show whether these shippers were served by AVR with copies of the petition for exemption. Therefore, we cannot determine whether the shippers' failure to respond was occasioned by a lack of awareness of the proceeding or because no shipper will be adversely affected. Moreover, since AVR did not segregate maintenance and operating costs attributable to the line except for certain car expenses, it is not possible to conclude that the line is operating at the deficit AVR reported. While there may be no economic justification for continuing to operate the line as petitioner suggests, we are unable to reach that conclusion from the evidence.

Because of the paucity of information presented, we find it impossible to determine that continued regulation is not necessary to carry out the rail transportation policy. Neither can we find that the transaction is of limited scope or regulation is not necessary to protect shippers from abuse.

AVR will be directed to serve copies of this decision on the 5 shippers-receivers and any other users of the line. We request interested parties to participate and comment. Comments from AVR should include substantiation of the deficits which it reports. Comments are due within 30 days of the publication of this notice in the Federal Register. After receipt and consideration of the views of all interested parties, we will act on AVR's petition. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Within 10 days of the date of service of this notice (October 13, 1981) AVR shall (1) serve copies of the notice on the shippers-receivers named in its petition and on any other users of the line and (2) certify to the Commission that this service has taken place.

2. This decision is effective on October 13, 1981.

Decided: September 28, 1981.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 81-29677 Filed 10-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs; Decision

Decided: October 6, 1981.

In our recent decisions, an 18.0-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figure set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 17.7-percent. Accordingly, we are authorizing that the surcharge for this traffic remain at 18.0 percent.

No change is authorized in the 3.0 percent surcharge on less-than-truckload (LTL) traffic performed by carriers not using owner-operators, the 2.0-percent surcharge for United Parcel Service, or the 6.6-percent surcharge for bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commission or Boards of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by depositing a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m., October 9, 1981.

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

James H. Baynes,

Acting Secretary.

October 5, 1981.

APPENDIX.—FUEL SURCHARGE

Base date and price per gallon (including tax)

January 1, 1979 ..... 69.5¢

Date of current price measurement and price per gallon (including tax)

October 5, 1981 ..... 130.1¢

	Transportation performed by—			
	Owner operator[2]	Other[4]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent: fuel expense (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	17.7	3.0	6.6	[1] 2.8
Percent surcharge allowed	18.0	3.0	6.6	[3] 2.0

[1] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[2] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[3] Apply to all truckload rated traffic.

[4] Including less-than-truckload traffic.

[FR Doc. 81-29681 Filed 10-13-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 179]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: October 7, 1981.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 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, Alspaugh, and Shaffer.

Agatha L. Mergenovich,

Secretary.

MC 29643 (Sub-19)X, filed March 25, 1981, previously noticed in the **Federal Register** of April 16, 1981, republished as follows: Applicant: WALSH TRUCKING SERVICE, INC., 50 Burney Ave., Massena, NY 13662. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Applicant seeks to remove restrictions in its lead and Sub-Nos. 3, 7, 8, 9, 10F, 11, 13F, 14F, 15F and 16F, certificates. This Board previously broadened these authorities by (1) broadening the commodity descriptions, (2) eliminating (a) port of entry restrictions to allow service at all ports of entry on the NY boundary line (b) an "originating at, destined to" restriction (c) commodities in bulk restrictions (d) restrictions against service to intermediate points, and (e) facilities limitations; (3) broadening cities to county-wide authority and (4) authorizing two-way radial movements. Applicant also sought to broaden mileage radii points to counties, but this portion of the application was not published by the Board. Applicant appealed and the Commission's Division 1, following the findings in the Hitchcock decision ordered republication. Notice is hereby given that applicant seeks to broaden (1) points in New York within 15 miles of Massena, NY to "points in St. Lawrence, Franklin, and Clinton Counties, NY" in the lead; (2) points in New Jersey within 30 miles of Newark, NJ to "points in Bergen, Hudson, Essex, Passaic, Morris, Sussex, Hunterdon, Somerset, Middlesex, Union and Monmouth Counties, NJ"; and (3) points within 12 miles of Jersey City, NJ to "points in Hudson, Essex, Passaic, Bergen, Morris, Union, Somerset, Middlesex and Monmouth Counties, NJ," in Sub-No. 11.

MC 102223 (Sub-16)X, filed September 21, 1981. Applicant: FRETTE-NICHOLSON TRUCK LINES, INC., P.O. Box 206, Ankeny, IA 50021. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Applicant seeks to remove restrictions in its lead certificate and Sub-Nos. 11, 13, 14 and 15 as follows: (1) Under regular route authority in the lead to broaden the commodity description to "farm products" from Livestock and Agricultural commodities; "food and related products" from mill feeds and flour; "furniture and fixtures; from new furniture; "general commodities, except Class A and B explosives" from General Commodities, with exceptions; (2) authorize service at all intermediate points on described regular routes in the lead; (3) broaden the off-route points to the named counties of Hardin, Hamilton and Story Counties, IA in lieu of Story City, IA and a 15 miles radius (with exceptions) in the lead; (4) under the irregular route authority in the lead certificate, to change the commmodity description to "Farm Products" from Livestock, Stock and Feeder Cattle, to "Machinery" from Farm Machinery and farm implements and agricultural machinery; "Chemicals and Related products" from paint; "Textile Mill Products" from Twine; "Metal Products" from Wire, Gates, Nails, Staples and Farm Hardware; "Food and Related Products" from Mill Feeds, Tankage, Poultry and Eggs, Feed and Seed and Dressed Poultry; "General Commodities except Class A and B explosives" from General Commodities with the usual exceptions; (5) to broaden the territory to Boone, Hardin, Hamilton and Story Counties, IA from Story City and points within 20 miles thereof; Story County, IA from Randall, IA and points within 10 miles thereof; Franklin, Hamilton, Hardin, Story and Wright Counties, IA from Alden, IA and points within 20 miles of Alden and points in Story County, IA; Peoria County, IL from Peoria, IL; Marshall County, IA from State Center, IA; Franklin, Hamilton, Hardin and Wright Counties, IA from Alden and points within 20 miles thereof; Grundy, Hamilton, Hardin, Jasper, Marshall, Polk, Poweshiek, Story, Boone and Tama Counties, IA from State Center, IA and points within 30 miles thereof; to Hamilton County, IA from Jewell, IA; Woodford County, IL from El Paso, IL; Hamilton County, IA from Ellsworth, IA; to Whiteside, Fulton and Winnebago Counties, IL from Rock Falls, Canton, and Rockford, IL; Peoria, Whiteside and DeKalb Counties, IL from Peoria, Sterling and DeKalb, IL; to Mower and Freeborn Counties, MN from Austin and Albert Lea, MN; to LaSalle County, IL from Streator, IL. (6) In Sub-Nos. 11, 13, 14 and 15 broaden the commodity description to "Food and Related Products" from Packinghouse Products and Meat, Meat Products, Meat

By-Products and Articles distributed by Meat Packinghouses as described in Sections A and C of Appendix to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766, except commodities in bulk and hides; (7) broaden territory in Sub-No. 11 to read Polk County, IA from Des Moines, IA. (8) In Sub-No. 13, remove the plantsite restrictions and broaden territory to Crawford and Hardin Counties, IA from Denison and Iowa Falls, IA. (9) In Sub-No. 14, remove the plantsite restriction and broaden the territory to Carroll County, IA from Carroll, IA. (10) In Sub-No. 15, broaden territory to Blackhawk and Louisa Counties, IA from Waterloo and Columbus Junction, IA. (11) delete originating at or destined to restrictions in Sub-Nos. 13, and 14; and (12) authorize radial service for existing one-way authority in all authorities.

MC 117344 (Sub-294)X, filed August 21, 1981 and previously noticed in **Federal Register** of September 8, 1981, republished as corrected in this issue. Applicant: THE MAXWELL CO., 10300 Evendale Drive, Cincinnati, OH 45241. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. Applicant seeks to remove restrictions in its Sub-No. 145 certificate as previously published, except that in replacing cities with county-wide authority in (2) in paragraph (6), (31), (37), (46), (47), (49), and (51) Warren County, OH should be included as a portion of Cincinnati, OH (previously published as Butler, Clermont and Hamilton County, OH). The purpose of this republication is to correct inadvertent errors and omissions.

MC 119878 (Sub-4)X, filed September 14, 1981. Applicant: A. B. COLLIER WRECKER SERVICE, INC., 475 Humphreys Street, Nashville, TN 37203. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Applicant seeks to remove restrictions in its Sub-No. 2 certificate to (1) broaden the commodity description from wrecked and disabled motor vehicles and replacement vehicles for wrecked and disabled motor vehicles to "transportation equipment"; (2) eliminate the limitation to transportation from or to the place where a disabled vehicle has been taken and the limitation to operations by use of wrecker equipment only; and (3) broaden the territorial description by deleting "except AK and HI."

MC 141710 (Sub-2)X, filed September 25, 1981. Applicant: CAPITOL CITY TRANSFER, INC., P.O. Box 1979, Topeka, KS 66601. Representative: John E. Jandera, 641 Harrison Street, Topeka, KS 66601. Sub. 1: Broaden (1) from 100-mile radius of Topeka, KS to Nemaha, Richardson, Johnson, Pawnee, Gage, and Jefferson Counties, NE and Atchison, Doniphan, Brown, Nemaha, Marshall, Washington, Cloud, Clay, Ottawa, Riley, Pottawatomie, Jackson, Jefferson, Leavenworth, Wyandotte, Johnson, Douglas, Shawnee, Wabaunsee, Dickinson, Saline, Marion, Morris, Chase, Lyon, Osage, Franklin, Miami, Linn, Anderson, Coffey, Bourbon, Allen, Woodson, Greenwood, Butler, Wilson, Neosho and Crawford Counties, KS; (2) to round-trip authority (3) from general commodities, with exceptions to "general commodities, except classes A and B explosives and household goods as defined by the Commission;" (4) remove restriction against service to Perry, Lawrence, or Tonganoxie, KS.

MC 145738 (Sub-25)X, filed September 25, 1981. Applicant: EAST-WEST FREIGHT, INC., P.O. Box 607, Hwy 45, South, Selmer, TN 38375. Representative: H. E. Miller, Jr., 806 Nashville Bank & Trust Bldg., 315 Union St., Nashville, TN 37201. Sub-Nos. 3, 4, 6, 9, 10, 11, 13, 16, 17, 18, 20, 21, 22, and 23: Broaden (1)(a) industrial chemicals (Sub-No. 3F), fiberglass products and materials, equipment and supplies (Sub. 9F) chemicals and commodities used in their production, distribution, and sale (Sub. 13F) to "chemicals and related products and materials, equipment, and supplies used in the manufacture and distribution of chemicals and related products"; (b) rubber tire treads, etc., equipment, and supplies (Sub 4F) and plastic pipe and fittings and accessories (Sub. 11F) to "rubber and plastic products and materials, equipment, and supplies used in the manufacture and distribution thereof"; (c) carpet cleaning machines, and materials, equipment and supplies (Sub. 6F) and electrical lighting fixtures and equipment and parts and accessories, (Sub. 17F), to "machinery and materials, equipment, and supplies used in their manufacture and distribution; (d) glass, (Sub. 10F) to "clay, concrete, glass or stone products"; (e) new furniture to "furniture and fixtures" (Subs. 10F, 18F, 22F, and 23F); and (g) carpet padding and backing, wood and foam products, and insulation and wood excelsor products, to "textile mill products, lumber and wood products, and building materials" (Sub. 21); (2) remove in bulk, originating at/or destined to, and foreign commerce only restrictions; (3) remove facilities at and/or broaden Panama City, FL, to Bay County Sub. 3F; Fresno, CA, to Fresno, County, Sub. 6F; Irwindale, CA to Los Angeles County, Sub. 9F; Las Vegas, NV, to Clark County, Selmer, TN, to McNairy County, Connellsville, PA, to Fayette County and Salem, NY, to Salem County Sub. 10F; facilities to Orange County, CA, Sub. 13F; Greensboro, NC, to Guilford County Sub. 16F; Americus, GA, to Sumter County and Eufaula, AL, to Barbour County, Sub. 17F; Marinette and Rice Lake, WI, to Marinette and Berrou Counties, Englewood, CO, to Arapahoe County, and Russelville, KY, to Logan County, Sub. 21F; and Lebanon, Millersville, Greenbriar, Cookesville, Murfreesboro and McMinnville, TN, to Wilson, Sumner, Robertson, Putnam, Rutherford, and Warren Counties, Sub. 23F; and (4) to radial authority; (5) remove the size and weight exception Sub. 6F.

[FR Doc. 81-29678 Filed 10-13-81; 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.

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. OPI–278

Decided: October 5, 1981.

By the Commission, Review Board Number 1. Members Parker, Chandler and Fortier. Member Chandler not participating in part.

MC 28241 (Sub-2), filed September 14, 1981. Applicant: ASSOCIATED STORAGE & VAN, INC., 120 West Monroe St., Kokomo, IN 46901. Representative: Constance J. Goodwin, Suite 600, Circle Tower, Five East Market St., Indianapolis, IN 46204 (317) 634–8313. Transporting *household goods*, between points in IN, on the one hand, and, on the other, points in FL, GA, IL, IA, KY, MD, MI, MN, MO, MT, NJ, NY, OH, OK, PA, TN, TX, WV, WI, and WY.

MC 45940 (Sub-3), filed September 29, 1981. Applicant: THOS. W. EASTON'S SONS, INC., 8915 Crane Ave., Cleveland, OH 44105. Representative: Lewis S. Witherspoon, 2455 North Star Rd., Columbus, OH 43221, (614)–486–0448. Transporting *those commodities* which because of their size or weight require the use of special equipment, between points in Cuyahoga, Geauga, Lake, Summit and Portage Counties, OH, on the one hand, and, on the other, points in CT, IL, IN, KY, MD, MI, NJ, NY, OH, PA, TN, VA and WV.

MC 52460 (Sub-339), filed September 29, 1981. Applicant: ELLEX TRANSPORTATION, INC., P.O. Box 9637, 1420 W. 35th St., Tulsa, OK 74107, (918) 446–4434. Representative: Don E. Kruizinga (same address as applicant). Transporting *clay, concrete, glass or stone products*, between points in Tulsa County, OK, on the one hand, and, on the other, points in the U.S.

MC 57450 (Sub-3), filed September 24, 1981. Applicant: ROBERT M. WRIGHT, INC., Box 6261, Pittsburg, PA 15212. Representative: David M. Wright, R. D. #1 Linwood Drive, Valencia, PA 16059, (412)–443–9054. Transporting (1) *such commodities* as are dealt in by retail department stores between points in AP and OH, on the one hand, and, on the other points in NY, WV, MD, PA and OH; and (2) *metal products*, between points in Allegheny County, PA, on the one hand and on the other points in OH, NJ, MD, IN and KY.

MC 61440 (Sub-216), filed September 25, 1981. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157, (405) 840–7579. Over *regular* routes transporting *general commodities* (except classes A and B explosives), serving points in Beaufort County, NC, on an off-route point in connection with applicant's authorized regular route operations.

MC 104421 (Sub-38), filed September 24, 1981. Applicant: ECONOLINES, INC., P.O. Box 623, Omaha, NE 68101. Representative: Roger W. Norris (same address as applicant), (712)–322–5009. Transporting *general commodities* (except classes A and B explosives), between points in NE, on the one hand, and, on the other, points in the U.S.

MC 107460 (Sub-81), filed September 25, 1981. Applicant: WILLIAM Z. GETZ, INC., 3005 Yellow Goose Rd., P.O. Box 4124, Lancaster, PA 17604. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101–1295, (717) 236–9318. Transporting *metal products*, between points in the U.S., under continuing contract(s) with Alcan Aluminum Corporation of Cleveland, OH.

MC 116710 (Sub-43), filed September 28, 1981. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., P.O. Box 6176, Bossier City, LA 71111. Representative: Joe T. Lanham, P.O. Box 2165, Austin, TX 78768, (512) 476–6083. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with (1) Georgia Pacific Corporation, of Plaquemine, LA; (2) Arkla Chemical Corporation, of Shreveport, LA; and (3) Olympia Petroleum, Inc., of Houston, TX.

MC 119741 (Sub-307), filed September 25, 1981. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave. NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant), (515) 576–6831. Transporting *such commodities* as are dealt in or used by retail department stores, between the facilities of Target Stores in the U.S., on the one hand, and, on the other, points in the U.S.

MC 124111 (Sub-70), filed September 21, 1981. Applicant: OHIO EASTERN EXPRESS, INC., P.O. Box 2297, Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *food and related products*, between those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 125040 (Sub-5), filed September 17, 1981. Applicant: R. CONLEY, INC., 6891 Seneca St., Elma, NY 14059. Representative: Robert D. Gunderman, Can-AM Bldg., 101 Niagara St., Buffalo, NY 14202, (716) 854–5870. Transporting *food and related products*, between points in NY, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 144541 (Sub-3), filed September 21, 1981. Applicant: BALDWIN LEASING COMPANY, INC., 801 Industrial Blvd., Bay Minette, AL 36507. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401, (205) 578–2836. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.

MC 144610 (Sub-4), filed September 30, 1981. Applicant: C. ALLEN TRUCKING, INC., 1 Nenningger Lane, East Brunswick, NJ 08816. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201)–572–5551. Transporting *wire, cable and ship stores*, between points in the U.S., under continuing contract(s) with Laribee Wire, Inc., of Farmingdale, NY.

MC 145371 (Sub-9), filed September 29, 1981. Applicant: MFCH, INC., Route 1, Kings, IL 61045. Representative: Daniel O. Hands, 205 West Touhy Av., Suite 200A, Park Ridge, IL 60068, (312)–698–2235. Transporting *metal products* and *machinery*, between the facilities of Crown Cork & Seal Co., Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 145890 (Sub-3), filed September 25, 1981. Applicant: EUGENE W. BELL, d.b.a. BELL TRUCKING, 1047 Shoemaker Ave., Shoemakerville, PA 19555. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting (1) *metal products,* between points in PA, CA, IL, MD, TX, WA and OR, on the one hand, and, on the other, points in the U.S., (2) *rubber and plastic products,* between points in Berks County, PA and Marion County, IN, on the one hand, and, on the other, points in the U.S., and (3) *fibreglass and acoustical products and building materials,* between points in Northampton County, PA and Calhoun County, MI, on the one hand, and, on the other, points in Los Angeles and Orange Counties, CA, Kent County, MI, Sandusky County, OH and Clackamas County, OR.

MC 147771 (Sub-5), filed September 21, 1981. Applicant: RALPH J. MARQUARDT & SONS, INC., P.O. Box 1040, Yankton, SD 57078. Representative: Max H. Johnston, P.O. Box 6597, Lincoln, NE 68506 (402) 488–4841. Transporting *metal products,* (1) between points in Madison County, NE, on the one hand, and, on the other, points in AZ, CA, CO, IA, IL, IN, KS, MN, MO, MT, NE, ND, NV, OR, SD, WA, WI, and WY, and (2) between Vermillion, SD, and points in Cook County, IL.

MC 150540, filed September 28, 1981. Applicant: COWAN BOAT TRANSFER, INC., 2001 Magnolia St., Pasadena, TX 77505. Representative: Jerry Prestridge, P.O. Box 1148, Austin, TX 78767, (512)–472–8800. Transporting *boats and boating equipment,* between points in TX, on the one hand, and, on the other, points in CA.

MC 152530, filed September 30, 1981. Applicant: WINDER'S WRECKER SERVICE CO., 5325 Knight Arnold Rd., Memphis, TN 38118. Representative: Robert L. White, Suite 2736, 5100 Popular Ave., Memphis, TN 37137, (901)–363–5833. Transporting *wrecked, disabled and replacement vehicles,* between points in AL, AR, GA, IL, KY, LA, MO, MS, OK, TN, and TX.

MC 152951 (Sub-2), filed September 29, 1981. Applicant: OILFIELD MAINTENANCE AND REPAIR, INC., P.O. Box 836, Immokalee, FL 33934. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001, (202)–628–9243. Transporting *Mercer commodities,* between points in FL, on the one hand, and, on the other, points in AL, AR, LA, MS, OK and TX.

MC 153381, filed September 14, 1981. Applicant: TCX, INC., 205 S. Parkway W., Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 51 Poplar Ave., Memphis, TN 38137, (90L) 767–5600. Transporting *general commodities* (except classes A and B explosives), between Memphis, TN, and points in Davidson County, TN, on the one hand, and, on the other, points in CA, WA, OR, AZ, NM, and TX.

MC 154050 (Sub-5), filed September 16, 1981. Applicant: CARRIER SYSTEMS INTERNATIONAL MOTOR FREIGHT, INC., Sellers & O'Brien Sts., Kearny, NJ 07032. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th St., N.W., Washington, DC 20036, (202) 783–8131. Transporting *general commodities* (except classes A and B explosives), in containers having a prior or subsequent movement by water, between ports in WA, OR, CA, TX, LA, WI, IL, MI, IN, and OH, on the one hand, and, on the other, those points in the U.S. in and west of MN, IA, MO, AR, and LA.

MC 155981, filed September 25, 1981. Applicant: ARMORED SERVICES, INC., Suite 2210, American National Bank Bldg., South Bend, IN 46601. Representative: Edward G. Bazelon, 39 South La Salle St., Chicago, IL 60603, (312) 236–9375. Transporting *coins, currency and food stamps,* between Chicago, IL, on the one hand, and, on the other, points in LaPorte, St. Joseph and Elkhart Counties, IN.

MC 155370 (Sub-1), filed September 23, 1981. Applicant: KEM CONTRACT CARRIERS, INC., P.O. Box 1565, Binghamton, NY 13902. Representative: Donald C. Carmien, 501 Midtown Mall, 15 Chenango St., P.O. Box 1922, Binghamton, NY 13902, (607) 772–6993. Transporting *typewriters,* between points in the U.S., under continuing contract(s) with S.C.M. Corporation, of Cleveland, OH.

MC 156171, filed September 21, 1981. Applicant: PANDA HOUSE, INC., P.O. Box 3255, Brooklyn, NY 11202. Representative: Francis Pak, 2086 2nd Ave., Apt. 20B, New York, NY 10029, (212) 860–2246. As a *broker,* at Brooklyn, NY, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, in charter and special operations, beginning and ending at points in NY and extending to points in the U.S.

MC 156981, filed September 25, 1981. Applicant: RATH, INC., Box 2, Sterling, ND 58572. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502–2056, (701) 223–5300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Jet Sales, Inc., of Bismarck, ND.

MC 157081, filed September 25, 1981. Applicant: DONALD & LENDA MOONEYHAM, INC., Route 2, P.O. Box 344, Marionville, MO 65705. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501, (402) 476–1144. Transporting *foods and related products,* between points in KS, on the one hand, and, on the other, points in the U.S.

MC 157521, filed September 17, 1981. Applicant: WALTER LEMKE, INC., R.R. 1, Foxhome, MN 56543. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *food and related products,* between points in the U.S., under a continuing contract(s) with Richels Beverages, Inc., of Wahpeton, ND.

MC 158270, filed September 14, 1981. Applicant: JERRY JOHNSON, 1110 West 29th St., Plainview, TX 79072. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408, (806) 763–9555. Transporting *trailer and containers,* between points in Lubbock and Hale Counties, TX, on the one hand, and, on the other, points in TX.

MC 158371, filed September 21, 1981. Applicant: TOMMY JEFFERS, d.b.a. JEFFERS TRUCKING, 1309 Astor St., Bakersfield, CA 93306. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872–1106. Transporting *petroleum, natural gas and their products,* between points in CA, on the one hand, and, on the other, points in AZ and NV. Condition: To the extent that this certificate authorizes the transportation of liquefied petroleum gas, it shall expire 5 years from date of issuance.

MC 158420, filed September 23, 1981. Applicant: EMPIRE TRANSPORTATION, INC., P.O. Box 767, Dobson, NC 27017. Representative: Marvin Rosenberg, 918 White Birch Lane, Wantagh, NY 11793, (516) 735–7659. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Inter State Express, Inc., of Brooklyn, NY.

MC 158430, filed September 24, 1981. Applicant: NORTHEAST RENTAL CORP., d.b.a. COLOMBO TRANSPORTATION LINES, P.O. Box "0", Clarks Summit, PA 18411. Representative: Christopher Colombo, R.D. #1, Dalton, PA 18414. Transporting *metal products and traffic control products,* between points in the U.S., under continuing contract(s) with Ingersoll Rand Company, of Old Forge, PA, Interstate Safety Service, Inc., of

Clarks Summit, PA, and Burns & Rivetti Steel Fabricators, Inc., of Archbald, PA.

MC 158451, filed September 24, 1981. Applicant: GUY M. TURNER, INC., P.O. Box 7664, Greensboro, NC 27407. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, N.W., Washington, DC 20004, (202) 737–1030. Transporting *building materials,* between points in MD, AL, FL, GA, NC, SC, TN, MS, VA and KY, on the one hand, and, on the other, the facilities of Lowe's Companies, Inc., at points in the U.S.

MC 158461, filed September 25, 1981. Applicant: T & R DELIVERY, INC., 3000 West Commerce, Dallas, TX 75212. Representative: James W. Hightower, Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237, (214) 339–4108. Transporting *general commodities* (except classes A and B explosives), between Dallas, TX, on the one hand, and, on the other, points in AR, CO, LA, NM, OK, MS and TX.

MC 158451 (Sub-1), filed September 25, 1981. Applicant: GUY M. TURNER, INC., P.O. Box 7664, Greensboro, NC 27407. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th St., N.W., Washington, DC 20004, (202)–737–1030. Transporting (1) *machinery;* and (2) *those commodities* which because of their size or weight require the use of special handling or equipment, between points in AL, FL, GA, NC, SC, TN and VA, on the one hand, and, on the other, points in the U.S.

MC 158471, filed September 25, 1981. Applicant: EDDIE EDWARDS TRUCKING, INC. 1337 Broadway, Lorain, OH 44052. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with (1) The B. F. Goodrich Company, of Akron, OH, and (2) The Mercier Corporation, of Birmingham, MI.

MC 158480, filed September 28, 1981. Applicant: J. LAURANCE NICHOLSON & SON INC., Route 2, Box 707, Chestertown, MD 21620. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740, (301) 739–4860. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Campbell Soup Company, of Camden, NJ.

MC 158481, filed September 25, 1981. Applicant: JAMES H. THORNES, d.b.a. THORNES LUXURY COACH SERVICE, 4816 Claybury Ave., Baltimore, MD 21206. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001, (202) 628–9243. Transporting *passengers and their baggage,* in charter and special operations beginning and ending at Baltimore, MD, and points in its commercial zone, and extending to those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 158501, filed September 28, 1981. Applicant: JAYGAR CORPORATION, 1473 Beers School Rd., Coraopolis, PA 15108. Representative: John A. Pillar, 1500 Bank Tower, 307 Forth Ave., Pittsburgh, PA 15222, (412) 471–3300. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Travenol Laboratories, Inc., of Motor Grove.

Volume No. OPY–3–184

Decided: October 6, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

MC 31675 (Sub-33), filed September 25, 1981. Applicant: CENTRAL DIVISION, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Leonard A. Jaskiewicz, 1730 M St., N.W., Washington, DC 20036, (202) 296–2900. Transporting *general commodities* (except classes A and B explosives), between points in AL, CT, DE, FL, GA, IL, IN, KY, LA, MA, MD, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, WV, and DC, on the one hand, and, on the other, points in the U.S.

MC 40505 (Sub-10), filed September 30, 1981. Applicant: HOGLAND TRANSFER COMPANY, 3221 Paine Ave., Everett, WA 98201. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055, (206) 228–3807. Transporting *general commodities* (except classes A and B explosives), between Everett, WA, on the one hand, and, on the other, points in Snohomish, Skagit, and Whatcom Counties, WA.

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 83835 (Sub-174), filed September 28, 1981. Applicant: WALES TRANSPORTATION, INC., P.O. Box 116186, Dallas, TX 75266. Representative: James W. Hightower, Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237, (214) 339–4108. Transporting *hazardous materials,* and *such commodities* designated sensitive by the Department of Defense, between points in the U.S.

Note.—The certificate granted in this proceeding shall expire 5 years from the date of issuance.

MC 106594 (Sub-8), filed September 28, 1981. Applicant: KIRKPATRICK TRUCKING CO., 11317 Rt. 14 N, Harvard, IL 60033. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016, (312) 298–1094. Transporting *general commodities* (except classes A and B explosives), between points in Clay County, MO and points in IA, IL, IN, MI and WI, on the one hand, and, on the other, points in the U.S.

MC 120184 (Sub-15), filed September 29, 1981. Applicant: PEP LINES TRUCKING CO., 32600 Dequindre Rd., Warren, MI 48092. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, (216) 566–5639. Transporting *machinery and machinery products,* between Cleveland, OH, on the one hand, and, on the other, points in MI.

MC 124964 (Sub-73), filed September 29, 1981. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 265, Tavares, FL 32778. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001, (202) 628–9243. Transporting (1) *food and related products* and (2) *such materials, supplies and equipment* as are used in the manufacture and distribution of food and related products, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company of Chicago, IL.

MC 127204 (Sub-19), filed September 29, 1981. Applicant: KINDSVATER, INC., P.O. Box 1027, Dodge City, KS 67801. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612, (913) 233–9629. Transporting *fertilizer and propane,* between points in NE, MO, KS, CO, NM, OK, TX and IA. Condition: The authority granted here is limited in point of time to a period of five (5) years from the date of issuance.

MC 138225 (Sub-12), filed September 25, 1981. Applicant: HEDRICK ASSOCIATES, INC., RR #2, Box 10A2 Douglas Rd., Far Hills, NJ 07931. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *such commodities* as are dealt in or used by retail, catalog, and discount department stores, between points in MD, NY, NJ, CT, MA, and PA, on the one hand, and, on the other, points in the U.S.

MC 139284 (Sub-10), filed September 29, 1981. Applicant: TRUCKER'S INC., P.O. Box 337, 4316 South Main St., Stafford, TX 77477. Representative: Damon R. Capps, 1300 Main St., Suite

1230, Houston, TX 77002, (713) 658–8101. Transporting: (1) *Mercer Commodities, metal and metal products, machinery, rubber and rubber products, plastic and plastic products,* and *pipes and related products,* (a) between points in LA, AR, MS, AL, CO, and NM, and (b) between points in OK, NM, CO, AR, and AL, and (2) *plastic and plastic products* and *rubber and rubber products,* (a) between points in TX, on the one hand, and, on the other, points in LA and OK.

MC 145555 (Sub-1), filed September 29, 1981. Applicant: WALKER'S, INC., Route 1, Box 86, Greenville, FL 32331. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, (904) 632–2300. Transporting (1) *farm products,* (2) *building materials,* (3) *pallets and pallet parts,* (4) *metal products,* (5) *fertilizer and fertilizer materials,* and (6) *chemicals and related products,* between points in LA, TX, and AR, and points on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International boundary line between the U.S. and Canada.

MC 146215 (Sub-3), filed September 28, 1981. Applicant: WOLFE TRUCKING, INC., 1333 E. 7th St., Los Angeles, CA 90021. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211, (213) 655–3573. Transporting (1) *food and related products,* between points in PA, new Haven County, CT, New York, NY, and St. Louis, MO, on the one hand, and, on the other, points in AZ, CA, NV, TX, and WA, and (2) *textile mill products* and *waste or scrap materials not identified by industry producing,* between points in LA, MA, PA, RI, and SC, on the one hand, and, on the other, Los Angeles, CA.

MC 148425 (Sub-4), filed September 28, 1981. Applicant: SUNDANCE STAGE LINES, INC., 3762 Main St., San Diego, CA 92113. Representative: Roger Curtis McKee, 110 W. "C" St., Suite 1803, San Diego, CA 92101, (714) 238–0085. Transporting: *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending in San Diego, CA and its commercial zone, and extending to points in the U.S. (except AZ, NM, CO, UT, and NV).

MC 149455 (Sub-2), filed September 28, 1981. Applicant: TORNETTA'S MOTOR TRUCK, INC., P. O. Box 349, Conshohocken, PA 19428. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110, (215) 561–1030. Transporting *metal products,* between Philadelphia, PA, on the one hand, and, on the other, points in CT, DE, MD, NJ, NY, OH, PA, VA, WV, and DC.

MC 151224 (Sub-1), filed September 24, 1981. Applicant: NORTHERN STEEL TRANSPORT CO., a corporation, 6041 Benore Rd., Toledo, OH 43612. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603, (419) 255–8220. Transporting *metal products,* between points in IL, IN, KY, OH, TN, WV, those in the Lower Peninsula of MI, those in PA on and west of U.S. Hwy 219, those in Audrain, Bollinger, Callaway, Cape Girardeau, Cole, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Monroe, Montgomery, Osage, Perry, Phelps, Pike, Ralls, Reynolds, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Warren, and Washington Counties, MO, and those in Allegany, Broome, Cataraugus, Cayuga, Chautauqua, Chemung, Cortland, Erie, Genesee, Livingstone, Monroe, Niagara, Onondaga, Ontario, Orleans, Oswego, Schuler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates Counties, NY.

MC 151345 (Sub-2), filed September 29, 1981. Applicant: ROBERT ALLEN HARTER, d.b.a. HARTER TRUCKING, 307 McCampbell, Fillmore, CA 93105. Representative: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650, (213) 863–8883. Transporting *food and related products,* between points in Jefferson County, CO, on the one hand, and, on the other, points in Santa Barbara County, CA.

MC 152695, filed September 30, 1981. Applicant: PACIFIC BUS LEASING, INC., 711 West 17th Street, Suite C11, Costa Mesa, CA 92627. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting *passengers and their baggage,* in the same vehicle with passengers, (1) in round-trip charter operations, beginning and ending at points in Los Angeles, Orange, Riverside and San Bernardino Counties, CA and extending to points in NV, AZ and UT; and (2) in one-way operation, between points in Los Angeles and Orange Counties, CA, on the one hand, and, on the other, the Los Angeles, San Diego and San Francisco Harbors, CA.

MC 154095, filed September 28, 1981. Applicant: CEDAR POINT TRUCKING, INC., 113 W. 1st South, Rexburg, ID 83440. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83705, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with The Boise Company, of Boise, ID, Suenaga Masonry & Building Supply, Inc., of Pocatello, ID, and Yellowstone Log Homes, of Rigby, ID.

MC 154095 (Sub-1), filed September 28, 1981. Applicant: CEDAR POINT TRUCKING, INC., 113 W. 1st South, Rexburg, ID 83440. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83705, (208) 343–3071. Transporting *building materials,* and *lumber and lumber mill products,* between points in CA, ID, MT, OR, UT, WA, and WY.

MC 154184 (Sub-1), filed September 24, 1981. Applicant: AMERICAN PACIFIC POWER APPARATUS, INC., P.O. Box 515, Aurora, OR 97002. Representative: C. Jack Pearce, 1000 Connecticut Ave., N.W., Suite 1200, Washington, DC 20036 (202) 785–0048. Transporting (1) *lumber and wood products,* and *metal products,* between points in the U.S., under continuing contract(s) with DLW Investment Co., d.b.a. Cascadian Co., Inc., of Eugene, OR, (2) *machinery,* between points in the U.S., under continuing contract(s) with Feenaughty Machinery Co., of Portland, OR, Machinery & Equipment Co., of San Francisco, CA, and Machinery Distribution Co., of Baldwin Park, CA.

MC 154995 (Sub-1), filed September 9, 1981. Applicant: HUSKER TRANSPORT, INC., 8402 Cedar Island Rd., Omaha, NE 68147. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501 (402) 475–6761. Transporting *food and related products,* between the facilities of Prime Meat Processors, Inc., at points in Douglas County, NE, on the one hand, and, on the other, points in the U.S.

MC 157115, filed September 28, 1981. Applicant: STEEL-TRUX, INC., 2787 Sandra Terrace, St. Joseph, MI 49085. Representative: Donald L. Bleich, 816 Ship St., St. Joseph, MI 49085 (616) 983–0151. Transporting *iron and steel articles,* between points in the U.S., under continuing contract(s) with Whirlpool Corporation, of Benton Harbor, MI.

MC 158315, filed September 18, 1981. Applicant: MAYFIELD ENTERPRISES INC., 140 E. Del Rio Dr., Tempe, AZ 85282. Representative: Houston T. Mayfield, (same address as applicant) (602) 829–9115. Transporting *general commodities* (except classes A and B explosives), between points in AZ, on the one hand, and, on the other, points in NV, CA, OR, WA, ID, WY, UT, CO, NM, and MT.

MC 158474, filed September 25, 1981. Applicant: J. K. STOCKWELL LTD., P.O.

Box 176, Leamington, Ontario, Canada N8H 3W2. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226 (313) 962–6492. In foreign commerce only, transporting *general commodities* (except classes A and B explosives), between ports of entry on the International Boundary Line, between the U.S. and Canada and points in the U.S.

MC 158485, filed September 29, 1981. Applicant: B & W TRUCKING CO., INC., 319 N. Fourth St., Columbus, OH 43215. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215 (614) 464–4103. Transporting *general commodities* (except classes A and B explosives), between Weirton and Wheeling, WV, and points in OH, on the one hand, and, on the other, Chicago, IL, and Columbus, OH.

MC 158494, filed September 28, 1981. Applicant: SUNBELT TOURS, INC., 3485 U.S. 19N, Ste. "N", Clearwater, FL 33515. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Rd., Atlanta, GA 30326 (404) 262–7855. As a *broker*, at Clearwater, FL, in arranging for the transportation by motor vehicle, of *Passengers and their baggage* in the same vehicle with passengers, between points in the U.S.

MC 158495, filed September 28, 1981. Applicant: OMH TRUCKING COMPANY, a corporation, d.b.a. HUBBARD CARTAGE COMPANY, 750 East 120th Street, Chicago, IL 60628. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001 (202) 628–9243. Transporting *chemicals and related products, ores and minerals, clay, concrete, glass or stone products, machinery, metal products, building materials,* and *rubber and plastic products,* between points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, LA, MD, MA, MI, MS, MO, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV, WI and DC, on the one hand, and, on the other, points in the U.S.

MC 158514, filed September 29, 1981. Applicant: LONG TRUCK LINES, INC., 152 Central Ave., Bridgeport, CT 06607. Representative: Frederick A. Long (same address as applicant) (203) 366–4668. Transporting *general commodities* (except classes A and B explosives), between points in CT, on the one hand, and, on the other, points in the U.S.

MC 158515, filed September 28, 1981. Applicant: INDY CARTAGE CO., INC., 1414 S. West St., Indianapolis, IN 46625. Representative: Tony H. Abbott, 620 Union Federal Bldg., Indianapolis, IN 46204 (317) 639–5633. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contracts with Johnson & Johnson Baby Products Company, of Park Forest, IL, and Merchandise Warehouse Co., Inc., of Indianapolis, IN.

MC 158544, filed Setpmber 29 1981. Applicant: RAY & ROSS TRANSPORT, INC., 1315 North "A" St., Las Vegas, NV 89106. Representative: Sammie Ross Armstrong (same address as applicant) (702) 385–1388. Transporting *passengers and their baggage,* in same vehicle with passengers, in charter and special operations, between points in Clark County, NV, on the one hand, and, on the other, points in CA, UT, ID, OR, and AZ.

MC 120675 (Sub-15), filed June 11, 1981, previously published in the F.R. issue of July 12, 1981. Applicant: ACME TRUCK LINE, INC., 2855 LaPalco Boulevard, Harvey, LA 70059. Representative: Paul D. Angenend, 1806 Rio Grande, Austin, TX 78768 (512) 476–6391. Transporting *Mercer Commodities,* between points in CO, ID, MT, ND, NE, SD, UT, and WY, between points in CO, ID, MT, ND, NE, SD, UT, and WY, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KS, KY, LA, MS, NM, OK, TN, and TX. *This republication corrects the territorial description.

Volume No. OPY–4–396

Decided: October 2, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

MC 120737 (Sub-99), filed September 25, 1981. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *building and construction materials, machinery, and metal products,* between points in the U.S. in and east of NM, IA, MO, AR, and LA.

MC 124887 (Sub-136), filed September 25, 1981. Applicant: SHELTON TRUCKING SERVICE, INC., Route, 1, Box 230 Altha, FL 32421. Representative: Sol H. Proctor , 1101 Blackstone Bldg., Jacksonville, FL 32202 (904) 632–2300. Transporting *chemicals and related products,* and *ores and minerals,* between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Condition: To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue.

MC 139667 (Sub-10), filed September 25, 1981. Applicant: C. SHCMIDT TRUCKING CO., INC., 101 West Sanger Salem, IL 62881. Representative: Brenda Schmidt 906 Meadow Lane, Salem, IL 62881 (618) 548–5823. Transporting *building materials,* between points in Marion County, IL, on the one hand, and, on the other, points in the U.S.

MC 150587 (Sub-3), filed September 25, 1981. Applicant: ROSS DEMING, P.O. Box 136, Dell Rapids, SD 57022. Representative: Thomas J. Simmons, Box 480, Sioux Falls, SD 57101, (605) 339–3629. Transporting *lumber and lumber products,* between points in the U.S., under continuing contract(s) with Sage Cedar Distribution Center, of Osseo, MN, and Gabler Sage Lumber Co., Inc., of Minneapolis, MN.

MC 153397, filed September 25, 1981. Applicant: RODEWAY OF CALIFORNIA, INC., d.b.a. RODEWAY TRANSPORT CORPORATION, P.O. Box 1111, Stockton, CA 95201. Representative: Ronald J. Graham, 1044 Sonora Ave., Manteca, CA 95336, (209) 239–2111. Transporting *bakery goods,* between points in the U.S., under continuing contract(s) with Mother's Cake and Cookie Company, of Oakland, CA.

MC 158477, filed September 25, 1981. Applicant: M & S TRUCKING CO., INC., P.O. Box 1058, Olla, LA 71465. Representative: James D. Morrison (same address as applicant), (318) 534–6403. Transporting *lumber and forest products,* between points in the U.S., under continuing contract(s) with Crown Zellerbach Corporation of Bogalusa, LA, and Colfax Creosoting Company of Pineville, LA.

Volume No. OPY–4–398

Decided: October 7, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher and Williams.

MC 5296 (Sub-2), filed October 1, 1981. Applicant: LACY'S EXPRESS, INC., 40 Mill St., Pedricktown, NJ 08067. Representative: Michael R. Werner, 423 Edgewood Ave., Teaneck, NJ 07666, (201) 575–7700. 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, Incorporated, of Wilmington, DE, Town & Country Plant Food, Inc., of Salem, NJ, and Jay Dee Sportswear, Inc., of Paulsboro, NJ.

MC 144216 (Sub-2), filed September 28, 1981. Applicant: J. D. ANDERSON TRUCKING, INC., R.D. 1, Industry, PA 15052. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219, (412) 281–9494. Transporting *general commodities* (except classes A and B explosives), between points in the U.S.,

under continuing contract(s) with Halstead Industries, Inc., of Zelienople, PA. F. B. Leopold, of Zelienople, PA. Elwin G. Smith Division, Cyclops Corporation, of Pittsburgh, PA. Pittsburgh Tube Company, of Monaca, PA. Thomas, Inc., of New Brighton, PA. The Hall China Company, of East Liverpool, OH. Colt Industries, Crucible, Inc., of Midland, PA, and Anthes Incorporated—Etobicoke Division, of Elwood City, PA.

MC 148966 (Sub-8), filed September 28, 1981. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 1000 United Central Bank Bldg., Des Moines, IA 50309 (515) 243-6164. Transporting *food and related products*, (1) between the facilities of Hygrade Food Products Corporation, at points in the U.S., on the one hand, and, on the other, points in the U.S., and (2) between points in Dubuque, Benton, Plymouth, and Crawford Counties, IA, Douglas County, NE, Jewell County, KS, and Henry and Ogle Counties, IL, on the one hand, and, on the other, points in the U.S.

MC 150086 (Sub-4), filed October 1, 1981. Applicant: WADE TRUCK LINES, INC., P.O. Box 156, Verona, MO 65769. Representative: Larry E. Gregg, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601 (913) 234-0565. Transporting *such commodities* as are dealt in or used by grocery and food business houses, and institutions, between points in the U.S., on the one hand, and, on the other, points in Greene County, MO and Kansas City, KS.

MC 151566 (Sub-9), filed September 28, 1981. Applicant: PERRY TRANSPORT, INC., 14375 172d Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant) (616) 842-3550. Transporting *duct, hose, and tubing*, between points in the U.S., under continuing contract(s) with Atcoflex, Inc., of Grand Haven, MI.

MC 153276, filed October 1, 1981. Applicant: LTL CONSOLIDATORS & DISTRIBUTORS, INC., 700 Woodswether Rd., Kansas City, MO 64105. Representative: Charles J. Fain, 333 Madison St., Jefferson City, MO 65101 (314) 635-4115. Transporting *general commodities* (except classes A and B explosives), between points in MO, KS, and NE.

MC 157306, filed October 1, 1981. Applicant: HARRY T. SMITH, d.b.a. HARRY T. SMITH TRUCKING, P.O. Box 88, Icard, NC 28666. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064 (615) 790-2510. Transporting *furniture and fixtures*, between points in the U.S., under continuing contract(s) with Pem-Kay Furniture Company, Inc., of Conover, NC.

MC 158576, filed October 1, 1981. Applicant: ROSS TRUCK LEASING, INC., d.b.a. ROSS TRUCKING, P.O. Box 267, Ocilla, GA 31774. Representative: Virgil H. Smith, 74 Highway N. Box 245, Tyrone, GA 30290 (404) 969-1980. Transporting *liquid fertilizer and fertilizer materials*, between points in GA, on the one hand, and, on the other, points in AL, FL, NC, SC, and TN.

James H. Bayne,

Acting Secretary.

[FR Doc. 81-29676 Filed 10-9-81; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1-279]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: October 5, 1981.

The following applications, filed on or after February 9, 1981, are governed by Special Rule 251 of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated 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 and 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. 1, Members Parker, Chandler and Fortier, (Chandler not participating in part).

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. OP1-279

Decided: October 5, 1981.

By the Commission, Review Board Number 1, Members Parker, Chandler, and Fortier. Member Chandler not participating in part.

MC 154380, September 25, 1981. Applicant: WALTER DUBOIS, d.b.a. CONTROL COURIER, 196 Hackensack St., Wood-Ridge, NJ 07075. Representative: Walter DuBois (same address as applicant) (201)-438-4142. Transporting *shipments weighing 100 pounds* or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 158310, filed September 17, 1981. Applicant: STEWARD BROS. TRANSPORTATION, INC., Umpqua

Star Route, Box 208A, Oakland, OR 97462. Representative: Billy R. Reid, 1721 Carl St., Fort Worth, TX 76103, (817) 332–4718. 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 158321, filed September 18, 1981. Applicant: PORT OF SEATTLE, PO Box 1209, Seattle, WA 98111. Representative: Jack H. Fox, (same address as applicant), (206) 382–3620. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 158450, filed September 24, 1981. Applicant: ROBERT DUVALL, R.D. #1, P.O. Box 323, West Grove, PA 19390. Representative: George E. Campbell, 985 Old Eagle School Road, Suite 501, Wayne, PA 19087, (215) 293–9220. 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 158460, filed September 25, 1981. Applicant: MICHAEL T. NEVILLE, d.b.a. BIG "M" TRUCKING, 35 Turnpike Rd., Southborough, MA 01745. Representative: Robert D. Hansen, P.O. Box 625, Framingham, MA 01701, (800)–225–9490. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioner*, between points in the U.S.

MC 158500, filed September 28, 1981. Applicant: GENERAL FREIGHT, INC., P.O. Box 2087, Sebastian, FL 32958. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518, (215)–385–6086. As a *broker* of *general commodities*, (except classes A and B explosives), between points in the U.S.

MC 158550, filed September 30, 1981. Applicant: VENTURA TRANSPORTATION, INC., 390 Michel Jasmin, Dorval, Quebec, Canada H9P 1C1. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742–3530. As a *broker* of *general commodities* (except household goods), between points in the U.S.

Volume No. OPY–3–183

Decided: October 6, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

MC 101474 (Sub-29), filed September 24, 1981. Applicant: RED TOP TRUCKING COMPANY, INC., 7020 Cline Ave., Hammond, IN 46323. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204, (317) 638–1301. 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 158475, filed September 25, 1981. Applicant: RICHARD H. GIANDOMENICO, d.b.a. GIANDOMENICO TRUCKING, 35 Turnpike Rd., Southborough, MA 01745. Representative: Robert D. Hansen, P.O. Box 625, Framingham, MA 01701, 800–225–9490. 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 158484, filed September 25, 1981. Applicant: DONALD J. & SALLY LEE GREGOR, 1478 Gellor, Port Angeles, WA 98362. Representative: (same as applicant), (206) 452–2835. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OPY–4–397

Decided: October 2, 1981.

By the Commission, Review Board Number 2, Members Carleton, Fisher, and Williams.

MC 158487, filed September 28, 1981. Applicant: CLEO IRWIN CROUCH, JR., 2200 W. Chain of Rocks Rd., Granite City, IL 62040. Representative: Cleo Irwin Crouch, Jr. (same address as applicant), (618) 797–6500. As a *broker of general commodities* (except household goods), between points in the U.S.

James H. Bayne,

Acting Secretary.

[FR Doc. 81–29680 Filed 10–9–81; 8:45 am]

BILLING CODE 7035–01–M

LIBRARY OF CONGRESS

Policy Regarding Public Use of In-Process Files

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

Public Use of In-Process Files

In-Process Files are those which the Copyright Office makes for its own immediate internal use in connection with pending applications for registration or the recordation of documents and which are preliminary to the completion of the public record. These files include the Master Index Card File, the Temporary Tile Card File, accounting files, open U.S. (unfinished business) files, and other files of a similar nature. These files are maintained and are constantly used to facilitate the internal administrative operations of the Office in processing applications for registration and recording documents. They are not a part of the records that are required by section 705 of the Copyright Act, to be open to public inspection.

I. General Policy

A. *Denial of Direct Access to In-Process Files.* It is the general policy of the Copyright Office to deny *direct* public access to in-process files and to any work (or other) areas where they are kept. Likewise, direct public use of computer terminals intended to access the automated equivalents of these files is not permitted.

B. *Access to Information. Information* contained in Copyright Office in-process files may be obtained by anyone upon request to the Information and Reference Division, in accordance with the procedures described below.

1. In general all requests by the public for information in the in-process and open U.B. files should be made to the Public Information Office. A report of the findings will be given for each request.

2. For other than numbered works, the report shall provide the following information.

a. The date(s) of receipt of:

(i) The application(s) for registration that may have been submitted and is (are) in process;(ii) The document(s) that may have been submitted for recordation and is (are) in-process;

(iii) The copy or copies (or phonorecords) that may have been submitted.

b. The title of the work(s).

c. The name of the remitter.

3. Such searches of the in-process files will be given priority to the extent permitted by the demands of normal workflow on the affected sections of the Copyright Office.

II. Exceptions to the General Policy

A. *Direct Public Inspection by Claimants.* Direct public access to pending applications for registration, documents for recordation, and deposits will be afforded in the case of applications for registration upon the request of the copyright claimant or his/her authorized representative, or, in the case of documents, upon the request of at least one of the persons who executed the document or by an authorized representative of that person. These requests should be made to the Public Information Office, and the claimant or authorized representative will be permitted to review these materals there.

B. *Limited, Provisional Public Access to Certain In-Process Files.* The Copyright Office recognizes that some members of the public wish to conduct searches of certain in-process files in order to obtain up-to-date information. In this policy announcement, the Copyright Office has endeavored to accommodate this public interest without permitting undue interference with normal workflow to the detriment of the general public interest.

As an exception to the general policy of denying direct public access to in-process files and to the work areas containing them, the Copyright Office therefore will permit direct access by members of the public under the following conditions:

1. Access is limited to the Master Index Card File and the Temporary Title Card File, presently located in the Files Services and Administrative Support Unit, Room LM-429 of the James Madison Memorial Building.

2. Hours of public access to the above files shall be from 10:00 a.m. to 11:00 a.m. Monday through Friday, on days the Copyright Office is open for business.

3. Cards may not be removed from the files.

4. In no case will direct access be permitted to open U.B. files, or to any financial or accounting records.

5. The Copyright Office reserves the right to deny direct access to the in-process files mentioned in paragraph 1 above in the case of any person who violates the stated conditions of the privilege.

Dated: September 29, 1981.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 81-29726 Filed 10-13-81; 8:45 am]

BILLING CODE 1410-03-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Visual Arts Panel (Artists Organizations) to the National Council on the Arts; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Artists Organizations) to the National Council on the Arts will be held on October 26-31, 1981, from 9:00 a.m.-5:30 p.m. in room 1426 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C. 20506.

This meeting is 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.

Dated: October 6, 1981.

[FR Doc. 81-29644 Filed 10-13-81; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Behavioral and Neural Sciences; Subcommittee for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee for Sensor Physiology and Perception—Panel A.

Date and time: November 2 & 3, 1981, 9:00 a.m. to 5:00 p.m.

Place: Room 540 at The National Science Foundation, 1800 "G" Street, N.W., Washington, D.C. 20550.

Type of meeting: Part Open: Open November 3, 12:00 to 2:00 P.M.; closed November 2; November 3, 9:00 a.m. to 12:00 p.m.; November 3, 2:00 to 5:00 p.m.

Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550; telephone; 202/357-7428

Summary minutes: May be obtained from the Contact Person, Dr. Terrence R. Dolan at the address listed above.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.

Agenda: Open: Discussion on Panel Reorganization in the Neurosciences area. Closed: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a 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. 552b(C), Government in the Sunshine Act.

Authority to close meeting: 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.

October 7, 1981.

[FR Doc. 81-29653 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences; Subcommittee for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Behavioral and Neural Sciences Subcommittee for Sensory Physiology and Perception—Panel B.

Date and time: November 5 & 6, 1981, 9:00 a.m., to 5:00 p.m.

Place: Room 628 at The National Science Foundation, 1800 "G" Street, N.W., Washington, D.C. 20550.

Type of meeting: Part Open: Open November 6, 12:00 to 2:00 p.m.; closed November 5; November 6, 9:00 a.m. to 12:00 p.m.; November 6, 2:00 to 5:00 p.m.
Contact person: Dr. Terrence R. Dolan, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, D.C. 20550; telephone 202/357-7428.
Summary minutes: May be obtained from the Contact Person, Dr. Terrence R. Dolan at the address listed above.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in sensory physiology and perception.
Agenda: Open: Discussion on Panel Reorganization in the Neurosciences area. Closed: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a 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. 552b(C), Government in the Sunshine Act.
Authority to close meeting: 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.

October 7, 1981.

[FR Doc. 81-29655 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences; Subcommittee on Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences—Panel A
Date and time: November 2 and 3, 1981—9 a.m. to 5 p.m. each day
Place: Room 1224, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Part Open—November 2, 9 a.m. to 5 p.m. closed; November 3, 9 a.m.-12 closed; 12 p.m. to 2 p.m.—open; 2 p.m. to 5 p.m.—closed
Contact person: Dr. Steven E. Kornguth, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471
Summary minutes: May be obtained from the contact person as listed above
Purpose of subcommittee: to provide advice and recommendations concerning support for research in Neurobiology
Agenda: Open—discussion of possible reorganization of Subcommittees in the three Neurosciences area. (11/3—12 p.m.-2 p.m.); closed—To review and evaluate research proposals as part of the selection process for awards. (11/2—all day; 11/3 9 a.m.-12 p.m. & 2 p.m. to 5 p.m.)
Reason for closing: The proposals being reviewed include information of a proprietery 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. 552b(c), Government in the Sunshine Act
Authority to close meeting: 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.

October 7, 1981.

[FR Doc. 81-29654 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Behavioral and Neural Sciences; Subcommittee on Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Neurobiology of the Advisory Committee for Behavioral and Neural Sciences—Panel B
Day and time: November 5 and 6, 1981—9 a.m. to 5 p.m. each day
Place: Room 1224, National Science Foundation, 1800 G Street NW., Washington, D.C.
Type of meeting: Part Open—November 5, 9 a.m.-5 p.m., closed; November 6, 9 a.m.-noon, closed; noon to 2 p.m., open; 2 p.m. to 5 p.m., closed
Contact person: Dr. Steven E. Kornguth, Program Director, Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202/357-7471
Summary minutes: May be obtained from the contact person as listed above
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Neurobiology
Agenda: Open—Discussion of possible reorganization of Subcommittees in the three Neurosciences area. (11/5—noon to 2 p.m.); Closed—To review and evaluate research proposals as part of the selection process for awards. (11/5—all day, 11/6 9 a.m. to noon and 2 p.m. to 5 p.m.)
Reason for closing: The proposals being reviewed include information of a 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. 552b(c), Government in the Sunshine Act
Authority to close meeting: 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.

October 7, 1981.

[FR Doc. 81-29656 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Materials Research; Ad Hoc Oversight Subcommittee for Condensed Matter Theory; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meetings:

Name: Ad Hoc Oversight Subcommittee for Condensed Matter Theory Program, Advisory Committee for Materials Research
Date and time: November 5-6, 1981; 9:00 a.m.-5:00 p.m. each day
Place: National Science Foundation, 1800 G Street NW., Room 340, Washington, D.C. 20550
Type of meeting: Closed
Contact person: Dr. Eric D. Thompson, Program Director, Condensed Matter Theory Program, Condensed Matter Sciences Section, Division of Materials Research, Room 404, National Science Foundation, Washington, D.C. 20550 Telephone: (202) 357-9737
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Condensed Matter Theory.
Agenda: Thursday, November 5, 1981—9:00 a.m. to 5:00 p.m. closed
Review and comparison of declined proposals (and supporting documentation) with successful awards including review of peer review materials and other privileged materials
Friday, November 6, 1981—9:00 a.m. to 5:00 p.m.—closed
Further discussions of declined proposals and awards—Preparation of report on Subcommittee findings and recommendations
Reasons for closing: The Subcommittee will be reviewing grants and/or declination jackets which contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This session will also include a review of the peer review of documentation pertaining to

applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 (c). Government in the Sunshine Act.

Authority to close meeting: 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.

October 7, 1981.

[FR Doc. 81-29657 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Determination of Renewal

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, I have hereby determined that the fourteen advisory committees listed below are necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with Committee Management Secretariat, General Services Administration, pursuant to Section 14(a)(1) of the Federal Advisory Committee Act.

Advisory Committee for Astronomical Sciences
Advisory Committee for Atmospheric Sciences
Advisory Committee for Behavioral and Neural Sciences
Advisory Committee for Chemistry
Advisory Committee for Earth Sciences
Advisory Committee for Environmental Biology
Advisory Committee for Materials Research
Advisory Committee for Mathematical and Computer Sciences
Advisory Committee for Ocean Sciences
Advisory Committee for Physics
Advisory Committee for Physiology, Cellular, and Molecular Biology
Advisory Committee for Polar Programs
Advisory Committee for Social and Economic Science
Advisory Committee for Engineering and Applied Science

Authority for these advisory committees shall expire on December 31, 1981, unless the Director of the National Science Foundation formally determines that continuance is in the public interest.

John B. Slaughter,

Director.

October 7, 1981.

[FR Doc. 81-29652 Filed 10-13-81; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Colorado; Staff Assessment of Proposed Amended Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed amended agreement with State of Colorado.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment a proposed amendment to the existing Section 274B. Agreement between NRC and the State of Colorado which became effective February 1, 1968. The request dated September 29, 1981, from the Governor of the State of Colorado, if approved, would permit the State of Colorado to regulate byproduct material as defined in Section 11e.(2) of the Atomic Energy Act, as amended, (uranium mill tailings) after November 8, 1981 in conformance with the requirements of Section 274o. of the Atomic Energy Act of 1954, as amended.

A staff assessment of the State's proposed radiation control program to implement the amended agreement is set forth below as supplementary information to this notice. A copy of the complete program description submitted by Colorado including a narrative prepared by the State describing the State's proposed program for control over byproduct materials as defined in Section 11e.(2) of the Act, appropriate State legislation, and regulations is available for public inspection in the Commission's public document room at 1717 H Street, NW, Washington, DC.

DATES: Comments must be received on or before November 13, 1981.

ADDRESSES: All interested persons desiring to submit comments and suggestions for the consideration of the Commission in connection with the proposed amended agreement should send them to the U.S. Nuclear Regulatory Commission, Office of State Programs, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John R. McGrath, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-9889.

SUPPLEMENTARY INFORMATION: Assessment of Proposed Colorado Program to Regulate Byproduct Material as Defined in Section 11e.(2) of the Act. Reference: Criteria 29-36 of "Guidance of States and NRC in Discontinuance of NRC Regulatory Authority Thereof by States Through Agreement," 44 FR 42818.

I. Introduction

The Uranium Mill Tailings Radiation Control Act of 1978 amended the requirements for Section 274 of the Atomic Energy Act, "Cooperation With States" and imposed certain requirements that must be met by Agreement States in order to regulate uranium mill tailings after November 8, 1981. Governor Richard D. Lamm of the State of Colorado has requested NRC to amend its agreement with NRC to permit continued State regulation of uranium mill tailings after this date. His request was supported by a description of the State's program for control of uranium mill tailings. NRC Staff has completed an assessment of the State's proposal as follows:

II. Assessment of Proposed State of Colorado Radiation Control Program for Uranium Mill Tailings

1. Statutes

State statutes or duly promulgated regulations should be enacted, if not already in place, to make clear State authority to carry out the requirements of Pub. L. 95-604, Uranium Mill Tailings Radiation Control Act (UMTRCA).

In the enactment of any supporting legislation, the State should take into account the reservations of authority to the United States in UMTRCA as stated in 10 CFR 150.15a.

It is preferable that State statutes contain the provisions of Section 6 of the Model Act,[1] but the provisions may be accomplished by adoption of either procedures by regulation or technical criteria. In any case, authority for their implementation should be adequately supported by statute, regulation or case law as determined by the State Attorney General.

In the licensing and regulation of ores processed primarily for their source material content and for the disposal of byproduct material, procedures shall be established which provide a written analysis of the impact on the environment of the licensing activity. This analysis shall be available to the public before commencement of hearings and shall include:

[1] The reference is to the model Uranium Mill Radiation Control Act, a copy of which has been placed in the Commission's Public Document Room. Section 6 of the Model Act requires that, among other things, statutory authority must be enacted to make clear State authority to carry out the requirements of the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, as amended. UMTRCA specifies that when States license an activity involving mill tailings, that has a significant impact on the human environment, they must prepare a written independent analysis of the impact of such license on the environment, including any activities conducted pursuant thereto.

a. An assessment of the radiological and nonradiological public health impacts;

b. An assessment of any impact on any body of water or groundwater;

c. Consideration of alternatives to the licensed activities; and

d. Consideration of long-term impacts of licenses activities.

A detailed evaluation of the pertinent Colorado Statues, Title 25, Article 11, and Title 24, Article 11, Colorado Revised Statutes 1973, as amended, has been performed by NRC Staff. The State's statutes provide sufficient authority for Colorado agencies to comply with the requirements of UMTRCA. Many of the requirements discussed above and pertaining to performance of environmental assessments are addressed in Colorado regulations rather than legislation. The requirement that an adequate surety will be provided by the licensee to assure the completion of all requirements established by the State for decontamination, decommissioning, and reclamation of sites is contained in Section 3.9.4 of the State regulations. Requirements concerning preparation of environment reports by licensees and the preparation of environmental impact analyses by the State are contained in Sections 3.8.8 and 3.9.10.

2. Regulations

State regulations should be reviewed for regulatory requirements, and where necessary incorporate regulatory language which is equivalent to the extent practicable, or more stringent than regulations and standards adopted and enforced by the Commission, as required by Section 274o. (See 10 CFR 40 and 10 CFR 150.31(b)).

On August 19, 1981, (effective date: October 1, 1981) the State of Colorado Rules and Regulations pertaining to radiation control were amended to conform to the requirements of the Uranium Mill Tailings Radiation Control Act of 1978.

The regulations have been reviewed by the staff and deemed to be equivalent to the extent practicable to the requirements of 10 CFR 40, Appendix A. Satisfactorily addressed in the Colorado regulations are: bonding requirements, siting requirements, criteria for tailings management, dam stability analyses, surety arrangements, requirements for ownership, and criteria for ongoing active maintenance for uranium mill tailings impoundments.

3. Organizational Relationships Within the States

Organizational relationships should be established which will provide for an effective regulatory program for uranium mills and mill tailings.

When personnel in agencies other than the lead agency are included in the professional staff's effort, their availability on a routine and continuing basis must be demonstrated. Arrangements for availability for such resources have been proposed by Colorado through interagency memoranda of understanding (MOU) with the Departments of Natural Resources, Highways, Local Affairs, and the Colorado Historical Society. Contained in the agreements are duties of each agency or division, i.e., the legislative or regulatory requirements for which they are responsible, and the period required for their performance. An organization chart outlining the organizational relationships between the Radiation Control Section and other State agencies is also included. The proposal acknowledges that the MOUs are for the work required by States statutes. Although not stated in the proposal, commitments for assistance by various State agencies assures that consideration for necessary budgeting is implicit in the commitments.

4. Personnel

Personnel needed in the processing of the license applications can be identified or grouped according to the following skills: Technical, Administrative, and Support.

In order to meet the requirements of UMTRCA, current indications are that 2–2.75 total professional person-years' effort is necessary to process and evaluate a new conventional mill license, in-situ license, or major license renewal. A complete review of in-plant safety, production of the environmental assessment, and consultant use are primary considerations in the total professional effort for each licensing case. With respect to clerical support, one secretary is required to process two conventional milling applications, including the pre-licensing and post-licensing phases. Legal support is also an essential element of the mill program, and the effort is set at a minimum of ½ staff-year. In addition, consideration must be given to such post-licensing activities as issuance of minor amendments, mill inspections, and environmental monitoring. Professional staff effort is estimated at 0.5–1.0 person-years for each year of post-licensing activities.

Currently, there are three conventional uranium milling operations and one heap leach operation licensed in the State of Colorado. The State is currently reviewing applications for two conventional mills and one in-situ leach operation. The State estimates that a total of 1.5 staff years of effort will be needed to conclude these actions in FY 81–82. A total of 5 staff years of technical and administrative effort is available. This includes 3.05 from the Radiation Control Section, 0.55 administrative, 0.4 from the Solid and Hazardous Waste Control Division, and 1.0 from other State agencies. 0.5 staff year of legal support per case (if uncontested) is also available. We conclude the total professional staff-years effort within the Radiation Control Section (RCS) directly responsible for regulation of uranium mills and mill tailings to be within our guidelines. Individuals in the Radiation Control Section involved in the regulation of mills include the following:

Albert J. Hazle, Director, Radiation and Hazardous Waste Control Division.

Education: Colorado State University, 1951–56, B.S. in Science; Colorado State University, 1958–60, graduate work in physiology.

Radiation Related Work Experience: 1961–65, Jefferson County Health Department; 1965–present, Colorado Department of Health.

Related Activities: Member of several task forces for the Conference of Radiation Control Program Directors.

Warren Jacobi, Supervisory Health Physicist.

Education: Wagner College, 1964–68, B.S. in Biology; Colorado State University, 1968–69, graduate work in Radiation Biology.

Radiation Related Work Experience: 1969 Colorado Department of Health; 1969–72 U.S. Army, Lectures in Radiation Protection; 1972–present Colorado Department of Health.

Related Activities: Member of several task forces for the Conference of Radiation Control Program Directors. Member of the Interorganizational Advisory Committee on Radiological Emergency Response Planning and Preparedness.

Robert Terry, Health Physicist.

Education: Colorado College, 1971–72, Syracuse University; 1972–75, B.S. in Biology, State University of New York at Binghamton; 1975–76, Graduate work in biochemistry.

Radiation Related Work Experience: 1976–present, Colorado Department of Health.

Dennis Brown, Health Physicist.

Education: Lawrence Institute of Technology, 1970–71; University of Michigan, 1971–73; Eastern Michigan University, 1974–76, B.S. in Biology.

Radiation Related Work Experience: 1981–present, Colorado Department of Health.

Richard Gamewell, Senior Health Physicist.

Education: Rutgers University, 1942–48, B.S. in Chemistry; University of Colorado, 1948–49, graduate work in Chemistry; University of Colorado School of Medicine, 1958–62, M.S. in Biophysics.

Radiation Related Work Experience: 1960–1962 Biophysics Department, University of Colorado School of Medicine; 1971–present, Colorado Department of Health.

Charles Mattson, Senior Health Physicist.

Education: Colorado School of Mines, 1961–1963; Colorado State College, 1963–1965, A.B. in Chemistry; Colorado State University, 1965–1967, M.S. in Chemistry; Colorado School of Mines, 1969, graduate work in Chemistry.

Radiation Related Work Experience: 1970–present, Colorado Department of Health.

Kenneth Weaver, Health Physicist.

Education: University of Colorado, 1963–1968, B.A. in Zoology, Chemistry; Washington State University, 1968–1969, graduate work in Zoology; Colorado State University, 1971–1978, M.S. in Radiation, Biology.

Radiation Related Work Experience: 1973–1976, Colorado State University; 1977–1978, Colorado State University; 1978–present, Colorado Department of Health.

During evaluations of license applications the State must have access to specialty resources such as hydrologists, geologists, and geotechnical engineers. Under the terms of the draft Memorandum of Understanding, the Colorado Geological Survey, a division of the Department of Natural Resources, is to provide technical advice and assistance regarding geologic hazards, mineral resource development, and visual esthetic impacts of source material milling operations. The Division of Water Resources of the State Department of Natural Resources reviews plans and specifications for design of dams, including tailings dams at source material milling operations. The Mined Land Reclamation Division and the State Water Conservation Board also review hydrologic aspects of such operations. It is also recommended that radioactive materials regulatory personnel have some training in these areas in addition to specialized training in uranium mill health physics and preparation of environmental assessments. Messrs. Weaver, Gamewell and Mattson have attended the NRC "Uranium Mill Training Course for State Regulatory Personnel." In addition, Mr. Weaver has attended the Colorado State University (CSU) course in Subsurface Contaminant Migration from Mill and Mill Waste Impoundments, Mr. Gamewell has attended the CSU course Groundwater Hydrology, and Mr. Mattson has attended an NRC sponsored course on bioassay at uranium mills.

5. Functions To Be Covered

The State should develop procedures for licensing, inspection, and preparation of environmental assessments.

Each uranium mill license application will be evaluated against State statutes, regulations, and NRC Regulatory Guides. A list of NRC Regulatory Guides and other reference material sent to applicants and utilized by the State in evaluating licensing actions has been furnished. The State has also developed their own Source Material Mill Licensing Guide. The Guide addresses the preparation of the radioactive materials license application, the environmental report, and financial surety arrangements. The Guide also discusses such requirements as the prohibition on pre-licensing construction. State personnel will perform in-plant safety reviews. The individual in charge of licensing is also responsible for assuring that the in-plant safety review meets State requirements. As discussed earlier other State agencies are involved in the review of the environmental report.

Upon completion of the review and resolution of concerns, a draft preliminary executive licensing review summary is prepared which includes a project description, an environmental assessment and discussion of the issues, a draft license proposal, and draft surety agreements.

Financial surety requirements for specific classes of radioactive material licenses for both reclamation and long term care were included in the 1978 edition of the Colorado regulations. Model surety agreements drafted by the Department of Law are included in the State's proposal. Reclamation sureties include mill site, pipeline corridors and tailings impoundment stabilization, which nominally amounts to a $10–25 million cost coverage guarantee. Mechanisms of surety provisions include all precedures including real equity but not including self insurance, unless certain very definitive tests are met.

Long-term funds for monitoring and maintenance are based on annual cost and the corpus necessary to generate the annual interest to meet that cost. Normally the corpus has involved several million dollars. Costs include visual inspections, surveys, sampling and analysis, fence, sign and road maintenance, plant and burrowing animal control, maintenance of drain and diversion systems and contingencies for recontouring.

Along with the preliminary executive licensing review summary, notice is also given of a hearing and a public comment period.

If several agencies will need to issue permits, hearings may be held jointly. The conduct of all procedures is in accord with the Colorado Administrative Procedures Act (APA or 24–4–101 *et seq.*, C.R.S. 1973, as amended) or as otherwise indicated by specific program statute.

Upon completion of the hearing and the comment period on the radioactive mill license application, a final executive licensing review summary is prepared and published. This includes a review of the comments and their disposition, findings of fact and conclusions of law, and the issuance of a license, if that is the final action called for.

Colorado's statute and regulations are written in a positive sense to the effect that it is the State's responsibility to issue licenses if public health, safety and the environment are adequately protected.

Inspections of all byproduct material licensees are conducted by Colorado in accordance with general procedures outlined in the State Radiation Control Section's Compliance manual. The procedures which are common to all routine inspections have been supplemented by instructions specific to inspections at mills. The general procedures have been judged acceptable during the periodic NRC review meetings with Colorado. The functions of State inspectors are to prepare for inspections, conduct on-site inspections, prepare a writen report of the inspection, prepare enforcement letters, and review corrective actions. Compliance inspections are essential to ensure that conditions of licensure are being honored. Regular mill inspections are conducted annually. Occasional inspections targeted to specific aspects of an operation occur more frequently. Inspections are unannounced.

When major violations are found, follow-up inspections are made as required to determine subsequent compliance. Compliance determinations are also made in conjuction with review of reports required to be submitted to the Department at regular intervals. Enforcement action is in accord with the Colorado Administrative Procedure Act, 25–4–101 *et seq.*, C.R.S. 1973, as amended. The Department's escalated enforcement policy is included in the proposal. This policy addresses the goals of the enforcement program, violation severity categories, the issuance of Notices of Violation, Orders adn other enforcement options available to the State.

Alongside traditional occupational health physics concerns, Colorado has directed multi-agency attention to solving environmental health problems e.g., those associated with tailings-built impoundments at existing facilities, remediation of off-site surface soil and ground water contamination, and reduction of dusting from ore stockpile and handling areas.

States should require the submittal of semi-annual reports specifying the

quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the six month period. This data should be reported in a manner that will permit the regulatory agency to confirm the potential annual radiation doses to the public. The State of Colorado places a standard condition on all uranium mill licenses requiring the submittal of effluent and environmental monitoring data. A sample format for reporting this data is provided.

6. Instrumentation

The State should have available both field and laboratory instrumentation sufficient to ensure the licensee's control of materials and to validate the licensee's measurements.

a. Sampling of air particulates—The State has area air samplers to detect natural uranium, Ra-226, Th-230, and Pb-210.

b. Sampling of radioactive gases—Scintillation detectors with compatible scintillation cells are utilized for detection of Radon-222.

c. Site surveillance—The State has a number of portable survey meters designed to be used with interchangeable detector probes, i.e., proportional, Geiger-Muller, and scintillation probes for detection of alpha, beta, and gamma radiations, respectively. Three micro-R meters for counting of low-level gamma dose rates are also available. There are general purpose survey meters providing versatility for use in field and laboratory. Alpha scintillation probes are currently being used with these survey meters.

d. Equipment calibration—Procedures have been developed and staff has been trained in calibration of radiation detection equipment. Survey instrumentation is calibrated in-house.

7. Conclusion

Based on the foregoing, the NRC staff concludes that the State of Colorado has met the NRC criteria for an amended agreement.

III. Amendment to Agreement Between the U.S. Nuclear Regulatory Commission and the State of Colorado for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Atomic Energy Commission [1] (hereinafter referred to as the Commission) entered into an Agreement (hereinafter referred to as the Agreement of January 16, 1968) with the State of Colorado under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), which Agreement became effective on February 1, 1968 and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with repect to byproduct materials as defined in Section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, it is necessary to enter into this amendment in order to implement new requirements of Section 274 of the Act which become fully effective on November 8, 1981; and

Whereas, the Commission found on ————, 1981 that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of Section 274o. of the Act and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, this amendment is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of February 1, 1968 is amended by adding "as defined in Section 11e.(1) of the Act:" after the words "byproduct materials" in paragraph H., by redesignating paragraphs B. and C. as paragraphs C. and D., and by inserting the following new paragraph immediately after paragraph A.:

"B. Byproduct materials as defined in Section 11e.(2) of the Act:"

Section 2. Article II of the Agreement of Febuary 1, 1968 is amended by inserting "a." before the words "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., and by adding the following at the end thereof:

"B. Notwithstanding this Agreement, the commission retains the following authorities pertaining to byproduct materials as defined in Section 11e.(2) of the Act:

"1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material. The Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

"2. The Commission reserves the authority to establish minimum standards governing reclamation, long term surveillance or maintenance, and ownership of such byproduct material. Such reserved authority includes:

"a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamations standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

"b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of the option of the State (provided such option is exercised prior to termination of the license);

"c. The authority to permit use of surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to subparagraph B.2.b. of this Article, but any such use of land transferred to the State may be made only with the concurrence of the State;

"d. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

"e. The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States."

Section 3. Article III of the Agreement of February 1, 1968 is amended by inserting "otherwise licensable by the State under Article I of this Agreement" after the words "special nuclear material."

[1] Under the provisions of the Energy Reorganization Act of 1974, the regulatory functions formerly carried out by the Atomic Energy Commission are now carried out by the Nuclear Regulatory Commission as of January 19, 1975.

Section 4. Article VII of the Agreement of February 1, 1968 is amended by inserting "all or part of" after the words "terminate or suspend," by inserting "(1)" after the words "finds that," and by adding at the end before the period the following:

", or (2) the State has not compiled with one or more of the requirements of Section 274 of the Act. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with the provisions of Section 274 of the Act."

Section 5. Article VIII of the Agreement of February 1, 1968 is amended by redesignating it Article IX and by inserting a new Article VIII as follows:

"In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o. of the Act. If, in such licensing and regulation, the State requires financial surety arrangements for the reclamation of long term surveillance or maintenance of such material,

"A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

"B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site."

This amendment shall become effective on November 8, 1981 and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Denver, State of Colorado, in triplicate, this day of 1981.

For the State of Colorado.

Richard D. Lamm,

Governor of Colorado.

Done at Washington, DC, in triplicate, this day of 1981

For the U.S. Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Dated at Bethesda, Maryland, this 7th day of October, 1981.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 81-29747 Filed 10-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-394]

California Polytechnic State University, AGN-201 Training Reactor; Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has considered the order authorizing dismantling of facility and disposition of component parts for the California Polytechnic State University (the licensee) AGN-210 (Serial No. 100) Training Reactor operated under Facility License No. R-121. The order authorizes the licensee to disassemble the reactor which operated at power levels up to 10 W (thermal), and to dispose of the component parts.

The Commission's Office of Nuclear Reactor Regulation has prepared an environmental impact appraisal for this training reactor. On the basis of this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the proposed action. The environmental impact appraisal is available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

Dated at Bethesda, Maryland, this 6th day of October 1981.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 81-29745 Filed 10-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-394]

California Polytechnic State University; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated April 30, 1981, as revised by letter dated September 8, 1981, California Polytechnic State University (the licensee) requested authorization to dismantle the AGN-201 (Serial No. 100) Training Reactor (the facility), at the California Polytechnic State University, San Luis Obispo, California, and to dispose of the components parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts, and Termination of Facility License" was published in the **Federal Register** on June 26, 1981 (46 FR 33148). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis for the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an environmental impact appraisal for this action. Based on that appraisal, the Commission has determined that this action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, California Polytechnic State University is hereby authorized to dismantle the facility covered by Facility License No. R-121, and dispose of the component parts in accordance with their dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and decontamination, the submission of a report on the radiation survey to confirm that radiation levels in the facility area meet the values defined in the dismantling plan and inspection by representatives of the Commission, consideration will be given to whether a further order should be issued terminating Facility License No. R-121.

For further details with respect to this action see (1) the application for authorization to dismantle facility and dispose of component parts dated April 30, 1981, as revised by letter dated September 8, 1981, (2) the Commission's related Safety Evaluation, (3) the Commission's Environmental Impact Appraisal, and (4) the Commission's Negative Declaration dated October 6, 1981 (which is also being published in the **Federal Register**). All of these items are available for public inspection at the Commission's Public Document Room,

1717 H Street, N.W., Washington, D.C. 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 at Bethesda, Maryland, this 6th day of October 1981.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 81-29744 Filed 10-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 72 to Facility Operating License No. DPR-32 and Amendment No. 73 to Facility Operating License No. DPR-37 issued to Virginia Electric and Power Company (the licensee), which revised Technical Specifications for operation of the Surry Power Station, Unit Nos. 1 and 2, respectively (the facilities), located in Surry County, Virginia. The amendments are effective as of the date of issuance.

The amendments incorporate the requirements for implementation of the TMI-2 Lessons Learned Category "A" items. They specifically include the areas of emergency power supply requirements, valve position indication, instrumentation for inadequate core cooling, containment isolation, auxiliary feedwater systems, and the implementation of programs to reduce leakage outside containment and to accurately determine airborne iodine concentrations.

The application for the amendments 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 these 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.

For further details with respect to this action, see (1) the application for amendments dated November 14, 1980, as supplemented December 23, 1980 and August 21, 1981, (2) Amendment Nos. 72 and 73 to License Nos. DPR-32 and DPR-37, (3) the Commission's related Safety Evaluation dated April 24, 1980 and (4) the Commission's letter dated September 29, 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 Swem Library, College of William and Mary, Williamsburg, Va. 23185. Copies of items (2), (3) and (4) may be obtained upon request addressed to Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of September 1981.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 81-29746 Filed 10-13-81; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266-OLA and 50-301-OLA]

Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2); Hearing

October 9, 1981.

This proceeding involves an application for a license amendment submitted by Wisconsin Electric Power Company (WE). Under existing license conditions for its Point Beach Nuclear Plant, WE is required to plug any tubes in its steam generator which become degraded through corrosion to less than 40 percent of their original thickness. The requested amendment would permit WE to repair degraded tubes by sleeving rather than plugging.

Today, in the course of an on-the-record Special Prehearing Conference conducted by telephone, the Board announced its tentative decision to admit Wiconsin's Environmental Decade as a party intervenor. Decade contends that the sleeving of tubes is unsafe and environmentally unacceptable. The formal order concerning party status and the admission of parties will be published next week.

Because of pending matters, including a motion for summary judgment and a procedure by which Decade is invited to show cause, it is not yet possible to determine whether a hearing in this matter will be necessary. However, if a hearing is necessary at this time, it will deal solely with unresolved safety and environmental matters related to a tube sleeving demonstration involving no more than 12 tubes. The hearing will be held on October 29 and 30, 1981 (or on the alternate dates of November 5 and 6, 1981) beginning at 9:30 a.m., in the U.S. Tax Court Room—No. 254, Federal Building, 517 E. Wisconsin Avenue, Milwaukee, Wisconsin.

Dated: October 9, 1981, Betheda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 81-29857 Filed 10-13-81; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from the Southland Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if three conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years beginning after the sale. The PBGC is authorized to grant exemptions from this requirement. Prior to granting an exemption, the PBGC is required to give interested persons an opportunity to comment on the exemption request. The effect of this notice is to advise interested persons of this exemption request and to solicit their views on it.

DATE: Comments must be submitted on or before November 30, 1981.

ADDRESSES: All written comments (at least three copies) should be addressed to: Assistant Executive Director for Policy and Planning (Mail Stop 140),

Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, D.C. 20006. The request for an exemption and the comments received will be available for public inspection at the PBGC Public Affairs Office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Graham, Office of the Executive Director, Policy and Planning, Suite 7300, 2020 K Street, NW, Washington, D.C. 20006; (202) 254-4862. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

The Statute

The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, 94 Stat. 1208 (the "Multiemployer Act") became law on September 26, 1980 and amended the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1001 *et seq.* As a result of the Multiemployer Act, an employer that withdraws, or partially withdraws, from a multiemplyer pension plan covered under Title IV of ERISA may be liable to the plan for a portion of the plan's unfunded vested benefits.

The withdrawal liability rules generally apply to withdrawals occurring after April 28, 1980.

Section 4204 of ERISA, 29 U.S.C. 1384, provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount is escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred; and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) and the contract-provision requirement of section 4204(a)(1)(C) if the variance would "more effectively or equitably carry out purposes of (Title IV)." The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the requirements of section 4204(a)(1)(B) or (C) does not constitute a finding by PBGC that the transaction satisfies the other requirements of section 4204(a)(1).

Section 4204(c) requires the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from the Southland Corporation ("Southland") to waive the bond/escrow requirement of section 4204(a)(1)(B) of ERISA. In the request, Southland represents among other things, that:

1. On August 17, 1981, Southland purchased the operating assets of Empire Cold Storage and Ice Company ("Empire").

2. Southland has assumed Empire's responsibilities under a collective bargaining agreement with Meat Cutters Local Union #576 of the United Food and Commercial Workers, which obligated Empire to contribute to the United Food and Commercial Workers International Union-Industry Pension Fund (the "Fund"). Prior to the sale, Empire's potential withdrawal liability to the Fund had been calculated to be $31,169.24.

3. Southland indicates that the amount of the bond or escrow would be $10,265.00, the contributions required to be made by Empire for the plan year ending June 1981. The sale contract between Southland and Empire obligates Southland to either obtain such a bond, or to obtain an exemption from PBGC from the bond requirement.

4. According to its audited statements for the fiscal year ending on December 31, 1980, Southland has net assets of $554 million. Southland's average net income for calendar years 1980, 1979 and 1978 is approximately $72.6 million. According to the company's unaudited six month report for the period ending June 30, 1981, Southland has a net income of approximately $31.7 million and net assets of about $572.8 million.

5. Southland has sent a copy of this request to the Fund.

Comments

All interested persons are invited to submit written comments on the pending exemption to the above address, on or before November 30, 1981. All comments will be made a part of the record. Comments received, as well as the application for exemption, will be available for public inspection at the address set forth above.

Issued at Washington, D.C., on this 7th day of October, 1981.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 81-29629 Filed 10-13-81; 8:45 am]

BILLING CODE 7708-01-M

PRESIDENTIAL ADVISORY COMMITTEE ON FEDERALISM

Health and Human Services Subcommittee; Open Meeting

The Health and Human Services Subcommittee of the Presidential Advisory Committee on Federalism will meet on Thursday, October 29, 1981, from 9:30 a.m. to 12:30 p.m. in Room PH 800 in the Hubert Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, D.C.

The Subcommittee is part of the Advisory Committee on Federalism which was established by Executive Order 12303 on April 8, 1981. The Chairman of the Committee is U.S. Senator Paul Laxalt. The Subcommittee is composed of members from the full Committee which include private citizens, public officials from state and local governments, and members of the Legislative and Executive branches of the federal government. The members serve at the pleasure of the President.

The Committee shall advise the President with respect to the objectives and conduct of the overall federalism policy of the United States.

The meeting will be open to public observation. Written comments or statements may be submitted at any time before or after the meeting and should be related to the substantive matter identified above. Approximately 75 seats will be available for the public on a first come, first served basis.

For further information, contact Rick Neal at (202) 456–7943.

Richard S. Williamson,

Assistant to the President.

[FR Doc. 81–29923 Filed 10–13–81; 10:14 am]

BILLING CODE 3195–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–18159; File No. SR-Amex 81–18]

American Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to amendments of listing qualifications for non-convertible bonds and non-convertible preferred stock, and applicable listing charges. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1981, the American Stock Exchange filed with the Securities and Exchange Commission the proposed rule change as desccribed in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Sections 103, 104, 151, 152, and 625 of the Amex Company Guide to establish listing guidelines for publicly-held non-convertible bonds and preferred stock of issuers whose common stock is not traded on the Amex (or NYSE), and applicable listing charges.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

(a) *Purpose.* The current restrictions on listing bonds or preferred stock of an issuer which does not have a common stock listed on the Amex (NYSE), no longer appear justified in view of standardized SEC reporting and disclosure rules.

The proposed new listing criteria for the original listing of non-convertible bonds and preferred stock of such issuers are necessary to assess the extent of public interest in such issues. While reviewing the present bond and preferred guidelines for Amex listed companies, it was deemed appropriate to increase the minimum aggregate market value for bonds and to establish a minimum number of shares of "float" for preferred shares.

Since the financial press is less likely to provide coverage of an issuer whose common stock is not listed on one of the principal stock exchanges, these issuers will be required to furnish bond or preferred stock holder with both annual and quarterly financial reports.

To more equitably match fees with the actual effort involved in processing an application, the one-time processing fee for the original listing of the securities of an issuer which has not or is not simultaneously listing equity securities will be increased. In addition, an annual fee for bonds, comparable to that for common preferred stock, will be imposed to cover the expense involved in maintaining continuing reporting and trading oversight for companies without an issue of equity securities admitted to trading on the Amex.

(b) *Basis.* The proposed amendments are consistent with Section 6(b) of the Exchange Act in general and further the objectives of Sections 6(b)(4) and 6(b)(5) of the Act in particular in that they will prevent unfair discrimination among issuers by removing impediments to facilitating transactions in certain of their securities in a free and open market, equitably allocate reasonable fees for issuers using the facilities of the exchange, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that the proposed rule changes will have no impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 18, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted on or before November 4, 1981.

Dated: October 7, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–29760 Filed 10–13–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-18152; File No. SR-Amex-81-19]

American Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to standards for approval and withdrawal of underlying securities. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1981 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Exchange" or "Amex") proposes to amend Rules 915 and 916 relating to the standards applicable for approving and withdrawing approval of securities underlying Exchange-listed options. The texts of the proposed rules is attached as Addendum A.

II

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rules changes is to modify the selection and maintenance criteria for securities underlying listed options. In general, the Exchange proposes to reduce most of the present initial criteria and similarly reduce (and, in part, eliminate) maintenance criteria for underlying stocks. However, the modifications do not change the requirement that reliable information be publicly available with respect to underlying securities for options trading. The overall modifications seek a reasonable continuation between the quality of markets for an underlying security and the quality of the underlying issuer (i.e., the companies themselves).

With regard to the number of shareholders a company has as well as its public float—two quality of market criteria—the Amex proposes a 6,000 shareholder criteria but does not propose a reduction in float requirement.

With regard to quality of issuer standards concerning adequate disclosure, non-defaults and positive earnings, the Amex proposes modifications in each of these areas as follows:

Disclosure—The present requirement that an underlying security meet the reporting intricacies of Sections 13 and 14 of the Securities Exchange Act is, in the Exchange's view, overly prohibitive for companies which meet qualification standards in all other respects. Historically, the present criteria was developed to inhibit the listing of foreign securities, many of which did not file proxy reports with the SEC under Section 14. The Amex proposes to eliminate compliance with Sections 13 and 14 provided the underlying company is duly listed and traded on a national securities exchange and in compliance with any applicable filing or other disclosure requirements. Without compromising any quality standard whatever, adoption of this criteria will open the way for the potential listing of certain foreign companies which today meet all other listing and selection standards.

Non-defaults—The present requirement to ensure that neither an issuer nor any of its "significant" subsidiaries has had a default in the payment of certain obligations is often a difficult and uncertain task to determine. Under SEC rules, no precise definition is available as to what constitutes a "significant" subsidiary. Therefore, the Amex believes that an appropriate change is to apply the non-default test solely to the issuer. In retaining a non-default standard to be applied to the issuer itself, the Amex believes that both public and trading interests will be properly served.

Earnings—The Amex believes that some type of a financial integrity standard for underlying securities be continued. While it is quite difficult to select a numercial standard, the Amex proposal requires a specified minimum dollar earnings standard of $1 million aggregate for the company's last 8 quarters. Such a standard is essential in order to ensure that, at the outset, an underlying company will possess some degree of financial integrity. However, the Amex also proposes to delete an earnings test as a maintenance standard. So long as listed options relate to underlying companies whose shares continue to be traded on securities exchanges, then the Exchange believes it should rely on those exchanges to determine continued financial listing standards.

With regard to trading volume and market price criteria, the Amex proposes to increase trading volume requirements—to require that an underlying stock trade at least 2.4 million shares in the twelve months preceding its selection—and to slightly modify market price criteria to require that an underlying stock trade above $10 per share on each business day during the three months prior to its selection.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 (the "1934 Act") and rules and regulations thereunder applicable to the Exchange in that they establish reasonable standards for the Exchange to follow in selecting and maintaining appropriate stocks to be the subject of options trading.

Therefore, the proposed rule changes are consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rules changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rules changes were solicited by the Exchange from its membership at large. However, the Exchange's Options Committee, a group consisting of member and member organization representatives, has considered these proposals and endorsed their adoption.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 18, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commisison will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commisison and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 4, 1981.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 6, 1981.

Addendum A

Rule 915 Approval of Underlying Stocks

(a) No change.

(b) No change.

Commentary

.01 The Board of Governors has established guidelines to be considered by the Exchange in evaluating potential underlying stocks for Exchange option transactions. Absent exceptional circumstances with respect to items 1, 2, 3, or 4 listed below, at the time the Exchange selects an underlying stock for Exchange options transactions, the following guidelines with respect to the issuer shall be met:

1. There are a minimum of 8,000,000 shares of the underlying stock which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934.

2. There are a minimum of [10,000] *6,000* holders of the underlying stock.

3. Trading volume (in all markets in which the underlying stock is traded) has been at least [2,000,000] *2,400,000* shares [per year in each of the two previous calendar years] *in the preceding twelve months.*

4. The market price per share of the underlying stock has been at least $10 each business day of the [six] *three* calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying stock traded on each of the subject days.

5. The issuer [has been subject to and has complied in all respects, including timeliness, with the requirements of Sections 13 and 14] *is in compliance with any applicable requirements of* the Securities Exchange Act of 1934 [for a period of at least its last three fiscal years].

6. The issuer [and its significant subsidiaries have not during the past three years defaulted] *is not currently in default* in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long term leases.

7. The issuer and its consolidated subsidiaries had an aggregate net income, after taxes but before extraordinary items net of tax effect, of at least $1,000,000 [in each fiscal year in three out of the last four fiscal years and $1,000,000 in the most recent fiscal year] *during the preceding eight quarters.*

.02 In considering underlying stocks, the Exchange shall ordinarily rely on information made publicly available by the issuer and/or the markets in which the stock is traded.

Rule 916 Withdrawal of Approval of Underlying Stocks

No change.

Commentary

.01 The Board of Governors has established guidelines to be considered by the Exchange in determining whether an underlying stock previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to items 1, 2, 3 and 4 listed below, an underlying stock will not be deemed to meet Exchange's requirements for continued approval whenever any of the following occur:

1. There are fewer than 7,200,000 shares of the underlying stock held by persons other than those who are required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934.

2. There are fewer than [9,000] *5,400* holders of the underlying stock.

3. The trading volume (in all markets in which the underlying stock is traded) was less than 1,800,000 shares in the preceding [calendar year] *Twelve months.*

4. The market price per share of the underlying stock closed below [$10] *$8* on a majority of the business days during the preceding six calendar months as measured by the highest closing price reported in any market in which the underlying stock traded.

5. The issuer has failed to make timely reports as required by *applicable requirements* [Sections 13 and 14] of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

[6. The issuer and its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in any payment of principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long term leases, and such default has not been cured within six months of the date on which the default occurred.

7. The issuer and its consolidated subsidiaries had net income, after taxes but before extraordinary items net of tax effect, of less than $250,000 in more than one of the preceding four fiscal years.]

.02 In connection with paragraph 4 of Commentary .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying stock at any time when the market price per share of such underlying stock is less than [$7½] *$6,* as measured by the highest closing price reported in any market in which the underlying stock trades. Further, no series of options contracts will be open with a strike price of less than $10 per share.

.03–.05 No change.

[FR Doc. 81-29732 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11979; 812-4913]

Bank of Scotland; Application for Exemption Order

October 7, 1981.

Notice is hereby given that Bank of Scotland ("Applicant"), c/o Peter V. Darrow, Esq., Shearman & Sterling, 53 Wall Street, New York, N.Y., 10005, filed an application on July 2, 1981, and an amendment thereto on September 14, 1981, for an Order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was incorporated by Act of the Scottish Parliament in 1695 and was Scotland's first bank. Applicant states further that

it is the eighth largest bank in the United Kingdom and ranks as number 185 in the World Banking League, as of February 29, 1980.

Applicant states that it provides banking services such as deposit accounts, savings accounts, loans and overdrafts to the personal and commercial sectors, as well as term lending, term deposits and the issue of sterling certificates of deposit, currency loans, installment finance, budget accounts, insurance brokerage, computer bureau service, investment management, travelers checks, executor and trustee taxation services. Applicant states that it also has an oil division that organizes and participates in energy-related financings, on both a direct and project basis, and an International Division. The application states that Applicant presently has representative offices in Houston, Los Angeles, Moscow and full branch offices in New York and Hong Kong.

Applicant states that it has two principal subsidiaries, The British Linen Bank Limited and North West Securities Limited. The application states that The British Linen Bank is the largest United Kingdom merchant bank outside the City of London, and that it acts as financial adviser to corporate entities and individuals and undertakes investment and other merchant banking activities. In addition, The British Linen Bank engages in the business of banking and the provision of a range of services, including the acceptance of deposits at call or for any of a wide range of terms, loans in sterling or in currency, either on current account or for short or medium term, leasing, and acceptance credit facilities.

Applicant states that North West Securities Limited and its subsidiaries, Industrial Bank of Scotland Limited and IBOS Finance Limited, market a wide range of personal finance and banking services and are also substantial providers of leasing and loan facilities to industry, commerce and agriculture. The application states that IBOS Finance Limited specializes in leasing and loan facilities for major public limited companies, nationalized industries and local authorities.

Applicant further states that it also acts as executor and trustee under wills, attends to the administration of interstate estates and acts as trustee of various trusts whose assets have a market value of approximately 27,000,000 pounds sterling as of April 5, 1980.

The Applicant states that preliminary approval has been granted by the Comptroller of the Currency to Applicant's application to establish a branch in the United States.

At February 28, 1981, the Bank had total assets of approximately $7.92 billion (using an exchange rate of $2.22 per pound sterling), of which approximately $6 billion, or 76%, consisted of loans and overdrafts and money at call and short notice. At that date, total liabilities equalled approximately $7.4 billion, of which $6.9 billion, or 93%, consisted of demand deposits, time deposits and other accounts. Further, on February 28, 1981, approximately 15% of loans made by the bank had been extended to non-United Kingdom individuals or entities with the remainder extended to United Kingdom individuals or entities.

The operating income of the Bank is derived principally from interest on loans, overdrafts and money at call and short notice. For the financial year ended February 28, 1981, the income from such sources accounted for approximately 85% of the bank's total operating income.

Like all major European and other non-United States banks, the Bank engages in various types of investment banking activities outside the United States. In the case of the Bank, these activities consist principally of underwriting governmental, quasi-governmental and corporate issues in the Euro-securities and other markets, as well as acting as financial adviser to corporate entities. These investment banking activities are together a very small part of the Bank's business, accounting in the fiscal year ended February 28, 1981, for .1% of the Bank's total revenues.

On February 28, 1981, the Bank had 32.4 million common shares issued and outstanding. As of that date, only two shareholders, Barclays Bank Limited and Kuwait Investment Office, held more than 5% of the bank's outstanding common shares. At that date such shareholders held 34.8% and 7.9% of the Bank's outstanding common shares, respectively.

Applicant represents that it is subject to broad supervision by the Bank of England, which is the central bank of the United Kingdom, and by H.M. Treasury. The application indicates that principal regulation relates to licensing, capital ratios, liquidity and reserve requirements. In addition, Applicant represents that it must file regular, detailed reports and periodic statistical returns prescribed by the Bank of England.

As a foreign bank having a branch in the United States, Applicant states that it is also subject, pursuant to the International Banking Act of 1978, to certain provisions of the Bank Holding Company Act.

Applicant proposes to issue and sell prime quality commercial paper notes in bearer form and denominated in United States dollars to a registered United States securities dealer who will then reoffer the notes in minimum denominations of $100,000 or more to institutional investors, entities and individuals in the United States who normally puchase commercial paper. The notes will not be advertised or otherwise offered for sale to the general public. Applicant represents that it does not intend to sell the notes in the United States in excess of an aggregate principal amount of $100 million outstanding at any one time. Applicant states that the purpose for making the proposed offering of the notes is to provide an additional source of supply of United States dollars to supplement dollars currently obtained in the Eurodollar market.

The application states that the notes will rank *pari passu* among themselves and equally with other unsecured indebtedness (including deposit liabilities) of Applicant and ahead of its share capital. Applicant plans to sell the notes without registration under the Securities Act of 1933 ("Securities Act"), in reliance upon an opinion of its United States counsel that the offering will qualify for the exemption from the registration requirements of the Securities Act provided for certain short-term commercial paper by Section 3(a)(3) thereof.

Applicant does not request Commission review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the proposed issue of securities shall have received, prior to issuance, one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization, and that its United States counsel shall have certified that such rating has been received.

Applicant undertakes to ensure that the dealer will provide each offeree who has indicated an interest in the notes, prior to any sale of notes to such offeree, with a memorandum describing Applicant's business and containing Applicant's most recent publicly available annual financial statements (including a balance sheet, profit and loss statement and notes thereto) audited in accordance with United Kingdom accounting Principles and its most recent publicly available unaudited semi-annual balance sheet

and summary profit and loss statement. Such memorandum will describe the material differences between United Kingdom accounting principles applicable to United Kingdom banks and "generally accepted accounting principles" applicable to United States commercial banks. Applicant represents that such memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States and that it will be updated periodically to reflect material changes in Applicant's business and financial condition. Applicant consents to having any order granting the relief requested under Section 6(c) of the act expressly conditioned upon its compliance with its undertaking regarding disclosure documents. Applicant represents that any future offering of its securities in the United States will be made on the basis of disclosure documents at least as comprehensive as those used in the presently proposed offering. Applicant further represents that such disclosure documents will be provided to offerees prior to the sales of such securities.

Applicant represents that it will appoint a bank in the United States or the Commission to accept service of process in any action based on the notes and instituted in any state or federal court by the holder of any of its notes. Applicant further represents that it will expressly accept the jurisdication of any state or federal court in the City and State of New York with respect to any such action. Applicant states that both its appointment of an authorized agent for service of process and its consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid by Applicant. Applicant similarly represents that it will consent to jurisdiction and will appoint an agent for service of process in suits arising from any other offerings of securities that it may make in the United States, which may include debt securities but not shares of its capital stock.

Section 6(c) of the act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the act exempting it from all provisions of the Act. Applicant states that, among other things, compliance by it with a number of substantive provisions of the Act would, as a practical matter, conflict with its operation as a bank and that Applicant would thus be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with such provisions of the Act. Applicant further submits that an exemptive order pursuant to Section 6(c) of the act would benefit institutional and other sophisticated investors in the United States because they would otherwise be precluded from purchasing Applicant's commercial paper notes. Moreover, the application contends that because of the development of the large Euro-dollar market, the major foreign banks which deal in the market need a source of United States dollars in case of a disruption of the market. As a closely regulated banking entity, Applicant also states that it is different from the type of institution that Congress intended the Act to regulate. It is asserted that the particular abuses against which the Act is directed are not present in Applicant's case. Applicant asserts that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant also represents that the granting of the requested order will not give Applicant an advantage over domestic banks in the issuance of commercial paper in the manner described in the application.

Notice is further given that any interested person may, not later than November 3, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81–29740 Filed 10–13–81; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 18157]

Boston Stock Exchange, Inc., et al.; Order Modifying Exemptions

October 7, 1981.

In the matter of Boston Stock Exchange, Inc.; Cincinnati Stock Exchange, Inc.; Midwest Stock Exchange, Inc.; Pacific Stock Exchange, Inc.; Philadelphia Stock Exchange, Inc.; order modifying exemptions from Rule 11b–1 under the Securities Exchange Act of 1934.

On June 1, 1981, the Commission requested comment on a proposed order to modify the current exemptions of the national securities exchanges captioned above ("regional stock exchanges") from Rule 11b–1 under the Securities Exchange Act of 1934 (17 CFR 240.11b–1),[1] relating to the regulation of specialists on national securities exchanges.[2] Under the proposal, the regional stock exchanges would be subject to the provisions of Rule 11b–1 with respect to any security which is listed on one or more of the regional stock exchanges and which is not also listed on either the American or New York Stock Exchanges ("regional stock listings").[3] The Commission has determined to issue the proposed order for the reasons indicated in its July 11, 1981 release.[4]

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[1] Securities Exchange Act Release No. 17855 (June 11, 1981), 46 FR 31975 (June 16, 1981).

[2] In adopting Rule 11b–1 in 1964, the Commission specifically exempted those exchanges (and their specialists) from its operation, based on the limited volume of transactions on those exchanges and the fact that the Commission had not made any studies of their specialist systems. *See* Securities Exchange Act Release No. 7465 (November 23, 1964), 29 FR 15862.

[3] In response to the Commission's request for comments, the Commission received one letter, dated August 7, 1981 from Jim Gallagher, President, Pacific Stock Exchange, Inc. indicating that the exchange had no objection to the proposal.

[4] The Commission, however, has determined to delay the effective date of the order until January 1,

Continued

Accordingly, it is ordered that the Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Midwest Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc., on and after January 1, 1982, shall be subject to the provisions of Rule 11b–1 with respect to any security which is listed on any such exchange and which is not listed on either the American Stock Exchange, Inc. or the New York Stock Exchange, Inc.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29743 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18152; File No. SR-CBOE-81-21]

Chicago Board Options Exchange, Inc.; Proposed Rule Change By Self-Regulatory Organization

In the matter of proposed rule change relating to listing and maintenance standards. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1981, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Approval of Underlying Securities

Rule 5.3. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board following the recommendation of the Securities Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a) Underlying securities approved for Exchange transactions shall have, in the absence of exceptional circumstances, the following characteristics:

(i) A minimum of [8,000,000] *7,000,000* shares which shall be owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934;

(ii) A minimum of [10,000] *6,000* shareholders; and

(iii) Trading volume (on all markets on which the stock is traded) of at least [2,000,000] *2,400,000* shares [per year in each of the two previous calendar years] *in the last 12 months.*

(iv) The market price per share of the underlying security shall have been at least $10.00 each business day of the [six] *three* calendar months preceding the date of selection as measured by the lowest closing price recorded in any market on which the underlying security traded on each of the subject days.

(b) Underlying securities shall be duly listed and registered on a national securities exchange; and

(c) The list of approved underlying securities shall be representative of issuers engaged in a wide variety of business activities.

Interpretations and Policies

.01 At the time it selects an underlying security for options transactions, the Securities Committee shall ordinarily determine from information publicly available at the Securities and Exchange Commission that the following conditions with respect to the issuer of the underlying security are met:

1. *The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934;* [the issuer has been subject to and has complied in all respects, including timeliness, with the requirements of Sections 13 and 14 of the Securities Exchange Act of 1934 for a period of at least the last three fiscal years.]

2. The issuer [and its significant subsidiaries have not during the past three years defaulted] *is not currently in default* in the payment of any dividend or sinking fund installment on any preferred stock or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long-term leases.

3. The issuer and its consolidated subsidiaries had an aggregate net income, after taxes, but before extraordinary items net of tax effect, of at least $1,000,000 [in each fiscal year in three out of the last four fiscal years including the most recent fiscal year] *for the last eight quarters.*

[4. The issuer and its consolidated subsidiaries have had not more than one annual deficit, before extraordinary items during the last four fiscal years, and have had no such deficit in the most recent fiscal year.]

Withdrawal of Approval of Underlying Securities

Rule 5.4. The approval of an underlying security for Exchange transactions shall be withdrawn by the Securities Committee if the underlying security fails to meet the then current requirements necessary to maintain such approval. In the event the Securities Committee withdraws approval of an underlying security, no additional series of option contracts of the class covering that underlying security shall be opened; provided however that where exceptional circumstances have caused the noncompliance of an underlying security with subsection [(E)] *(B)* or [(F)] *(C)* of Section 1 of Interpretation .01 or Section 2 or 3 of Interpretation .01 hereunder the Board may, in the interest of maintaining a fair and orderly market or for the protection of investors, direct the Securities Committee to open additional series of option contracts of the class covering the subject underlying security.

Interpretations and Policies

.01 In connection with Rule 5.4 the Exchange has adopted certain requirements which must be met in order for an underlying security to maintain approval for exchange transactions. Therefore the Securities Committee shall take the action prescribed by Rule 5.4 for the withdrawal of an underlying security when any one of the following occurs:

1. The Securities Committee ordinarily relying upon information publicly available at the Securities and Exchange Commission determines that:

[(A) The issuer and its consolidated subsidiaries have incurred a net deficit after taxes, but before extraordinary items net of tax effect in more than one of the preceding four fiscal years.

[(B) The issuer and its consolidated subsidiaries have a net income after taxes, but before extraordinary items net of tax effect, of less than $250,000 in more than one of the preceding four fiscal years.

[(C) The issuer and its significant subsidiaries have defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment of any indebtedness for borrowed money, or in the payment of rentals under long-term leases, and such default has not been cured within six months of the date on which the default occurred.]

[D]*(A)* The issuer has failed to make timely reports as required by [Sections 13 and 14] *any applicable sections* of the

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1982 in order to give the regional exchanges sufficient time to conform their rules, where necessary, to the requirements of Rule 11b-1.

Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed.

[E]*(B)* There is a failure to have a minimum of [7,200,000] *6,300,000* shares of the underlying security held by persons other than those who are subject to the requirement of Section 16(a) of the Securities Exchange Act of 1934, as amended.

[F]*(C)* There is a failure to have a minimum of [9,000] *5,400* holders of the underlying stock.

2. The volume of trading in the underlying security is less than 1,800,000 shares in [the preceding calendar year] *the last twelve months.*

3. The market price per share of an underlying security closes below $[10]*8.00* on a majority of the business days of any six month period as measured by the highest closing price recorded in any market on which the underlying security trades.

.02 In connection with Rule 5.4 and Interpretation .01.3 thereto, the Securities Committee shall direct that no additional series of option contracts of the class covering an underlying security be opened at any time when the market price per share of the subject underlying security is less than $[7.50] *6.00* as measured by the highest closing price recorded in any market on which the underlying security trades. Further no series of option contracts will be opened with a strike price of less than $10.00.

.03 Whenever the Exchange shall announce that approval of an underlying stock has been withdrawn for any reason, each member organization shall, prior to effecting any transaction in option contracts in respect of such underlying stock for a customer, inform such customer of such fact.

.04 Whenever the Exchange withdraws approval of an underlying security, it shall not open a class of option contracts covering that underlying security until such security is able to comply with the provisions of Rule 5.3.

II

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to liberalize the listing and maintenance standards for underlying securities. The Exchange believes that the proposed changes will significantly increase the number of stocks eligible for listed options trading without compromising liquidity in the market for an underlying security.

The proposed revisions modify financial performance tests for issuers of underlying stocks. CBOE believes that reliance on disclosure is more appropriate than reliance on financial performance tests. This is especially true in view of the present economic environment, in which even blue chip issuers may suffer deficits or defaults over a period of several years. During such times price volatility increases, and the hedging opportunities provided by listed options trading should be available to the investing public. Investor choices can be informed by the required disclosures, so that in effect investors can create their own financial performance tests.

The changes also decrease the listing and maintenance requirements concerning floating supply, number of shareholders and market price per share. Reductions in the floating supply are sought because high float is not required to protect investors as long as trading volume requirements remain high. Trading volume requirements have been increased from 2,000,000 shares in each of the two previous calendar years to 2,400,000 shares in the last twelve months. Reductions are sought in the number of shareholders in order to minimize the unnecessary burden on exchanges to canvass brokerage firms and banks holding securities in street name or in trust accounts. Such canvasses have shown that if an underlying security has 6,000 shareholders of record, the total number of shareholders will be substantially in excess of that number. Furthermore, it is in an exchange's interest to list for options trading only securities having substantial investor interest and breadth of ownership. Finally, the reductions in market price per share are minor because the minimum strike price remains the same at $10.

It is in the public interest to have an increased number of underlying securities available for consideration for options listing. The revisions would make available roughly 75 additional securities for consideration. Increasing the number of securities available for consideration will help to insure that securities approved for listed options trading are representative of issuers engaged in a wide variety of business activities as required by Exchange Rule 5.3(c). Because investors are protected by the disclosure available and the trading volume respecting underlying securities, and because the public interest is served by a reasonable expansion of the number of underlying securities available for options trading, the basis under the Act for the proposed changes is section 6(b)(5).

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 18, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 4, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 6, 1981.

[FR Doc. 81-29734 Filed 10-13-81; 8:45 am]

SILLING CODE 8010-01-M

[Release No. 11972; 812-4914]

IDS Life Insurance Co., et al.; Application for Exemption Order and Order Approving Certain Offers of Exchange

October 6, 1981.

In the matter of IDS Life Insurance Co.; IDS Life Separate Account F; IDS Life Separate Account G; and IDS Life Separate Account H; IDS Tower, Minneapolis, Minnesota 55402; notice of application for an order of exemption pursuant to section 6(c) of the Act from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 threunder and for an order approving certain offers of exchange pursuant to Section 11 of the Act.

Notice is hereby given that IDS Life Insurance Company ("IDS Life"), IDS Life Separate Account F ("Account F"), IDS Life Separate Account G ("Account G"), and IDS Life Separate Account H ("Account H") (together, "Applicants") filed an application on July 6, 1981, and an amendment thereto on August 31, 1981, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the offering of variable annuity contracts providing for contingent deferred sales charges and other charges and to permit IDS Life to act as custodian for the assets of the unit investment trust issuing the contracts and, pursuant to Section 11 of the Act, approving certain offers of exchange to be provided with the contracts. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Background

IDS Life is a stock life insurance company organized under the laws of Minnesota. Accounts F, G, and H (together "Accounts"), separate accounts of IDS Life, were established, pursuant to the Insurance Law of the State of Minnesota, by resolution of the Board of Directors of IDS Life on May 13, 1981. Account F was formed to accept allocation of amounts received by IDS Life in connection with the INNOVEST II Annuity Contracts (the "Contracts") for investment in shares of IDS Life Capital Resource Fund II, Inc. ("Capital Resource"). Similarly, Account G was formed to accept allocation of amounts in connection with the Contracts for investment in IDS Life Special Income Fund II, Inc. ("Special Income") and Account H was formed to accept allocation of amounts in connection with the Contracts for investment in IDS Life Moneyshare Fund, Inc. ("Moneyshare"). Capital Resource, Special Income and Moneyshare (together, "Funds") are each registered, diversified, open-end management investment companies. The Accounts have been registered collectively as a single unit investment trust under the Act. This unit investment trust proposes to offer and sell the Contracts under the name INNOVEST II. IDS Life is principal underwriter and distributor of the Contracts.

The Contracts are flexible purchase payment, deferred, variable annuity contracts, and are for purchase by plans which qualify for special federal income tax treatment afforded certain retirement plans under Sections 401, 403, 408 and 457 of the Internal Revenue Code. The Contracts require a minimum annual premium of $600, payable in installments of at least $23.08. During the accumulation period under the contract, a contract owner may transfer all or a part of the contract value held in one or more of the Accounts to another one or more of the Accounts, provided that the amount transferred is at least $250 (or the entire balance in the Account, if less). Each such transfer will be made, without the imposition of any fee or charge, as of the end of the valuation period during which IDS Life receives a valid, complete transfer request. This transfer privilege may be suspended or modified by IDS Life at any time, however IDS Life will not modify the transfer privilege without seeking and obtaining any necessary order or consent from the Commission. Once each contract year during the annuity period, the contract owner also may elect to have the annuity units of one or more of the Accounts from which annuity payments derive exchanged for, or converted into, annuity units of another Account or Accounts.

No sales charge is deducted from the purchase payments made under the Contracts. However, IDS Life will impose a contingent deferred sales charge ("Surrender Charge") to help it recover certain expenses relating to the sales of the Contracts, including commissions paid to sales personnel and other promotional and selling expenses. The Surrender Charge is imposed when all or part of the contract value is surrendered or, within the first five contract years, applied under an optional annuity payment plan. The amount of the Surrender Charge is the lesser of (i) 9 percent of the purchase payments received by IDS Life, or (ii) 9 percent of the first $3,000 of contract value surrendered or applied under an annuity payment plan, and 4 percent of any amount in excess of $3,000. There is no Surrender Charge on contract value applied under an annuity payment plan during the sixth and later contract years, nor is there a Surrender Charge if the annuitant dies during the accumulation period.

The Contracts provide for an annual administrative charge ("Administrative Charge") of $25 during the accumulation period. This charge is to reimburse IDS Life for expenses incurred in processing premium payments and establishing and maintaining the records relating to the contract owner and participation in the Accounts for the duration of the Contract. The amount of this charge may not be increased by IDS Life. The Administrative Charge is deducted from the contract value on the last day of each contract year during the accumulation period and if a Contract is surrendered on other than the last day of a contract year, the charge will be deducted from the contract value before determining the surrender value.

IDS Life makes a daily deduction from the Accounts of a fee which is equivalent to 1 percent of the average net assets on an annual basis. This fee is intended to compensate IDS Life for the risks it assumes under the Contracts, an annuity mortality risk and an expense risk ("Mortality and Expense Risk Charge"). IDS Life estimates that approximately two-thirds of the Mortality and Expense Risk Charge is attributable to the mortality risk and one-third is attributable to the expense risk. The application states that IDS Life does not plan to profit from the Administrative Charge, however it does hope to profit from the Mortality and Expense Risk Charge. Applicants state that any profits realized by IDS Life from the Contracts would be available to it for any proper corporate purpose, including among other things, payment of distribution (selling) expenses.

Offers of Exchange

Section 11(a) of the Act makes it unlawful for any registered open-end investment company or any principal

underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any offer of exhange of any security of a registered open-end company for a security of a registered unit investment trust and to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Under the Contracts, an owner may split the allocation of the purchase payments among the Accounts. Each of the Accounts is invested exclusively in the shares of one of the Funds. Applicants propose to permit transfers of contract value among the Accounts as described above. The application states that such transfers will be effected at net asset value, with no assessment of any kind of transaction or sales charge. Applicants submit that the transfer rights will afford the owner flexiblity of a choice among the shares of mutual funds having different investment objectives. Applicants contend that the transfer rights are not in any way violative of any of the provisions of Section 11 of the Act, and request an order pursuant to Section 11 to the extent necessary to permit Applicants to offer contract owners the transfer privileges described.

Performance of Custodian Function

Section 27(c)(2) provides that the proceeds of all payments on periodic payment plan certificates issued by a registered investment company (except amounts deducted for sales load) must be deposited with a trustee or custodian with the qualifications prescribed by Section 26(a) under an agreement described therein. Section 26(a) provides that no principal underwriter for or depositor of a registered unit investment trust shall sell securities of which the trust is the issuer unless the indenture, custodial agreement or other instrument under which the securities are issued designates one or more qualified banks to serve as trustee or custodian.

Applicants request an exemption from Sections 26(a) and 27(c)(2) so that IDS Life may administer the Accounts without appointing a custodian or trustee. They state that IDS Life will be responsible for administering the Accounts, receiving and processing all payments, and making deductions therefrom in accordance with the terms of the Contract. Applicants indicate that the Accounts will invest their assets in shares of registered investment companies which use open account systems for their shares. Therefore, Applicants state, there will be no certificates to keep in custody. Applicants further state that obligations of the Accounts are policy obligations of IDS Life under Minnesota law and consequently backed by IDS Life's total resources (except other separate accounts) and that the activities of the Accounts will be closely supervised by Minnesota insurance authorities. Applicants assert that IDS Life is subject to supervision and control by the Insurance Division of the State of Minnesota and other state insurance administrators and that Minnesota law provides that the assets of the Accounts shall not be chargeable with liabilities arising out of any other business IDS Life may conduct.

Surrender Charge

Sections 26(a)(2)(C) and 27 (c)(2)

Section 27(c)(2) of the Act provides that the proceeds of all payments on periodic payment plan certificates issued by a registered investment company (except amounts deducted for sales load) must be deposited with a trustee or custodian with the qualifications prescribed by Section 26(a) and held by such trustee or custodian under an agreement described therein. Section 26(a)(2)(C) provides that no payment to the depositor or principal underwriter of a unit investment trust shall be allowed the custodian as an expense, except a fee, not exceeding such reasonable amounts as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the custodian.

Applicants submit that the propose Surrender Charge is not inconsistent with the limitations on payments by the custodian. They assert that the charge is not the typical kind of "expense" contemplated by Section 26(a)(2)(C) and that the Surrender Charge will be assessed solely to recover expenses related to the sale of the Contracts, including commissions paid to sales personnel, and the costs of promotion and sales administration. They aver that deferring the sales charge and making it contingent upon an event which may never occur does not change the basic nature of the charge as a sales charge for which Section 27(c)(2) contains an exception. Thus, Applicants request an exemption from the operation of the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit assessment of the Surrender Charge in the manner described.

Section 2(a)(35)

Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

Applicants submit that the proposed pricing structure is consistent with the intent of the definition of sales load. They contend that the expenses for which the Surrender Charge is designed to reimburse IDS Life are wholly attributable to sales and promotional activity and thus fit squarely within the Section 2(a)(35) definition but for the timing of the imposition of the charge. In order to avoid any questions as to the potential applicability of Section 2(a)(35), Applicants request an exemption from that section to the extent necessary to permit the imposition of the Surrender Charge.

Section 22(c) and Rule 22c-1

Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security.

Applicants assert that when a surrender is requested to effect a cash withdrawal under the Contracts, the price on redemption will be based on the current net asset value. The Surrender Charge will merely be deducted at the time of redemption from the owner's proportionate share of account value. Appllicants submit that imposition of the Surrender Charge is in no way violative of Section 22(c) or Rule 22c-1. However, in order to avoid any questions applicability of those provisions, Applicants request an exemption from them to the extent necessary to permit imposition of the Surrender Charge.

Section 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, prohibits any registered investment

company issuing periodic payment plan certificates, or depositor or underwriter therefor, from selling any such certificate unless it is a redeemable security.

Applicants believe that the assessment of a Surrender Charge upon certain redemptions should not be construed as a restriction on redemption which would prevent the Contract from qualification as a redeemable security and that the Contract is still a redeemable security despite deferral of the sales charge. However, in order to avoid any questions of applicability of Section 27(c)(1), Applicants request an exemption from its provisions to the extent neccessary to permit imposition of the Surrender Charge.

Sections 2(a)(32) and 27(d)

Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets or the cash equivalent thereof. Section 27(d) of the act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under circumstances with the recovery of certain front-end sales charges.

Applicants submit that the imposition of the Surrender Charge does not violate Sections 2(a)(32) or 27(d). While Applicants acknowledge that both sections contemplate the assessment of a front-end sales load, they state that deferring the imposition of the sales charge does not restrict the owner from receiving his proportionate share or the value of his account on redemption. In order to avoid any questions of the applicability of Sections 2(a)(32) and 27(d), applicants request an exemption from their provisions to the extent necessary to permit imposition of the Surrender Charge.

Administrative Charge

As noted above, the Contracts are subject to an annual administrative charge of $25. If the value of the Contract is surrendered in full on other than the last day of the contract year, the Administrative Charge will be deducted before determining the redemption value.

The provisions of the Act discussed above under the heading "Surrender Charge" may be equally applicable to the Administrative Charge. Thus, for similar reasons, Applicants request exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary, to permit deduction of the Administrative Charge as described.

Payment of Contract Fees and Charges

Section 27(c)(2) of the Act provides that the proceeds of all payments on periodic payment plan certificates issued by a registered investment company (except amounts deducted for sales load) must be deposited with a trustee or custodian with the qualifications prescribed in Section 26(a) and held by such trustee or custodian under an agreement described therein. Section 26(a)(2)(C), as here pertinent, provides that no payment to the depositor or principal underwriter of a unit investment trust shall be allowed the custodian as an expense, except a fee, not exceeding such reasonable amounts as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services of a character normally performed by the custodian. Section 26(a)(2)(D) further provides that the custodian have possession of all securities and other property in which the funds of the trust are invested subject only to charges and collections allowed under clauses (A), (B), and (C) of Section 26(a)(2) until distribution thereof to the security holders of the trust.

Applicants request an exemption from the provisions of Sections 26(a) and 27(c)(2) to the extent necessary to permit deduction by IDS Life and payment to IDS Life of the Administrative Charge, the Mortality and Expense Risk Charge and any applicable state premium tax. Applicants agree to the following conditions and terms in connection with these exemptions:

(1) The charges for administrative services shall not exceed such reasonable amount as the Commission may prescribe, jurisdiction being reserved to the Commisison for such purpose.

(2) The payment of sums and charges out of the assets of the Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to the condition shall not be deemed to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right, in any proceeding before the Commission, or in any suit or action in any court to assert that the Commisison has no authority to regulate the payment of such other sums and charges.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act or any rule or regulation under the act if, and to the extent, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, no later than October 26, 1981 at 5:30 p.m. submit to the Commisison in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered will receive any notice and orders in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29737 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11973; 811-2893]

Mayflower Fund, Inc.; Filing of Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

October 6, 1981.

Notice is hereby given that Mayflower Fund, Inc. ("Applicant"), c/o Thomas J. Kelly, Suite 2900, 100 Federal Street, Boston, Massachusetts 02110, registered under the Investment Company Act of

1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 3, 1981, pursuant to Section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states, among other things, that Applicant, a Delaware corporation, registered under the Act on January 2, 1979. Applicant also states that it filed a registration statement under the Securities Act of 1933 (File No. 2-63493) registering 350,000 shares of common stock in connection with a proposed public offering of shares, and that such registration statement was declared effective by the Commission on April 30, 1979. According to Applicant a public offering of shares of Applicant's common stock commenced on that date, and on August 20, 1981, there were outstanding 66,373,730 shares of Applicant's common stock having an aggregate net asset value of $118,596.31, or $1.79 per share.

On April 1, 1981, Applicant's board of directors adopted a Plan of Liquidation and Dissolution, which was subsequently approved by Applicant's shareholders at a special meeting of shareholders on May 27, 1981. A cash distribution in the amount of $9.10 per share has been made to Applicant's shareholders (which totalled approximately 360 as of the filing of the application), and it is contemplated that one additional distribution of assets will be made when Applicant's winding-up process has been completed. Applicant has retained assets in the amount of approximately $150,000 for unpaid expenses (including taxes and known contingencies of about $55,000), incurred in connection with its liquidation, comprising primarily legal, accounting, printing, and office related expenses. Applicant states that such retained assets are invested solely in U.S. government securities and will be distributed to its shareholders, to the extent any remain after paying all of Applicant's unpaid expenses, in the final liquidation distribution; that it has not other known liabilities or unpaid expenses; and that no separate trust has been created to hold any of its assets.

Applicant is plaintiff in certain litigation brought against its former investment adviser, Mayflower Management Co., Inc., and its former principal officer, Mr. James A. Lach, in which Applicant has asserted claims in the aggregate amount of approximately $210,000. The application states that, on the basis of information available to Applicant, it does not appear that either defendant has any substantial assets from which such claims could be satisfied. However, Applicant states that if it is, either prior to the date of the final liquidation distribution or later, successful in recovering on any of the claims it has asserted in this litigation, the amount recovered will be distributed promptly to the same persons who appear as shareholders of record of Applicant on the date of the final liquidation distribution. Applicant contemplates that the final liquidation distribution will be made in November, 1981.

Applicant further states that it filed a Certificate of Dissolution on August 28, 1981, with the State of Delaware, and that pursuant to applicable Delaware corporate law it will have a legal existence for a period of at least three years from the date of dissolution for the purpose of prosecuting and defending lawsuits and winding-up its affairs. Applicant finally states that it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs, and that it is therefore no longer an investment company as defined in the Act.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on it own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order and, upon taking effect of such order, the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than October 29, 1981, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact of law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29738 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18130; File No. SR-MSRB-81-15]

Municipal Securities Rulemaking Board; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to requirements for good delivery. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 14, 1981, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board ("Board") is filing herewith a series of questions and answers, which interprets the requirements for good delivery under rule G-12 (hereafter referred to as the "proposed rule change") as follows:[1]

Q: Must all of the securities which are delivered on a transaction be identical with respect to [the "in whole"] call feature?

A: Yes. Securities which have the same issuer, coupon rate, and maturity date, but which are subject to different "in whole" call

[1] These questions and answers are part of a notice, to be published in the September 1981 issue of *MSRB Reports*, which also discusses the application of the yield disclosure requirements for customer confirmations under Board rule G-15. These requirements were the subject of prior filings with the Commission [*See* File Nos. SR-MSRB-79-6, SR-MSRB-80-11, SR-MSRB-81-8, and SR-MSRB-81-13).

provisions, are not fungible (interchangeable), and cannot be included together in a delivery on a single transaction. Such a delivery would be considered irregular for purposes of Board rule G–12(g).

Q: Is this true even in the event the securities are trading at a price substantially below par?

A: Yes. Regardless of the price of a particular transaction, the securities delivered on the transaction cannot differ with respect to the "in whole" call provisions.

II. Self-Regulatory Organizations's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed rule change

(a) Rule G–12 sets forth certain procedures and standards for the comparison, clearance, and settlement of transactions in municipal securities. Sections (e) and (g) of the rule set forth the requirements for good delivery in inter-dealer transactions, and under section (g) parties to an inter-dealer transaction have a right to reclaim, or to demand reclamation of, securities previously delivered, under certain circumstances, including an irregularity in delivery. The purpose of the proposed rule change is to clarify that a delivery on a single transaction of securities which have the same issuer, coupon rate, and maturity date, but which are subject to different "in whole" call provisions would be considered an irregular delivery for purposes of the requirements of rule G–12.

(b) The proposed rule change is adopted pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended (the "Act"), which requires and empowers the Board to adopt rules

> designed * * * to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The proposed rule change, by clarifying the requirements of good delivery in connection with inter-dealer transactions, will facilitate the clearance and settlement of municipal securities transactions. The Board notes that amendments to rule G–15 on customer confirmations, which become fully effective on October 1, 1981, will require that confirmations for transactions in callable securities set forth the lowest of the yield to a premium call, par option or maturity resulting from the dollar price. By clarifying that municipal securities which are delivered on a single transaction must be identical with respect to the "in whole" call feature, the proposed rule change will facilitate compliance with the customer confirmation disclosure requirements and help to assure that good deliveries are made to customers. The Board believes that these purposes are consistent with Section 15B(b)(2)(C) of the Act.

B. The Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition, inasmuch as the proposed rule change merely clarifies the manner in which municipal securities dealers are to comply with an existing requirement of Board rules, and applies equally to all such municipal securities dealers. In this regard, the Board notes that the effective date of the confirmation disclosure requirements referred to above has been deferred to October 1, 1981, in order to provide dealers sufficient time to implement procedures which would enable the identification of call features as a normal part of processing municipal securities transactions.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rule Change Received from Members, Participants or Others

The Board neither solicited nor received comments on the proposed rule change from members, participants or others. The Board from time to time has received inquiries from industry members concerning the application of the good delivery requirements of Board rule G–12 to deliveries of securities which are "mixed" as to the "in whole" call feature.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 4, 1981.

Dated: October 1, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29736 Filed 10-13-81; 8:45 am]

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[Release No. 34-18153; File No. SR-NYSE-81-18]

New York Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to establishing specific uniform margin requirements for proposed new option contracts on U.S. Treasury and GNMA debt securities and to extending credit to customers on shelf registered, control and restricted securities. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 21, 1981, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The New York Stock Exchange proposes to amend Rule 431(c) to increase the amount of credit which member organizations can extend to customers on shelf registered, control and restricted securities; and to amend Rule 431(d) to establish specific margin requirements for proposed new option contracts on U.S. Treasury and Government National Mortgage Association securities (debt securities).

II.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

(a) Margin Requirements for Credit Extended on Shelf Registered, Control and Restricted Securities (Rule 431(c)). The proposed amendments would double the amount of credit a member organization could extend to customers (1) from 5 percent to 10 percent of excess net capital on a single issue without charging Rule 325 net capital and (2) from 25 percent to 50 percent of excess net capital on all securities. The proposal would also reduce the Rule 326(a) and (b) capital charges a member organization must take in determining if it can expand or must contract its business to 25 percent up to the first 50 percent of excess net capital and impose a 100 percent charge on credit extended over 50 percent of excess net capital.

The proposal would substantially conform NYSE requirements with those of the industry and provide for a more uniform extension of credit for such securities.

Margin Requirements for Options Contracts on Debt Securities (Rule 431(d)). The American Stock Exchange (AMEX), The Chicago Board Options Exchange (CBOE) and New York Stock Exchange (NYSE) have submitted to the Commission for approval various proposals to trade in option contracts on U.S. Treasury obligations (bills, notes and bonds) and Government National Mortgage Association (GNMA) securities.

The application of existing NYSE margin requirements relating to options on corporate equity securities (stock options) would not be practicable for debt securities because the underlying government instruments do not require as large an amount of initial and maintenance margin. The NYSE proposal would set margin requirements for options on debt securities based upon the time until maturity and price volatility of the underlying security instead of utilizing the value of the underlying security as is the case with stock options. The proposal also would prescribe margin requirements for options on U.S. Government securities that are traded over-the-counter.

The proposed amendments have been drafted in conjunction with the AMEX and CBOE to insure uniformity in the computation of margin requirements for option contracts on debt securities proposed for trading on the Respective Exchanges. This uniform approach has been developed to avoid conflicting regulations and an unnecessary burden on market participants.

(b) The proposed amendments to Rule 431(c) and (d) are consistent with Section 6(b)(5) of the Act as the amendments would foster cooperation, coordination and uniformity among persons engaged in regulating the extension of credit with respect to securities transactions, thereby facilitating transactions in securities, and removing impediments to and perfecting the mechanism of a national market system. The imposition of uniform margin requirements for the debt security option contracts of the various self-regulatory organizations will eliminate the necessity and attendant expense and confusion that would result from organizations being required to compute margin requirements on similar contracts using different criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will help to promote competition by enabling NYSE member organizations to extend credit to customers on terms similar to those being offered to customers of non-members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 18, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 4, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 6, 1981.

[FR Doc. 81-29733 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34—18158; File No. SR-NYSE 81-11]

New York Stock Exchange, Inc.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to Exchange Rule 103A dealing with stock reallocation for non-disciplinary purposes. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1981, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is Amendment No. 1 to SR-NYSE-81-11, and consists of revisions to the Exchange's procedures for stock reallocation actions under Rule 103A of the Exchange. The purpose of the proposed rule change filed by the Exchange in SR-NYSE-81-11 was to make permanent Rule 103A as a rule of the Exchange. Annexed to that filing as "stated policies, practices, or interpretations" concerned with the Exchange's administration of Rule 103A were Exhibit B ("Supplemental Specialist Performance Evaluation Questionnaire") and Exhibit C ("Procedures for Possible Stock Reallocation Action Pursuant to Exchange Rule 103A"). In Amendment No. 1 to SR-NYSE-81-11, the Exchange proposes several revisions to Exhibit C to insure that there is an appropriate mix of Floor brokers participating in a supplemental evaluation of a specialist unit, while still protecting the specialist unit's right to name brokers to participate in the evaluation process. Amendment No. 1 to SR-NYSE-81-11 also revises Exhibit C to give the Exchange flexibility in issuing multiple Supplemental Specialist Performance Evaluation Questionnaires.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the revisions to Exhibit C is to enhance the effective administration of Rule 103A by the Exchange. To accomplish this end, the Exchange is proposing to make three changes in Item 1 of Exhibit C to make more effective, in terms of obtaining meaningful input from members, the procedures for selecting brokers to complete the Supplemental Questionnaire. Item 1 has been amended to state that the number of firms to be selected, based on their activity in the specialist unit's stocks as reflected by the Reconciliation Clearance Sheets, to receive the Supplemental Questionnaire shall not exceed one-half the number of brokers who participated in the two prior quarterly evaluations of the specialist unit. Item 1 has also been amended to state that the Exchange staff will ask Floor brokers to complete the Supplemental Questionnaire if they completed a Specialist Performance Evaluation Questionnaire for the specialist unit in question for the prior two quarters. In addition, Item 1 has been amended to state that the specialist unit to be the subject of a supplemental evaluation may submit a list of brokers that it wishes to complete the Supplemental Questionnaire, but the number shall not exceed the number which participated in the two prior quarterly evaluations of the specialist unit. The Exchange's Subcommittee on Performance Measures and Procedures will then select one-half of these brokers (based on appropriate criteria) to participate in the supplemental evaluation.

The Exchange is also proposing several alternative courses of action should a specialist unit, which has previously been the subject of a supplemental evaluation, subsequently fall below acceptable performance levels. A new Item 3 has been added to Exhibit C which states that if the Exchange agrees with the Subcommittee on Performance Measures and Procedures' recommendations not to institute a reallocation proceeding, and the specialist unit's subsequent performance requires the initiation of a possible reallocation action, the Exchange may either direct that further performance improvement actions be taken, direct that a Supplemental Questionnaire be issued, or waive the issuance of a Supplemental Questionnaire and proceed with a reallocation action.

It should be noted parenthetically that the Exchange's Market Performance Committee is charged with the administration of Rule 103A on behalf of the Exchange.

The statutory basis for the proposed revisions to Exhibit C is Section 6(b)(5) of the Securities Exchange Act of 1934 which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a rational market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The enhancements to the Exchange's procedures for administering Rule 103A as stated in Exhibit C are designed to promote competition by assuring that specialists compete with each other not only for the allocation of newly listed stocks but also for the stocks in which they are already registered. Thus, the revisions to Exhibit C will not impose any burden on competition, but rather will enhance competition among specialists on the Floor of the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On or before November 18, 1981, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments and concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for

inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions shoud refer to the file number in the caption above and should be submitted on or before November 4, 1981. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 7, 1981.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29759 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18160; File No. SR-OCC-81-11]

The Options Clearing Corp.; Proposed Rule Change by Self-Regulatory Organization

In the matter of proposed rule change relating to the fee schedule for the Debt Securities Options Program. Comments requested on or before November 4, 1981.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 5, 1981. The Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of the Proposed Rule Change

Pursuant to Article III, Section 8 of the By-laws of The Options Clearing Corporation ("OCC"), and in accordance with the principles set forth in Article IX, Section 9 of said By-laws, the Board of Directors of OCC has determined to establish the following fee schedule in connection with the clearing of options on securities of the Government National Mortgage Association ("GNMAs") and other debt securities issued or guaranteed by the United States Government ("Debt Securities"):

GNMA Prospectus Supplement—$.25/copy
Market-Maker/Specialist scratch trades—$.05/contract
All other trades—$.40/contract
Exercises—$1.00/line item

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable OCC to provide the GNMA Prospectus Supplement and clearing services for options in GNMAs and other Debt Securities at approximately a break-even level based on an estimated average daily volume of 3,000 contracts, thereby ensuring OCC's ability to maintain capital, surplus and reserves sufficient for its needs and consistent with the principles set forth in Article IX, Section 9 of its By-laws.

OCC believes that the proposed rule change is reasonable in light of OCC's anticipated printing and distribution costs, projected revenues from clearing fees, and projected operating costs resulting from the institution of the Debt Securities Options Program. The clearing fees are keyed to the projected volume of trading and certain fixed overhead costs and are subject to adjustment as OCC acquires experience in clearing Debt Securities Options. OCC believes that the proposed fee schedule allocates reasonable fees in an equitable manner among OCC's Clearing Members since the operating costs associated with Debt Securities Options are intended to be borne by those who participate in the Debt Secuties Options Program. The proposed fee schedule is expected to have no effect on OCC's ability to safeguard securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participant, or Others

Comments were not and are not intended ot be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capital Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 4, 1981.

Dated: October 7, 1981.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29739 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release Nos. 33-6353, 34-18143, IC-11969]

Procedures for Processing Post-Effective Amendments and Preliminary Proxy Material Filed by Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Announcement of staff procedures.

SUMMARY: The Commission's Division of Investment Management, which is responsible for reviewing disclosure documents filed by registered investment companies, is revising the procedures which currently are applicable to the review of preliminary proxy soliciting materials filed by registered investment companies. The Division also has developed stand-by procedures for the selective review of certain other investment company filings. The stand-by procedures apply to filings made by open-end management investment companies and unit investment trusts, including insurance company separate accounts, and will be put into effect only when necessary to maintain orderly processing of filings. In addition to announcing the changed and new procedures, the Commission is reminding registrants that where they file post-effective amendments to registration statements under rule provisions which permit such amendments to become effective automatically 60 days after filing, it is the registrant's responsibility to file such amendments in a timely manner.

EFFECTIVE DATE: October 2, 1981.

FOR FURTHER INFORMATION CONTACT: W. Burrell Ellis, Assistant Director, (202) 272–2105, Kathleen A. Jackson Special Counsel, (202) 272–2115, or, with respect to insurance company separate accounts, William Strickland, Attorney, (202) 272–2057, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Consistent with its practice of publishing the views of its staff to assist issuers, their counsel and accountants, and other interested persons, the Commission is announcing certain changes in the procedures the Division of Investment Management applies in the review of preliminary proxy soliciting materials filed by registered investment companies. The Commission also is announcing new stand-by procedures which may be used by the Division of Investment Management in its review and processing of certain investment company filings. In light of the particularly heavy concentration of filings during certain months of the year, the Division believes it is advisable to have stand-by procedures for expediting review of such filings. The new procedures will be used only when necessary to ensure orderly processing. They involve the selective review of certain filings and will be utilized in conjunction with procedures previously announced. The Commission anticipates that the new procedures are most likely to be used during the months January through April of each year.

The Commission also reminds open-end management investment company and unit investment trust registrants that it is the responsibility of any such registrant that files an annual updating post-effective amendment under paragraph (a) of rule 465 under the Securities Act of 1933 [17 CFR 230.465(a)] ("Securities Act") to ensure that such amendment is filed at least 60 days before the date on which its then current prospectus becomes stale.

Revised Procedures

In 1978, the Commission announced procedures for "red-line" review of post-effective amendments and selective review of preliminary proxy soliciting materials filed by registered investment companies.[1] Under these procedures, review of post-effective amendments to registration statements filed under the Securities Act [15 U.S.C. 77a *et seq.*] is now ordinarily limited to financial statements and narrative material which is marked to indicate textual changes. No review is made of the substance of preliminary proxy soliciting materials, filed pursuant to rule 14a–6 under the Securities Exchange Act of 1934 [17 CFR 240.14a–6], that concern no proposals other than those relating to the uncontested election of directors, the ratification of the selection of accountants and the continuation of a current advisory contract. The staff reviews those documents only to determine that they contain no other proposals. In light of the staff's experience since the adoption of these review procedures in 1978, it appears appropriate to expand the category of such preliminary proxy soliciting material filings which do not receive substantive staff review. The expansion of the "no-review" category will permit the Division to allocate its resources to those preliminary proxy filings which most clearly appear to need review and, at the same time, should expedite the review and processing by the Division of all preliminary proxy soliciting materials. Accordingly, where preliminary proxy soliciting materials filed by a registered investment company concern no proposals other than those specified in Securities Act Release No. 5988[2] and described above, or those related to (1) increasing the number or amount of shares authorized to be issued by the registrant, or (2) the continuation of any current contract related to the distribution of shares issued by the registrant which is not associated with a distribution plan permitted by rule 12b–1 under the Investment Company Act [17 CFR 270.12b–1], the Division will limit its review of such materials to a determination that they contain no other proposals.

Stand-By Review Procedures

By virtue of the operation of section 10(a)(3) of the Securities Act,[3] any investment company that offers its shares continuously must update its prospectus within four months after its fiscal year ends. Since the fiscal years of most such investment companies end on December 31, the majority of post-effective amendments reviewed by the Division are intended to become effective on or before April 30. Consequently, the staff's task of reviewing and commenting on post-effective amendments is not spread evenly throughout the year.

Rule 465 under Securities Act[4] permits most post-effective amendments filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, either immediately upon filing or within 60 days thereafter. Under paragraph (a) of the rule, a post-effective amendment will become effective on the 60th day after filing if it contains disclosure relating to any of the several events listed in paragraph (b)(2), and those events have occurred since the effective date of the issuer's registration statement or the issuer's most recent post-effective amendment containing a prospectus, or if it contains disclosure concerning any other event which in the judgment of the registrant is material. A post-effective amendment may be filed pursuant to paragraph (b) of rule 465 and become effective automatically either immediately upon filing or on any date within 20 days after the date of filing if it is filed for any one or more of the purpose listed in

[1] Securities Act Release No. 5988 (October 19, 1978) [43 FR 49886, October 25, 1978].

[2] *Id.*

[3] [15 U.S.C. 77](a)(3)]. Section 10(a)(3) of the Securities Act provides that, when a prospectus is used more than nine months after the effective date of a registration statement, the information contained therein may not be as of a date more than 16 months prior to such use. Pursuant to section 24(e)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–24(e)(3)], any prospectus which is updated to meet the requirements of section 10(a)(3) must be filed as a post-effective amendment to the issuer's registration statement.

[4] Rule 465 under the Securities Act was adopted in Securities Act Release No. 6229 (August 25, 1980) [45 FR 57702, August 29, 1980].

paragraph (b)(1) of the rule and certain other criteria specified in the rule are met.

Post-effective amendments filed under paragraph (a) of rule 465 are subject to staff review and comment during the 60-day period between the filing and effective dates. Since most registrants filing under the 60-day provision of rule 465 seek effectivness of their amendments on or shortly before April 30, the Division is required to review and comment on the bulk of the post-effective amendment filings that it will receive during the course of any given year during the months of March and April.[5]

Rule 465 does not apply to post-effective amendments filed by insurance company separate accounts.[6] However, because the fiscal years of most such companies end on December 31, the majority of the post-effective amendments reviewed by the Division's Office of Compliance and Insurance Products are intended to become effective on or before April 30. Therefore, the staff's review of such filings is concentrated during the months December through April of each year.

The problem caused by the concentration of post-effective amendment filings during certain months of the year is exacerbated by: (a) the fact that the number of post-effective amendments filed has increased by approximately 50 percent during the past two years and (b) the fact that the majority of investment companies file preliminary proxy soliciting materials with the Commission during the months December through March of each year *i.e.*, during part of the period that the volume of other investment company filings is heavy. Therefore, the Division will implement stand-by procedures for the selective review of certain filings during periods when such action appears necessary to assure the timely and orderly processing of all filings received. In connection with the new procedures, the Division requests that registrants continue the current practice of clearly describing, in letters transmitting filings to the Commission, any material changes from the most recent filing of the same kind and any problem areas which in the view of the registrant warrant particular attention.[7]

If and when it becomes necessary for the Division to put the new procedures into effect in order to maintain orderly processing of filings, the Division will not review certain post-effective amendments filed by insurance company separate accounts or certain post-effective amendments filed by other investment companies under paragraph (a) of rule 465. Certain preliminary proxy soliciting materials which, under procedures announced in Securities Act Release 5988 and revised in this release, would otherwise be subject to review also may not be reviewed. If the procedures are used, some filings will be selected for review by random sampling, and others will be selected based on the following factors:

1. Information contained in the transmittal letter which indicates a need for special disclosure, or which reveals financial, organizational or other business characteristics that suggest a special need for review;

2. Unusual findings resulting from a test-check of certain items in the financial statements contained in the filing; or

3. A belief on the part of the staff, based either on past experience in reviewing disclosure filings of a particular registrant, the results of an inspection of the registrant, or other information, that review of the registrant's filing is appropriate.

If a post-effective amendment or preliminary proxy soliciting material will not be reviewed, the staff will so advise the issuer or its counsel as far in advance of the proposed effective or mailing date as practicable. In light of these new procedures registrants making filings that may be affected by the procedures should not assume that a particular filing either will or will not be reviewed. For example, in some instances part one of a two-part filing made by an insurance company separate account may not be reviewed while part two of the filing may be reviewed by the staff.

Timeliness of Filings Under Rule 465

Paragraph (a) of rule 465 provides that the Commission, having due regard to the public interest and the protection of investors, may advance the effective date of a post-effective amendment filed under that paragraph to a date earlier than the 60th day after the amendment is filed with the Commission. In the release which announced the proposal of rule 465,[8] registrants were advised that the Division would use the authority to advance the effective date of the amendments filed under paragraph (a) of the rule only under limited circumstances.[9] In particular, it was stated that the fact that a registrant's prospectus is, or is about to become, stale normally would not be considered sufficient reason for the Commission or the staff to excercise its authority to set an effective date earlier than the 60th day after filing.

During the first several months of the operation of rule 465, the Division has received a significant number of requests for the advancement of the effective date of annual updating post-effective amendments filed under paragraph (a) of the rule. Most of these requests have been based, in large part, on the fact that the issuer's prospectus will become stale before the 60 days provided for in paragraph (a) have expired. For this reason, the Commission believes it is appropriate to remind regisrants of their responsibility to file any post-effective amendment which will become effective pursuant to paragraph (a) of rule 465 at least 60 days in advance of the desired effective date unless the criteria specified in the release announcing the proposal of rule 465 for requesting earlier effectiveness can be met. The cooperation of registrants in this regard is essential to effective and continue operation of the rule and to avoid registrants having to

[5] Recently, the Commission adopted rule and form amendments (see Securities Act Release No. 6326 (July 8, 1981) [46 FR 36120, July 14, 1981]) which, among other things, give certain investment companies the option of providing a prospectus in lieu of the annual report to shareholders, provided that they do so within 60 days after the end of the fiscal year. Any such investment company that had a calendar year fiscal year and that filed a post-effective amendment to update its prospectus under paragraph (a) of rule 465 would have to file such an amendment on or before January 1. Since the Division has not yet had any experience with these new provisions, it is too soon to estimate what, if any, effect they will have on the Division's workload.

[6] The Commission anticipates that it will in the near future consider whether to propose an amendment to rule 465 or a new rule making automatic effectiveness procedures applicable to at least some post-effective amendments filed by insurance company separate accounts.

[7] See Securities Act Release No. 4936 (March 12, 1969) [34 FR 5547, March 22, 1969]; Securities Act Release No. 5738 (September 3, 1976) [41 FR 36013, September 14, 1976] and Securities Act Release No. 5868 (October 19, 1978) [43 FR 49969, October 25, 1978].

[8] See Securities Act Release No. 6205 (April 3, 1980), [45 FR 24500, April 10, 1980].

[9] It was stated in the proposing release that the Commission's authority to advance the effective date of filings under paragraph (a) would normally be exercised only in two cases: 1) where the registrant has filed an additional amendment solely to make changes in disclosure suggested by the staff, and 2) where an amendment, other than an annual updating amendment, is filed to disclose changes in the registrant's business, operations, or services, and the changes are such that it would be inappropriate for the registrant to continue to sell its shares pending effectiveness of the amendment containing the revised prospectus.

suspend temporarily sales of their shares.

George A. Fitzsimmons,

Secretary.

October 2, 1981.

[FR Doc. 81-29735 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11980; 812-4960]

The Reserve Fund, Inc.; Filing of Application for Exemption Order

October 7, 1981.

Notice is hereby given that The Reserve Fund, Inc. ("Applicant"), 810 Seventh Avenue, New York, NY 10019, which is registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on August 24, 1981, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit applicant to compute the net asset value per share of its Government Portfolio using the amoritized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which is summarized below.

Applicant states that it was organized in 1970 under the laws of the State of Maryland. Applicant states that it is a "money market fund," designed to offer corporations, fiduciaries, other institutions and individuals a means to invest in a professionally managed portfolio of money market instruments with the objective of obtaining as high a level of current income as is consistent with preservation of capital and liquidity.

Applicant states that it intends to submit for shareholder approval proposed amendments to its articles of incorporation and proposed restatements of its investment objective and its fundamental policies, designed to permit it to operate as a "series company." If such proposals are approved, Applicant states that it intends to create and offer to the public a new class of stock, representing a new portfolio, to be designated the "Government Portfolio" and to redesignate its existing portfolio the "Combined Portfolio." The Government Portfolio will invest exclusively in marketable obligations issued or guaranteed as to principal and interest by the United States Government or its agencies; deposit-type obligations, acceptances and letters of credit of United States banks (including foreign branches of such banks) and savings and loan associations which are members of the Federal Deposit Insurance Corporation; and instruments fully secured or collateralized by (such as repurchase agreements), or rights to acquire, such obligations.

According to the application, Applicant is not authorized to invest in commercial paper, but may buy notes guaranteed by letters of credit of such banks or by the United States Government or it agencies.

Applicant states that it holds no security maturing in more than one year and that it has undertaken to maintain a dollar-weighted average portfolio maturity of less than 120 days. Reserve Management Company serves as investment manager to Applicant.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by an investment company's board of directors.

Rule 22c–1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or to sell such security.

Rule 2a–4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necesssary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the provisions of the Act.

On October 30, 1980, the Commission issued an order (Investment Company Act Release No. 11416) exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit it to use the amortized cost valuation method for purposes of valuing the securities held in the portfolio of its initial series.

Applicant requests an order of the Commission amending its prior order by further exempting it from Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to permit it to use the amortized cost method of valuing the securities held in the Government Portfolio. In support of the relief requested, Applicant represents that use of the amortized cost method of valuing the instruments held in the Government Portfolio will benefit shareholders by enabling Applicant to maintain a $1.00 per share purchase and redemption price with respect to the Government Portfolio in a manner consistent with that permitted with respect to Applicant's existing portfolio.

Applicant has agreed that the following conditions may be contained in any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of directors of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of directors of the Applicant shall be the following:

a) Review by the board of directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors will promptly consider what action, if any, should be initiated by it.

c) Where the board of directors believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of portfolio instruments; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. As to each Portfolio, Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year (unless subject to a repurchase agreement with a maturity of one year or less), or (b) maintain as to a Portfolio a dollar-weighted average portfolio maturity which exceeds 120 days. If disposition of an instrument held in a Portfolio results in such average maturity exceeding 120 days, Applicant will invest the available cash of the Portfolio in such a manner as to reduce its average maturity to 120 days.[2]

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the boards of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of directors determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of directors.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than November 3, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29741 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its board of directors in the exercise of its discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

[2] In fulfilling this condition, if the disposition of a portfolio security results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

State Mutual Securities, Inc. and State Mutual Life Assurance Company of America; Filing of Application for Order Permitting Acquistion of Certain Notes and Exempting Sale of Notes

[Release No. 11981; October 7, 1981 812-4912]

Notice is hereby given that State Mutual Securities, Inc. ("Fund"), a registered, closed-end, diversified investment company, and its investment adviser, State Mutual Life Assurance Company of America ("Insurance Company"), a mutual life assurance company organized under the laws of Massachusetts (the Fund and the Insurance Company are together referred to hereinafter as "Applicants"), 440 Lincoln Street, Worcester, Massachusetts 01605, filed an application on July 1, 1981, and amendments thereto on August 17, 1981 and September 28, 1981, for an order pursuant to Sections 6(c) and 17(d) of the Act, and Rule 17d–1 thereunder, permitting the joint acquisition by the Insurance Company and the Fund of 18½% Equipment Trust Loan Certificates of United Air Lines, Inc. ("United") ("18½% Note"), and pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act the proposed sale by the Insurance Company to the Fund of $500,000 in principal amount of the 18½% Note, plus accrued interest.

Applicants state that on July 8, 1981, the Commission issued an order (Investment Company Act Release No. 11852), amending a prior order of the Commission (Investment Company Act Release No. 7665, February 12, 1973) pursuant to which Applicants had been permitted, without the necessity of prior approval by the Commission, to make concurrent investments in securities purchased at direct placement. It is

stated that the previous order had been made subject to certain conditions, one of which had required, as pertinent hereto, that purchases at direct placement of securities which would be consistent with the investment policies of the fund be shared equally by Applicants. The previous order did not require this equal participation in connection with the purchase of long-term debt obligations or preferred stock without equity participation, and in cases in which Applicants wished to share in the acquisition of securities of this type, it was necessary to file an application for an order of the Commission specifically permitting such acquisitions.

The amended order applies to Applicants' purchases at direct placement of both securities having equity features and those without equity participation. The amended order is subject to certain conditions, including, as pertinent hereto, the following: (1) that the fund be offered the opportunity to purchase an equivalent amount of any security which the Insurance Company is prepared to purchase at direct placement, the Fund having discretion to purchase none of such securities or to purchase an amount up to the entire amount of such securities; (2) that without further order of the Commission, Applicants may participate in the purchase of securities at direct placement on an equal basis and on identical terms; (3) that in cases where the Fund decides to participate with the Insurance Company in a direct placement on other than an equal basis, an application for an exemption be filed with the Commission pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder; and (4) that any decision by the Fund not to participate in a direct placement offered to it by the Insurance Company be approved by the Fund's board of directors, including a majority of the disinterested directors of the Fund.

Applicants state that on April 21, 1981, the Insurance Company agreed to purchase up to $2,500,000 principal amount of a 16¼% Equipment Trust Loan Certificate of United due in fifteen years at par ("16¼% Note"). Applicants represent that because of the potential fluctuation of interest rates between the time of commitment to purchase the 16¼% Note and the closing date, the Insurance Company did not recommend that the Fund participate in the acquisition of this security. Accordingly, it is stated, the board of directors of the Fund, including a majority of the Fund's disinterested directors, voted to decline the opportunity to praticipate in the purchase of the 16¼% Note.

Applicants state that on May 19, 1981, the Insurance Company made a commitment to purchase up to $1,000,000 principal amount of the 18½% Note, the closing for such purchase to take place three days thereafter, on May 22, 1981. Applicants state that while the Insurance Company regarded the 18½% Note—a long-term debt obligation without equity participation—as an attractive investment for the Fund, the Insurance Company was unable, due to the fact that the closing occurred within such a brief period of time after the date of commitment, to offer a participation in the 18½% Note to the Fund. Applicants note that all such purchases in private placements made by the Fund must be approved by the Fund's board of directors, which meets on a quarterly basis and which had convened most recently prior to May 19, 1981 (the date of the Insurance Company's commitment to purchase the 18½% Note), on May 8, 1981. Applicants state that the next regularly scheduled meeting of the Fund's board was to be held on August 14, 1981. Thus, it is indicated, it would not have been possible to have obtained the approval of the Fund's board of directors in advance of the acquisition of the 18½% Note at a regularly scheduled meeting.

It is further stated that, although the board of directors of the Fund is also authorized to act by mail, all such action undertaken by mail must receive the consent of all nine directors. Thus, Applicants state, in order for the Fund to have obtained the requisite approval of the proposed acquisition by mail, the necessary consents would have to have been mailed to the directors, and each director would have to have given his consent and returned it to the Fund, all in the period of three days, from May 19, to May 22, 1981.

Applicants note, further, that in addition to the consent of the directors of the Fund, Commission approval would have been needed in advance of any action taken by Applicants in connection with the acquisition. Applicants represent that on May 19, 1981, the conclusion was therefore reached that it would not be possible to obtain all of the necessary consents and Commission approval to permit Applicants to participate jointly in the acquisition of the 18½ percent Note. Accordingly, it is stated, it was decided that the Insurance Company would proceed with the purchase of the 18½ percent Note, and subsequent to such purchase, request by mail the consent of the Fund's directors to the proposed acquisition, and upon receiving such consent, apply for Commission approval of the proposed transaction.

Applicants represent that as of June 15, 1981, the board of directors of the Fund, including all of the disinterested directors, approved the purchase by the Fund from the Insurance Company of $500,000 principal amount of the 18½ percent Note plus accrued interest. This approval was given subject to the condition that the Commission issue an order permitting the acquisition pursuant to Sections 6(c), 17(b) and 17(d) of the Act, and Rule 17d–1 thereunder, and that upon the issuance of such order, the Fund's board of directors approve and thereby reaffirm their earlier approval of the proposed acquisition.

Thus, it is represented that the Insurance Company is prepared, subject to the issuance of the Commission order sought herein, and to approval given subsequent to the issuance thereof by the board of directors of the Fund, to sell to the Fund $500,000 principal amount of the 18½ percent Note at a price equal to the cost of the security to the Insurance Company, plus accrued interest.

As the investment adviser to the Fund, the Insurance Company is an affiliated person of the Fund within the meaning of Section 2(a)(3) of the Act, subparagraph (E) of which includes within the definition of affiliated person any investment adviser of an investment company. Section 17(a) of the Act, in pertinent part, provides that it shall be unlawful for any affiliated person of a registered investment company knowingly to sell to such registered company any security or other property. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company involved and with the general purposes of the Act.

In support of the order requested pursuant to Section 17(b) of the Act, Applicants submit that (1) the terms of the proposed sale are reasonable and fair and do not involve overreaching on the part of either Applicant, since the consideration to be paid by the Fund for its portion of the 18½ percent Note would be equal to the price paid by Insurance Company, plus accrued interest; (2) the proposed transaction is

consistent with the policy of the Fund as recited in its registration statements; and (3) the proposed transaction is consistent with the general purposes of the Act. Applicants assert, therefore, that the order herein requested can properly include, pursuant to the terms of Section 17(b) of the Act, an exemption from the prohibitions of Section 17(a) of the Act to permit the proposed transfer by the Insurance Company to the Fund of $500,000 of principal amount of the 18½ percent Note, plus interest which will have accrued thereon to the date of sale.

Section 17(d) of the Act and Rule 17d-1 taken together provide, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or other joint arrangement in which any such registered company is a participant unless an application relating thereto has been granted by an order of the Commission. In passing upon such an application, the commission will consider whether the participation of such registered company in such joint enterprise on the basis proposed is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from, or less advantageous than, that of other participants.

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the order requested herein was applied for subsequent to the Insurance Company's purchase of the 18½ percent Note, Applicants have incorporated in the application the provisions of Section 6(c) as grounds for the requested exemption to permit the Insurance Company and the Fund to participate jointly in the acquisition of the 18½ percent Note.

In support of the request for exemption to permit such acquisition, Applicants state that in the judgment of the Insurance Company, the 18½ percent Note would be an attractive investment for the Fund. In this regard, Applicants note that (1) United has demonstrated a reasonable long-term record of profitability; and (2) as of June 19, 1981, the interest rate applicable to the 18½ percent Note was attractive in view of the current yield on the Fund's portfolio. Therefore, Applicants assert that it would be disadvantageous to the Fund if it were not permitted to participate in the acquisition of the 18½ percent Note. Applicants further state that the Insurance Company's interest in the 16¼ percent Note has had no effect on its opinion that the 18½ percent Note is an attractive investment for both the Insurance Company and the Fund. Applicants conclude that to extend to the Funds the opportunity to invest in the 18½ percent Note would be consistent with the provisions, policies and purposes of the Act.

Applicants have undertaken to consummate the proposed transaction within 21 days of the date of the order requested herein. Applicants represent that upon the issuance of such order, the board of directors of the Fund, including the Fund's disinterested directors, will decide whether or not to reapprove the proposed purchase by the Fund of the 18½ percent Note at the price paid by the Insurance Company, plus accrued interest. Applicants state that such approval will be sought by mail. Applicants have agreed further that: (1) the Fund's board of directors will not reapprove the proposed purchase if at the time the transaction is under consideration by the board, it does not appear that the 18½ percent Note is the most attractive investment for the Fund, taking into account all pertinent criteria, including prevailing interest rates, degree of risk, and length of maturity pertaining to similar securities; (2) within 15 days after the closing of the proposed purchase by the Fund, Applicants will file with the Commission a copy of all records with respect to the transaction and the subject note required to be kept pursuant to Rule 31b-10 and Rule 31b-11 promulgated under the Act, and (3) if the order requested herein is not received, the Insurance Company will retain for investment the entire principal amount of the 18½ Note.

Notice if further given that any interested person may, not later than November 2, 1981, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 81-29742 Filed 10-13-81; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 148-1; Public Notice 774]

Under Secretary of State for Management; Amendment to Delegation of Authority

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 26, 1949 (22 U.S.C. 2658), Delegation of Authority No. 148 of August 4, 1981 (46 FR 42395, August 20, 1981) is amended by adding before "General Provisions" the following new section 3:

"Sec. 3. The functions vested in the Secretary of State or the Secretary by the Foreign Service Act of 1980 (Public Law 96-465, 94 Stat. 2071 *et seq.*, 22 U.S.C. 3901 *et seq.*) except those under sections 209, 1105(b), and 1107(d) of that Act."

Dated: September 9, 1981.

Alexander M. Haig, Jr.,

Secretary of State.

[FR Doc. 81-29722 Filed 10-13-81; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice CM-8/451]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 27, 1981 at 10:00 a.m. in Room 856, of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. This Study Group will deal with U.S. Government aspects of international telegram and telephone operations and tariffs.

The Study Group will discuss international telecommunications questions relating to telegraph, telex, new record services, data transmission and leased channel services in order to develop U.S. positions to be taken at upcoming international CCITT meetings. This meeting of Study Group A will examine the questions and contributions relating to upcoming meetings of CCITT Study Group I, and Mobile Maritime Service SMM).

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Requests for further information should be directed to Earl S. Barbely, Chief, Conference Staff, Federal Communications Commission, Washington, D.C., telephone (202) 632-3214.

Dated: October 5, 1981.

Richard H. Howarth,

Chairman, U.S. CCITT National Committee.

[FR Doc. 81-28337 Filed 10-13-81; 11:09 am]

BILLING CODE 4710-07-M

FEDERAL COMMUNICATIONS COMMISSION

Open En Banc Meeting; Date Changed

September 15, 1981.

The first of a series of open en banc Commission meetings to be held under a recently reinstituted FCC policy has been changed to October 14, beginning at 9 a.m. and continuing until 12 noon, in the Commission meeting room (856), 1919 M St. NW., Washington, D.C.

Those wishing to participate in the October 14 meeting should send a letter by September 29, indicating their desire to participate and including a brief outline of the topics they wish to discuss, to William Russell, FCC Director of Public Affairs, Room 202, 1919 M St. NW., Washington, D.C. 20554.

The en banc meetings are intended to give interested persons an opportunity to express their views on a variety of communications policy issues directly to the full Commission and to contribute to the FCC's decision-making processes. Dates and deadlines for submissions for future meetings will be announced as the meetings are scheduled.

Selection of participants will be at the Commission's discretion and will be in accordance with the number of requests received and the time available. The first meeting originally was scheduled for October 7.

Issued: September 15, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-29714 Filed 10-13-81; 8:45 am]

BILLING CODE 6712-01-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 198
Thursday, October 14, 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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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, October 19, 1981, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Requests for relief from adjustment for violations of Regulation Z:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandun and Resolution re: Surety Bank and Trust Company, Wakefield, Massachusetts.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 9, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1548-81 Filed 10-9-81; 3:12 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, October 19, 1981, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance:

The Harbor Bank of Maryland, a proposed new bank, to be located at 100 St. Paul Street, Baltimore (Independent City), Maryland.

Application for consent to establish a branch:

The Montclair Savings Bank, Montclair, New Jersey, for consent to establish a branch at 220 West Main Street, Boonton Township, New Jersey.

Application for consent to consolidate and establish branches:

The Savings Bank of New London, New London, Connecticut, for consent to consolidate, under its charter and with the title "New England Savings Bank," with Deep River Savings Bank, Deep River, Connecticut, and to establish the three existing offices and one approved but unopened office of Deep River Savings Bank as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,919-L (Addendum)—Banco de Ahorro de Puerto Rico, San Juan (Hato Rey), Puerto Rico.

Case No. 44,939-L—Franklin National Bank, New York, New York.

Memorandum and Resolution re: Banco Credito y Ahorro Ponceno, Ponce, Puerto Rico.

Memorandum re: Renewal of travel accident insurance policy.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Request for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 9, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-1547-81 Filed 10-9-81; 3:12 pm]

BILLING CODE 6714-01-M

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FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 46, Issue No. 196, Page No. 50185, Date Published, October 9, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, October 15, 1981.

PLACE: 1700 G Street, NW., Board Room, 6th Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6679).

CHANGES IN THE MEETING: The following items have been added to the open portion of the Bank Board meeting scheduled for Thursday, October 15, 1981.

Balloon Payment Mortgages and Reverse Annuity Mortgages.

FHLMC Short Term Notes as Liquidity.

Amortization Periods for Premiums, Charges and Credit; Treatment of Gains and Losses on Sale of Real Estate.

[No. 545, October 9, 1981]

[S-1553-81 Filed 10-9-81; 4:03 pm]

BILLING CODE 6720-01-M

4

FEDERAL RESERVE SYSTEM. (Board of Governors).

TIME AND DATE: 10 a.m., Tuesday, October 20, 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: October 9, 1981.

James McAfee,

Assistant Secretary of the Board.

[S-1551-81 Filed 10-9-81; 3:45 pm]

BILLING CODE 6210-01-M

5

NATIONAL TRANSPORTATION SAFETY BOARD. [NM–81–37].

TIME AND DATE: 11 a.m., Friday, October 9, 1981.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTER TO BE CONSIDERED:

A majority of the Board has determined by recorded vote that the business of the Board required that the following item be discussed on this date and that no earlier announcement was possible.

Recommendation to the Federal Aviation Administration resulting from the Air Traffic Control Special Investigation.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming 202–382–6525.

October 9, 1981.

[S-1549-81 Filed 10-9-81; 3:37 p.m.]

BILLING CODE 4910-58-M

6

NUCLEAR REGULATORY COMMISSION.

DATE: Week of October 12, 1981 (Revised) and Week of October 19, 1981.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/Closed.

MATTERS TO BE CONSIDERED:

Tuesday, October 13

10 a.m. 1. Briefing on IAEA Annual Meeting (approximately 30 minutes) (closed meeting).

2. Briefing by Executive Branch (Closed meeting) (as announced).

2 p.m. 1. Discussion and Possible Vote on Revised Licensing Procedures—Proposed Rule Change to Part 2 (Public Meeting) (as announced).

Wednesday, October 14

10 a.m. 1. Oral Presentations on TMI–1 Restart (Public meeting) (as announced).

2 p.m. 1. Continuation of Oral Presentations on TMI–1 Restart (Public meeting) (as announced).

Thursday, October 15

9:30 a.m. 1. Discussion of Management-Organization and Internal Personnel Matters (approximately 1 hour) (Closed meeting) (as announced; time changed).

2. Discussion of Budget (Closed meeting).

3:30 p.m. 1. Affirmation/Discussion Session (Public meeting) (items revised). Items to be affirmed and/or discussed:

a. Interim Rule on Hydrogen Control (postponed from October 5).

b. Review of ALAB–646, In the Matter of Alabama Power Co. (Antitrust), and Alabama Power Company's Application for Stay Pendente Lite.

c. Central Electric Power Cooperative's Petition for Reconsideration (Virgil Summer OL—Antitrust).

d. Request of the State of Illinois for a Hearing on the G.E. Morris License Amendment.

e. Implementation of Equal Access to Justice Act.

f. Delegation of Part 70 Jurisdiction to Licensing and Appeal Boards.

g. New Development in Florida Cities and Florida Power & Light Antitrust Matter.

Wednesday, October 21

2 p.m. 1. Briefing on Status of NUREG–0771 and –0772 (on Fission Product Behavior) (Public meeting).

Thursday, October 22

10 a.m. 1. Periodic Status Report on Phase II of SEP (Public meeting).

3 p.m. 1. Affirmation/Discussion Session (Public meeting).

Items to be affirmed and/or discussed:

a. Proposed Amendment to 10 CFR Part 71 to Restrict Air Transport of Plutonium.

b. Review of ALAB–650 (In the Matter of Public Service Electric and Gas Company, et al.)

ADDITIONAL INFORMATION: Affirmation of Petition for Extention of Deadline for Environmental Qualification of Class IE Electrical Equipment, scheduled for October 8, has been cancelled.

Automatic telephone answering service for schedule update: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

Walter Magee,

Office of the Secretary.

October 8, 1981.

[S-1553-81 Filed 10-9-81; 3:56 pm]

BILLING CODE 7590-01-M

7

OVERSEAS PRIVATE INVESTMENT CORPORATION. Meeting of the Board of Directors.

TIME AND DATE: Meeting of the OPIC Board of Directors: Tuesday, October 20, 1981 at 9:00 a.m. (Closed Portion): 9:45 a.m. (Open Portion).

PLACE: Offices of the Corporation. Seventh (7th) Floor Board Room; 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9:00 a.m. to 9:45 a.m. will be closed to the public. The open portion of the meeting will start at 9:45 a.m.

MATTERS TO BE CONSIDERED: (Closed to the Public: 9:00 a.m. to 9:45 a.m.).

1. Renegotiation of Lloyd's Reinsurance Agreement.
2. OPIC Budget for Fiscal Year 1982.
3. Claims Report.
4. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public: 9:45 a.m.)

1. Approval of the Minutes.
2. Confirmation of Scheduled Board Meetings.
3. OPIC Legislative Renewal.
4. OPIC By-Laws; Amended.
5. Policy/Guidelines: "Country Eligibility for OPIC Programs": Amended.
6. Review of Fiscal Year 1981 OPIC Activities.
7. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653–2925.

Elizabeth A. Burton,

Corporate Secretary.

October 9, 1981.

[S–1546–81 Filed 10–9–81; 11:04 am]

BILLING CODE 3210–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 19, 1981, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Monday, October 19, 1981, at 2:30 p.m. An open meeting will be held on Tuesday, October 20, 1981, at 10:00 a.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).

Commissioners Loomis, Evans, and Longstreth voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, October 19, 1981, at 2:30 p.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Dismissal of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Freedom of Information Act appeals.

Regulatory matters regarding financial institutions.

The subject matter of the open meeting scheduled for Tuesday, October 20, 1981, at 10:00 a.m., will be:

1. Consideration of whether to grant the application by The Chase Manhattan Bank, N.A., for an exemption from the provisions of Section 17(f) of the Investment Company Act of 1940 and Rule 17f–4 thereunder to permit registered investment companies to maintain their securities in the custody of foreign banks and foreign securities depositories. For further information, please contact H. R. Hallock, Jr. at (202) 272–3030.

2. Consideration of whether to promulgate the proposed procedural rules implementing the Equal Access to Justice Act, Pub. L. 96–481, 94 Stat 2325, subject to the Office of General Counsel's consultation with the Chairman of the Administrative Conference. For further information, please contact Harlan W. Penn at (202) 272–2454.

3. Consideration of whether to send a letter to Senator Richard Lugar commenting on H.R. 2501 and S. 1406, two bills that would remove state interest-rate ceilings on business, agricultural and consumer loans. For further information, please contact A. White at (202) 272–2444.

4. Consideration of whether to propose for comment a rule and related amendment to Form S–6 under the Securities Act of 1933 ("1933 Act"), under which 1933 Act registration statements of certain unit investment trusts would be permitted to become effective automatically at a date and time designated by the registrant, if the registrant complied with certain conditions and made certain representations. For further information, please contact Kathleen A. Jackson at (202) 272–2115.

5. Consideration of whether to authorize publication of a release of the SEC Advisory Committee on Shareholder Communications soliciting public comment on issues to be addressed by the Committee. For further information, please contact Gregory H. Mathews at (202) 272–2589.

6. Consideration of whether to issue a release proposing for comment a rule and rule amendments providing for a system of classifying smaller issuers for purposes of exempting certain categories of issuers from Securities Exchange Act of 1934 reporting and other obligations. For further information, please contact Suzanne Brannan at (202) 272–2644.

7. Consideration of whether to authorize publication of a release announcing the revision of Articles 7 and 7A of Regulation S–X, which apply to the financial statements of insurance companies. These revisions were proposed for comment in Securities Act Release No. 33–6306 (March 30, 1981). For further information, please contact M. Elizabeth Rader at (202) 272–2133.

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: Arthur C. Delibert at (202) 272–2467.

October 9, 1981.

[S–1550–81 Filed 10–9–81; 3:37 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
October 14, 1981

Part II

Department of Health and Human Services

Health Services Administration

Designation of Medically Underserved Areas; Proposed Deletions

Part II

Department of Health and Human Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Services Administration

Designation of Medically Underserved Areas; Proposed Deletions

AGENCY: Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice is to advise all interested individuals and organizations, particularly Health Systems Agencies and State Health Planning and Development Agencies, of proposed deletions from the list of areas that have been designated as Medically Underserved Areas (MUAs). Governors of affected States will be consulted by letter regarding proposed deletions in their States. The proposed MUA deletions result from changes in available data and revisions in the weighting of the data since the last publication of the list of MUAs in the Federal Register. This notice also meets the newly enacted notification requirements of section 905 of Pub. L. 97–35.

DATE: Individuals and entities wishing to comment on the proposed deletions or the revisions in the weighting of data must do so by November 13, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Crooke, Chief, Positive Programming Branch, Division of Monitoring and Analysis, Bureau of Community Health Services, Room 6–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone number 301 443–1022..

SUPPLEMENTARY INFORMATION: Criteria and procedures for MUA designations and a list of MUA designations were last published in the Federal Register on October 15, 1976 (41 FR 45718–45777). The designation of MUAs has significance for eligibility or priority in a number of Federal health programs including:

(1) Community Health Centers (Public Health Service (PHS) Act, section 330);

(2) Health Maintenance Organizations (PHS Act, Title XIII);

(3) Health Systems Agencies (PHS Act, Title XV);

(4) Health Resources Development (PHS Act, Title XVI); and

(5) Medicare/Medicaid Reimbursement for Rural Health Clinic Services (Social Security Act, Title XVIII and XIX).

The October 15, 1976, Federal Register previously referenced provides that: "The MUA list will be revised and published periodically, based on the most recent data available nationally. The updates will be based on changes in the actual values of the indicators or adjustments in the cut-off level." The most recent national data are:

1. The 1078 U.S. Bureau of the Census estimates by county for the physician/population ratios and for the population over 65 years of age.

2. The 1978 physician data from the American Medical Association and the American Osteopathic Association by county.

3. The 1973–1977 infant mortality data by county.

4. The 1970 U.S. Bureau of the Census Population by county, Minor Civil Division (MCD) or Census County Division (CCD) and Census tract for the population under poverty.

5. The 1970 U.S. Bureau of the Census population by MCD/CCD and census tract for the population 65 years of age and over.

Preliminary 1980 census data are anticipated to be available in July 1982.

This proposed list of MUA deletions results from an analysis of the more recent data described above. In addition to noting the changes in the actual values of the indicators, the Department has adjusted the weights applied to the actual values of two of the indicators—infant mortality and primary care physicians per 1,000 population—in order to reflect the changes in those indicators nationally since 1975. Between 1975 and the present, there has been a decrease in the national rate of infant mortality per 1,000 live births (from 17.7 to 15.9) and an increase in the shortage ratio of primary care physicians per 1,000 population (from .250 to .286). Therefore, the weight distributions for these two indicators were revised accordingly.

These indicators are two of four indicators used in computing the index of medical underservice (IMU), which is the score used to determine whether an area is medically underserved. The Department adjusted the weights assigned to these two indicators so that their respective values as part of the IMU would remain stable notwithstanding the changes in national data regarding infant mortality and physician/population ratio.

Comments are invited from all interested individuals and organizations within 30 days from the date of this notice as to any aspect of this proposed list of MUA deletions, including comments about particular areas on the list and comments on the statistical/methodological revisions described above.

Projects funded from the above-mentioned sources which are located in any of the areas proposed to be deleted, should contact the appropriate Department of Health and Human Services Regional Office for further information.

Dated: September 29, 1981.

John H. Kelso,

Acting Administrator, Health Services Administration.

[FR Doc. 81–29645 Filed 10–13–81; 8:45 am]

BILLING CODE 4110–84–M

federal register

Wednesday
October 14, 1981

Part III

Department of Defense

Defense Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-28]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-28. Some of the changes include: ACO authority to issue unilateral administrative changes; use of computer generated form in lieu of DD Form 1861; elimination of requirement for humane slaughter statement of compliance; contracting policy for commercial or industrial type activities (CITA); women-owned business; reinstatement of terminated contracts; professional compensation plans; organization costs, relocation costs; charter and rules for the Armed Services Board of Contract Appeals (ASBCA); and addition of shipping data to contractor invoices. In addition to these changes, there is included information material concerning procedure for short-term purchases of petroleum; DAR transition; 1981 DoD Appropriation Act (Unsolicited Proposals); utilization of the C/SCSC Joint Implementation Guide by contractors implementing DoD Instruction 7000.2; and contracting for motion picture and videotape productions.

EFFECTIVE DATE: July 15, 1981.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1028, Pentagon, Washington, D.C. 20301, telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-28.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-28, issued July 15, 1981. The following is a summary of the amendments:

Correction to DAC #76-24 (Small Purchases). DAR 3-603.1(g), 8th line, page 3:78—the word "quotations" (erroneously chanted to "quotations(s)" in DAC 76-27) is changed to read "quotation(s)." This correction is necessary to clarify the intent not to require dissolution of an otherwise valid small business-small purchase set-aside (1-702(c)) in the event only one quotation is received for a contract in excess of $500.

ACO Authority to Issue Unilateral Administrative Changes. A new function is added in DAR 1-406(c) to authorize ACO's to issue administrative changes.

Use of Computer Generated Form in Lieu of DD Form 1861. DAR 3-1300.7(b) is revised to permit the use of a computer generated form in lieu of a DD Form 1861, provided all essential elements of data are included and identified as DD Form 1861 data.

Elimination of Requirement for Humane Slaughter Statement of Compliance. The Humane Methods of Slaughter Act of 1978 repealed the requirement, under government contracts, for statements of compliance with the Humane Slaughter Act of 1958, as compliance at all slaughtering establishments is to be effected by the Department of Agriculture. DAR Section IV, Part 6, which requires contractors to submit such statements of compliance, is canceled, effective 12 April 1981, and the related clause in 7-104.30 is deleted.

Contracting Policy for Commercial or Industrial Type Activities (CITA). Part 12 is added to Section IV to provide guidance to DoD personnel contracting with commercial sources for industrial or commercial type requirements. Related provisions are added to Section VII and related changes made to other applicable DAR material. The material implements applicable provisions of OMB Circular A-76 and related DoD Directives and Instructions.

Women-Owned Business. DAR 7-2003.80 is changed to clarify the definition of a women-owned business as a small business concern.

Reinstatement of Terminated Contracts. DAR 8-601 is changed to provide for reinstatement of a contract after it has been terminated for default.

Professional Compensation Plans. DAR 12-1007.2 is expanded to provide additional guidance to DoD personnel evaluating professional compensation plans.

Organization Costs. DAR 15-205.23 is revised to clarify that costs of activities designed primarily for the purpose of providing compensation will not be considered organizational costs.

Relocation Costs. DAR 15-205.25 is revised to recognize changes in the cost of relocating contractors' employees due to economic factors and changes in industry and Government practices.

Armed Services Board of Contract Appeals (ASBCA). Appendix A is revised to incorporate the current Charter for the ASBCA, effective April 21, 1980. The Rules for the ASBCA, revised June 30, 1980, and the charter are included in this DAC.

Addition of Shipping Data to Contractor Invoices. Appendix I is revised to require inclusion of gross shipping weight in contractors' invoices submitted to DoD activities for payment.

Editorial Changes. Editorial changes are included in this DAC to correct typographical errors or administrative oversight, and to provide other editorial corrections.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on July 15, 1981.

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-28. The number at the top of each page (for example, 1:23) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1-39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR Paragraph	Replacement pages
Volume I	
1-302.7	1:23
1-406	1:64
1-705.5	1:131

DAR Paragraph	Replacement pages
1-706.3	1:142-A
1-707.2	1:146-A, 1:147
1-1003.4	1:169
2-201	2:9, 2:11, 2:17
3-501	3:66, 3:66-C, 3:70
3-507.2	3:74
3-603.1	3:78
3-1300.7	3:193
4-110.1	4:9
Section IV, Part 6 (Reserved) (4-601 through 4-606 deleted).	4:35, 4:37 (4:36 removed)
4-1104.10	4:67
4-1104.15	4:70
Section IV, Part 12 (add)	4:72
4-1200	4:72
4-1201	4:72
4-1202	4:72
4-1203	4:72
4-1203.1	4:72
4-1203.2	4:72, 4:73
4-1203.3	4:73
4-1203.4	4:73 through 4:76
5-701	5:34
Section VI, Table of Contents	4
6-001.6	6:3
6-303	6:16
6-1310.3	6:59

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7-104.14	7:54-B
7-104.20	7:57
7-104.30	7:73
7-104.32	7:75
7-104.34	7:76-A
7-104.104	7:140-D
7-204.43	7:204
7-303.43	7:237
7-403.38	7:262
7-603.26	7:304
7-606.16	7:330
7-705.19	7:368
7-902.16	7:390
7-1401.13	7:422
7-1702.24	7:439
7-1802.2	7:442
7-1903.31	7:448
7-1910.5	7:463
7-2003.80	7:526-C
7-2003.69	7:526-E through 7:526-H
8-216	8:22
8-600	8:33
8-601	8:33
8-602.1	8:33
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10-405	10:21
12-1007.2	12:44-E
15-205.23	15:29
15-205.25	15:29-A, 15:30

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22-107	22:7
Appendix A	A:1 through A:26
I-301	I:9

October 5, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer.
Washington Headquarters Services.
Department of Defense.

BILLING CODE 3810-01-M

(INFORMATION ITEM ONLY -- NO REPLACEMENT PAGES)

15 UTILIZATION OF THE C/SCSC JOINT IMPLEMENTATION GUIDE BY CONTRACTORS IMPLEMENTING DoD INSTRUCTION 7000.2

The Notice of Cost/Schedule Control Systems at 7-2003.43 and the Cost/Schedule Control Systems at 7-104.87 cite the Cost/Schedule Control Systems Criteria Joint Implementation Guide (JIG) (AFSCP/AFLCP 173-5, DARCOM-P 715-5, NAVMAT P5240, DLAH 8135.2).

The utilization of the JIG by the Military Departments and other Defense agencies responsible for implementation of the Cost/Schedule Control Systems Criteria (C/SCSC), consistent with the provisions of DoD Instruction 7000.2, "Performance Measurement for Selected Acquisitions," is obligatory. Where supplemental instructions are issued by individual commands to provide additional guidance to their operations, instructions will be consistent with the content of the JIG (see chapter 1, paragraph 1-1.a. and b., JIG).

The utilization of the JIG by contractors is intended to aid contractors in understanding and responding to the criteria for cost and schedule control systems. When the solicitation document specifies application of the criteria (DAR 7-2003.43), an element in the evaluation of proposals will be the prospective contractor's proposed systems for planning and controlling contract performance. The contractor is required to submit a comprehensive plan describing compliance with each criterion. DAR 7-2003.43 further states "preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in ...., Cost/Schedule Control Systems Guide." It is the intent of this statement to indicate the preferred method of demonstrating compliance with the criteria. The evaluation of the contractor's proposed management system by the Government will be conducted in accordance with the JIG, including the checklist (Appendix F of the JIG). The contractor may choose whatever method he considers to be most effective in demonstrating his proposed management system is compliant with the criteria of DoD Instruction 7000.2. Regardless of the form of the contractor's proposal, the proposal evaluation process is one of correlation of the checklist items with the applicable portions of the system description to ensure adequate coverage. It should be further noted that DAR 7-2003.43 allows a contractor proposing to use management control systems previously accepted

to satisfy the criteria requirement in the solicitation document by citing in the proposal the memorandum of understanding under which he is currently performing or notification of system acceptance.

DAR 7-104.87 requires the contractor to establish, maintain and use in the performance of the contract Cost/Schedule Control Systems meeting certain specific criteria. As a part of the demonstration, review and acceptance procedure, the contractor is required to furnish the Government a description of the Cost/Schedule Control Systems applicable to the contract in such form and detail as indicated by the JIG, or required by the contracting officer.

The "form and detail" indicated by the JIG do not include a contractual obligation to complete the checklist (Appendix E of the JIG) or C/SCSC Review Worksheets and Exhibits (Appendix F of the JIG) as a part of the contractor's systems description. The JIG guidance on management systems descriptions, their use, form and detail may be found at chapter 1, paragraphs 2.b., 3 and 4, and chapter 5, paragraphs 1.d., 2.b., 3, 5 and 8. The burden of proof for demonstrating compliance with the criteria rests with the contractor. The Government review team is required to assess compliance with the criteria. The team will follow the evaluation/demonstration review checklist to assist members in completing an orderly, comprehensive and conclusive review that is consistent with other contractors' systems which have been previously validated by the Government. The contractor is required to have a comprehensive description of the management control systems and demonstrate to a Government C/SCSC review team their effective application in planning and controlling the work under the contract. The documentation of the management systems should include written descriptions of the management control systems and applicable portions of the systems descriptions; operating procedures must also be available at the contractor's operating levels.

The process of evaluation of the contractor's plan and ultimately the demonstration of the management system for Government acceptance can be expected to generate conflicting interpretations as to the intent of the criteria. The C/SCSC Joint Implementation Guide was created with the intent of minimizing the occurrence of interpretative conflicts and ensuring clear lines of communication are provided to both Government and industry for resolving the issues which are inevitable in the subjective evaluation of operating management systems. The procedures for appealing differences in interpretation of criteria application between the C/SCSC review team and the contractor are described in the JIG at Chapter 1, paragraph 4.

agreement shall be a factor to be considered in determining its responsibility pursuant to Section I, Part 9.

(f) *Small Business Status.* Approval of an organization as a defense production or research and development pool under the Defense Production Act of 1950, as amended, does not confer upon such pool the preferences and privileges accorded to "small business concerns". Such preferences and privileges shall be accorded only to those pools which have been approved under the Small Business Act, P.L. 85-536, as amended.

1-302.4 *Foreign Purchases.* Foreign purchases shall be made in accordance with the provisions of Section VI and upon compliance with any other applicable provisions of this Regulation.

1-302.5 *Planned Producer.* A Planned Producer is an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

1-302.6 *Contracts Between the Government and Its Employees or Business Organizations Substantially Owned or Controlled by Government Employees.*

(a) Contracts shall not knowingly be entered into between the Government and employees of the Government or business organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(b) When a contracting officer has reason to believe that an exception as described in (a) above should be made, approval of the Head of a Procuring Activity shall be obtained prior to entering into any such contract.

(c) Nothing in (a) above shall authorize a "Personal Services" contract in violation of 22-102.

1-302.7 *Commercial or Industrial-Type Activities (CITA).* Normally the Government relies on the private sector for goods and services, while recognizing that certain functions are inherently governmental in nature and must be performed by Government personnel. Section IV, Part 12 establishes the policies and procedures used to determine whether needed commercial or industrial type work should be done by contract with private sources or in-house using Government facilities and personnel.

1-303 Exchange of Purchase Information.

(a) When the same item or class of items is being purchased by more than one Department, or by more than one procuring activity within a Department, the exchange and coordination of pertinent information, particularly cost and pricing data, between these Departments or procuring activities is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. Such exchange and coordination of information is particularly beneficial during the period of procurement planning, presolicitation, evaluation, and pre-award survey.

(b) When substantial purchases of major items are involved or when the purchasing activity deems it desirable, it shall request appropriate information (on both the end item and on major subcontracted components) from other purchasing activities responsible for buying similar items. Each activity receiving such requests shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

1-304 Procurement of Privately Developed Items.

1-304.1 *General.* It is Department of Defense policy:

(i) to make all procurements on a competitive basis to the maximum practicable extent, and

(ii) to provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes.

It is important that the efforts directed toward increasing competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in Section IX, Part 2. Accordingly, when the two policies stated above produce situations which require the contracting officer to decide whether to procure data for future competitive procurement, the provisions of Section IX, Part 2, as supplemented by this paragraph 1-304, shall govern.

1-304.2 *Specific Procurement Methods.*

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent development, the contracting officer shall seek full and free competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive procurement, the contracting officer shall use one of the following alternative procedures with preference in the order of this listing (see also 1-313).

(1) When practical, procurement shall be competitive using performance or other specifications, including purchase descriptions, which do not contain data developed at private expense to which the Government does not have unlimited rights. Procurement on this basis will normally not provide items of identical design. However, it frequently is not necessary that items of identical design be purchased. There are two methods of competitive procurement which may provide items of the same or of similar design and suitable performance. One of these is purchase by two-step formal advertising. The other is by the use of "brand name or equal" purchase descriptions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, procuring activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 1-1206.2 through 1-1206.4 and 2-202.4).

(2) When items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a noncompetitive basis from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfac-

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the ISR and ISM (See Appendix C, Industrial Security Regulation, DoD 5220.22-R, for partial listing of primary responsibilities (also see 1-320).);

(lii) make payments on assigned contracts (but see 20-706);

(liii) assign and perform supporting administration;

(liv) assure timely submission of required reports;

(lv) will advise and assist defense contractors regarding their priorities and allocations responsibilities and assist defense purchasing activities in processing requests for special assistance and for priority ratings for privately-owned capital equipment;

(lvi) process and execute novation and change of name agreements in accordance with Section XXVI, Part 4;

(lvii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements accelerating or decelerating contract delivery schedules;

(lviii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements;

(lix) determine adequacy of prime contractor's Disclosure Statements;

(lx) determine whether prime contractor's Disclosure Statements are in compliance with Section XV and Cost Accounting Standards;

(lxi) determine contractor compliance with Cost Accounting Standards and Disclosure Statements, if applicable;

(lxii) negotiate price adjustments and execute supplemental agreements pursuant to the Cost Accounting Standards clauses in 7-104.83;

(lxiii) perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria (see 7-104.87), provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to insure continuing operation of contractors' accepted systems;

(lxiv) when authorized by the purchasing office, issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from the amended shipping instructions;

(lxv) when authorized by the purchasing office, issue change orders and negotiate and execute resultant supplemental agreements under contracts for ship construction, conversion and repair;

(lxvi) issue contract modifications requiring the contractor to provide packing, crating and handling services on excess Government property. When the ACO determines it to be in the Government's best interests, he may secure such services from other than the contractor in possession of the property;

(lxvii) approve contractor acquisition/fabrication of special test equipment as provided in paragraph (b) of the clause in 7-104.26.

(lxviii) negotiate and execute contractual documents for settlement of cancellation charges under multi-year contracts;

(lxix) evaluate and monitor contractor's procedures for complying with the Restrictive Markings on Technical Data clause in 7-104.9(p);

(lxx) monitor the contractor's costs as set forth in 20-1000;

(lxxi) issue Notice of Intent to Disallow or Not Recognize Costs (see 15-206);

(lxxii) negotiate forward pricing rate agreements;

(lxxiii) analyze quarterly limitation on payments statements and recover overpayments from the contractor;

(lxxiv) when authorized by the contracting office, negotiate changes to interim billing prices;

(lxxv) when authorized by the contracting office, negotiate and definitize adjustments to contract prices resulting from exercise of an Economic Price Adjustment clause; and

(lxxvi) with the exception of changes in accounting and appropriation data which must be issued by the procuring activity, issue administrative changes (DAR 26-101(a)(i)).

Contracting functions not designated as contract administration functions shall remain the responsibility of the contracting office.

(c) Procedures.

(1) Supplies, Services and Research and Development.

(A) In contracts for supplies, services and research and development, the SBA contracts with only those small firms which have submitted an acceptable and approved written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of (b). In the execution of this policy, the SBA will furnish to the appropriate Department Director of Small and Disadvantaged Business Utilization, or his designee, its request for a commitment to support the approved plan, showing at least the following information:

(i) the background and ownership of the firm;

(ii) how and when the firm is expected to become a self-sustaining, competitive entity;

(iii) the extent to which contracting assistanace is needed and an identifcation of the requirements soughr from the DoD (the identification of the supplies or services which the SBA may require in connection with a small firm's business plan will be developed by the SBA representatives. This may be accomplished through liaison with the appropriate contracting office either before or after the SBA's approval of a small firm's business plan as the SBA may elect. Small and Disadvantaged Business Utilization Specialists at contracting offices shall cooperate and assist the SBA representatives in the development of identifying information for the requirements being sought from the contracting office. To the extent possible, identifying information furnished to the SBA will be definitive and include, purchase descriptions and national stock numbers. The Small and Disadvantaged Business Utilization Specialist shall, when practicable and feasible, arrange for such additional assistance as may be required from contracting, technical and supply management officials in order that the development of the identifying information may be meaningful. Current and future requirements of a small firm's business plan, if identified in meaningful terms will enable the DoD to relate the items to present and future acquisition requirements); and

(iv) if the firm is currently in existence, the present production capacity and related facilities and how any additional facilities needed will be provided.

(B) The Department concerned will evaluate the SBA's request for a commitment to support the business plan approved by the SBA and determine whether or to what extent the Department can support the SBA request. In the evaluation of the SBA requested commitments, considerstion shall be given to:

(i) estimated total quantities of the identified items planned for acquisition in the current fiscal year and, to the extent known, future fiscal years;

(ii) required monthly rates of production and delivery scheules;

(iii) items of similar complexity and nature if there are no known requirements of the specifically identified items;

(iv) problems encountered in prior production of the items either by the proposed contractor or other contracts;

(v) impact if slippage in delivery occurs;

(vi) impact if items were acquired historically by small business or labor surplus area set-aside; and

(vii) any other information concerning the items or the proposed contractor which is pertinent to the evaluation of the requested commitments.

(C) After the SBA requested commitments have been evaluated, the Department concerned, through the Director of Small and Disadvantaged Business Utilization or his designee will notify the Office of Business Development, SBA, Washington, D.C., or its designee of the extent to which it appears that contracts will be placed with the SBA as requested. This notification represents a firm commitment of the DoD to negotiate with the SBA, provided, that there is no material change in requirements, availability of funds, and other pertinent factors. The Department, through the Director of Small and Disadvantaged Business Utilization or his designee, will notify the appropriate contracting offices to reserve the initially identified requirements for negotiations of a Section 8(a) award to the SBA. Within ten working days after notification, the SBA will establish contact with the designated contracting office and initiate negotiation of the Section 8(a) contract in support of the SBA requested commitments. If negotiations with the contracting activity have not been initiated by the SBA within the time indicated, the contracting activity will notify the Director of Small and Disadvantaged Business

(vii) a class set-aside of the item or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal"

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

(l) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

1-706.2 *Contract Authority.* Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d)) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii)) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the nomination of a set aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1-707.2 *Review Responsibilities.*

(a) *General.* The clause specified in 1-707.3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1-707.3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *PCO Responsibilities.*

(1) The PCO shall:

(i) assure that a subcontracting plan is submitted when required.

(ii) determine the adequacy of the subcontracting plan.

(iii) consider the contractor's past compliance with the clause specified in 1-707.3(a) and with subcontracting plans as a factor in determining the contractor responsibility.

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 7-104.14(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the solicitation prior to its public release.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their acceptance by the PCO. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR

a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the PCO. Failure of the PCR to respond to the PCO in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide a copy of the award document (a copy of the DD 350 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and a copy of the plan to the resident PCR.

(2) Subcontracting plans shall be reviewed by the PCO for adequacy. All plans must include the six elements required by the clause. On negotiated contracts, the adequacy of the plan is determined by the PCO based on the negotiations of each of the six elements. The final plan must be acceptable to the PCO before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 7-104.14(a), the contracting officer may find the bidder nonresponsible in accordance with 1-903.

(3) The ACO shall monitor contractor compliance in accordance with 1-406(c)(xlvi) and apprise the PCO. Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1-707.3(a), the PCO, based on recommendations from the ACO, shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the ACO.

(c) *ACO Responsibilities.* The ACO is responsible for assisting in the evaluation of subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause specified in 1-707.3(a) and any subcontracting plan included in a contract. The SADBUS assigned to the contract administration office shall provide the PCO advice and assistance for use in determining the acceptability

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of a plan and, through the ACO, shall provide the necessary information and advice to support the PCO, as appropriate, by furnishing:

(i) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;

(ii) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;

(iii) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;

(iv) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and

(v) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1-707.3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1-707.3(b) and (c) require the minimum information, goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situation. The PCO's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include—

(i) previous involvement of small business concerns as prime or subcontractors in similar acquisitions;

(ii) methods of involving small business concerns as subcontractors in such acquisitions; and

(iii) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

(i) assist both departments and contractors in complying with their responsibilities with regard to subcontracting plans;

(ii) review any solicitation for any contract which is to include the clause required by 1-707.3(b) or (c) to determine whether maximum practicable opportunity has been afforded small and small disadvantaged businesses to participate as subcontractors

in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and

(iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business.

1-707.3 *Required Clauses.* In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause in 7-104.14(a) shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause in 7-104.14(b) shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(b) shall not be included in any solicitation which has been set aside for small business concerns or which requirement is to be procured through the Section 8(a) program.

(c) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Advertised) clause in 7-104.14(c) shall be included in all solicitations for formally advertised contracts or modifications which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to

services when it is feasible and practicable to do so and the best interests of the Government will be served.

(2) *Architect-Engineer Services.* Unless a situation described in 1-1003.1 is applicable, requirements for architect-engineer services shall be publicized as follows:

(i) *Fees Over $10,000.* Each procurement to be made in the United States, its possessions, or Puerto Rico for which the total fee (including phases and options) is expected to exceed $10,000, shall be synopsized in accordance with 1-1003.9(h).

(ii) *Fees Not Exceeding $10,000 or Overseas.* A notice of procurements with fees not expected to exceed $10,000 or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily.*

For procurements with an estimated total fee of $225,000 and which require notification to Congress in accordance with Section 612 of Public Law 89-568 as amended, no public announcement shall be made until two weeks after Congress has been notified.

(c) Commercial and Industrial Type Activities. When no known sources are available, the requirement shall be synopsized in accordance with 4-1203.

1-1003.5 *Publication of Procurements Not Exceeding $10,000.* When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements not exceeding $10,000 may be publicized in the *Commerce Business Daily.*

1-1003.6 *Synopsis of Subcontract Opportunities.*

(a) *By Contracting Officers.*

(1) To broaden the opportunity in negotiated procurement over $100,000 for subcontracting by small business concerns and others, contracting officers, shall, unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms to whom requests for proposals are to be issued, *provided* that no more than five firms are to be solicited. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with 1-1003.9 shall be made as set forth in 1-1003.9(g).

(2) Contracting officers shall, for procurements over $100,000 unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising and will therefore be issued invitations for bids in the second step (see 2-503). Such lists should be followed by a statement substantially as follows:

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(b) *By Prime Contractors and Subcontractors.* Prime contractors and subcontractors should be encouraged to use the *Commerce Business Daily* to publicize

opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois, 60680, under the heading "Subcontracting Assistance Wanted" and in the form of the following example.

XYZ CO. ATTN JOHN Z. SMITH, TELE. NO. 123-456-1111, 102 FIRST AVE., CHICAGO, ILL., 60607, seeks Subcontractor on items to be used in connection with Contract No. ____ awarded _____ *(date)*.

COILS, INDUCTION, DWG. NO. 10-742 _____ 10,000 ea. (name, description, and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—if interested, make inquiry before _____ *(date)* to above contractor.

1-1003.7 *Information Regarding Specifications, Plans, and Drawings.*

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained. (See 1-1203.)

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement, the synopsis shall contain notice of this fact.

(c) Notices of the situation in (a) and (b) above shall be prepared in accordance with 1-1003.9(f).

1-1003.8 *Responsibility of Small Business Specialists.* Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this paragraph 1-1003. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

1-1003.9 *Preparation and Transmittal.*

(a) Each purchasing office shall transmit a synopsis of proposed procurements. Synopses shall be:

(i) issued in a timely manner in accordance with 1-1003.2;

(ii) forwarded daily via first class mail; and

(iii) addressed to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, Illinois 60680

(b) Each synopsis shall be prepared as described below:

(1) *Description of Procurements.* Prepare the text of synopses in the sequential format described below or one that closely parallels it. Use conventional typing with both upper and lower case letters and standard punctuation symbols. The description shall be clear, concise, and in such detail that it will be understood by potentially interested parties.

(2) *Spacing.* Double spaced lines will be used in the text. Each procurement shall be described in a separate paragraph.

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(xi) when a solicitation may result in an f.o.b. origin contract and the item to be purchased is new to the supply system, nonstandard, or such a modification of a previously shipped item that a different freight classification may apply (e.g., contains new materials, ingredients, changed weight, cube, configuration, etc.,) (see 19-202(b)), insert the provision in 7-2003.17;

(xii) when bids are to be solicited f.o.b. origin only and when it is desired that a bidder be permitted to offer commercial transit credits (see 19-206(b)), insert the provision in 7-2003.18;

(xiii) when the contract is to include the clause in 7-104.70 and when it is believed that a prospective contractor is likely to include in his f.o.b. origin price a contingent amount to compensate for what may be for him an extremely unfavorable routing condition, which the Government has the option to specify at the time of shipment (see 19-208.2(b)), insert a provision substantially as in 7-2003.19;

(xiv) when supplies are to be delivered outside the United States and more than one U.S. port of loading meets the eligibility criteria applicable to the nature and quantity of the supplies for movement to the overseas destination (see 19-208.1(b) and 19-213.1(d)), insert the provision in 7-2003.20;

(xv) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), insert the clause in 7-2003.21;

(xvi) the Clean Air and Water Certification in 7-2003.71;

(xvii) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xviii) insert the Women-Owned Business representation in 7-2003.80;

(xix) insert the Percent Foreign Content representation in 7-2003.81; and

(xx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

SECTION L - Instructions and Conditions, and Notices to Bidders.

(i) Standard Form 33A, Solicitation Instructions and Conditions; alternatively, SF 33A may be incorporated by reference to the form name, number, and edition date;

(ii) the Late Bids provision in 7-2002.2 (this replaces paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) permission, if any, to submit telegraphic bids (see 2-202.2);

(v) permission, if any, to submit alternate bids, including alternate materials or designs (see 1-1207);

(vi) if no award will be made for less than the full quantities advertised, a statement to that effect;

(vii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(viii) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1); if a bid bond or other form of bid guarantee is required, the solicitation shall include the provisions required by 10-102.4;

(ix) directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see 1-1203);

(x) any applicable requirements for samples or descriptive literature (see 2-2-2.4 and 2-202.5);

(xi) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Review set forth therein;

(xii) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xiii) in accordance with 6-1104, the U.S.-owned foreign currency provision set forth in 7-2003.62;

(xiv) when provision for progress payments is to be included in the invitation for bids, the notice in E-504.4 and, if appropriate, the notice in E-504.3;

(xv) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xvi) invitations for bid that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when considered necessary to stipulate a minimum acceptance period:

(A) insert the stipulated number of calendar days in the "Offer" portion of the SF 33, strike the phrase "(60 calendar days unless a different period is inserted by the offeror)" and add the following at the end of the statement: "(See Section L (insert paragraph number))."

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);
(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);
(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));
(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;
(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;
(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);
(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.
(xxviii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the provision in 7-2003.89(a).
(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation. (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.
(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);
(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);
(iv) discount provision (see 2-407.3);
(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);
(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);
(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);
(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);
(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);
(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);
(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(xiii) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII, Part 5, particularly 13-502);

(xiv) any applicable information pertaining to evaluation and award where first article approval is involved (see 1-1903);

(xv) if the invitation is for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48; and

(xvi) when it is determined that transportation costs are not to be evaluated because it is impracticable to do so, the provision in 7-2003.70.

(b) *Construction Contracts.* For construction contracts, the invitation for bids shall contain the following information if applicable to the procurement involved (see also 16-401.2).

(i) invitation number;

(ii) name and address of issuing activity;

(iii) date of issuance;

(iv) date, hour, and place of opening. See 2-202.1 concerning bidding time. Prevailing local time shall be used. Timing by the 24-hour clock shall not be used except where customary in the industry. The exact location of the bid depository, including the room and building numbers, and a statement that handcarried bids must be deposited therein;

(v) number of pages;

(vi) requisition or other purchase authority and appropriation and accounting data;

(vii) a brief description of the work to be performed. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the procurement and dates of both the specifications and the revisions (see 1-1201). Such description shall comply with Section I, Part 12, relating to specifications;

(viii) the time of performance (see 18-105);

(ix) permission, if any, to submit telegraphic bids (see 2-202.2);

(x) permission, if any, to submit alternate bids, including alternate materials or designs (see 1-1207);

(xi) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1; 16-401.2(c)(m)(1); and 18-801). If a bid bond or other form of bid guarantee is required, follow the instructions in 10-102.4;

(xii) when considered necessary to stipulate a minimum acceptance period:

(A) Insert the stipulated number of calendar days* in the blank provided in the 'Bid' portion of SF 19, strike the phrase '(30 days unless a different period is inserted)', and add the following at the end of the statement: '(See paragraph ____** ____ of the invitation for bids)'. When SF 21 is used, insert the stipulated number of calendar days* in the blank provided on the reverse of the form, strike the phrase '(____ calendar days unless a different period be inserted by the bidder)' and add the following

(lvii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*");

(lviii) insert the Women-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;

(lxii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(a);

(lxiii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(c) Master Solicitation. A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DOD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;

(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administration Services Regional Office);

(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1) and (2);

(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;

(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;

(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;

(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;

(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production

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and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));

(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;

(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);

(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204.1(a)(vii)(A), insert the provision in 7-2003.67(b);

(C) in accordance with 3-1204.1(b), insert the provision in 7-2003.67(c);

(D) in accordance with 3-1213(a), insert the provision in 7-2003.67(d);

(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-110(a));

(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;

(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;

(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;

(xix) the Clean Air and Water certification in 7-2003.71;

(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xxi) insert the Women-Owned Business representation in 7-2003.80;

(xxii) insert the Percent Foreign Content representation in 7-2003.81;

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.

(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;

(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;

(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);

(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;

(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;

(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);

(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);

(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);

(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;

(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;

(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);

(xix) the applicable size standard and product classification (see 1-701 and 1-703);

(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);

(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;
(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;
(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);
(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;
(xxvi) statutory cost limitation, if any;
(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;
(xxviii) a statement covering special technical capabilities that the offeror must possess;
(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);
(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;
(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(h)), the provision in 7-2003.43 shall be included;
(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;
(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;
(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxxvii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b).
(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

SECTION M - Evaluation Factors for Award.
(i) factors other than price (including technical quality when technical proposals or quotations are requested), which will be given paramount consideration in the awarding of the contract; when an award is to be based upon technical and other factors, in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, and (B) the relative order of importance the Government attaches to price and all such other factors. Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitations;
(ii) statements of information required to enable evaluation of technical and financial capabilities;
(iii) discount provisions (see 2-407.3);
(iv) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services and that required by 22-502 for mortuary services);
(v) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;
(vi) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII);
(vii) any information pertaining to evaluation and award when first article approval is involved (see 1-1903);
(viii) in a solicitation for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48;
(ix) the appropriate transportation solicitation evaluation provisions in 7-2003.23 and 7-2003.24;
(x) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals or quotations (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*").

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b).

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

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in 2-303.2, appropriately modified to relate to proposals and, if necessary, to telegraphic proposals.

(d) The normal revisions of proposals by offerors selected for discussion during the usual conduct of negotiations with such offerors are not to be considered as late proposals or late modifications to proposals.

(e) Late proposals and modifications of proposals which are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the purchase office files with respect to each late proposal or modification of proposal:

(i) the date of mailing, filing, or delivery, as the case may be;
(ii) the date and hour of receipt;
(iii) whether or not considered for award; and
(iv) the wrapper or other evidence if considered for award.

3-507 Treatment of Procurement Information.

3-507.1 *Restrictions on Disclosure and Use of Data in Proposals and Quotations.*

(a) A proposal, whether solicited or unsolicited, may include data, such as a technical design or concept or financial and management plan, which the offeror does not want disclosed to the public for any purpose or used by the Government for any purpose other than evaluation of the proposal. If an offeror wishes so to restrict his proposal, he shall mark the title page with the following legend:

> This data, furnished in connection with Request for Proposals No. _____*, shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal, *provided*, that if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in Sheets _____. (1966 DEC)
>
> *If proposal is unsolicited (see 4-101(c)), delete "furnished in connection with Request for Proposals No. _____"

The offeror shall mark each sheet of data which he wishes to restrict with the following legend:

> Use or disclosure of proposal data is subject to the restriction on the Title page of this Proposal. (1966 DEC)

Contracting officers and other Government personnel shall not refuse to consider any proposal merely because it or the data submitted with it is so marked. Those portions of the proposal and data which are so marked (except for information which is also obtained from another source without restriction) shall be used only to evaluate the proposal and shall not be disclosed outside the Government without the written permission of the offeror. If it is desired to duplicate, use, or

disclose the data of the offeror to whom the contract is to be awarded, for purposes other than to evaluate the proposal, the contract should so provide. (See 9-201 for a description of "data" and Section IX, Part 2, in general, for the policy, instructions, and contract clauses with respect to the acquisition and use of data.)

(b) Proposals or quotations of subcontractors which are included as part of a proposal submitted by a prime-offeror may be marked as provided in (a) above.

(c) Records or data, other than the types of items listed in 1-329.1(b), bearing such a legend may be otherwise subject to release under the terms of the Freedom of Information Act, 5 U.S.C. 552, as amended (see 1-329). It is to be noted, however, that absent a request for such records or data pursuant to the statutory provisions, and the subsequent determination of releaseability, the legend shall be honored in accordance with (a) above.

(d) Proposals, solicited and unsolicited, shall be maintained and disposed of pursuant to 1-308 and related S2-102.1(x) and S2-501.

(e) See Part 9 of Section IV for further provisions with respect to unsolicited proposals.

3-507.2 *Disclosure of Information During the Pre-Award or Pre-Acceptance Period.*

(a) *General.* After receipt of proposals or quotations, no information contained in any proposal or quotation or information regarding the number or identity of the offerors shall be made available to the public, or to anyone within the Government not having a legitimate interest therein, as expressly provided by this Regulation. However, the negotiated price of the potentially selected offer shall be made available to the public in accordance with 4-1203.4(b)(3) when the procedures therein are used.

(b) *Equal Consideration and Information to All Prospective Contractors.* Discussions with prospective contractors regarding a potential procurement and the transmission of technical or other information shall be conducted only by the contracting officer, his superiors having contractual authority or others specifically authorized. Such personnel shall not furnish any information to a potential supplier which alone or together with other information may afford him an advantage over others. However, general information which would not be prejudicial to others may be furnished upon request *e.g.*, explanation of a particular contract clause or a particular condition of the schedule. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be furnished in a timely manner to all to whom the solicitation has been furnished. See 3-505.

3-508 Information to Offerors.

3-508.1 *General.* Notice shall be provided offerors in accordance with 3-508.2 and 3-508.3 below. Such notice need not be given where disclosure may in some way prejudice the Government's interest or where the contract is:

(i) for subsistence;
(ii) negotiated pursuant to 10 U.S.C. 2304(A)(4), (5), or (6) (see 3-204, 3-205, or 3-206);
(iii) negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited.

3-508.2 *Pre-Award Notice of Unacceptable Offers.*

(a) In any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 30 days or in which a limited

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Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotation(s) that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

ment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

3–1300.7 *Administrative Procedures.*

(a) Contractor submission of Forms CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see 3–807.8), and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 3–808.2, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under 3–801.5, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

4–108 Grants for Basic Research. Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

4–109 Recovery of Nonrecurring Research, Development, Test and Evaluation Costs. See section I, part 24, and 6-1306.

4–110 Cost-Sharing Policy.

4–110.1 *General.* Cost sharing under DoD contracts is encouraged in accordance with Federal Management Circular, FMC 73-3: "Cost Sharing on Federal Research," in the procurement of basic and applied

[next page is 4:11]

Part 5—Dismantling, Demolition or Removal of Improvements

4-500 Scope. Procurement procedures of special application to contracts for dismantling, demolition or removal of improvements are set forth in this Part.

4-501 General. A copy of the proposed contract for dismantling, demolition or removal of improvements consisting of the contract format in 16-502 and the applicable clauses in 7-2101 and 7-2102 shall be furnished to bidders with the invitations for bids.

4-502 Labor Provisions. The provisions of the Davis-Bacon Act relating to the predetermination of minimum wages for mechanics and laborers do not apply to contracts solely for dismantling, demolition or removal of improvements. The Service Contract Act is applicable to such contracts provided further work is not contemplated which will result in construction of a public building or public works at that location. If such further construction work, even though by separate contract, is intended, then the Davis-Bacon Act must be made applicable to such contracts.

4-503 Bonds or Other Security. The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids. If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "*Bid Guarantee*" provision in 7-2003.25 and the "*Bonds or Other Security*" provision in 7-2003.73 shall be included in the invitation for bids.

4-504 Payment.

(a) The contract may provide for payment by the Government to the contractor for the dismantling or demolition of structures and conditioning of materials (see 7-2101.3(a)), or it may provide for payment of compensation by the contractor to the Government in consideration of the right to salvage and remove for his own use the materials resulting from the dismantling or demolition operation (see 7-2101.3(b)). The contracting officer should carefully consider the usefulness of salvageable property to the Government. Any items more useful to the Government than the value to the contractor as salvage should be expressly designated for retention by the Government. Title to any property not specifically designated for retention by the Government will vest in the contractor. The contracting officer shall determine the fair market value of the property title to which is to be vested in the contractor, since the value thereof will have a direct bearing upon the amount of money consideration, if any, that may be payable to the contractor and in determining whether further compensation may be made in the event of termination for convenience or for default.

(b) In special circumstances where it will be advantageous to the Government, the payment provision in 7-2101.3(b) may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

4-505 Termination. The termination for default and termination for convenience clauses in 7-2101.7 and 7-2101.8 provide specifically that title to property which under the terms of the contract is vested in the contractor is revested in the Government in the event of termination, except as to such property as the contractor has disposed of by bona fide sale or property which has been removed from the site by the contractor.

[The next page is 4:37.]

Part 6—Reserved

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 7- Leader Company Procurement

4-701 General. Leader company procurement is an extraordinary procurement technique under which the developer or sole producer of an item or system (the leader company) furnishes manufacturing assistance and know-how or otherwise enables a follower company to become a source of supply for the item or system. This technique is used to accomplish one or more of the following objectives.

(i) shortening the time for delivery,
(ii) establishing additional sources of supply for reasons such as geographical dispersion or broadening the production base,
(iii) making maximum use of scarce tooling or special equipment,
(iv) achieving economy in production,
(v) assuring uniformity and reliability in equipment performance, compatibility or standardization of components, and interchangeability of parts,
(vi) eliminating problems in use of proprietary data not amenable to other more satisfactory solutions, or
(vii) effecting transition from development to production and to subsequent competitive procurement of end items or of major components.

4-702 Limitations on Use. Leader company procurement is to be used only when all of the following circumstances are present:

(i) the leader company possesses the necessary production know-how and is able to furnish the requisite assistance to the follower,
(ii) no source of supply (other than a leader company) would be able to meet the Government's requirements without the assistance of a leader company,
(iii) the assistance required of the leader company is limited to that which is essential to enable the follower company to produce the items, and
(iv) the Government reserves the right to approve contracts between the leader and follower companies.

4-703 Procedures.

(a) One procedure is to award a prime contract to an established source (leader company) in which the source is obligated to subcontract a designated portion of the total number of end items required to a specified subcontractor (follower company) and to assist the follower company in that production.

(b) A second procedure is to award a prime contract to the leader company for the requisite assistance to the follower company, and another prime contract to the follower company for production of the items.

(c) A third procedure is to award a prime contract to the follower company for the items, under which the follower company is obligated to subcontract with a designated leader company for the requisite assistance.

SPECIAL TYPES AND METHODS OF PROCUREMENT

(1) Purchase.

(2) Lease: Vendor retains title to the equipment throughout the systems life.

(3) Lease with Option to Purchase (LWOP): A method of acquisition whereby the Government leases the ADPE with options to purchase.

(4) Lease to Ownership Plan (LTOP): A method whereby title to ADPE transfers to the Government after payment of rental over a specified period in accordance with applicable funding statutes.

(b) Evaluation Factors.

(1) To enable an offeror to prepare a proposal or quotation, the solicitation shall contain all the evaluation factors that are to be considered. In addition to the mandatory requirements, desirable features shall be included where applicable. When desirable features are included in a solicitation, their value to the Government shall be expressed in dollars as an evaluation factor.

(2) Conversion rental credits (those credits proposed by a contractor for the reduction or termination of monthly lease charges for equipment already installed but which is to be replaced) applicable to installed ADPE during the period of conversion to new equipment, when parallel systems are in operation, shall not be considered as an evaluation factor in the contracting for ADPE. Conversion rental credits are not the same as, and should not be confused with, purchase option credits (those credits which accrue to the Government under contracts awarded for lease and which contain an option to purchase). The latter, when applicable, are to be considered in the evaluation.

(3) Evaluation of offers shall be based on the systems life cost and shall, among other factors, consider the following:

(i) residual value of ADPE;
(ii) present value of money (discounted for the systems life); and
(iii) maintenance cost.

The net evaluated cost resulting from the application of all factors shall be used in determining the lowest overall cost alternative.

(c) Small Purchase. When the aggregate amount of any one requirement for ADPE, software, and maintenance services does not exceed $10,000, it shall be accomplished in accordance with Section III, Part 6, except that FSC Group 70 items which are available under FSS Schedule contracts for FSC Group 70 items will be subject to this Part 11; however, existing

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mandatory ordering provisions representing contractual obligations of the Government will not be disturbed. In addition, monetary thresholds applicable to agency procurement authority are reflected in the ADTS/ADP Schedule contract provisions. The requirement for synopsizing prior to placing an order under a schedule contract applies to ADPE requirements which exceed $35,000.

4-1104.11 *Source Selection.* Proposal evaluation and source selection of ADPE, software, maintenance, and certain other contractual ADP support services shall be in accordance with OSD and Department procedures. A selection plan shall be prepared prior to issuance of the solicitation documents, and a copy shall be retained in the contract file.

4-1104.12 *Sole Source Contracting Documentation.* The following documents, clearly marked "sole source procurement," shall be forwarded to the General Services Administration (CDPSD), Washington, D. C. 20405, for each sole source acquisition of ADPE, if the dollar value involved is between $10,000 and $50,000:

(i) a copy of the contract; or

(ii) a copy of the purchase/delivery order issued against an ADTS/ADP Schedule contract.

4-1104.13 *Defense Contractors.*

(a) When either of the two conditions of 4-1101(c)(4) apply, then:

(1) Contracting procedures of 4-1104 through 4-1104.12 apply, as supplemented herein. (When the two conditions, referred to above, do not apply, see 3-1100 and 13-301(h).)

(2) Defense contractors shall submit requests for all methods of acquisition for ADPE software, maintenance services, and supplies to the Administrative Contracting Officer for processing and approval in accordance with OSD and Department procedures.

(b) The following procedures are applicable when leased ADPE is used on Government contract work and the total cost of leased ADPE is absorbed by the Government under a cost-reimbursement type contract.

(1) The contracting officer shall require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase credits or other benefits earned through rental payments.

(2) When leased ADPE is used on Government contract work under a cost-reimbursement type contract and less than 100 percent of the cost of the equipment is absorbed by the Government, the contracting officer should obtain for the Government, when possible, the right to accrued purchase credits, if the contractor elects not to exercise his purchase option. Accordingly, negotiation objectives for cost-reimbursement type contracts shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government.

(i) the contractor should be encouraged to incorporate in his ADP equipment lease the right to assign accrued purchase credits to the Government;

(ii) the contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise his purchase option; and

(iii) a 60-day advance notice should be provided to the Government when the contractor intends to terminate his ADP equipment lease if the Government has been granted rights to accrued purchase credits.

(3) If the Government has been granted rights to purchase credits in accordance with (b) above and the contractor elects not to exercise his purchase option, the ADPE shall be reported through DoD reutilization channels as provided in paragraph (c) below.

(4) If the Government elects to exercise the option to purchase ADPE leased by the contractor, the applicable provisions in this Part 11 relating to the acquisition of ADPE shall apply to the exercise of the option as if the Government was the initial lessee.

(c) Excess ADPE, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported regardless of the procurement authority under which they were acquired. Accordingly, ADPE, software, and associated spare parts acquired under any of the authorities set forth in 4-1101 are subject to the reporting requirements of DAR Section XXIV and Defense ADPE Reutilization

Manual DOD 4160.19M. ADPE, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special excess screening procedures in DOD Manual 4160.19M.

4-1104.14 *ADP Fund.*

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease of ADP equipment and/or software. When approved by GSA, the ADP fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP fund.

(b) When evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type, the contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon insuring that funds are not available, shall make an inquiry to GSA for the use of the ADP fund. If the ADP fund is not available, this activity shall notify the contracting officer that the ADP fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

4-1104.15 *Contract Clauses.* In addition to the other clauses required by DAR, the clauses in 7-2302 shall be used in all solicitations and contracts for ADP equipment, software, maintenance services, supplies, and certain other contractual ADP support services when GSA has delegated procurement authority either by DPA or by regulation.

4-1105 Conflicts Between DAR and DPA. When contracting for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of the DAR and shall not be processed as a deviation from DAR.

4-1106 Acquisition Assistance. Assistance in any phase of the contracting process covered by this Part may be obtained by contacting:

ARMY:

U.S. Army Computer Systems Selections
and Acquisition Agency
Alexandria, VA 22331

HQ DA DAAC-ZK
The Pentagon
Washington, DC 20310

NAVY:

ADP Selection Office
Washington, DC 20376

Naval Data Automation Command
Washington Navy Yard
Washington, DC 20374

AIR FORCE:

Air Force Computer Acquisition Center
Hanscom AFB, MA 01731

HQ USAF (AF/RDC)
Washington, DC 20330

DEFENSE LOGISTICS AGENCY:

DLA-PP
Cameron Station
Alexandria, VA 22314

Part 12– Commercial or Industrial-Type Activities

4-1200 Scope of Part. This Part implements DoD contracting policy regarding Commercial or Industrial-Type Activities (CITA) and applies to those requirements identified for cost comparison.

4-1201 Policy. It is the general policy of the Government to rely on private commercial sources to supply the products and services it needs when it is more economical to do so, consistent with National Defense requirements and the availability of satisfactory commercial sources. Implementation of this policy employs the conventional contract process with the following added features: (i) the Government prepares an in-house cost estimate based on the same statement of work and same level of performance as offerors; (ii) a cost comparison is made between the potentially successful offeror and the Government; and (iii) depending on the results of the cost comparison, a contract is awarded or the solicitation is cancelled.

4-1202 Contract Clauses. The following clauses shall be included as appropriate in all solicitations and resultant contracts subject to this Part:

(i) Notice of Cost Comparison (Advertised), 7-2003.89(a);
(ii) Notice of Cost Comparison (Negotiated), 7-2003.89(b); and
(iii) Right of First Refusal for Employment Openings, 7-104.104.

4-1203 Procedures.

4-1203.1 *Planning.* DoD commercial or industrial-type activities are inventoried and reviewed periodically by management to determine if the activity is subject to a cost comparison. During such reviews, contracting officers shall assist management officials in identifying private commercial sources. If it appears no private commercial source is available, management officials with the assistance of the contracting officer shall seek to identify sources through--

(i) synopsis of the requirement in the *Commerce Business Daily* at least three times in a 90-day period with a minimum interval of 30 days between each synopsis or, for urgent requirements, at least two times in a 30-day period with a minimum interval of 15 days between each synopsis; and
(ii) seeking assistance from the General Services Administration, Small Business Administration, and the Domestic and International Business Administration in the Department of Commerce.

When commercial sources are available, an acquisition package, to include a clear and concise performance-oriented statement of work, will be prepared by the requiring activity personnel in conjunction with the contracting officer.

4-1203.2 *In-House Cost Estimate.*

(a) An in-house cost estimate is prepared based on the same statement of work that is in the solicitation. The in-house cost estimate and other cost elements required to accomplish a cost comparison are entered on a cost comparison form, audited, sealed, dated and submitted to the contracting officer not later than the time established for receipt of initial offers or bid opening. All necessary detailed supporting data will be included in the sealed envelope when it is submitted to the contracting officer.

(b) The confidentiality of both the in-house cost estimate and the bids in formally advertised cost comparison studies shall be maintained until the time of public disclosure to ensure they are completely independent. For cost comparison studies conducted using negotiation procedures, confidentiality and independence shall be maintained until after completion of negotiations and selection of the most advantageous offer. Personnel who have knowledge of the cost figures set forth in the government in-house cost estimate shall not participate in the offer evaluation process.

4-1203.3 *Solicitation.* Solicitations shall be prepared in accordance with 4-1202 and 2-201 or 3-501. For purposes of the cost comparison, solicitations shall provide for a base contract period and any necessary priced options to total the amount of time represented by the in-house cost estimate. Evaluation of options for selection between competing offers shall be in accordance with 1-1500.

4-1203.4 *Evaluation.* After receipt of the sealed and dated in-house cost estimate and the offers, the procedures for CITA contracting differ as follows from conventional contracting procedures.

(a) Formal Advertising.

(1) At the time of public bid opening, after recording of bids, the sealed envelope containing the cost comparison form and the in-house cost estimate shall be opened and the price of the apparent low bidder shall be entered on the cost comparison form. The contracting officer shall announce the results, based upon the completed cost comparison form, subject

to evaluation of bids for responsiveness and responsibility, and resolution of requests for review. The abstract of bids, the completed cost comparison form and detailed supporting data relative to the in-house cost estimate shall be made available to interested parties for review. Interested parties shall be advised that no final decision will be made for at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex) during this public review period. Review procedures are at (c) below.

(2) After the evaluation of bids and determinations of responsibility, the price of the low, responsive, responsible bidder shall be provided to the preparer of the in-house cost estimate for final review of the cost comparison form and origination of the Decision Summary Form.

(3) The final decision for performance in-house or by contract shall be reported through appropriate channels as required by departmental procedures. This final decision shall be communicated to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The completed cost comparison analysis shall be made available to interested parties upon request.

(b) Negotiation.

(1) The contracting officer shall receive proposals, evaluate, negotiate and select the most advantageous proposal in accordance with Section III. The contracting officer, together with the preparer of the in-house cost estimate then open the Government in-house cost estimate, complete the cost comparison form and make a cost comparison. This cost comparison is made prior to public announcement.

(2) If the result of the cost comparison is in favor of contracting out, the decision to award a contract shall be reported through appropriate channels as required by departmental procedures. Upon receiving clearance from appropriate channels, the contracting officer shall then award a contract. In addition, the contractor shall be put on notice (i) that such award is conditioned upon its offer still being more economical than in-house performance after completion of the public review period plus such additional time as may be required pursuant to the review procedures set forth in (c) below, and (ii) that preparation for commencement of performance shall not begin until notification to commence is received from the contracting officer. Concurrent with the award, the contracting officer shall publicly announce the

results of the cost comparison to all interested parties. This public announcement shall include revealing and making available for public review the in-house cost estimate with detailed supporting data, the completed cost comparison form and the name of the contractor. Interested parties shall also be advised that contractor preparations for performance are conditioned upon completion of a public review period plus such additional time as may be required pursuant to the review procedures set forth in (c) below. The period for public review shall commence with the announcement of the results of the cost comparison by the contracting officer and shall run for a period of at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex). Upon completion of the public review period and resolution of questions raised, if any, the Decision Summary Form shall be completed and approved. After receiving clearance from appropriate channels, the contracting officer shall issue an authorization to commence to the contractor, or cancel the contract, as appropriate.

(3) If the result of the cost comparison is in favor of in-house performance, the contracting officer shall announce the results of the cost comparison and make available for public review the in-house cost estimate, the detailed supporting data relative to the in-house cost estimate, the completed cost comparison form, and the price of the offeror whose offer was the most advantageous to the Government. The period for public review shall commence with the announcement by the contracting officer of the results of the cost comparison and shall run for a period of at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex). Upon completion of the public review period and resolution of questions raised, if any, the Decision Summary Form shall be completed and approved. After receiving clearance from appropriate channels, the contracting officer shall cancel the solicitation or award the contract, as appropriate.

(c) Review Procedures. These procedures shall only be used to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning potential award to one firm in preference to another. Requests for review of any discrepancy in the cost comparison shall be filed with the contracting officer, in writing, by directly affected parties. Such requests shall be considered only if based on specific objections and filed within the

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public review period. The contracting officer shall forward such requests for review to the preparer of the in-house cost estimate for consideration in accordance with departmental procedures. Decisions with regard to such requests for review are final and shall be communicated to the requesting party within 30 days of receipt.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 6—Procurement of Printing and Related Supplies

5-601 Printing and Related Supplies. Printing, binding, and blank-book work and envelopes, paper, and related supplies shall be procured in accordance with (i) regulations of the Congressional Joint Committee on Printing, and (ii) procedures prescribed by each respective Department. For example, printing requirements (*e.g.*, reproducible masters, camera-ready copy in page format, page lithographic negatives, etc.) for technical manuals and other publications (not commercial manuals or technical manuals in manuscript form) may not be procured as an integral part of a contract for supplies or services unless approval has been obtained from the Congressional Joint Committee on Printing or the Public Printer. Responsibility within each Department for obtaining waivers and for dealing with the Congressional Joint Committee on Printing and the Public Printer on matters relating to printing is vested in one specifically designated office or agency. In the Army, this responsibility is vested in The Adjutant General; in the Navy, in the Director, Navy Publications and Printing Service; in the Air Force, in the Director, Administrative Services, Headquarters, USAF; in the Defense Supply Agency, in the Staff Director, Administration, Headquarters, DSA; in the Defense Communications Agency, in the Assistant to the Director for Administration; in the Defense Nuclear Agency, in the Personnel Administration Directorate; in the Defense Mapping Agency, in the Deputy Director, Programs, Production and Operations.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 7—Procurement Under the Economy Act

5-700 Scope of Part. This Part deals with orders for supplies or services placed with another Government department or agency pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U.S.C. 686), except that it does not apply to any procurement covered by the other parts of this Section V. Orders for supplies and services placed *within* a Department shall be in accordance with procedures prescribed by that Department.

5-701 Authorization and Policy Relating to Placing and Filling Orders.

(a) It is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources (but see Section IV, Part 12). Invitations for bids and requests for proposals shall not be sent to Government agencies.

(b) Each procuring activity, when it is in the interest of the Government to do so, may place delivery orders on DD Form 1155 (see 3-608.6) with any other Government department or agency for supplies or services that any such requisitioned department or agency may be in a position to furnish or perform or to obtain by contract. Generally, an order for supplies or services will not be placed with a department or agency which is not in a position to furnish the supplies or is not equipped to perform the services, except that an order may be filled by means of an outside contract with a commercial source of supply if the order is placed by any one of the following: Department of the Army, Department of the Navy, Department of the Air Force, Department of the Treasury, Federal Aviation Administration, or Maritime Commission. An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more cheaply by private contractors.

5-702 Determination of Amount and Method of Payment. Upon the written request of the requisitioned department or agency, an advance by check shall be made of all or part of the estimated cost of furnishing the supplies or services as specified by such requisitioned department or agency; *provided* that, where an advance is made, proper adjustments of the basis of the actual cost of the supplies or services shall be made as may be agreed upon by the departments or agencies concerned. Subject to approval by the requisitioned department or agency, payment by check may be made after the furnishing of the supplies or services. The amount to be paid shall be based on the actual cost of the supplies or services as may be agreed upon by the departments or agencies concerned.

5-703 Procuring Helium Under Public Law 86-777.

It is the policy of the Department of Defense to obtain its requirement of helium as follows:

(i) bulk helium requirements (tank car lots) shall be procured either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the

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FOREIGN ACQUISITIONS

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

[illegible] country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifying country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

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Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

Part 3--Appropriations Act Restrictions

6-300 Scope of Part. This Part implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or specialty metals. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This Part also implements the restriction on acquisition of foreign buses contained in Section 404 of Public Law 90-500 (see 6-306), and the restriction on R&D contracting with foreign sources contained in Section 744 of Public Law 92-570 (see 6-307), and the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 6-308). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program (see Parts 1 and 8 of this Section).

6-301 Definitions. As used in this Part, the following terms have the meaning set forth below.

(a) Possessions. As used in the phrase "United States or its possessions", the term "possessions" includes Puerto Rico.

(b) United States means the States and the District of Columbia.

(c) Specialty metals means:

(i) steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

6-302 Restriction. Except as provided in 6-303, there shall not be acquired supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

6-303 Exceptions. The restriction of 6-302 does not apply to the following:

(i) acquisitions outside the United States in support of combat operations;

(ii) acquisitions by vessels in foreign waters;

(iii) emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(iv) acquisitions of those supplies listed in 6-105 as to which the list does not make this Part expressly applicable;

(v) small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(vi) acquisitions of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item; Provided, That the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater;

(vii) any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(viii) supplies purchased specifically for commissary resale (see 6-103.7);

(ix) purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(x) purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and

(xi) purchases of specialty metals (see 7-104.93(b)) or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).

6-304 Procedures.

6-304.1 Acquisition of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Supplies containing Mohair or Cotton, or Specialty Metals. Except as permitted by 6-303, food, clothing (not covered by 6-304.2), woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, any form of mohair or cotton, or specialty metals including stainless steel flatware will be

responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with 7-104.105, (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary), and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under 6-103.3, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (b)(1) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(b) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 6-1403.1(a) for participating countries. When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. (See 2-202.1, 2-203.1 and 3-503.2.) For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 6-1403.1(c). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (b)(1) below. The list set forth at 6-1405 shall also apply to FMS/offset arrangement countries.

(1) To obtain an exemption under 6-103.3 of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items or modified as necessary for components (see 6-001.2):

SERVICE OR AGENCY _____
EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d)
DETERMINATION AND FINDINGS

Upon the basis of the following findings and determinations which I hereby make in accordance with the provisions of DAR 6-103.3, acquisition of an _____ (FMS/offset arrangement country) _____ (describe item) _____ may be made as provided below.

FINDINGS

1. The _____ (Contracting Activity) _____ proposes to purchase _____, under contract number _____, mined, produced or manufactured in _____ (country of origin) _____. The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of

FOREIGN ACQUISITIONS

_____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD) if necessary, will offer potential DoD requirements suitable for purchases of _____(FMS/offset arrangement country)_____ defense items.

3. The Agreement provides that competitive offers of _____(FMS/offset arrangement country)_____ end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that _____(FMS/offset arrangement country)_____ items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of _____(FMS/offset arrangement country)_____ items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, (7-104.3) which states that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an _____(FMS/offset arrangement country end item)_____ is found to be acceptable.

DETERMINATION

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

_____(Date)_____ _____(Secretary of Department)_____

(c) To assure that the policy of 6-602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clause in 7-104.31(a) or 7-104.31(b), as appropriate, in contracts which either contribute, or are anticipated to contribute, to the fulfillment of an FMS/offset arrangement.

(d) The clause set forth at 7-104.105 shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth).

(e) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation

by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(f) In the acquisition of commercial products the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the contracting officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

7-104.20 *Utilization of Labor Surplus Area Concerns.*

(a) In accordance with 1-805.3(a), insert the following clause.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1981 MAY)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business and Small Disadvantaged Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) labor surplus area concerns which are also small business concerns, (ii) other small business concerns, and (iii) other labor surplus area concerns.

(End of clause)

(b) In accordance with 1-805.3(b), insert the following clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1978 JUN)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Labor Surplus Area Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(End of clause)

7-104.21 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

LIMITATION ON WITHHOLDING OF PAYMENTS (1958 SEP)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided*, that this limitation shall not apply to—

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholdings not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or
(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-104.22 *Equal Opportunity Pre-Award Clearance of Subcontracts.* Insert the following clause in all contracts containing a "Subcontracts" clause prescribed by 23-201 (see also 23-201.4).

7-104.30 *Reserved.*

7-104.31 *Duty-Free Entry.*

(a) *Duty-Free Entry for Designated Items.* In accordance with 6-603.3(a), insert the provision in 7-2003.49 and the following clause.

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (1971 FEB)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry.

(b) The Contractor warrants that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents covering those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry, shall consign the shipments to the appropriate Military Department, in care of the particular Contractor including the Contractor's delivery address or the appropriate military installation and shall bear the following information:

(i) Government prime contract number;
(ii) identification of carrier;
(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate ;"
(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
(v) estimated value in United States dollars.

(e) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (d) above and mark all packages UNITED STATES DEPARTMENT OF DEFENSE to qualify for duty-free and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies identified in the schedule as supplies to be accorded duty-free entry. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the overseas supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(g) The Contractor will make appropriate provisions in subcontracts hereunder to assure that the entire substance of this clause is agreed to by each first- or lower-tier subcontractor, if any, who will import into the United States, its possessions, or Puerto Rico, supplies identified in the Schedule as supplies to be accorded duty-free entry.

(End of clause)

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(b) In accordance with 6-603.3(b), insert the following clause.

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (1971 FEB)

(a) Except as provided in paragraph (c) below, the Contractor shall notify the Contracting Officer in writing of any purchase in excess of $10,000 by the Contractor of foreign supplies (including without limitation raw materials, components, and intermediate assemblies) that are to be imported into the United States, its possessions, or Puerto Rico, for delivery to the Government, or for incorporation in end items to be delivered to the Government, under this contract; *provided*, that if this contract contains any other clause providing for duty-free entry, such notice is not required for any supplies that are to be accorded duty-free entry under any other such clause. Any such notice shall be furnished to the Contracting Officer at least twenty (20) days before the importation of any supplies pursuant to any such purchase. The notice shall identify (i) the foreign supplies, (ii) the estimated amount of duty payable thereon, and (iii) the country of origin.

(b) If, within ten (10) days of receipt of any notice under (a) above, the Contracting Officer notifies the Contractor in writing that the Government will issue duty-free entry certificates for such foreign supplies, or if the Government otherwise tenders and the Contractor agrees to the issuance of such a duty-free entry certificate, the following subparagraphs shall apply:

(1) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause.

(2) The Contractor warrants that all such foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause are intended to be delivered to the Government or incorporated in end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(3) The Government agrees to execute duty-free entry certificates and to afford appropriate assistance in order to obtain the duty-free entry of such foreign supplies as to which, pursuant to subparagraph (4) below, the shipping documents bear the notation specified therein, except as the Contractor may otherwise agree.

(4) All shipping documents submitted to Customs, covering foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause shall consign the shipments to the appropriate (i) Military Department in care of the particular Contractor including the Contractor's delivery address, or (ii) the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate."

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in United States dollars.

(5) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (4) above and mark all packages UNITED STATES DEPARTMENT OF DEFENSE to qualify for duty-free entry and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(6) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies for which duty-free entry certificates are to be

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplies. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1981 JAN)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1980 DEC)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

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7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the following clause.

RIGHT OF FIRST REFUSAL FOR EMPLOYMENT OPENINGS (1980 MAY)

Consistent with Government post employment conflict of interest standards, the Contractor shall give Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings on the contract in positions for which they are qualified.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

LIMITATION OF LIABILITY - MAJOR ITEMS (1979 MAR)

(a) Except as provided below and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISKS,
AIRCRAFT FLIGHT RISK,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either:

(i) insert, with the advance written consent of the Contracting Officer, the substance of this clause including this paragraph (f) suitably altered to reflect the relationship of the contracting parties; or

(ii) insert the substance of the clause in 7-104.45(a), suitably altered to reflect the relationship of the contracting parties.

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(b) In contracts for the purchase of both major items (see 1-330) for which the clause in (a) above is appropriate, and other contract end items for which the clause in 7-104.45(a) is appropriate, both clauses shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-204.34 *Multi-Year Procurement.* In accordance with 1-322.5, insert the clauses in 7-104.47.

7-204.35 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-204.36 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-204.37 Reserved.

7-204.38 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-204.39 *First Article Approval.*

(a) In accordance with 1-1904, insert the clause in 7-104.55(a) with appropriate modifications.

(b) In accordance with 1-1904, insert the clause in 7-104.55(b) with appropriate modifications.

7-204.40 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-204.41 *United States Products and Services (Balance of Payments Programs).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-204.42 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-204.43 Right of First Refusal for Employment Openings. In accordance with 4-1202, insert the clause in 7-104.104.

7-204.44 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-204.45 *Recovery of Nonrecurring Costs on Foreign Sales of Major Defense Equipment.* Insert the clause in 7-104.64, as appropriate.

7-204.46 *Use of Excess and Near-Excess Currency.* In accordance with the requirements of 6-1110, insert the clause in 7-104.66.

7-204.47 *Production Progress Report.* In accordance with the requirements of 25-202, insert the clause in 7-104.51.

7-204.48 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3 , insert the clause in 7-104.38.

7-204.49 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-204.50 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-204.51 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4 , insert the clause in 7-104.46.

7-204.52 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-204.53 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-204.54 *Contractor's Identification of Changes.* In accordance with 26-802, insert a clause as provided in 7-104.86.

7-303.29 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-303.30 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-303.31 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44 as applicable.

7-303.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-303.33 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404 and 1-1410, insert the appropriate clause in 7-104.19.

7-303.34 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-303.35 *Limitation of Liability.* In accordance with 1-330(b), insert the appropriate clause in 7-104.45.

7-303.36 *Bills of Lading Covering Shipments From Contractor's Plant.* In accordance with the requirements of 19-217.1(a), insert the clause in 7-103.25.

7-303.37 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-303.38 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20-304.2(c)(ii), insert the clause in 7-104.7.

7-303.39 *First Article Approval.* In accordance with 1-1904, insert the appropriate clause in 7-104.55.

7-303.40 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-303.41 *United States Products and Services (Balance of Payments Program.)* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-303.42 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-303.43 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-303.44 *Care of Laboratory Animals.* In compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles, the following clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico, which may involve the use of such animals.

CARE OF LABORATORY ANIMALS (1974 APR)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, P.L. 89-544, Laboratory Animal Welfare Act, 24 August 1966 as amended by P.L. 91-579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public Laws enumerated in (a) above. In case of conflict between standards, the higher standard shall be used. Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (P.L. 89-544 and P.L. 91-579).

NOTE: The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located. The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland, 20782.

(End of clause)

7-303.45 *Recovery of Nonrecurring Costs on Non-US Government Sales of Defense Equipment.* In accordance with 4-110(d), insert the clauses in 7-104.64, as appropriate.

7-303.46 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-303.47 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-303.48 *Aircraft, Missile and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-303.49 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-303.50 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-303.51 *Reserved.*

7-303.52 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the clause in 7-104.46.

7-303.53 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-303.54 *Rights in Data.* In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-303.55 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-303.56 *Contractor's Identification of Changes.* In accordance with 26-802, insert a clause as provided in 7-104.86.

7-303.57 *Cost Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-303.58 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-303.59 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (1959 FEB)

If more than one clause or Schedule provision of this contract authorized the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided* that this limitation shall not apply to:

(i) withholdings pursuant to any clause relating to wages or hours of employees,
(ii) withholding not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or **contracting** activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-403.13 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-403.14 *Changes to Make-or-Buy Program.* In accordance with Section III, Part 9, insert the clauses in 7-204.20.

7-403.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-403.16 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-403.17 *Duty-Free Entry.* In accordance with Section VI, Part 6, insert the appropriate clause or clauses in 7-104.31.

7-403.18 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-403.19 *Taxes.* In accordance with 11-403, insert one of the clauses in 7-204.24.

7-403.20 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-403.21 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502 (b) and (c) according to the instructions stated in those paragraphs.

7-403.22 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2 , insert the clause in 7-104.37.

7-403.23 *General Services Administration Supply Sources.* In accordance with 5-909, insert the clause in 7-204.28.

7-403.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-403.25 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-403.26 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-403.27 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44, substituting the "Sharing" paragraph (e) in 7-204.32(b) or (c) for paragraph (e) of the clause in 7-104.44, as applicable.

7-403.28 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-403.29 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404, insert the clause in 7-104.19 (d).

7-403.30 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-403.31 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-403.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-403.33 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-403.34 *First Article Approval.* In accordance with Section I, Part 19, insert the appropriate clause in 7-104.55.

7-403.35 *Order of Precedence.* In accordance with 3-501(b)Sec C(xxxi), insert the clause in 7-2003.41.

7-403.36 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-403.37 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-403.38 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-403.39 *Care of Laboratory Animals.* In accordance with 7-303.44, insert the clause therein.

7-403.40 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-403.41 *Material Inspection and Receiving Report.* In accordance with 7-104.62, insert the clause therein.

(m) *Termination.*

(i) In the event of a complete termination, the amount payable to the Contractor shall be established in accordance with the clause of this contract entitled "Termination for Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable.

(ii) In the event of a partial termination, the amount payable to the Contractor as to the work and services terminated shall be established in accordance with the clause of this contract entitled "Termination for the Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable. As to the work and services not terminated the provisions of this clause shall apply.

(End of clause)

7-603.24 *Special Tooling.* In accordance with 13-305.2(d)(3), insert the clause in 7-104.25 in negotiated construction contracts.

7-603.25 *Physical Data.*

(a) All the information concerning local conditions pertaining to the performance of the contract work, which has been made available to the contractor should be referenced into the contract by completing the clause set forth in (b) below. Wherever test borings, analyses, or hydrographic data are to be made available to the contractor, the wording of this special clause should be such as only to inform the contractor as to the source of the data and where it may be examined.

(b) *Contract Clause.*

PHYSICAL DATA (1965 JAN)

Information and data furnished or referred to below are furnished for the Contractor's information. However, it is expressly understood that the Government will not be responsible for any interpretation or conclusion drawn therefrom by the Contractor.

(a) The physical conditions indicated on the drawings and in the specifications are the result of site investigations by (insert investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels, etc.)

(b) Weather Conditions. (Insert summary of weather records and warnings.)

(c) Transportation facilities. (Insert the summary of transportation facilities accessible to project, availability, and limitations.)

(d) _____ (Insert other pertinent information.)

(End of clause)

7-603.26 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-603.27 *Variations in Estimated Quantities.* Insert the following clause in contracts containing estimated quantity items (not required for indefinite delivery type contracts).

VARIATIONS IN ESTIMATED QUANTITIES (1968 APR)

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.

(End of clause)

7-603.28 *Identification of Government Furnished Property.* Insert the following clause when required. The point at which the Government-furnished property will be delivered to the contractor should be specifically stated as a part of the information furnished under the special clause on physical data (see 7-603.25). Special provisions may be required in addition to the clause herein to cover Government or another contractor's installation, preparation for operation, or testing of equipment.

(B) Delete paragraph (c) and substitute the following:

Promptly after receipt of each invoice or voucher and statement of cost the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fee shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, *provided*, however, that after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the target fee or one hundred thousand dollars ($100,000), whichever is less.

(C) The additional instructions for use of the clause in 7-203.4(c)(1), (2), (5), (6), and (7) apply.

7-606.2 *Approval of Wage Rates.* Insert the following clause in contracts to be performed in the United States:

APPROVAL OF WAGE RATES (1965 JAN)

All wage rates in excess of the applicable Davis-Bacon Wage rates for this contract, including compensation for overtime pursuant to paragraph 2 of Standard Form 19-A, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Head of a Procuring Activity or a representative expressly designated by him for this purpose. Any amounts paid by the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Head of a Procuring Activity or a representative expressly designated by him for that purpose shall be at the expense of the Contractor and shall not be reimbursed by the Government.

(End of clause)

7-606.3 *Buy American.* In accordance with 7-602.20, insert the clause therein.

7-606.4 *Nondomestic Construction Materials.* In accordance with 7-602.24, insert the clause therein.

7-606.5 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2 insert the clause in 7-104.18.

7-606.6 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-606.7 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, modified in accordance with 7-204.12.

7-606.8 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-606.9 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-606.10 *Alterations.* In accordance with 7-604.1, insert the clause therein.

7-606.11 *Payment for Overtime Premiums.* In accordance with 12-102, insert the clause in 7-203.27.

7-606.12 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-606.13 *Approval of Contract.* In accordance with 7-105.2, insert the clause therein.

7-606.14 *Architectural Designs and Data—Government Rights.* In accordance with 18-910.1(a), insert one of the two clauses in 7-603.42(a)(1) or (2), if appropriate.

7-606.15 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58.

7-606.16 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-606.17 *North Carolina State and Local Sales and Use Tax.* In accordance with 11-302(c), insert the clause in 7-602.27.

7-606.18 *Airfield Safety Precautions.* Insert the following clause in contracts to be performed on or near airfields when it is desired to cover the subject matter thereof.

AIRFIELD SAFETY PRECAUTIONS (1968 APR)

(a) The operation of all ground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply:

(1) "*Landing Areas*" means the following:

(i) the primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length, the width of each primary surface is 2000 feet (1000 feet on each side of the runway centerline)*); (*See footnote at end of clause*)

(ii) the "clear zones" beyond the ends of each runway—*i.e.*, the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway,

(iii) all taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, *i.e.*, a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet), and

(iv) all aircraft parking aprons plus the area 125 feet in width extending beyond each edge all around the aprons.

(iii) "Apprentices and Trainees," 7-602.23(a)(iii);
(iv) "Payrolls and Basic Records," 7-602.23(a)(iv);
(v) "Compliance With Copeland Regulations," 7-602.23(a)(v);
(vi) "Withholding of Funds" 7-602.23(a)(vi);
(vii) "Subcontracts", 7-602.23(a)(vii);
(viii) "Contract Termination - Debarment", 7-602.23(a)(viii); and
(ix) "Disputes Concerning Labor Standards", 7-602.23(a)(ix).

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates and the clauses referenced in paragraph (a) above shall be incorporated into the contract in their entirety by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination and clauses required in paragraph (b) above unless the Contracting Officer authorizes the start of work because of unusual or emergency situations.

(End of clause)

7-705.6 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-705.7 *Improvements to Buildings or Land Owned by the Government.* When necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDING OR LAND OWNED BY THE GOVERNMENT (1964 SEP)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

(End of clause)

7-705.8 *Patent Rights.* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-705.9 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-705.10 *Changes to Make-or-Buy Program.* In accordance with 3-902.4, insert the clause in 7-204.20(a).

7-705.11 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-705.12 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-705.13 *Advance Payments.* In accordance with Appendix E, Part 4, insert the clause in 7-104.34 but substitute paragraphs (3) and (5) from the clause in 7-204.25 for paragraph (3) and (5) of the clause in 7-104.34.

7-705.14 *General Services Administration Supply Sources.* In accordance with 7-204.28, insert the clause therein, deleting the last sentence.

7-705.15 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-705.16 *Duty-Free Entry.* In accordance with 6-603.2 and 6-603.3, insert either or both of the clauses in 7-104.31.

7-705.17 *United States Products and Services (Balance of Payments Program).* In accordance with 6-806.4, insert the clause in 7-2(03.53.

7-705.18 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-705.19 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-705.20 *Insurance.* In accordance with 10-405 and 10-501, insert the clause in 7-104.65.

7-705.21 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-705.22 *Facilities Equipment Modernization.* Insert the following clause in any bilateral modification of an existing facilities contract, and in any new facilities contract, under which the Government provides modernized or replacement facilities.

FACILITIES EQUIPMENT MODERNIZATION (1976 JUL)

(a) In consideration of the Government providing, as set forth in this contract, for modernization or replacement of Government-owned equipment being used or to be used by the Contractor in the performance of Government firm-fixed-price contracts or subcontracts, or fixed-price contracts or subcontracts with economic price adjustment provisions, the Contractor agrees to return to the Government the net cost savings actually realized from the use of the modernized or replacement equipment on all such contracts or subcontracts entered into prior to the expiration of the three-year period following the date such equipment is placed in production, except (i) formally advertised contracts entered into subsequent to the date such equipment is placed in production, and (ii) contracts or subcontracts which specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for the implementation of this clause. The Contractor shall make such records available at its office for inspection, audit or reproduction by any authorized representative of the Contracting Officer. Within fourteen (14) months after the modernized or replacement equipment has been placed in production, the Contractor shall file with the Administrative Contracting Officer cognizant of the Government production and research property four (4) completed copies of DD Form 1651 (Industrial Equipment Modernization Program—Post Analysis Report).

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, he shall require the subcontractor to maintain records, to make them and additional information available to the Contracting Officer, and to file four (4) copies of DD Form 1651, in the manner prescribed in (1) above.

(c) Records shall generally be acceptable if they are maintained for the equipment under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Administrative Contracting Officer by

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

7-902.4 *Priorities, Allocations and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-902.5 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-902.6 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-902.7 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-902.8 *Patent Rights.* In accordance with 9-107, insert the appropriate clause in 7-302.23.

7-902.9 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-902.10 *Alterations in Contract.* When required, insert the clause in 7-105.1(a).

7-902.11 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-902.12 *Communist Areas.* In accordance with 6-403. insert the clause in 7-103.15.

7-902.13 *Flight Risks.* In accordance with 10-504, if the contract is for development, production, modification, maintenance, or overhaul of aircraft, or if it otherwise involves furnishing of aircraft to the contractor by the Government, include the clause from 7-204.21, but substitute the paragraph (c) below for paragraph (c) of the clause in 7-204.21.

(c) If any aircraft is damaged, lost, or destroyed, during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the ceiling price of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made in the ceiling price, hourly rate, delivery or performance date, or all of them and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the hourly rate that is equitable, any faults of the Contractor, his employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

7-902.14 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b), depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause Reimbursement for War Hazard Losses in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-902.15 *Royalty Information.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-902.16 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-902.17 *Interest.* In accordance with E-620 and E-621, insert the clause in 7-104.39.

7-902.18 *Price Reduction for Defective Cost or Pricing Data.* Insert the clause in 7-104.29(a).

7-902.19 *Limitation of Liability.* In accordance with 1-330(b), insert the appropriate clause in 7-104.45.

7-902.20 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-902.21 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-902.22 *Duty-Free Entry.* In accordance with 6-603.2, insert the clause in 7-104.31.

7-902.23 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-902.24 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58.

7-902.25 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-902.26 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-902.27 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-902.28 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-902.29 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-902.30 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-902.31 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-902.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-902.33 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-902.34 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

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In contracts that provide for laundry or dry cleaning service to individual personnel (see 7-1401.12), add the following paragraph (c) to the above clause.

(c) Individual laundry bundle delivery tickets shall be provided by the Contractor as specified in the clause entitled "Individual Laundry" of the General Provisions of this contract.

7-1401.6 *Loss or Damage.*

LOSS OR DAMAGE (1967 APR)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged and, in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with Federal Supply Class price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and just price. Credit shall be allowed for any depreciation in the value of the property at the time of loss or damage, and the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the value of the property, or fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

(End of clause)

7-1401.7 *Storage and Handling.*

STORAGE AND HANDLING (1967 APR)

During the time Government-owned property is in the possession of the Contractor, it shall be adequately stored and protected. When contaminated hospital linen is furnished for service under this contract, it shall be handled separately from other articles.

(End of clause)

7-1401.8 *Vehicles.*

VEHICLES (1967 APR)

Vehicles used in the transportation of items called for in this contract shall be clean, closed, conform to commercial standards, and equipped to protect against contamination of the items. Such vehicles shall be subject to examination at all times by the Contracting Officer or his authorized representative.

(End of clause)

7-1401.9 *Requirements or Indefinite Quantity.* Insert the Requirements clause in 7-1102.2(b) or the Indefinite Quantity clause in 7-1102.3(b), as appropriate.

7-1401.10 *Ordering.* In accordance with the requirements of 7-1101, insert the clause therein.

7-1401.11 *Special Definitions of Government Property.*

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (1967 APR)

(a) The term "Government-furnished property," as used in this contract, means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(b) The term "Government-owned property," as used in this contract, means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

(End of clause)

7-1401.12 *Individual Laundry.* The following clause shall be inserted in any contracts which, pursuant to Departmental authority, provide for laundry service to individual personnel.

INDIVIDUAL LAUNDRY (1967 APR)

(a) The Contractor shall provide laundry service on both a unit bundle and on a piece-rate bundle basis for individual personnel when required by this contract. The total number of pieces listed in the column "Estimated Quantity" in the Schedule is the estimated amount of individual laundry for this contract, but does not constitute any representation as to the amount of individual laundry to be required. Individuals may elect whether they shall patronize the laundry services. Services covered by this provision shall be on a weekly basis and the schedule for pickup and delivery shall be as specified elsewhere in this contract. Charges for individual laundry shall be on a per unit bundle or a piece-rate basis as indicated on the form, to be furnished by the Contractor, accompanying the bundle at time of pickup.

(b) The maximum number of pieces to be allowed per bundle is as specified in the Schedule and as follows:*

(i) Bundle consisting of twenty-six (26) pieces including laundry bag. This bundle shall contain approximately _____ pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(ii) Bundle consisting of thirteen (13) pieces including laundry bag. This bundle shall contain approximately _____ pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(c) Individual laundry bundles shall be accompanied by forms listing the items contained therein, prepared by the patrons concerned. Forms on individual laundry bundles shall clearly identify unit bundle or piece-rate bundle as applicable when both services are provided by this contract.

(End of clause)

*The number of pieces and the composition of a bundle may be revised by the contracting officer prior to advertising to meet local conditions.

7-1401.13 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Reserved.*

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1702.24 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7-1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7-1703.5 *Subcontracts.* In accordance with the requirements of 23-201, insert an appropriate clause entitled Subcontracts.

7-1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1703.7 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

Part 18—Refuse Services Contracts

7-1800 Scope of Part. This Part sets forth uniform clauses for refuse services contracts (see Section XXII, Part 8). These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1801 Required Clauses. The following clauses shall be inserted in all refuse services contracts.

7-1801.1 *Refuse Services Definitions.*

REFUSE SERVICES DEFINITIONS (1971 NOV)

As used throughout this contract, the following terms shall have the meanings set forth below.

(a) "*Refuse*" includes all garbage, ashes, debris, rubbish and other similar waste material. Not included are explosive and incendiary waste and contaminated waste from medical and radiological processes.

(1) "*Garbage*" means animal and vegetable waste (and containers thereof) resulting from the handling, preparation, cooking, and consumption of foods. Edible, or hogfood, garbage is the portion of waste food which has been segregated for salvage.

(2) "*Ashes*" means the residue from burned wood, coal, coke, and other combustible material.

(3) "*Debris*" means grass cuttings, tree trimmings, stumps, street sweepings, roofing and construction wastes, and similar waste material.

(4) "*Rubbish*" means a variety of unsalvable waste material such as metal, glass, crockery, floor sweepings, paper, wrappings, containers, cartons and similar articles not used in preparing or dispensing food. Rubbish is further subdivided into:

(i) "*Combustible rubbish*" which can be burned readily in an incinerator or burning pit; and

(ii) "*Noncombustible rubbish,*" which cannot be burned at ordinary incinerator temperatures (800 to 1,800 degrees F.).

(b) "*Receptacles*" or "*Containers*" means cans, drums, bins, or similar receptacles which can be handled easily, and multiple containers which are handled by mechanical truck-mounted hoists.

(c) "*Refuse Collection*" means a system of transporting refuse, including nonaccountable salvage, from pickup stations to points of disposal. It includes hauling garbage to the transfer station when required by the terms of a salvage contract.

(1) "*Collection*" means the accumulated refuse from any one unit at any one time, regardless of the number of cartons or bundles.

(2) "*Pickup Stations*" means designated locations where refuse may be conveniently and efficiently assembled and stored in containers for collection.

(End of clause)

7-1801.2 *Subcontracting.* Insert the clause in 7-1201.8.

7-1802 Clause To Be Used When Applicable.

7-1802.1 *Scope of Contract—Refuse Services.*

(a) Insert the following clause when applicable in refuse services contracts. The clause may be modified to meet local conditions and requirements.

SCOPE OF CONTRACT (1971 NOV)

(a) The Contractor shall furnish all labor, tools, materials, equipment and supervision necessary for the performance of all operations incidental to the collection and disposal of refuse generated at the installation or area defined in the Schedule.

(b) The Contractor's duties and responsibilities, in addition to those specified in the Schedule, are as follows.

(1) *Removal and Disposal.* All refuse in the containers shall be collected on those days as indicated in the Schedule. All other loose refuse, such as cardboard boxes, cartons, bundled and

tied newspapers and magazines, tree branches and packing containers, etc., which are placed adjacent to the containers shall be picked up by the Contractor. Any spillage of refuse in course of the handling operation shall be cleaned up immediately by the Contractor. Refuse containers when emptied shall be returned to their original position with the lids replaced thereon. All refuse collected shall be hauled in suitable vehicles and disposed of in the manner elsewhere provided herein.

(2) *Compliance with Laws and Regulations.* The Contractor shall comply with all laws, ordinances, statutes and regulations pertaining to the collection, transportation, and disposal of refuse and shall obtain such permits, licenses or other authorizations as may be required.

(End of clause)

(b) The following paragraph shall be added as paragraph (c) to the clause in (a) above for requirements contracts.

(c) (1) Accurate operating records shall be kept for each truck or other vehicle on such forms as may be provided by the Contracting Officer and the records shall show total collections in terms of either cubic yards, tons or receptacles as may be determined by the Contracting Officer.

(2) The reports shall show the number of loads, the number of cubic yards per load, tons of refuse per load, or receptacles per load on the truck prior to final disposal. The report shall be certified by the _____* and the authorized representative of the Contractor. If the unit of measure for payment is expressed in tons, each daily report shall be accompanied by a certified weight certificate for each truck load, indicating both the weight of the vehicle empty and the weight of the vehicle loaded. One copy of each report shall be retained by the Contractor and the original shall be retained by the Contracting Officer.

(3) The Contractor shall furnish such reports relating to labor statistics as the Contracting Officer may direct. (1971 NOV).

*Identify the Government representative who will be responsible for certifying as to the accuracy of the report.

7-1802.2 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

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7-1903.12 *Examination of Records by Comptroller General.* Pursuant to 10 U.S.C. 2313(b), the clause in 7-104.15 shall be inserted in all negotiated contracts in excess of $10,000 including contracts awarded under a total (Small Business Restricted Advertising) or partial set aside, except (i) as provided in 6-704 and 6-1001; and (ii) in contracts or purchase orders for public utility services at rates not in excess of those established for uniform applicability to the general public or at such rates plus reasonable connection charges incident to such services.

7-1903.13 *Gratuities.* Insert the clause in 7-104.16 except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1903.14 *Convict Labor.* In accordance with 7-104.17, insert the clause therein.

7-1903.15 *Ocean Transport of Government Owned Supplies.* In accordance with 7-104.19(a), insert the clause therein.

7-1903.16 *Utilization of Labor Surplus Area Concerns.* In accordance with 7-104.20, insert the appropriate clause or clauses therein.

7-1903.17 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1903.18 *Subcontracts.* In accordance with 23-201.1, insert the appropriate clause in 7-104.23.

7-1903.19 *Government Property.* In accordance with 7-104.24, insert the appropriate clause therein.

7-1903.20 *Special Tooling.* In accordance with 7-104.25, insert the clause therein.

7-1903.21 *Special Test Equipment.* In accordance with 7-104.26, insert the clause therein.

7-1903.22 *Options.* When it is intended to extend the services described in the schedule, insert a clause substantially as follows:

OPTION TO EXTEND SERVICES

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision unless provision for appropriate price adjustment has been made elsewhere in this contract.

(End of clause)

Other examples of option clauses appear in 7-104.27. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1903.23 *Quality Program.* In accordance with 7-104.28, insert the clause therein.

7-1903.24 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1903.25 *Advance Payments.* in accordance with Appendix E, Part 4, insert the appropriate clause in 7-104.34.

7-1903.26 *Progress Payments.* In accordance with E-510.1, insert the appropriate clause in 7-104.35.

7-1903.27 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1903.28 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-1903.29 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-1903.30 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1903.31 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-1903.32 *Communist Areas.* In accordance with 7-103.15, insert the clause therein.

7-1903.33 *Multiyear Contracting.* In accordance with 1-322.5, 1-322.6(c), or 1-322.7(c), insert the appropriate clause set forth below.

(a) *Limitation of Price and Contractor Obligations.* (See 7-104.47(a)).

(b) *Cancellation of Items—Service Contracts.* Insert the following clause.

CANCELLATION OF ITEMS—SERVICE CONTRACTS (1974 APR)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement."

(b) As used herein, the term "cancellation" means that the Government is canceling, pursuant to this clause, its Program Year requirements for items as set forth in the Schedule for all Program Years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only if, by the date or within the time period specified in the Schedule, or such further time as may be agreed to, the Contracting Officer (i) notifies the Contractor that funds will not be available for contract performance for any subsequent Program Year; or (ii) fails to notify the Contractor that funds have been made available for performance of the Program Year requirement for the succeeding Program Year.

(c) Except for cancellation pursuant to this clause or for termination pursuant to the "Default" clause, any reduction by the Contracting Officer in the quantities called for under this contract shall be considered a termination in accordance with the "Termination for Convenience of the Government" clause of this contract.

(d) In the event of cancellation pursuant to this clause, the Contractor will be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in the Schedule as being applicable at the time of cancellation.

(e) The cancellation charge is intended to cover only expenses incurred by the Prime Contractor or his subcontractor which would have been equitably amortized in the unit prices for the entire multi-year contract period, but which, because of the cancellation are not so amortized. The cancellation charge shall be computed and the claim therefor made as would be applicable under the "Termination for Convenience of the Government" clause of this contract. The Contractor shall submit the claim promptly but in no event later than one year (i) from the date of notification of the nonavailability of funds, if issued pursuant to paragraph (b)(i), or (ii) from the date specified in the schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. The claim may include reasonable start-up and other nonrecurring costs such as plant or equipment relocation costs; the costs of special tooling and special equipment; allocable portions of the costs of facilities acquired or established for the conduct of the work, *provided* such costs have not been charged to the contract through overhead, or otherwise depreciated, and to the extent that it is impracticable for the Contractor to utilize such facilities in the conduct of his commercial work; costs incurred for the assembly training and transportation of a specialized work force to and from the job site; and costs not amortized by the level contract unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning. The claim shall not include any amount for:

(i) labor, material, or other expenses incurred by the Contractor or its subcontractor for performance of the canceled work;

7-1910.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1910.5 *Right of First Refusal for Employment Openings.* In accordance with 4-1202, insert the clause in 7-104.104.

7-1910.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1910.7 *Patent Rights.* When experimental, developmental or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1910.8 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-1910.9 *Reporting of Royalties.* In accordance with 9-110, insert the clause in 7-104.8(a).

7-1910.10 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1910.11 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-1910.12 *Military Security Requirements.* In accordance with 7-104.12(a), insert the clause therein with the modification specified in 7-204.12.

7-1910.13 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1910.14 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1910.15 *Ocean Transport of Government Owned Supplies.* In accordance with 1-1404(a), insert the clause in 7-104.19(a).

7-1910.16 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1910.17 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-1910.18 *Taxes.* In accordance with 11-403.2, insert the appropriate clause in 7-204.24.

7-1910.19 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-1910.20 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-1910.21 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1910.22 *Value Engineering.* In accordance with 1-1702, insert the appropriate clauses in 7-104.44, substituting the clause paragraph (e)(1)(ii) in 7-204.32(b) or (c) for paragraph (e)(1)(ii) of the clause in 7-104.44 and as modified by clause paragraph (k) in 7-1903.51.

7-1910.23 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1910.24 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1910.25 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-1910.26 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3).

7-1910.27 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-1910.28 *United States Products and Services (Balance of Payments).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-1910.29 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-1910.30 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-1910.31 *Service Contract Act of 1965.* In accordance with 7-1903.41, insert the appropriate clause therein.

7-1910.32 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-1910.33 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1910.34 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1910.35 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1910.36 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1910.37 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1910.38 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1910.39 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1910.40 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1910.41 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1911 Additional Clauses for Use in Cost Reimbursement Service Contracts. The following clauses may be included in cost reimbursement service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1911.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1911.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-1911.3 *Options.* Examples of option clauses appear in 7-104.27 and 7-1903.22. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1911.4 *Stop Work Orders.* In accordance with 7-205.6, the clause prescribed therein may be inserted.

7-1911.5 *Clauses for Contracts Involving Furnishing of Supplies.* In cost reimbursement service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed by 7-1909.

Changes clause in 7-203.2;

Inspection of Supplies and Correction of Defects clause in 7-203.5; and

Walsh-Healey Public Contracts Act clause in 7-103.17.

In addition, applicable clauses in 7-1910 shall be included. Any clause applicable only to supplies or only to services shall be so labeled.

7-2003.80 *Women-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMEN-OWNED BUSINESS (1981 JUL)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a women-owned business. A *women-owned business* is a business that (i) is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. *Control* in this context means exercising the power to make policy decisions. *Operate* in this context means being actively involved in the day-to-day management.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 *Recovered Material.* The following certification shall be inserted in solicitations as required by 1-2500.5(b).

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 *Reserved.*

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services;
(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and
(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1979 SEP)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c, the economic terms of that agreement (or any new CBA negotiated 10 or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.

7-2003.89 *Notice of Cost Comparison.*

(a) Advertised Contracts. In accordance with 4-1202, insert the following provision in solicitations and resultant contracts.

NOTICE OF COST COMPARISON (ADVERTISED) (1980 MAY)

(a) Bidders are notified that this solicitation is a part of a cost comparison to determine whether accomplishing the specified work in-house or by contract is more economical.

(b) The Government's in-house cost estimate shall be based on the statement of work set forth in this solicitation and shall be submitted to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the time of the bid opening, the bids and the sealed Government in-house estimate will be opened and the results announced. This announcement is based upon an initial comparison of the cost of in-house performance with the cost of contracting out as indicated on the cost comparison form. The abstract of bids, the completed cost comparison form and detailed supporting data relative to the in-house cost estimate shall be made available to interested parties for review.

(c) A period of ____ working days will be provided for public review by interested parties of the cost comparison data. No final determination regarding the question of in-house or contractor performance will be made during this review period. Interested parties may file written requests, based on specific objections, for review of the cost comparison results with the Contracting Officer during this period. This review shall only be used to resolve questions concerning the calculation of the cost comparison, and shall not apply to decisions regarding selection of one bidder in preference to another. Decisions with regard to such requests are final.

(d) After evaluation of bids, and resolution of requests for review, if any, the Contracting Officer shall announce the results of the cost comparison and either award a contract or cancel the solicitation. The completed cost comparison analysis shall be made available to interested parties.

(e) In accordance with provisions of the clause "Late Bids, Modifications of Bids or Withdrawal of Bids," a late modification which displaces the otherwise low in-house cost estimate shall not be considered. An otherwise low in-house cost estimate is considered a successful bid and cannot be displaced by a late modification within subparagraph (d) of that clause.

(End of clause)

(b) Negotiated Contracts. In accordance with 4-1202, insert the following provision in solicitations and resultant contracts.

NOTICE OF COST COMPARISON (NEGOTIATED) (1980 MAY)

(a) Offerors are notified that this solicitation is a part of a cost comparison to determine whether accomplishing the specified work in-house or by contract is more economical.

(b) The Government's in-house cost estimate shall be based on the statement of work set forth in this solicitation and shall be submitted to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of evaluation of proposals, negotiation and selection of the most advantageous proposal, the sealed envelope shall be opened by the Contracting Officer in the presence of the preparer of the in-house cost estimate. They shall then make a cost comparison prior to public announcement. Based upon the results of this cost comparison, the following actions shall occur.

(1) If the result is in favor of contracting out and appropriate administrative approval obtained, an award shall be made. The Contracting Officer shall then publicly reveal the completed cost comparison form, the in-house cost estimate and its detailed supporting data, and the awarded contract. However, this award is conditioned upon the offer remaining the more economical alternative after (i) completion of a public review period of ____ working days and (ii) administrative resolution within 30 days of their receipt by the Contracting Officer of all questions raised during the public review period. The Contractor is put on notice that the Government assumes no liability for costs incurred during the periods specified in (i) and (ii) above. After administrative resolution of the questions, if any, filed with the Contracting Officer during the review period in (i) above, the Contracting Officer shall then either notify the Contractor that it may proceed with performance of the contract, or cancel the contract at no cost to either party.

(2) If the result is in favor of in-house performance, the Contracting Officer shall publicly reveal the completed cost comparison form, the in-house cost estimate and its detailed supporting data, and

the price of the most advantageous offer to the Government. After completion of a public review period of ____ working days and administrative resolution of all questions, if any, filed with the Contracting Officer during the review period, the Contracting Officer shall then either, as appropriate, cancel the solicitation or award a contract after obtaining the required administrative approvals.

(d) No final determination regarding the question of in-house or contractor performance will be made during the period provided for public review. Interested parties may file written requests, based on specific objections and review of the in-house cost estimate, with the Contracting Officer during this period. This review shall only be used to resolve questions concerning the calculation of the cost comparison, and shall not apply to questions concerning award to one offeror in preference to another. Decisions with regard to such requests are final.

(e) In accordance with provisions of the clause "Late Proposals, Modifications of Proposals or Withdrawal of Proposal," a late modification which displaces the otherwise low in-house cost estimate shall not be considered. An otherwise low in-house cost estimate is considered a successful proposal and cannot be displaced by a late modification within subparagraph (d) of that clause.

(End of clause)

7-2003.90 Data Universal Numbering System (DUNS) Number Reporting. In accordance with 2-201 and 3-501, insert the following provision.

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (1980 DEC)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following:

Payment in the amount of $_____ approved

8–213.2 *Final Payment.*

(a) *Negotiated Settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by Determination.* In the event of a settlement by determination:

(i) if the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment; or

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7–104.82.

8–214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8–301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15–103(iii)).

8–215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

8–216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6–1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8–802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8–210 and 8–805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6–504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24–205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8–217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7–108.1.

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7–108.1 and paragraph (k) of the clause in 7–108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

Part 6—Termination for Default

8–600 Scope of Part. This Part sets forth policies and procedures for the utilization and application of the Default clause set forth in 7–103.11 for fixed-price supply contracts. (For fixed-price construction contracts, see 18–618. For cost-reimbursement type contracts, see 8–407.)

8–601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform his obligations under the contract.

(b) If the contractor can establish that his failure to perform arose out of causes beyond his control and without his fault or negligence, the contract clauses in 7–103.11 and 7–602.5 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in 7–103.11).

(d) For default terminations of orders under Federal Supply Schedule contracts, see 5–108.

(e) Notwithstanding the provisions of this Part, the purchasing office may reinstate the terminated portion of a contract in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(i) circumstances clearly indicate a requirement for the terminated items; and

(ii) reinstatement is advantageous to the Government; *provided that* the written consent of the contractor is obtained to the reinstatement.

8–602 Termination of Fixed-Price Supply Contracts for Default.

8–602.1 *The Government's Right to Terminate for Default.* Under contracts containing the Default clause in 7–103.11, the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (i) fails to make delivery of the supplies or to perform the services within the time specified in the contract (ii) fails to perform any other provision of the contract, or (iii) fails to make progress so as to endanger performance of the contract.

8–602.2 *Effect of Termination for Default.*

(a) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of advance payments and progress payments, if any, applicable to such work. The Government may elect, pursuant to paragraph (d) of the Default clause 7–103.11), to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, in the manner and to the extent directed by the contracting officer. The PCO shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless he has made certain that the Government does not already have title thereto under some other provision of the contract. In the event manufacturing materials are to be acquired by the Government under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the PCO shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(b) Subject to the provisions of (c) below, the Government shall pay to the contractor the contract price for any completed supplies, and the amount agreed upon by the PCO and the contractor for any manufacturing materials, acquired by the Government pursuant to the Default clause.

(c) To protect the Government from overpayment for any completed supplies or manufacturing materials, that might result from failure to make provision for the Government's potential liability to laborers and materialmen for lien rights outstanding against such supplies or materials after the Government has paid the contractor therefore, the PCO shall take one or more of the following measures before making the payment referred to in (b) above:

(i) ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(ii) require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(iii) obtain appropriate agreement by the Government, the contractor and lienors assuring release of the Government from any potential liability to the contractors or lienors;

(iv) withhold from the amount otherwise due for the supplies or materials such amount as the PCO determines to be necessary to protect the Government's interest, but only if the measures set forth in (i), (ii) and (iii) cannot be accomplished or are otherwise deemed inadequate;

(v) take any other action the PCO deems appropriate considering the particular circumstances and the degree of the contractor's solvency.

(d) The contractor is liable to the Government for any excess costs incurred in procuring supplies and services similar to those terminated for default (see 8–602.6), and for any other damages, whether or not repurchase is effected (see 8–602.7).

8–602.3 *Procedure for Default.*

(a) Where a default termination is being considered, a decision as to the type of termination action to be taken (*i.e.*, for default, for convenience or a no-cost cancellation) shall be made only after review by procurement and technical personnel, and by counsel to assure the propriety of the proposed action. The administrative contracting officer shall not issue a Show Cause Notice or Cure Notice without the prior approval of the purchasing office. Approval should be obtained by the most expeditious means including telephone or other electronic communications media. The PCO shall consider the following factors in determining whether to terminate a contract for default:

(i) the provisions of the contract, and applicable laws and regulations;

(ii) the specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(iii) the availability of the supplies or services from other sources;

(iv) the urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(v) the degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

7-104.65 in all other contracts requiring work on a Government installation. Neither clause is required, however, for contracts (i) of $10,000 or less, (ii) when only a small amount of work is required on a Government installation (*e.g.*, a few brief visits per month), or (iii) when all work on a Government installation is to be performed outside the United States, its possessions, and Puerto Rico. The coverage specified in 10-501 is the minimum insurance required and shall be included in the clause in 7-603.10 or in the contract schedule. Additional coverage and higher limits may be required by the contracting officer.

(b) The clause in 7-104.65 may also be included in contracts described in (a) (i), (ii), and (iii) above when the contracting officer judges this to be in the interest of the Government. In such contracts, if appropriate, any of the kinds of insurance listed in 10-501 may be omitted from the Schedule, and the limits may be lowered.

10-406 Capture and Detention of Contractor Employees. The clause in 7-104.94 is authorized for use when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

Part 5—Insurance Under Cost-Reimbursement Type Contracts

10-500 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under cost-reimbursement type contracts for supplies or services.

10-501 Policy. The types of insurance listed below, with the minimum amounts of liability indicated, ordinarily shall be required in cost-reimbursement contracts and subcontracts thereunder when the provisions of the prime contract are extended to the subcontract. (Insurance written on a single limit basis must be equal to or greater than the combined required minimums indicated.) An approved program of self-insurance, as provided in 10-303, may be substituted for any of the types of insurance ordinarily required.

10-501.1 *Workmen's Compensation and Employers' Liability Insurance.*

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employers' liability section of the insurance policy; however, such additional insurance shall not be required when contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. Employers' liability coverage in the minimum amount of $100,000 shall be required except in states with exclusive or monopolistic funds which do not permit the writing of workmen's compensation by private insurance carriers (Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming). The clause in 7-104.2(a) shall be included in all public work contracts as described therein to be performed outside the United States.

(b) When the clause in 7-104.2(b) is required for contractor programs of self-insurance, and the Chief of the Contracting Office determines that the contractor shall not purchase insurance against the liability described in 10-403(d)(2), the clause in 7-104.2(c) shall be inserted in the contract.

(c) Each contract containing the clause in 7-104.2(c) shall contain:

(i) the estimated cost for war hazard losses;
(ii) the clause at 7-203.4(a) appropriately limited to cover allowable war hazard cost;
(iii) the Examination of Records clause (7-104.15); and
(iv) a provision similar to the following:

> The portion of this contract providing for the Contractor to afford protection to his employees and by subcontractors to their employees against war hazard risks

12-1005.10 *Termination.* See paragraph (i) of 7-1903.41(a).

12-1005.11 *Cooperation With the Department of Labor.* The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1006 Hearings. A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 Procedures for Evaluating Professional Employee Compensation for Service Contracts.

12-1007.1 *Purpose.* The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This subpart provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 *Policy.* It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated. To accomplish this policy, DoD proposal evaluators shall ensure that they fully understand the compensation plan proposed by each offeror within the competitive range. If a particular plan is either unclear or not fully substantiated, the evaluator shall request clarification and/or additional substantiating information, including, as appropriate, recognized national and regional compensation surveys and studies of professional public and private organizations used in establishing the total compensation package.

12-1007.3 *Applicability.* The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;
(ii) the proposed contract will be negotiated;
(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and
(iv) the proposed contract will be in excess of $250,000.

12-1007.4 *Definition of Professional Employee.* The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control, allowance may be at a price when:

(i) it is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 3-807.7(b); or

(ii) it is the result of "adequate price competition" in accordance with 3-807.7, and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity;

provided that in either case:

(1) the price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(2) the price is not determined to be unreasonable by the contracting officer.

The price determined in accordance with (i) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

15-205.23 *Organization Costs.* (CWAS-NA)

(a) Except as provided in (b) below, expenditures in connection with (i) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or (ii) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counsellors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders whether or not additional capital is raised.

(b) The cost of the activities primarily designed for the purposes of providing compensation will not be considered organizational costs subject to this Part, but will be governed by 15-205.6. These activities include the acquisition of stock for (i) executive bonuses, (ii) employee savings plans, and (iii) employee stock ownership plans.

15-205.24 *Other Business Expenses.* (CWAS) Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

15-205.25 *Relocation Costs.*

(a) Relocation costs, for the purpose of this Part, are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated

period of not less than 12 months) (but see (f) below) of an existing employee or upon recruitment of a new employee. These costs may include but are not limited to:

(i) cost of travel of the employee and members of his immediate family (see 15-205.46) and transportation of his household and personal effects to the new location;

(ii) cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition period;

(iii) closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer;

(iv) other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnecting and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property;

(v) loss on sale of home;

(vi) costs incident to the acquisition of a home in a new location;

(vii) continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date or lease date of new permanent residence;

(viii) continuing mortgage principal and interest payments on residence being sold; and

(ix) cost of canceling an unexpired lease.

(b) (CWAS) Subject to (c), (d) and (f) below, relocation costs of the type covered in (a)(i), (ii), (iii), (iv), (vi), (vii) and (ix) above are allowable, *provided*:

(i) the move is for the benefit of the employer;

(ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically;

(iii) the costs are not otherwise unallowable under the provisions of 15-205.33, or any other paragraph of Part 2 (see 15-107 as related to large scale contractor relocation); and

(iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses, except that for costs of the type discussed in (a)(iv), a flat amount, not to exceed $500, may be allowed in lieu of actual (or reasonably estimated) cost.

(c) (CWAS) Costs otherwise allowable under (b) above are subject to the following additional provisions:

(i) the transition period for incurrence of costs of the type covered in (a)(ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 36 days including advance trip time;

(ii) allowance for the combined total of costs of the type covered in (a)(iii) and (a)(vii) above shall not exceed 11.5% of the sales price of the property sold;

(iii) costs of canceling an unexpired lease under (a)(ix) shall not exceed 3 times the monthly rental ; and

(iv) costs incident to the acquisition of a home in a new location if customarily paid by the purchaser are allowable except for the following:

(A) brokers fees and real estate commissions;

(B) costs of litigation;

(C) insurance such as owner's title policy, "record title" policy, mortgage insurance relating to real property and insurance against damage or loss of property (however, cost of a mortgage title policy is allowable);

(D) interest on loans, points, and mortgage discounts;

(E) any fee, cost, charge, or expense which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System; and

(F) property taxes and operating or maintenance costs.

Costs of the type covered in (a)(iii), (a)(iv), (a)(vi) and (a)(vii) above are allowable only in connection with the relocation of existing employees.

(d) (CWAS-NA) Costs of the type covered in (a) (v) and (a)(viii) above are not allowable. Costs of the type covered in (a)(iii), (a)(iv), (a)(vi) and (a)(vii) above are not allowable for newly recruited employees.

(e) (CWAS-NA) Payments for employee income taxes incident to reimbursed relocation costs are unallowable.

(f) If the employee does not remain at the new location for at least 12 months, the costs associated with the relocation are allowable if failure to comply with the 12-month requirement is beyond the control of the employee and the reason is acceptable to the Government.

15-205.26 *Patent Costs.*

(a) (CWAS) Costs of (i) preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures; (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty free license is required by Government contract to be conveyed to the Government; and (iii) general counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable. (But see 15-205.31.)

(b) (CWAS-NA) Costs of preparing disclosures, reports and other documents and of searching the art to the extent necessary to make invention disclosures, if not required by the contract, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application with respect to which the contract does not require conveying title or a royalty free license to the Government, are unallowable. (Also see 15-205.36.)

15-205.27 *Pension Plans.* See 15-205.6.

15-205.28 *Plant Protection Costs.* (CWAS) Costs of items such as (i) wages, uniforms and equipment of personnel engaged in plant protection, (ii) depreciation on plant protection capital assets, and (iii) necessary expenses to comply with military security requirements, are allowable.

15-205.29 *Plant Reconversion Costs.* (CWAS-NA) Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the military contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

15-205.30 *Precontract Costs.* (CWAS-NA) Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract. (But see 15-107.)

15-205.31 *Professional and Consultant Service Costs — Legal, Accounting, Engineering, and Other. (CWAS-NA)*

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to (b), (c), (d), and (e) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 15-205.26).

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(i) the nature and scope of the service rendered in relation to the service required;

(ii) the necessity of contracting for the service considering the contractor's capability in the particular area;

(iii) the past pattern of such costs, particularly in the years prior to the award of Government contracts;

(iv) the impact of Government contracts on the contractor's business (*i.e.*, what new problems have arisen);

(v) whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(vi) whether the service can be performed more economically by employment rather than by contracting;

(vii) the qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-government contracts;

(viii) adequacy of the contractual agreement for the service (*e.g.*, description of the service; estimate of time required, rate of compensation; termination provisions).

(c) In addition to (b) above, retainer fees to be allowable must be supported by evidence that:

(i) the services covered by the retainer agreement are necessary and customary;

(ii) the level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable); and

(iii) the retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, considering factors such as cost, and level of expertise.

(d) Costs of legal, accounting and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see 15-205.23.)

(e) Except for retainers (see (c) above), fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the services furnished. (Also see 15-205.37(c).)

15-205.32 *Gains and Losses on Disposition of Depreciable Property or Other Capital Assets.* (CWAS-NA)

(a) Gains and losses from the sale, retirement or other disposition (but see 15-205.16) of depreciable property, for purposes of computing contract costs,

(i) a one-year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(ii) a multi-year service contract within the coverage of 1-322.6;

(iii) a one-year requirements or indefinite quantity contract, as defined in 3-409.2 and 3-409.3, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (see 1-318); or

(iv) a contract for expert or consultant services entered into in accordance with 22-204.2, or for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

(b) Any contract entered into under the authority of (a)(iii) above shall contain the "*Availability of Funds*" clause in 7-104.91(b).

22-108 Prohibition Against Contracts With Organizations Which Provide Quasi-Military Armed Forces For Hire. 5 U.S.C. 3108 prohibits contracts with "Pinkerton Detective Agencies or similar organizations." This prohibition applies only to entering into a contract with an organization or its employees, regardless of the character of the contract to be performed, if such organization offers quasi-military armed forces for hire. An organization which provides guard or protective services does not thereby become a "quasi-military armed force," even if the individual guards are armed, and even though the organization may also be engaged in the business of providing general investigative or "detective" services.

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SERVICE CONTRACTS

Part 2—Procurement of Expert or Consultant Services

22-200 Scope of Part. This Part sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of expert or consultant services (including stenographic reporting services) from individuals and from firms, regardless of whether personal. This Part does not govern employment of individual experts or consultants by excepted appointment; the requirements for such employment are set forth in personnel regulations of the Civil Service Commission and of the respective Departments.

22-201 Statutory Authority.

(a) Authority for the procurement by contract of expert and consultant services is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the annual Department of Defense Appropriation Act.

(1) 5 U.S.C. 3109 provides:

"(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 5721 of this title; and

(2) "appropriation" includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service,

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services."

(2) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 is section 601 of the Act of September 29, 1965 (P.L. 89-213; 79 Stat. 873), which provides:

"During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: *Provided*, That such contracts may be renewed annually."

(b) Except in the case of stenographic reporting services, contracts with individuals or firms for expert and consultant services are usually negotiated, normally under the authority of 10 U.S.C. 2304 (a) (4), as implemented by 3-204.

DAC #76-28 15 JULY 1981

APPENDIX A

ARMED SERVICES BOARD OF CONTRACT APPEALS

Approved 1 May 1962
Revised 1 May 1969
Revised 1 September 1973
Revised 1 July 1979

Part 1—Charter

1. There is created the Armed Services Board of Contract Appeals which is hereby designated as the authorized representative of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy and the Secretary of the Air Force, in hearing, considering and determining appeals by contractors from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken (a) pursuant to the Contract Disputes Act of 1978 (41 U.S.C. Sect. 601, et seq.), (b) pursuant to the provisions of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or (c) pursuant to the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure. The Board may determine contract disputes for other departments and agencies by agreement. The Board shall operate under general policies established or approved by the Under Secretary of Defense (Research and Engineering).

2. Membership of the Board shall consist of attorneys at law who have been qualified in the manner prescribed by the Contract Disputes Act of 1978. Members of the Board are hereby designated Administrative Judges. There shall be appointed from members of the Board a chairman and two or more vice-chairmen. Appointment of the chairman and vice-chairmen and other members of the Board shall be made by the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement. The chairman and vice-chairmen shall serve in that capacity for a two-year term unless sooner removed or reappointed for an additional term or terms. The Under Secretary will also designate

the order in which the vice-chairmen will act for the chairman in his absence. In the absence of a vice-chairman, the chairman or acting chairman may designate a member of the Board to serve as a temporary vice-chairman.

3. It shall be the duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals on the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

4. The chairman of the Board shall be responsible for establishing appropriate divisions of the Board to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the military department or other procuring agency which entered into the contract. A division may consist of one or more members of the Board. The chairman shall designate one member of each division as the division head. The division heads and the chairman and vice- chairmen shall constitute the senior deciding group of the Board. A majority of the members of a division or of the senior deciding group shall constitute a quorum for the transaction of the business of each, respectively. Decisions of the Board shall be by majority vote of the members of a division participating and the chairman and a vice-chairman, unless the chairman refers the appeal for decision by the senior deciding group. The decision of the Board in cases so referred to the senior deciding group shall be by majority vote of the participating members of that group. The chairman may refer an appeal of unusual difficulty, significant precedential importance, or serious dispute within the normal decision process for decision by the senior deciding group. An appeal involving $50,000 or less may be decided by a single member or fewer members of the Board than hereinbefore provided for cases of unlimited dollar amount, under accelerated or expedited procedures as provided in the Rules of the Board and the Contract Disputes Act of 1978.

5. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Under Secretary of Defense (Research and Engineering) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board,

unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

6. Any member of the Board or any examiner, designated by the chairman, shall be authorized to hold hearings, examine witnesses, and receive evidence and argument for consideration and determination of the appeal by the designated division. A member of the Board shall have authority to administer oaths and issue subpoenas as specified in Section 11 of the Contract Disputes Act of 1978. The chairman may request orders of the court in cases of contumacy or refusal to obey a subpoena in the manner prescribed in that Section.

7. The Chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of the Board with non-member personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

8. The Board will be serviced by the Department of the Army for administrative support for its operations as required. Administrative support will include budgeting, funding, fiscal control, manpower control and utilization, personnel administration, security administration, supplies, and other administrative services. The Departments of the Army, Navy, Air Force and the Office of the Secretary of Defense will participate in financing the Board's operations on an equal basis and to the extent determined by the Assistant Secretary of Defense (Comptroller). The cost of processing appeals for departments and agencies other than those in the Department of Defense will be reimbursed.

9. The chairman of the Board will furnish the Secretary of Defense and to the Secretaries of the Military Departments by October 31 of each year a report containing an account of the Board's transactions and proceedings for

the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Under Secretary of Defense (Research and Engineering), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Logistics Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

10. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals." This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

11. This revised charter is *effective April 21, 1980.*

APPROVED:

W. GRAHAM CLAYTOR, JR.
Deputy Secretary of Defense

CLIFFORD L. ALEXANDER, JR.
Secretary of the Army

E. HIDALGO
Secretary of the Navy

HANS M. MARK
Secretary of the Air Force

Part 2—Rules

Approved 15 July 1963
Revised 1 May 1969
Revised 1 September 1973
Revised 30 June 1980

PREFACE

I. JURISDICTION FOR CONSIDERING APPEALS

The Armed Services Board of Contract Appeals (referred to herein as the Board) shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) relating to contracts made by (i) the Departments of Defense, Army, Navy and Air Force or (ii) any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

II. LOCATION AND ORGANIZATION OF THE BOARD

(a) The Board's address is Hoffman Building #2, 200 Stovall Street, Alexandria, Virginia 22332, telephone (202) 325-9070.

(b) The Board consists of a chairman, two or more vice chairmen, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board members are designated Administrative Judges.

(c) There are a number of divisions of the Armed Services Board of Contract Appeals, established by the Chairman of the Board in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman of the Board act as members of each division. Appeals are assigned to the divisions for decision without regard to the military department or other procuring agency which entered into the contract involved. Hearing may be held by a designated member (Administrative Judge), or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure, the decision of a majority of a division constitutes the decision of the Board, unless the chairman refers the appeal to the Board's Senior Deciding Group (consisting of the chairman, vice chairmen and all division heads), in which event a decision of a majority of that group constitutes the decision of the Board.

Appeals referred to the Senior Deciding Group are those of unusual difficulty, significant precedential importance, or serious dispute within the normal division decision process. For decisions of appeals processed under the expedited or accelerated procedure, see Rules 12.2(c) and 12.3(b).

PRELIMINARY PROCEDURES

1. Appeals, How Taken

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy thereof shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a properly certified claim over $50,000 to the contracting officer or has requested a decision by the contracting officer which presently involves no monetary amount pursuant to the Disputes clause, and the contracting officer has failed to issue a decision within a reasonable time, taking into account such factors as the size and complexity of the claim, the contractor may file a notice of appeal as provided in subparagraph (a) above, citing the failure of the contracting officer to issue a decision.

(d) Upon docketing of appeals filed pursuant to (b) or (c) hereof, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(e) In lieu of filing a notice of appeal under (b) or (c) hereof, the contractor may request the Board to direct the contracting officer to issue a decision in a specified period of time, as determined by the Board, in the event of undue delay on the part of the contracting officer.

2. Notice of Appeal, Contents of

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed personally by the appellant (the contractor taking the appeal), by the appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

3. Docketing of Appeals

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant with a copy of these rules, and to the contracting officer.

4. Preparation, Content, Organization, Forwarding, and Status of Appeal File

(a) *Duties of Contracting Officer* - Within 30 days of receipt of an appeal, or notice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

(1) the decision from which the appeal is taken;

(2) the contract, including pertinent specifications, amendments, plans and drawings;

(3) all correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) any additional information considered relevant to the appeal.

Within the same time above specified the contracting officer shall furnish the appellant a copy of each document he transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished appellant indicating specific contractual documents transmitted will suffice.

(b) *Duties of the Appellant* - Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which he considers relevant to the appeal, and furnish two copies of such documents to the government trial attorney.

(c) *Organization of Appeal File* - Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents* - Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted he shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File* - Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing or, if there is no hearing, of settling the record. If such objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) Notwithstanding the foregoing, the filing of the Rule 4(a) and (b) documents may be dispensed with by the Board either upon request of the appellant in his notice of appeal or thereafter upon stipulation of the parties.

5. Motions

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(b) The Board may entertain and rule upon other appropriate motions.

6. Pleadings

(a) *Appellant* - Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Upon receipt of the complaint, the Board shall serve a copy of it upon the Government. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its complaint and the Government shall be so notified.

(b) *Government* - Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and two copies of an answer thereto. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available. Upon receipt of the answer, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(c) A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 11, 13 or 20. The determination of foreign law shall be treated as a ruling on a question of law.

7. Amendments of Pleadings or Record

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

8. Hearing Election

After filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

9. Prehearing Briefs

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been

elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

10. Prehearing or Presubmission Conference

(a) Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an administrative judge or examiner of the Board for a conference to consider:

(1) simplification, clarification, or severing of the issues;

(2) the possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) agreements and rulings to facilitate discovery;

(4) limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) the possibility of agreement disposing of any or all of the issues in dispute; and

(6) such other matters as may aid in the disposition of the appeal.

(b) The administrative judge or examiner of the Board shall make such rulings and orders as may be appropriate to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the administrative judge or examiner and this writing shall thereafter constitute a part of the record.

11. Submission Without a Hearing

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does

not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submissions to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

These procedures are available solely at the election of the appellant.

12.1 Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures

(a) In appeals where the amount in dispute is $10,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.

(b) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

12.2 The SMALL CLAIMS (EXPEDITED) Procedure

(a) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned administrative judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether either party wants a hearing, and if so, fix a time and place therefor; (iv) require the Government to furnish all the additional documents relevant to the appeal; and (v) establish an expedited schedule for resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge. If there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining such

oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

12.3 The ACCELERATED Procedure

(a) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed or allowed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.

(b) Written decision by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. Alternatively, in cases where the amount in dispute is $10,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single administrative judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

12.4 Motions for Reconsideration in Rule 12 Cases

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

13. Settling the Record

(a) The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

14. Discovery - Depositions

(a) *General Policy and Protective Orders* - The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted* - After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions* - The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence* - No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses* - Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas* - Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service; (b) a request for the admission of specified facts and/or the authenticity of any documents, to be answered or objected to within 45 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and

copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders, and of Rule 35 with respect to sanctions.

16. Service of Papers Other Than Subpoenas

Papers shall be served personally or by mail, addressed to the party upon whom service is to be made. Copies of complaints, answers and briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

HEARINGS

17. Where and When Held

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request or motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

18. Notice of Hearings

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

19. Unexcused Absence of a Party

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

20. Hearings: Nature, Examination of Witnesses

(a) *Nature of Hearings* - Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding administrative judge or examiner. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses* - Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding administrative judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

21. Subpoenas

(a) *General* - Upon written request of either party filed with the recorder, or on his own initiative, the administrative judge to whom a case is assigned or who is otherwise designated by the chairman may issue a subpoena requiring:

(i) testimony at a deposition - the deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(ii) testimony at a hearing - the attendance of a witness for the purpose of taking testimony at a hearing; and

(iii) production of books and papers - in addition to (i) or (ii), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation* - Each party is expected (i) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (ii) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas* -

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify* - Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance* -

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service* -

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who eerves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books or papers the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena* - In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

22. Copies of Papers

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. Post-Hearing Briefs

Post-hearing briefs may be submitted upon such terms as may be directed by the presiding administrative judge or examiner at the conclusion of the hearing.

24. Transcript of Proceedings

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts of the proceedings shall be supplied to the parties at such rates as may be established by contract between the Board and the reporter, provided that ordinary copy of transcript shall be supplied to the appellant at an amount no greater than the cost of duplication.

25. Withdrawal of Exhibits

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

ARMED SERVICES BOARD OF CONTRACT APPEALS

REPRESENTATION

26. The Appellant

An individual appellant may appear before the Board in person, a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

27. The Government

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time.

DECISIONS

28. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board. Decisions of the Board will be made solely upon the record, as described in Rule 13.

(b) Any monetary award to a contractor by the Board shall be promptly paid in accordance with the procedures provided by section 1302 of the Act of July 27, 1956 (70 Stat. 694, as amended; 31 U.S.C. 724a). To assure prompt payment the Recorder will forward a waiver form to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute waivers which so state, and return them to the Recorder. The Recorder will forward the waivers and a certified copy of the award decision to the General Accounting Office for certification for payment.

ARMED SERVICES BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION

29. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

SUSPENSIONS, DISMISSALS AND DEFAULTS: REMANDS

30. Suspensions; Dismissal Without Prejudice

The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

31. Dismissal or Default for Failure to Prosecute or Defend

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 35. If good cause is not shown, the Board may take appropriate action.

32. Remand from Court

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders shall conform to these rules.

TIME, COMPUTATION AND EXTENSIONS

33. Time, Computation and Extensions

(a) Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time shall be in writing.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

EX PARTE COMMUNICATIONS

34. Ex parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

35. Sanctions

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

36. Effective Date

These rules shall apply (i) mandatorily, to all appeals relating to contracts entered into on or after 1 March 1979, and (ii) at the contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on 1 March 1979 or initiated thereafter.

ARMED SERVICES BOARD OF CONTRACT APPEALS

Pursuant to the Charter of the Armed Services Board of Contract Appeals, the attached rules are hereby approved for use and application to appeals to the Armed Services Board of Contract Appeals under the Contract Disputes Act of 1978.

(signed) WILLIAM J. PERRY (30 JUN 1980)
UNDER SECRETARY OF DEFENSE FOR
RESEARCH AND ENGINEERING

(signed) PERCY A. PIERRE
ASSISTANT SECRETARY OF THE ARMY
(RESEARCH, DEVELOPMENT AND
ACQUISITION)

(signed) J. A. DOYLE
ASSISTANT SECRETARY OF THE NAVY
(MANPOWER, RESERVE AFFAIRS AND
LOGISTICS)

(signed) EUGENE H. KOPF
(ACTING) ASSISTANT SECRETARY OF THE AIR FORCE
(RESEARCH, DEVELOPMENT AND
LOGISTICS)

MATERIAL INSPECTION AND RECEIVING REPORT

(3) On the next printing lines: the MIPR number prefixed by "MIPR" or the MILSTRIP requisition number(s) when provided in the contract, or shipping instructions followed on the same line, when more than one requisition is entered, by the unit for payment and the quantity shipped against each requisition.

Example:
V04696018507S0XY19059A — EA 5
N00188017760 38XY3211BA — EA 200
AT650803050051AAT6391J — EA 1000

(4) When a TCN is assigned for each line item, enter on the next line the Transportation Control Number prefixed by "TCN".

(b) When acceptance of a service line item (as differentiating from supplies) is involved, enter the word "SERVICE" followed by as specific a description as is possible in no more than 20 additional characters. Some examples of service line items are maintenance, repair, alteration, rehabilitation, engineering, research, development, training, and testing. Do not complete Blocks 4, 13 and 14 when shipment of materiel is not involved in the service.

(c) For all contracts administered by Defense Contract Administration Services, with the exception of fast pay procedures, enter and complete the following:

Gross Shipping Wt. _____.

State weight in pounds only.

(d) In addition to entries required above, starting with the next line, enter the following as appropriate (entries may be extended through Block 20). When entries are applicable to more than one line item in the MIRR, such data may be entered only once after the last line item entry referencing applicable line item numbers.

(1) Enter in capital letters any special handling instructions/limits for material environmental control, *e.g.*, temperature, humidity, aging, freezing, shock, etc.

(2) When a shipment is chargeable to Navy appropriation 17X4911, enter the appropriation, Bureau Control Number (BCN), and Authorization Accounting Activity (AAA) Number (*e.g.*, 17X4911–14003–104).

(3) When the Navy transaction type code (TC), "2T" or "7T" is included in the appropriation data, enter "TC 2T" or "TC 7T".

(4) When an NSN is required by but not cited in a contract and has not been furnished by the Government, shipment may be made without such NSN at the direction of the contracting officer. Enter the authority for such shipment.

(5) When Government furnished property (GFP) is included with or incorporated into the line item, enter the letters "GFP".

(6) When shipment consists of replacements for supplies previously furnished, enter in capital letters "REPLACEMENT SHIPMENT." (See I–301, Block 17, for replacement indicators).

(7) On shipments of Government Furnished Aeronautical Equipment (GFAE) under Air Force contracts, the assignment AERNO control number will be entered, *e.g.*, "AERNO 60–6354."

(8) For items shipped with missing components, enter and complete the following: "Item(s) shipped short of the following component(s): NSN or comparable Identification....., Quantity....., Estimated Value....., Authority....."

MATERIAL INSPECTION AND RECEIVING REPORT

(9) When shipment is made of components which were short on a prior shipment, enter and complete the following: "These components were listed as shortages on shipment number....., date shipped....."

(10) When shipments involve drums, cylinders, reels, containers, skids, etc., designated as returnable under contract provisions, enter and complete the following: "Return to....., Quantity....., Item....., Ownership (*Government/contractor*)."

(11) Enter the total number of shipping containers, the type of containers, and the container number(s) assigned for the shipment.

(12) On Foreign Military Sales (FMS) or Military Assistance Program (MAP) (Grant Aid) shipments, enter the special markings, the applicable FMS country and case identifier or MAP Record Control/Program/Directive Number identifier as provided in the contract, and the gross weight.

(13) Reserved.

(14) Reserved.

(15) When test/evaluation results are a condition of acceptance and are not available prior to shipment, the following note shall be entered if the shipment is approved by the ACO/PCO: "Note: Acceptance and payment are contingent upon receipt of approved test/evaluation results." The ACO/PCO shall advise (a) the consignee of the results (approval/disapproval) and (b) the contractor to withhold invoicing pending attachment to his invoice of the approved test/evaluation results.

(16) The copy of the DD Form 250 required to support payment for destination acceptance (top copy of those with shipment) or ARP origin acceptance shall be identified as follows: enter "PAYMENT COPY" in approximately one-half inch outline type style letters with "FORWARD TO BLOCK 12 ADDRESS" in approximately one-quarter inch letters immediately below. Do not obliterate any other entries.

(17) For Clothing and Textile contracts containing a bailment clause, enter the words "GFP UNIT VALUE."

(18) When the initial unit incorporating an approved Value Engineering Change Proposal (VECP) is shipped, enter the following statement:

This is the initial unit delivered which incorporates VECP No. .....,
Contract Modification No. ....., dated .....

Block 17—QUANTITY SHIPPED/RECEIVED.

(a) Enter the quantity shipped, using the unit of measure indicated in the contract for payment. When a second unit of measure is used for purposes other than payment, enter the appropriate quantity directly below in parentheses.

(b) On the final shipment of a line item of a contract containing a clause permitting a variation of quantity and an underrun condition exists, the prime contractor shall enter a "Z" below the last digit of the quantity. Where the final shipment is from other than the prime contractor's plant and an underrun condition exists, the prime contractor may elect either to: (i) direct the subcontractor making the final shipment to enter a "Z" below the quantity, or (ii) upon determination that all subcontractors have completed their shipments, correct the DD Form 250 (see I–305) covering the final shipment of the line item from the prime contractor's plant by addition of a "Z" below the quantity. The "Z" shall not be used on deliveries which equal or exceed the contract line item quantity.

[illegible]

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 81–29306 Filed 10–13–81; 8:45 am]
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federal register

Wednesday
October 14, 1981

Part IV

Department of Health and Human Services

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance Benefits and Supplemental Security Income for the Aged, Blind, and Disabled; Payment to States for Successful Rehabilitation Services

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance Benefits and Supplemental Security Income for the Aged, Blind, and Disabled; Payment to States for Successful Rehabilitation Services

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: These regulations for providing payments for vocational rehabilitation (VR) services implement sections 2209 and 2344 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, which amends sections 222(d) and 1615(d) of the Social Security Act. The intent of these sections is to give rehabilitation agencies an incentive to rehabilitate beneficiaries under titles II and XVI, but to greatly improve the cost effectiveness of use of Social Security Trust Funds for rehabilitation of beneficiaries and to that end to limit reimbursement for VR services to cases of successful rehabilitations attributable to VR agency involvement. The regulations will provide for payment to the States, on a case-by-case basis, and subject to certain conditions, for each person successfully rehabilitated.

DATES: Comments must be received on or before December 14, 1981.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 Between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7337.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 replaced the system under which State VR agencies were given a lump sum advancement to cover costs they might incur in attempting to rehabilitate beneficiaries under titles II and XVI with a system under which States or other participants will be paid only for successful rehabilitations on a case-by-case basis.

Under prior law the Secretary was authorized to make available each year up to 1½ percent of the disability benefits paid under title II in the preceding year from the Trust Funds, and an appropriated amount under title XVI from general revenue funds, to cover the costs incurred by States in attempting to rehabilitate title II beneficiaries and title XVI recipients. These funds have ben disbursed to the individual States by the Rehabilitation Services Administration (RSA), Department of Education, through its grant system, based on various allocation formulas. That arrangement is no longer appropriate, because Pub. L. 97–35 requires the Secretary to reimburse the States on a case-by-case basis, subject to conditions which require us to deal directly with the States. These regulations will serve as the basis for reimbursement of the States for VR.

Beginning October 1, 1981, the rehabilitation of disabled persons under title II and disabled/blind persons under title XVI will not be financed in any major way from funds under title II or title XVI. Financing will be the primary responsibility of the States using funds appropriated to administer the basic rehabilitation grant program provided by the Rehabilitation Act of 1973. Pub. L. 97–35 authorizes the Secretary to reimburse the States from titles II and XVI funds only for the successful rehabilitation of titles II and XVI beneficiaries as determined under criteria established by the Commissioner of Social Security. No payments can be made under these provisions for VR services provided prior to October 1, 1981.

Regulatory Provisions

The proposed regulations will apply to the payment of the costs for successfully rehabilitating title II disability beneficiaries and title XVI disabled and blind recipients. They will reflect and implement sections 2209 and 2344 of Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981.

The regulations will provide for a method of payment to the States or alternate participants of the costs (subject to limitations set in these regulations) of services provided to persons who have been able to return to the performance of substantial gainful activity (SGA) for a continuous period of not less than 9 months. By alternate participants we mean other public or private agencies, organizations, institutions, or individuals with whom the Commissioner has entered into an agreement or contract to provide VR services.

The regulations will require that each State notify us by April 1, 1982, whether it intends to participate in the new titles II and XVI VR programs. If a State is unwilling to participate, the regulations specify that the Commissioner may provide VR services by agreement or contract with other public or private agencies, organizations, institutions or individuals. We will contact each State in advance of April 1, 1982, to assure that all States are aware of the deadline. We currently are considering whether States that express a willingness to participate should also be required to achieve specified levels of performance and, if so, what levels of performance should be required. We welcome suggestions in this regard.

The law provides that payments may be made in advance (based on expected reimbursements) or by reimbursement. However, under the regulations, we will not advance funds in fiscal year 1982. After fiscal year 1982, we will decide on the basis of our experience whether we can make sufficiently accurate estimates to advance funds (§ 404.2118).

These regulations will also provide the criteria SSA will use in determining whether VR significantly "contributed" to an individual's ability to engage in SGA for a continuous period. These criteria differentiate between three types of situations:

1. The person who has completed a "continuous period" of SGA and has not medically recovered;

2. The person who has completed a "continuous period" of SGA and has medically recovered before completion of that period as expected by us (we had scheduled a medical reexamination);

3. The person who has completed a "continuous period" of SGA, has medically recovered, but was not expected by us to so recover.

In the first situation, if the individual's continuous period began less than a year after VR services ended, we will ordinarily consider that any VR services provided contributed significantly (at least had a motivating effect) to a continuous period and potential savings. If the individual's continuous period began more than five years after VR services ended, we will not consider VR services to have had a significant effect on the individual's work effort. If the continuous period began between one and five years after VR ended, our determination to pay for VR services will depend on whether the continuous period evolved from "transitional work" attributable to VR or, if it did not,

whether it could have occurred without the VR having been provided.

In the second situation, we will assume VR did not contribute, regardless of the services provided, since reimbursement will be made only where it can be demonstrated that the services resulted in the disabled individual's leaving the benefit rolls. The chief criticism of the prior VR programs under titles II and XVI has been that the States have served many individuals who were expected by us to medically recover, who did recover and would have recovered regardless of VR services. GAO has strongly recommended (GAO Report, HRD–81–22, November 10, 1980) that the Social Security trust funds should not finance VR in cases involving expected medical recovery.

In the third situation, we will assume that VR significantly contributed to a person's ability to engage in SGA only if the person's individualized written rehabilitation program included medical services, and there is an evident link between those medical services and medical recovery.

Because medical recovery is based on medical improvement and not return to work, VR services which contributed to work activity without contributing to the medical improvement which led to recovery will not produce a savings to the trust funds. (In such cases, termination of benefits would have occurred regardless of whether VR services were provided.)

These regulations explain that we will generally consider a person to have a "continuous period" of SGA if he or she worked at the SGA level for at least 9 consecutive months, or under certain very limited conditions, if he or she worked at that level 9 out of 12 months.

These regulations also provide the criteria to be used in determining the amount of reimbursement. Among these criteria are:

1. The cost to be reimbursed must have been incurred while the individual was disabled;

2. The cost must not have been reimbursed, or be reimbursable, from another source.

3. The total reimbursement must not be so high as to preclude a savings to the titles II and XVI funds. Savings will be computed by estimating the value of the benefits we will not have to pay and comparing that value to VR expenditures.

The regulations also provide for us to reimburse the States for administrative costs on a formula basis for the convenience of the States, because they now account for such costs on a formula basis. However, we will reconsider this arrangement after we gain more experience with the program, so as to determine whether it is cost effective.

The regulations stipulate that the States or alternate participants must claim reimbursement before SSA will consider paying it.

The regulations will provide procedures the States must follow if they wish to dispute an adverse determination regarding (1) the impact of VR services on an individual's performance of a continuous period of SGA or (2) the amount of costs to be reimbursed.

The regulations will provide for audit of expenditures which were the basis for reimbursement.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291. Because these regulations do not create costs of $100 million or more or otherwise meet the threshold of the Executive Order, we have determined that they do not constitute a major rule, and that a regulatory impact analysis is not required.

These regulations implement a change which responds to long-standing criticisms of the cost-effectiveness of SSA's VR programs. In reports issued in 1976 (GAO Report MWD 76–66) and 1980 (GAO Report, HRD 81–22), GAO stated that the title II rehabilitation program only marginally fulfilled the intent of the law, which was to save Trust-Fund resources by returning disabled beneficiaries to productive work. In a report issued in 1979 (GAO report HRD 79–2) GAO indicated that the title XVI VR program was not even marginally meeting the intent to save general revenues.

We proposed in the Spring of this year that Congress terminate the titles II and XVI VR programs effective with FY 1982 and eliminate all VR funding under the Social Security Act. Congress terminated those programs as recommended but replaced them with two programs requiring funding of VR under the Act but well below the level of the prior programs. The new programs are the subject of these regulations. Therefore, cost reductions in excess of $100 million dollars from abolition of the old programs merely implement decisions made in the budgetary process and are not caused by these regulations.

Regulatory Flexibility Act

These regulations are primarily directed at States. However, if States elect not to participate, or are not qualified to do so, the regulations will impact on any alternate participants who are chosen to provide VR services. We do not know how many States will not participate and thus how many alternate participants may be involved. Nevertheless, we have no reason to believe these regulations will have a significant economic impact on a substantial number of small entities. Accordingly, we certify that a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required. Certainly, there is nothing in these regulations which would directly and adversely impact on small entities.

Paperwork Reduction Act

The Department is required to submit to the Office of Management and Budget for review and approval §§ 404.2104 (b) and (c)(1), 404.2108(a), 416.2204 (b) and (c)(1), and 416.2208(a) of the regulations which deal with reporting requirements. These sections require States to declare their intent to participate and require participating States (or alternate participants) to file a claim to receive reimbursement. These reporting requirements will be submitted to the Office of Management and Budget for review and approval prior to issuing final regulations.

(Catalog of Federal Domestic Assistance Program No. 13.625, Vocational Rehabilitation Services for Social Security Disability Beneficiaries; No. 13.624, Rehabilitation Services and Facilities-Basic Support)

Dated; September 9, 1981.

Robert J. Myers,

Acting Commissioner of Social Security.

Approved: September 24, 1981.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

1. A new Subpart V is added to Part 404 to read as follows:

Subpart V—Payments to States for Successful Rehabilitation Services

General Provisions

Sec.
404.2101 General.
404.2102 Purpose and scope.
404.2103 Definitions.
404.2104 Participation by States or alternate participants.

Reimbursement Provisions

404.2108 Requirements for reimbursement.
404.2109 Responsibility for making reimbursement decisions.

404.2110 What we mean by "SGA for a continuous period of nine months".
404.2111 Criteria for determining when VR will be considered to have contributed to a continuous period of SGA.
404.2112 What services may be reimbursed.
404.2113 When services must have been provided.
404.2116 What costs will be reimbursed.

Administrative Provisions

404.2117 Applicability of these provisions to alternate participants.
404.2118 Method of payment.
404.2121 Audits.
404.2122 Confidentiality of information and records.
404.2123 Other Federal laws and regulations.
404.2127 Resolution of disputes.

Authority: Issued under secs. 205, 222, and 1102 of the Social Security Act; 49 Stat. 624, 68 Stat. 1082, 49 Stat. 647; (42 U.S.C. 405, 422, and 1302); sec. 2209 of Pub. L. 97–35.

Subpart V—Payments to States for Successful Rehabilitation Services

General Provisions

§ 404.2101 General.

Section 222(d) of the Social Security Act provides for payment from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of such funds as may be necessary to reimburse the States for the reasonable and necessary costs of vocational rehabilitation (VR) services which result in individuals entitled under sections 223, 202(d), 202(e) and 202(f) of the Social Security Act performing substantial gainful activity (SGA) for a continuous period of at least nine months. The purpose of this section is that savings accrue to the Federal Old-Age and Survivors Trust Fund and the Federal Disability Insurance Trust Fund.

§ 404.2102 Purpose and scope.

This subpart describes the rules under which the Secretary will reimburse the State VR agencies or alternate participants for VR services which result in an individual's return to SGA for a continuous period of at least nine months. It also provides the criteria for determining whether VR services furnished to the individual significantly contributed to his or her successful return to SGA and the amount of the State's costs that will be reimbursed.

(a) Sections 404.2101–404.2103 describe the purpose of these regulations and the meaning of terms we frequently use in them.

(b) Section 404.2104 describes the requirement that States declare their intent to participate or not participate.

(c) Sections 404.2108–404.2109 describe the requirements of and conditions under which we will reimburse a State under this subpart.

(d) Sections 404.2110–404.2111 describe when a person has completed a continuous period of SGA and when VR will be considered to have significantly contributed to that period.

(e) Sections 404.2112–404.2113 describe reimbursable services.

(f) Section 404.2116 describes the payment conditions.

(g) Section 404.2117 describes the applicability of the regulations to alternate participants.

(h) Section 404.2118 describes how we will make payment to States for successful rehabilitation services.

(i) Section 404.2121 describes audits we will make.

(j) Section 404.2122 discusses confidentiality of information and records.

(k) Section 404.2123 provides for the applicability of other Federal laws and regulations.

(l) Section 404.2127 provides for the resolution of disputes.

§ 404.2103 Definitions.

For purposes of this subpart:

"Act" means the Social Security Act, as amended.

"Disability" means "disability" or "blindness" as defined in sections 216(i) and 223 of the Act.

"SGA" means substantial gainful activity performed by an individual as defined in §§ 404.1571–404.1575 and 404.1584 of this subpart.

"Medical recovery" occurs when a person's physical or mental condition has improved to the extent that he or she is able to perform SGA, regardless of whether such person actually engages in SGA.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.

"Commissioner" means the Commissioner of Social Security or his designee.

"State" means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, or Guam. It includes the State VR agency.

"VR Agency" means that agency of the State which has been designated by the State to provide vocational rehabilitation services under title I of the Rehabilitation Act of 1973.

"Alternate Participants" means other public or private agencies, organizations, institutions, or individuals with whom the Commissioner has entered into an agreement or contract to provide VR services.

"Disability beneficiary" means a disabled individual who is entitled to benefits under sections 223, 202(d), 202(e), or 202(f) of the Act.

"Trust Funds" means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

"We", "us" and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

"Vocational Rehabilitation Services" has the meaning assigned to it under title I of the Rehabilitation Act of 1973.

§ 404.2104 Participation by States or alternate participants.

(a) In order to participate, a State must have a plan which meets the requirements of title I of the Rehabilitation Act of 1973.

(b) *State decision.* The option of participation in the reimbursement program covered by this regulation will be offered first to the States. Each State must notify the regional commissioner (SSA) in writing by April 1, 1982, whether it will participate in the program. The notice must be from an official authorized to act for the State for this purpose. The State must provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

(c) *Nonparticipation after March 31, 1982.* (1) If a participating State subsequently decides to withdraw from participation, the withdrawal must be made in writing to the regional commissioner (SSA) at least 90 days prior to withdrawal. This notice must be submitted under the same conditions as specified in § 404.2104(b).

(2) The Commissioner will declare a State unwilling to participate if:

—The State has notified us that it does not intend to participate.

—The State fails to notify us by April 1, 1982, of its intent to participate.

(d) *Alternate participants.* In any State where the State has decided not to (or demonstrated its unwillingness to) participate in the program, we may arrange for VR services through an alternate participant by agreement or contract.

Reimbursement Provisions

§ 404.2108 Requirements for reimbursements.

(a) The State must file a claim for reimbursement in each individual case;

(b) The VR services for which reimbursement is being requested must have been provided on or after October 1, 1981;

(c) The services must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973;

(d) The services must have been provided while the individual was entitled to disability insurance benefits under section 202 or 223 of the act or during such individual's waiting period;

(e) The individual must have performed SGA for a continuous period of at least 9 months (See § 404.2110);

(f) The VR services must have contributed to the individual's return to SGA for a continuous period of at least 9 months (See § 404.2111);

(g) The State must provide adequate documentation of services and costs; and

(h) The amount to be reimbursed must be reasonable and necessary. (See § 404.2116(f))

§ 404.2109 Responsibility for making reimbursement decisions.

The Commissioner will decide:

(a) Whether a continuous period of SGA has been completed;

(b) Whether documentation of VR services and expenditures is adequate;

(c) Whether VR services contributed to the continuous period of SGA; and

(d) What VR costs were reasonable and necessary and will be reimbursed.

§ 404.2110 What we mean by "SGA for a continuous period of nine months".

(a) *What we mean by "SGA".* In determining whether a person's work is SGA we will follow the rules in §§ 404.1572–404.1575. We will follow these same rules for persons who are statutorily blind, but we will evaluate the earnings in accordance with the rules in § 404.1584(d).

(b) *What we mean by "a continuous period of nine months".* A continuous period of 9 months ordinarily means a period of 9 consecutive calendar months. Exception: In the rare case when a person does not perform SGA in 9 consecutive calendar months, he or she will be considered to have done so if—

(1) The person performs 9 months of SGA within 10 consecutive months and has monthly earnings over the 10-month period that meet or exceed the guidelines in § 404.1574(b)(2), or § 404.1584(d), if the person is statutorily blind, or

(2) The person performs at least 9 months of SGA within 12 consecutive months, and the reason for not performing SGA in 2 or 3 of those months was due to circumstances beyond his or her control and unrelated to the impairment (e.g., the employer closed down for 3 months).

(c) *What work we consider.* All of a person's work activity will be evaluated for purposes of this subpart, even if such work was performed in the waiting period, during a trial work period, or after entitlement to disability ended.

§ 404.2111 Criteria for determining when VR services will be considered to have contributed to a continuous period of SGA.

(a) *Continuous period without medical recovery.* If an individual who has completed a "continuous period" of SGA, has not medically recovered as of the date of completion of the period, the determination as to whether VR services contributed will depend on whether the continuous period began: Less than one year after VR services ended; between one and five years after VR services ended; or more than five years after VR services ended.

(1) *Less than one year.* Any VR services which might have significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have significantly contributed to the continuous period.

(2) *Between one and five years.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved into SGA), and that work activity began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period if it is clear that VR services contributed to the transitional work activity.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the services (e.g., training) the State provided.

(3) *More than five years.* If the continuous period began more than five years after VR services ended, VR services will not be considered to have contributed to the continuous period.

(b) *Continuous period with medical recovery occurring before completion.* If an individual medically recovers before a continuous period has been completed, VR services will not be reimbursable unless those services directly and significantly contributed to the medical improvement which was the basis for medical recovery. VR will be considered to have directly and significantly contributed to the medical improvement if—

(1) We did not expect the medical recovery to occur (the individual was not scheduled for a medical reexamination when recovery occurred);

(2) The individualized written rehabilitation program (IWRP) included medical services; and

(3) The medical improvement which led to medical recovery occurred, at least in part, because of these medical services. (For example, the individual's medical recovery was based on improvement in a back condition which, at least in part, stemmed from surgery provided under an IWRP).

§ 404.2112 What services may be reimbursed.

All services provided in accordance with title I of the Rehabilitation Act of 1973 may be reimbursable, subject to the conditions and limitations in §§ 404.2113 and 404.2116 of this subpart. This includes general diagnostic and evaluation services provided to determine eligibility for VR services and all services provided under an IWRP, including extended evaluation, regular case services and post employment services.

§ 404.2113 When services must have been provided.

To be reimbursable the services must have been provided:

(a) After September 1981;

(b) No earlier than the beginning of the waiting period or the first month of entitlement, if no waiting period is required; and

(c) Before completion of a continuous period of SGA or termination of benefits, whichever comes earlier.

§ 404.2116 What costs will be reimbursed.

If VR services provided to an individual contributed to the individual's continuous period of SGA, the Secretary will reimburse the State for all VR services performed during the period described in § 404.2113, but subject to the following limitations:

(a) The cost must have been incurred by the State;

(b) The cost must not have been reimbursed or be reimbursable from some other source (States will be expected to seek reimbursement from other sources in accordance with the "similar benefit" provisions under 45 CFR 1361.45(b));

(c) If the cost of a service substantially exceeded the usual cost to the agency for that service, and the excess has not been adequately explained, reimbursement will be limited to the usual cost;

(d) Maintenance payments will be reimbursed only if they are provided to an individual who must be away from home in order to receive rehabilitation

services; the amount reimbursed will not exceed the amount of increased expenses which the individual incurred as a result of being away from home;

(e) Total reimbursement, including any prior reimbursement related to an earlier continuous period of SGA, must not be so high as to preclude a net "savings" (the estimated value of the benefits that will not have to be paid must exceed the total reimbursement); and

(f) Any reimbursement for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A-87, published at 46 FR 9548 on January 28, 1981.

(g) Reimbursement will also be made for administrative costs. This reimbursement may be on a formula basis, if a State prefers. The formula will be negotiated. The reimbursement will also be subject to the preceding limitations.

Administrative Provisions

§ 404.2117 Applicability of these provisions to alternate participants.

When an alternate participant provides rehabilitation services under this subpart, the reimbursement procedures stated herein shall apply except that:

(a) Reimbursement must be consistent with the cost principles described in 45 CFR Part 74 or 41 CFR Part 1-15 as appropriate; and

(b) Any disputes, including appeals of adult determinations, shall be resolved in accordance with applicable statutes and regulations.

§ 404.2118 Method of payment.

(a) *For fiscal year 1982.* No funds will be advanced to the States for use in fiscal year 1982. Services provided in fiscal year 1982 are reimbursable under the conditions of these regulations.

(b) *For fiscal years after 1982.* Payment to the States for successful services will be made either by advancement of funds or by reimbursement, as decided by the Commissioner.

§ 404.2121 Audits.

(a) *General.* The State or alternate participant will permit us and the Comptroller General of the United States (including duly authorized representatives) access to and the right to examine records relating to the services or administrative costs for which reimbursement was made under these regulations. These records will be retained by the State or alternate participant for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR Parts 1-20).

(b) *Audit basis.* Auditing will be based on cost principles and written guidelines in effect at the time services were performed and costs were incurred. The State or alternate participant will be informed and given a full explanation of any questioned items. They will be given a reasonable time to explain questioned items. Any explanation furnished by the State or alternate participant will be given full consideration before a final determination is made on questioned items in the audit report.

(c) *Appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State or alternate participant in writing of his or her determination on the audit report. If the State disagrees with that determination, it may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later than 45 days from the date of the appeal. The decision by the Commissoner will be final and conclusive unless the State appeals that decision in writing to the Department of Health and Human Services, Departmental Grant Appeals Board within 30 days after receiving the Commissioner's decision. See § 404.2127.

§ 404.2122 Confidentiality of information and records.

The State or alternate participant will comply with the provisions for confidentiality of information, including the Security of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 404.2123).

§ 404.2123 Other Federal laws and regulations.

Each State and alternate participant will comply with the provision of other Federal laws and regulations that directly affect its responsibilities in carrying out the vocational rehabilitation function.

§ 404.2127 Resolution of disputes.

(a) *Disputes on the amount to be reimbursed.* The appropriate SSA official will notify the State in writing of his or her determination concerning the amount to be reimbursed. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the notice of determination. The written request may be made through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination in accordance with criteria outlined in 45 CFR 74.304 and notify the State of that decision in writing no later than 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing to the Health and Human Services Departmental Grant Appeals Board within 30 days after receiving the Commissioner's decision in-accordance with 45 CFR Part 16.

(b) *Disputes on whether there was a continuous period of SGA and whether VR services contributed to a continuous period of SGA.* The rules in paragraph (a) of this section will apply, except that the Commissioner's decision will be final and conclusive. There is no appeal to the Grant Appeals Board.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

1. A new Subpart V is added to Part 416 to read as follows:

Subpart V—Payments to States for Successful Rehabilitation Services

General Provisions

Sec.

416.2201 General.
416.2202 Purpose and scope.
416.2203 Definitions.
416.2204 Participation by States or alternate participants.

Reimbursement Provisions

416.2208 Requirements for reimbursement.
416.2209 Responsibility for making reimbursement decisions.
416.2210 What we mean by "SGA for a continuous period of nine months".
416.2211 Criteria for determining when VR will be considered to have contributed to a continuous period of SGA.
416.2212 What services may be reimbursed.
416.2213 When services must have been provided.
416.2216 What costs will be reimbursed.

Administrative Provisions

416.2217 Applicability of these provisions to alternate participants.

Sec.
416.2218 Method of payment.
416.2221 Audits.
416.2222 Confidentiality of information and records.
416.2223 Other Federal laws and regulations.
416.2227 Resolution of disputes.

Authority: Issued under secs. 1102 and 1615 of the Social Security Act; 49 Stat. 647, 86 Stat. 1474 (42 U.S.C. 1302, and 1382d); sec. 2344 of Pub. L. 97-35.

Subpart V—Payments to States for Successful Rehabilitation Services

General Provisions

§ 416.2201 General.

Section 1615(d) of the Social Security Act provides for reimbursement to the States for the reasonable and necessary costs of vocational rehabilitation (VR) services which result in individuals eligible under sections 1614(a)(2) and 1614(a)(3) of the Social Security Act performing substantial gainful activity (SGA) for a continuous period of at least nine months.

§ 416.2202 Purpose and scope.

This subpart describes the rules under which the Secretary will reimburse the State VR agencies or alternate participants for VR services which result in an individual's return to SGA for a continuous period of at least nine months. It also provides the criteria for determining whether VR services furnished to the individual significantly contributed to his or her successful return to SGA and the amount of the State's costs that will be reimbursed.

(a) Sections 416.2201–416.2203 describe the purpose of these regulations and the meaning of terms we frequently use in them.

(b) Section 416.2204 describes the requirement that States declare their intent to participate or not participate.

(c) Sections 416.2208–416.2209 describe the requirements of and conditions under which we will reimburse a State under this subpart.

(d) Sections 416.2210–416.2211 describe when a person has completed a continuous period of SGA and when VR will be considered to have significantly contributed to that period.

(e) Sections 416.2212–416.2213 describe reimbursable services.

(f) Section 416.2216 describes the payment conditions.

(g) Section 416.2217 describes the applicability of the regulations to alternate participants.

(h) Section 416.2218 describes how we will make payment to States for successful rehabilitation services.

(i) Section 416.2221 describes audits we will make.

(j) Section 416.2222 discusses confidentiality of information and records.

(k) Section 416.2223 provides for the applicability of other Federal laws and regulations.

(l) Section 416.2227 provides for the resolution of disputes.

§ 416.2203 Definitions.

For purposes of this subpart:

"Act" means the Social Security Act, as amended.

"Disability" means "blindness" or "disability" as defined in sections 1614(a)(2) or 1614(a)(3) of the Act.

"SGA" means substantial gainful activity performed by an individual as defined in §§ 416.971–416.975 of this subpart and 404.1584 of this chapter.

"Medical recovery" occurs when a person's physical or mental condition has improved to the extent that he or she is able to perform SGA, regardless of whether such person actually engages in SGA.

"Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.

"Commissioner" means the Commissioner of Social Security or his designee.

"State" means any of the 50 States of the United States, the District of Columbia, or the Northern Mariana Islands. It includes the State VR agency.

"VR Agency" means that the agency of the State which has been designated by the State to provide vocational rehabilitation services under title I of the Rehabilitation Act of 1973.

"Alternate Participants" means other public or private agencies, organizations, institutions, or individuals with whom the Commissioner has entered into an agreement or contract to provide VR services.

"Disability recipient" means a disabled individual who is eligible for benefits under sections 1614(c)(2) or 1614(c)(3) of the Act.

"We", "us" and "our" refers to the Social Security Administration (SSA) or the Secretary, as appropriate.

"Vocational Rehabilitation Services" has the meaning assigned to it under Title I of the Rehabilitation Act of 1973.

§ 416.2204 Participation by States or alternate participants.

(a) In order to participate, a State must have a plan which meets the requirements of Title I of the Rehabilitation Act of 1973.

(b) *State decision.* The option of participation in the reimbursement program covered by this regulation will be offered first to the States. Each State must notify the regional commissioner (SSA) in writing by April 1, 1982, whether it will participate in the program. The notice must be from an official authorized to act for the State for this purpose. The State must provide an opinion from the State's Attorney General verifying the authority of the official who sent the notice to act for the State.

(c) *Nonparticipation after March 31, 1981.* (1) If a participating State subsequently decides to withdraw from participation, the withdrawal must be made in writing to the regional commissioner (SSA) at least 90 days prior to withdrawal. This notice must be submitted under the same conditions as specified in § 416.2104(b).

(2) The Commissioner will declare a State unwilling to participate if:

—The State has notified us that it does not intend to participate.

—The State fails to notify us by April 1, 1982, of its intent to participate.

(d) *Alternate participants.* In any State where the State has decided not to (or demonstrated its unwillingness to) participate in the program, we may arrange for VR services through an alternate participant by agreement or contract.

Reimbursement Provisions

§ 416.2208 Requirements for reimbursement.

(a) The State must file a claim for reimbursement in each individual case;

(b) The VR services for which reimbursement is being requested must have been provided on or after October 1, 1981;

(c) The services must have been provided under a State plan for VR services approved under title I of the Rehabilitation Act of 1973;

(d) The services must have been provided while the individual was eligible for benefits under sections 1614(c)(2) and 1614(c)(3) of the Act;

(e) The individual must have performed SGA for a continuous period of at least 9 months (see § 416.2210);

(f) The VR services must have contributed to the individual's return to SGA for a continuous period of at least 9 months (see § 416.2211);

(g) The State must provide adequate documentation of services and costs; and

(h) The amount to be reimbursed must be reasonable and necessary (see § 416.2216(f)).

§ 416.2209 Responsibility for making reimbursement decisions.

The Commissioner will decide:

(a) Whether a continuous period of SGA has been completed;

(b) Whether documentation of VR services and expenditures is adequate;

(c) Whether VR services contributed to the continuous period of SGA; and

(d) What VR costs were reasonable and necessary and will be reimbursed.

§ 416.2210 What we mean by "SGA for a continuous period of nine months".

(a) *What we mean by SGA.* In determining whether a person's work is SGA we will follow the rules in §§ 416.972–416.975. We will follow these same rules for persons who are statutorily blind, but we will evaluate the earnings in accordance with the rules in § 404.1584(d) of this chapter.

(b) *What we mean by "a continuous period of nine months".* A continuous period of 9 months ordinarily means a period of 9 consecutive calendar months. Exception: In the rare case when a person does not perform SGA in 9 consecutive months, he or she will be considered to have done so if—

(1) The person performs 9 months of SGA within 10 consecutive months and has monthly earnings over the 10-month period that meet or exceed the guidelines in § 416.974(b)(2), or § 404.1584(d) of this chapter, if the person is statutorily blind, or

(2) The person performs at least 9 months of SGA within 12 consecutive months, and the reason for not performing SGA in 2 or 3 of those months was due to circumstances beyond his or her control and unrelated to the impairment (e.g., the employer closed down for 3 months).

(c) *What work we consider.* All of a person's work activity will be evaluated for purposes of this subpart, even if such work was performed during a trial work period, or after eligibility to disability or blindness payments ended.

§ 416.2211 Criteria for determining when VR services will be considered to have contributed to a continuous period of SGA.

(a) *Continuous period without medical recovery.* If an individual who has completed a "continuous period" of SGA, has not medically recovered as of the date of completion of the period, the determination as to whether VR services contributed will depend on whether the continuous period began: Less than one year after VR services ended; between one and five years after VR services ended; or more than five years after VR services ended.

(1) *Less than one year.* Any VR services which might have significantly motivated or assisted the individual in returning to, or continuing in, SGA will be considered to have significantly contributed to the continuous period.

(2) *Between one and five years.* (i) If the continuous period was preceded by transitional work activity (employment or self-employment which gradually evolved into SGA), and that work activity began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period if it is clear that VR services contributed to the transitional work activity.

(ii) If the continuous period was not preceded by transitional work activity that began less than a year after VR services ended, VR services will be considered to have contributed to the continuous period only if it is reasonable to conclude that the work activity which constitutes a continuous period could not have occurred without the VR services (e.g., training) the State provided.

(3) *More than five years.* If the continuous period began more than five years after VR services ended, VR services will not be considered to have contributed to the continuous period.

(b) *Continuous period with medical recovery occurring before completion.* If an individual medically recovers before a continuous period has been completed, VR services will not be reimbursable unless those services directly and significantly contributed to the medical improvement which was the basis for medical recovery. VR will be considered to have directly and significantly contributed to the medical improvement if—

(1) We did not expect the medical recovery to occur (the individual was not scheduled for a medical reexamination when recovery occurred);

(2) The individualized written rehabilitation program (IWRP) included medical services; and

(3) The medical improvement which led to medical recovery occurred, at least in part, because of the these medical services. (For example, the individual's medical recovery was based on improvement in a back condition which, at least in part, stemmed from surgery provided under an IWRP).

§ 416.2212 What services may be reimbursed.

All services provided in accordance with title I of the Rehabilitation Act of 1973 may be reimbursable, subject to the conditions and limitations in §§ 416.2213 and 416.2216 of this subpart. This includes general diagnostic and evaluation services provided to determine eligibility for VR services and all services provided under an IWRP including extended evaluation, regular case services and post employment services.

§ 416.2213 When services must have been provided.

To be reimbursable, the services must have been provided:

(a) After September 1981;

(b) During months the individual is eligible for SSI payments; and

(c) Before completion of a continuous period of SGA.

§ 416.2216 What costs will be reimbursed.

If VR services provided to an individual contributed to the individual's continuous period of SGA, the Secretary will reimburse the State for all services performed during the period described in § 416.2213, but subject to the following limitations:

(a) The cost must have been incurred by the State;

(b) The cost must not have been reimbursed or be reimbursable from some other source (States will be expected to seek reimbursement from other sources in accordance with the "similar benefit" provisions under 45 CFR 1361.45(b));

(c) If the cost of a service substantially exceeded the usual cost to the agency for that service, and the excess has not been adequately explained, reimbursement will be limited to the usual cost;

(d) Maintenance payments will be reimbursed only if they are provided to an individual who must be away from home in order to receive rehabilitation services; the amount reimbursed will not exceed the amount of increased expenses which the individual incurred as a result of being away from home;

(e) Total reimbursement, including any prior reimbursement related to an earlier continuous period of SGA, must not be so high as to preclude a net "savings" (the estimated value of the benefits that will not have to be paid must exceed the total reimbursement); and

(f) Any reimbursement for either direct or indirect VR expenses must be consistent with the cost principles described in OMB Circular No. A–87, published at 46 FR 9548 on January 28, 1981.

(g) the Commissioner will also reimburse the State for administrative costs. This reimbursement may be on a formula basis, if a State prefers (the formula to be negotiated). The reimbursement will also be subject to the preceding limitations.

Administrative Provisions

§ 416.2217 Applicability of these provisions to alternate participants.

When an alternate participant provides rehabilitation services under this subpart, the reimbursement procedures stated herein shall apply except that:

(a) Reimbursement must be consistent with the cost principles described in 45 CFR Part 74 or 41 CFR Part 1–15 as appropriate; and

(b) Any disputes, including appeals of audit determinations, shall be resolved in accordance with applicable statutes and regulations.

§ 416.2218 Method of payment.

(a) *For fiscal year 1982.* No funds will be advanced to the States for use of fiscal year 1982. Services provided in fiscal year 1982 are reimbursable under the conditions of these regulations.

(b) *For fiscal years after 1982.* Payment of the States for successful services will be made either by advancement of funds or by reimbursement, as decided by the Commissioner.

§ 416.2221 Audits.

(a) *General.* The State or alternate participant will permit us and the Comptroller General of the United States (including duly authorized representatives) access to and the right to examine records relating to the costs for which reimbursement was made under these regulations. These records will be retained by the State or alternate participant for the periods of time specified for retention of records in the Federal Procurement Regulations (41 CFR Parts 1–20).

(b) *Audit basis.* Auditing will be based on cost principles and written guidelines in effect at the time services were performed and costs were incurred. The State or alternate participant will be informed and given a full explanation of any questioned items. They will be given reasonable time to explain questioned items. Any explanation furnished by the State or alternate peariciparit will be given full consideration before a final determination is made on questioned items in the audit report.

(c) *Appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State in writing of his or her determination on the audit report. If the State disagrees with that determination, it may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of that decision in writing no later than 45 days from the date of the appeal. The decision by the Commissioner will be final and conclusive unless the State appeals that decision in writing to the Department of Health and Human Services, Departmental Grant Appeals Board within 30 days after receiving the Commissioner's decision. See § 416.1683.

§ 416.2222 Confidentiality of information and records.

The State or alternate participant will comply with the provisions for confidentality of information, including the secuirty of systems, and records requirements described in 20 CFR Part 401 and pertinent written guidelines (see § 416.2123).

§ 416.2223 Other Federal laws and regulations.

Each State and alternate participant will comply the the provisions of other Federal law and regulations that directly affect its responsibilities in carrying out the vocational rehabilitation function.

§ 416.2227 Resolution of disputes.

(a) *Disputes on the amount to be reimbursed.* The appropriate SSA official will notify the State in writing of his or her determination concerning the amount to be reimbursed. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the notice of determination. The written request may be made through the Associate Commissioner, Office of Operational Policy and Procedures, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination in accordance with criteria outlined in 45 CFR 74.304 and notify the State of that decision in writing no later than 45 days from the date of the State's appeal. The decision by the Commissioner will be final and conclusive upon the State unless the State appeals that decision in writing to the Health and Human Services Departmental Grant Appeals Board within 30 days after receiving the Commssioner's decision in accordance with 45 CFR Part 16.

(b) *Disputes on whether there was a continuous period of SGA and whether VR services contributed to a continuous period of SGA.* The rules in paragraph (a) or this section will apply, except that the Commssioner's decision will be final and conclusive. There is no appeal to the Grant Appeals Board.

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Part V

Environmental Protection Agency

Requirements for Preparation, Adoption, and Submittal of Implementation Plans and Approval and Promulgation of Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL 1919-3]

Requirements for Preparation, Adoption and Submittal of Implementation Plans and Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 7, 1980 (45 FR 52676), EPA promulgated rules for review of major new sources and major modifications in areas where air quality does not meet federal standards (nonattainment areas). Those rules defined "source" in essence as *either* an entire plant *or* an individual piece of process equipment within the plant. On March 12, 1981 (46 FR 16280), EPA proposed to change the definition of source to be an entire plant only. That proposal is being promulgated as a final rule today. The practical significance of this change will be to reduce the coverage of nonattainment area new source review (NSR). The same change will also apply to the rules governing the construction moratorium under Section 110(a)(2)(I) of the Clean Air Act (which prohibits major new construction in nonattainment areas lacking a State Implementation Plan (SIP) approved by EPA under Part D of the Act). This change will similarly shrink the coverage of the moratorium.

EPA's August 7 rules also required reconstructed facilities to undergo nonattainment area NSR. As was proposed on March 12, EPA is also deleting that requirement today. These changes will allow states to reduce the regulatory burden of new source review programs without impeding timely attainment and maintenance of air quality standards.

DATES: This rule is effective on October 14, 1981.

FOR FURTHER INFORMATION CONTACT: Kirt Cox, Standards Implementation Branch (MD-15), Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, 919-541-5592.

SUPPLEMENTARY INFORMATION:

I. Background

A. Definition of Source

Under the Clean Air Act, all major new stationary sources and modifications to existing major sources must obtain a permit before they may construct—a Prevention of Significant Deterioration (PSD) permit if the source or modification locates in an area which is cleaner than a national ambient air quality standard (NAAQS), or a nonattainment permit if the source or modification locates in a nonattainment area. The Act defines a "stationary source" as "any building, structure, facility, or installation which emits or may emit any air pollutant." Section 111(a)(3).[1]

In *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979), the United States Court of Appeals for the District of Columbia Circuit held that EPA has discretion to define the constituent terms of the definition of "source" (*i.e.*, the terms "building," "structure," "facility," and "installation") so as to meet the purposes of the various NSR programs mandated by the Act. On August 7, 1980, EPA promulgated amended rules affecting PSD NSR, nonattainment NSR, and the construction moratorium to take into account the court's holding. 45 FR 52676 (August 7 rules). For PSD purposes, EPA defined "source" in essence as an entire plant (the "plantwide" definition). But for nonattainment purposes, EPA defined "source" as both the entire plant and each piece of process equipment at the plant (the "dual" definition).[2]

The practical significance of these different definitions largely lies in the number of modifications each definition would bring in for review. EPA's August 7 rules define a "modification" as a significant net increase in emissions at a source. *See, e.g.*, 45 FR 52747. Since the PSD definition defines "source" in essence as a plant, only net increases occurring at the entire plant need a PSD permit. For example, if a plant increased emissions at one piece of process equipment, but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant, and therefore no modification to the "source." But under the nonattainment definition, the piece of process equipment itself is a "source," which means that only equivalent reductions at that particular piece of process equipment would enable the source to avoid the need for a nonattainment permit. As a result, the nonattainment definition affords fewer opportunities for a source to use a reduction in emissions to compensate for an increase at the source, and therefore avoid the need for a permit.

EPA promulgated a plantwide definition for the PSD program pursuant to *Alabama Power*. *See* 636 F.2d at 397; 45 FR 52695, 52730, 52736 (August 7, 1980). But EPA adopted the more inclusive dual definition for nonattainment areas in order to most effectively use NSR to aid in the cleanup of nonattainment areas. *See* 45 FR 52697 (August 7, 1980). EPA asserted that a narrow definition of source brings in more sources for review, which will enable states to ensure more reductions in emissions through new source permitting. These additional reductions from permitting were said to arise from the greater applicability of the provision in Section 173(1)(A) of the Act (which was adopted by most states) that a new source or modification must obtain offsetting reductions in emissions which are greater than the increase from the new source or modification. EPA further noted that the permit requirement also brings into play Section 173(3) of the Act, under which the owner of a proposed new source or modification must certify that all other sources owned, operated, or controlled by him are in compliance with the applicable State Implementation Plan. Finally, EPA felt that increased applicability of the construction moratorium through use of a narrow definition of source would serve as a strong incentive for states to develop plans to clean up their nonattainment areas.

However, on March 12, 1981, EPA proposed to delete the dual definition for nonattainment areas and to substitute a plantwide definition identical to that of the PSD program. 46 FR 16280. EPA stated that it could, by adopting a plantwide definition, reduce these regulatory burdens and complexities associated with NSR and the construction moratorium without interfering with timely attainment of the NAAQS in accordance with the Act. In particular, EPA argued that by bringing in more sources for review or subjecting them to the construction moratorium, the dual definition was discouraging replacement of older, dirtier processes with new cleaner ones. It thereby acted as a disincentive to new investment and modernization and retarded progress toward clean air. In addition, EPA noted that a source would still be subject to any applicable new source performance standards (NSPS) and that significant net increases at a plant as well as

[1] Where a state does not have an approved plan in place for cleaning up a nonattainment area, the Act imposes a moratorium on construction of major new sources and modifications in that nonattainment area (construction moratorium).

[2] Formally, for PSD purposes, EPA defined each of the terms "building," "structure," "facility," and "installation" as an entire plant. However, for nonattainment purposes, EPA defined "Building, structure, or facility" as an entire plant and "installation" as a piece of process equipment.

wholly new plants, still would undergo nonattainment review. Third, EPA stated that its proposal would simplify the regulatory process by adopting the same definitions for PSD and nonattainment permits. Finally, EPA stated that even if a state adopted a plantwide definition, it nonetheless had to demonstrate attainment of the NAAQS and reasonable further progress (RFP) towards attainment by the statutory deadlines. For these reasons, EPA concluded that the dual definition was unnecessarily burdensome, and so should be deleted.

B. Reconstruction

EPA's August 7 rules also required reconstructed or replacement facilities to undergo NSR in nonattainment areas as if they were new sources. Specifically, the rules provided that whenever a company rebuilt a "source" so that more than 50 percent of its capital cost represented new investment, that rebuilt source had to obtain a nonattainment permit. EPA did not adopt a similar provision for PSD, because few if any whole plants are likely to be rebuilt.

On March 12, 1981, EPA proposed to delete this requirement. EPA stated that since it was proposing to use a plantwide definition for nonattainment areas, and since few entire plants are likely to be rebuilt, there is little need for review of reconstructions. In addition, this change would further reduce the differences between PSD and nonattainment NSR.

II. Today's Action

A. Definition of Source

EPA has decided to adopt the plantwide definition of source and to delete the reconstruction requirement as it proposed last March. After evaluation of the comments received, EPA has concluded that two concerns warrant this approach to NSR.

First, today's action means that both the PSD and nonattainment programs will use the same definition of "source." This alone will reduce regulatory complexity. Sources will no longer have to figure out what an "installation" is, which should lessen any confusion engendered by EPA's August 7 rules.

Second, and more important, by removing the requirement that states adopt a dual definition, EPA is acting consistently with the purposes of Part D of the Act. Congress expressly provided that states are to play the primary role in pollution control. Sections 101(a)(3), 101(b). It also intended that states retain the maximum possible flexibility to balance environmental and economic concerns in designing plans to clean up nonattainment areas. *See, e.g.*, Sen. Rep. 95–127 at pp. 10–11; *cf. NRDC* v. *Train*, 421 U.S. 60 (1975). Today's action follows this mandate by allowing states much greater flexibility in developing their nonattainment area NSR programs and attainment demonstrations. Since demonstration of attainment and maintenance of the NAAQS continues to be required, deletion of the dual definition increases state flexibility without interfering with timely attainment of the ambient standards, and so is consistent with Part D.

This rulemaking in no way affects either the current status of any EPA-approved SIP or the state's duty to assure RFP and attainment of the NAAQS by the statutory deadlines. All state plans containing the dual definition and the reconstruction provisions remain fully valid after this rulemaking. States may, however, choose to adopt a plantwide definition, provided that they submit that change to EPA as a SIP revision.

States choosing to delete the dual definition must demonstrate that their plans, as revised, continue to demonstrate RFP and attainment. Many state plans are based in part upon a projection of reductions in emissions obtained through the state's NSR program. This projection in turn rested upon an anticipated number of permit applications. Use of a plantwide definition would mean that many sources will no longer need a permit. Unless counterbalanced by other consequences of the deletion (*e.g.*, more rapid construction of new clean emission units), this may result in the loss of reductions originally expected by the state. In other instances, where RFP demonstrations were more general in nature, states relied on the NSR program to assist in their enforcement efforts and to identify additional more efficient means to control emissions. In either case, a state's RFP demonstration, which was predicated on those assumptions for NSR coverage, might no longer apply; and the state might have to obtain or guarantee those reductions in other ways (such as requiring additional reductions from existing sources and stepping up enforcement efforts). States changing from a dual to a plantwide definition must therefore reassess their general attainment strategies and revise them as necessary to ensure RFP and attainment by the statutory deadlines.

A related problem may arise if a state decides to rescind existing nonattainment permits. A modification which required a permit under the dual definition may not have needed one had the plantwide definition been in effect, and some states may choose to rescind those permits and reissue them with conditions more favorable to the affected sources (such as deleting the requirement that the source install the technology assuring the lowest achievable emission rate (LAER)). However, the emissions reductions required by that permit may have been included in the state's RFP demonstration, and rescission might therefore damage that demonstration. States should thus be careful that, in designing any rescission procedure, they do not interfere with RFP and attainment. Any such rescission procedure must be submitted to EPA as a SIP revision and must assure that each rescission is consistent with the state's RFP demonstration.[3]

B. Reconstruction

EPA is also taking a final action today to delete the requirement that reconstructed facilities (as that term is defined in the rules) be subject to nonattainment requirements. The rationale for that decision is the one offered in the proposal: Adoption of the plantwide definition means that the reconstruction requirement applies only to entire plants which are rebuilt. Since few if any such reconstructions are anticipated, there is little reason to retain this requirement. In addition, deletion of the requirement makes the PSD and nonattainment rules the same in this respect.

As with the dual definition, some state plans may be based upon emission reductions obtained from the reconstruction provision. States choosing to delete this requirement should therefore assess and adjust their RFP and attainment demonstrations as necessary.

III. Response to Comments

EPA received 81 comments in response to its March 12 proposal, the majority of which favored deletion of the dual definition and the reconstruction requirement. The particular comments, as well as EPA's response, are discussed below.

A. Modernization

Many commenters who agreed with the proposal stated that it would be conducive to modernization of existing plants and so would enhance economic efficiency. These commenters also agreed that the dual definition acted as a disincentive to replacement of

[3] Permit rescissions granted under an EPA-approved permit rescission procedure would not have to be submitted to EPA as a SIP revision.

outmoded dirty facilities with newer cleaner ones, and some cited specific examples where this in fact has happened. Other commenters, however, noted that EPA had cited no data to corroborate its claim that the dual definition impeded modernization, and argued, also without supporting data, that the direct cost of offsets and of the installation (pursuant to Section 173(2)) of technology resulting in LAER was so much less than the total cost of a modified plant that it did not act as a disincentive.

EPA believes that the examples provided by the commenters support its statement in the proposal that the dual definition impedes legitimate efforts to modernize existing plants. (*See, e.g.*, comments of Crown Zellerbach; Union Oil Corporation.) This is particularly true in areas subject to the construction moratorium, where plants cannot modernize a particular facility, even if emissions at the plant as a whole actually *decrease*. To deny construction to candidate modernization projects which would cause no significant increase in air pollution at the plant, and which in some cases would produce a net air quality improvement, may call upon such projects to bear an unacceptably large part of the overall burden for cleaning up a nonattainment area. Accordingly, EPA has concluded that elimination of the dual definition requirement will remove a barrier to modernization of the nation's industrial base.

A related issue raised by some commenters was that deletion of the dual definition would actually result in more economic inefficiency in the nonattainment area as a whole. The argument here rests on two claims. First, installation of technology representing LAER means the new source will have lower emissions and thus need fewer offsets; sources not installing LAER would need more offsetting reductions to avoid the need for a permit. Deletion of the dual definition therefore would mean that more cost-effective reductions would be used up quickly, leaving fewer reductions available over the long term. This would make it more difficult for new sources to find needed offsets and so could actually impede growth over time; and if additional reductions were needed to attain the NAAQS, they could only be obtained by imposing additional controls on existing sources, controls which would require costly retrofits. Second, the proposal was alleged to favor large existing sources over new sources, because many existing sources have significant amounts of available emission reductions that can be used to avoid the need for a permit, whereas new sources would always have to undergo nonattainment area NSR. This means that existing sources might use up all the available reductions, and so preclude all new construction.

The concerns raised by these commenters are at this point speculative, particularly in view of the fact that the commenters provided no data to support their claims. In addition, they contradict a central principle of economic efficiency, under which the cheapest and most cost-effective emission reductions should be allowed to be used first, not saved until some hypothetical future need develops while more expensive controls are used first. More importantly, given the structure of the Act, EPA believes that the choice of whether to take the risks these commenters mention is one properly made by the states, not the federal government. If a state feels that the long-term risks of the plantwide definition outweigh its potential short-term benefits, then that state may properly retain the dual definition. But this kind of decision is essentially based on economic factors, not air quality concerns, and so is appropriately left to the states. *Cf. Union Electric Co. v. EPA*, 427 U.S. 246 (1976).

B. Regulatory Complexity

Supporters of the proposal endorsed it as a means of simplifying the regulations, thereby reducing some of the confusion in the permit review process and eliminating an inconsistency with the PSD program. Other commenters asserted that the dual definition adds only slightly to the complexity of the regulations and that anyone who carefully reviews the regulations can readily understand the way in which the definition works.

EPA believes that elimination of the dual definition clearly simplifies what any objective observer would agree is a quite complex regulation. First, plants sometimes must get a PSD permit for one pollutant and a nonattainment permit for another pollutant. Using the same definition for PSD and nonattainment purposes simplifies the permit process. Second, by defining "source" in essence as an entire plant, EPA has eliminated the problem of determining what an "installation" is in a given situation.

C. Application of Control Technology

Many commenters agreed that adequate use of the most up-to-date control technology is assured, regardless of the applicability of nonattainment area NSR, because NSPS will continue to apply to many new or modified facilities. Other commenters argued, however, that there is no applicable NSPS for many categories of sources, and that NSPS is often not as stringent as LAER. These commenters also claimed that Congress intended that all new sources must install some form of advanced pollution control technology, particularly in nonattainment areas where the maximum possible emission reductions must be obtained.

EPA has embarked upon an expanded program of NSPS development. *See* 40 CFR 60.16. This program will assure that most major emitting source categories will be covered by an NSPS. Accordingly, EPA believes that eventually the NSPS program will ensure that new and modified sources will adequately apply state-of-the-art control technology. To the extent that the controls imposed are not as strict as LAER, the internal offsets needed to "net out" of NSR will make up the difference.

EPA agrees that in some cases an NSPS will be less stringent than LAER. But this comment is not wholly relevant, for while Congress intended that new or modified *sources* apply LAER, it left EPA discretion to define "source." As noted above, EPA believes that a plantwide definition of "source" is consistent with the purposes of the nonattainment provisions of the Act, and so comports with Congressional intent. Consequently, EPA's approach with regard to application of control equipment is consistent with the Act.

D. Assuring Reasonable Further Progress and Attainment

Many commenters who supported the proposal emphasized that the states will remain subject to the requirement that they demonstrate that each nonattainment area will attain the NAAQS as expeditiously as practicable and will show reasonable further progress toward attainment. These commenters thus agreed with EPA that use of a plantwide definition need not interfere with the fundamental purpose of Part D of the Act (relating to nonattainment areas). Other commenters challenged EPA's analysis, arguing that most RFP analyses and attainment demonstrations are so imprecise that extensive NSR coverage is essential to assuring attainment and RFP. These commenters claimed that this imprecision is exacerbated by the fact that most Part D SIPs are based on deficient emission inventories. Therefore, the reviewing authority cannot say with confidence that any opportunities for emissions reductions can be ignored. They added that this

also means that even "insignificant" increases in emissions could pose a problem, since states would have difficulty using NSR to offset their cumulative impact.[4] As a result, the commenters felt it was crucial to have a comprehensive NSR system to manage air quality in nonattainment areas and assure tight control of pollution. Therefore, under these commenters' analysis, deletion of the dual definition would remove an essential state tool for clean-up of nonattainment areas. In fact, several commenters argued that EPA's approach as a whole is short-sighted, because it will enable sources to build without any review, despite the fact that such sources might have to install expensive retrofit technology when the state or EPA discovers that the area has not attained the NAAQS.

These comments miss the point. As noted above, and as correctly pointed out by several commenters, state plans *must* assure RFP and attainment by the statutory deadlines. If a state wishes to use a plantwide definition and run the risks identified by these commenters, then that state has discretion to do so, provided that its choice does not interfere with RFP and attainment. EPA believes that it is more appropriate for the states to make any needed decisions in this area, for it is the states that are closest to their own particular situations and problems and so it is the states that are best equipped to make the choices about which the commenters are concerned.[5]

E. Impact on State Plans

Some states asked EPA to allow them to choose the definition of source most appropriate to their own program—they were concerned that EPA's proposal would keep them from continuing to use a narrower definition. Other states pointed out that they may have no choice but to use a plantwide definition if EPA were to promulgate one, for these states have laws which prohibit them from developing SIPs which are more stringent than what EPA's rules would require. Finally, one commenter was concerned that a plantwide definition would jeopardize existing NSR rules which require permits for *all* changes at a plant, regardless of whether these changes would increase emissions at the entire plant. These rules were claimed to be necessary to keep track of the activities at different sources in the state and to monitor RFP.

By this rulemaking, EPA does not intend to require any state to change its NSR rules. Similarly, nothing in today's promulgation is meant to forbid states from requiring permits for all changes at a plant. Finally, to the extent that a state has laws which prohibit state rules from being more stringent than federal regulations, EPA recognizes that this may be a problem. States may as a result have to change either their rules or their laws.

F. Construction Moratorium

Some commenters argues that elimination of the dual definition for the construction moratorium will mean that many fewer sources will be subject to the moratorium and so will reduce the incentive for states lacking Part D plans to develop them. However, this comment ignores the fact that the primary purpose of the construction moratorium is to preserve ambient air quality while the states are preparing their plans for cleaning up nonattainment areas. A plantwide definition is consistent with this purpose, since it ensures that emissions will not increase significantly during this time.[6] In any event, the moratorium will continue to fulfill its secondary purpose as an incentive to state action, since new sources and modifications which result in a significant net increase in emissions will still be prohibited from constructing in nonattainment areas subject to the construction moratorium.

G. Use of Standard Industrial Classification (SIC) Codes

One commenter requested that EPA expand the definition of "source" to include a group of commonly-owned plants on a contiguous property or complex. However, EPA has already considered and rejected this comment. *See* 45 FR 52695 (August 7, 1980). EPA had originally proposed a definition similar to that requested by the commenter, but it decided instead to adopt the present system, based upon SIC codes, since a broader definition would severely strain the boundaries of even the most elastic of the four terms which define the term "source," *i.e.*, "building," "structure," "facility," and "installation." EPA believes that the aggregation of separate contiguous plants under common ownership into one source would be inconsistent with the common sense notion of plant. *See Alabama Power*, 636 F.2d at 397–98.

H. Reconstruction

Most commenters also agreed that EPA should delete the reconstruction test for nonattainment NSR. Others argued that EPA should retain the test, relying basically upon the same claims as those addressed above for the dual definition. For the reasons laid out above, EPA has concluded that the adoption of a plantwide definition means that a reconstruction test no longer is needed.[7]

I. Legal Arguments

Many commenters adduced legal arguments to the effect that EPA lacked discretion to define "source" for nonattainment purposes. Some commenters claimed that EPA was legally compelled to adopt a plantwide definition, while others asserted that EPA must as a matter of law use a dual definition. However, in view of the lack of express statutory language and the conflicting Congressional signals found by the various commenters in the legislative history, EPA believes that it has discretion to choose a definition of "source" best suited to the nonattainment program. This authority was expressly noted in *Alabama Power*, where the court held that "EPA had descretion to define (the) statutory terms (for "source") reasonably so as to carry out the expressed purposes of the Act." 636 F.2d at 396.

Those commenters who favored the dual definition raised a variety of legal arguments.[8] These claims will be addressed individually.

(1) *A dual definition is required by Alabama Power and by ASARCO v. EPA, 578 F.2d 319 (D.C. Cir. 1978).*

The commenters asserted that the *Alabama Power* and *ASARCO* cases held that where the purpose of a program is to maintain air quality, as in PSD, a plantwide definition is appropriate; but where the purpose is to *improve* air quality, a much narrower definition of "source" must be used. Since the purpose of Part D of the Act is to clean up nonattainment areas, the commenters claimed that EPA must continue to use a dual definition.

[4] One commenter erroneously claimed that EPA's rules enabled sources to increase emissions up to 100 tons per year (tpy) without having to undergo review. In fact, EPA has defined as "insignificant" (*i.e.* as below the level requiring review) emission increases which generally range from 25 tpy to 40 tpy, depending on the pollutant in question. *See e.g.*, 45 FR 52747 (August 7, 1980).

[5] In any event, the commenters can raise these concerns at the state level during state proceedings on whether to adopt a plantwide definition.

[6] At the same time, the present moratorium imposes costs on plants that want to modify internally without lowering emission.

[7] Some commenters urged EPA to delete the reconstruction test from the NSPS rules. That comment is not relevant to this rulemaking, which addresses *only* requirements for new source review in nonattainment areas.

[8] One commenter requested that EPA insert each state's SIP into the record for this rulemaking. EPA is not granting this request because the SIPs have been incorporated by reference into the Code of Federal Regulations and so are documents of public record.

The difficulty with this claim is that it ignores the fact that states have the discretion to define the approaches best suited to their own problems and needs, provided that those approaches will demonstrate RFP and attainment. If a state can demonstrate attainment despite the use of a plantwide definition of source, then EPA must approve the state's plan. Accordingly, use of a plantwide definition can be consistent with the purposes of Part D.

(2) *Use of a plantwide definition means that state plans will not demonstrate attainment as expeditiously as practicable, since fewer sources will be brought in for review.*

This objection ignores the basic point that this is a matter for the states to decide: they are still subject to the statutory requirements, but EPA believes that they may use a plantwide definition if that wil not interfere with their demonstration of attainment.

(3) *The legislative history of the Act requires that as many changes at a "source" as possible be brought in for NSR.*

This begs the question, for the legislative history and, more importantly, the statute, speak of "sources," and EPA has descretion to define what that term means for the purposes of the nonattainment program.

(4) *The definitions of "source" used in the Act themselves mandate a dual definition.*

The commenters noted that the PSD definitional structure uses only the term "facility," while NSPS and nonattainment structures use both "source" and "facility." This difference was a point on which *Alabama Power* relied to distinguish *ASARCO*. Accordingly, the commenters claim that since *ASARCO* applied to NSPS and since the terms are defined identically for NSPS and Part D (see Section 111(a)(3) and 172(b)(6)), EPA must for Part D use at least the narrow definition contained in the NSPS rules.

While it is true that the court in *Alabama Power* used the different definitional structures of NSPS and PSD to distinguish *ASARCO*, the critical element of the court's opinion rests on the fact that EPA may define the term "source" so as to best meet the purposes of a particular program. *See* 636 F.2d at 391–98. As discussed above, EPA believes that a plantwide definition is consistent with the purposes of Part D. Consequently, EPA may define the constituent terms of "source" differently for NSPS and Part D.

(5) *Congress ratified the dual definition.*

The commenters argue that in Section 302(j), Congress used the terms "source" and "facility" in defining the unit to which NSR applies, and it must have known that EPA at that time defined "facility" quite narrowly in terms of particular pieces of process equipment. Congress adopted the entire Offset Ruling in 1977, and therefore ratified the Ruling's use of a dual definition.

The difficulty with this argument is that Congress used "facility" in defining the unit to which PSD review applies, Section 165(a), yet in *Alabama Power*, the court held that EPA had discretion to interpret this term to mean in essence an entire plant. *See* 636 F.2d at 397. Moreover, Congress provided in Section 129(a)(1) of the Clean Air Act Amendments of 1977 that EPA could modify the Offset Ruling "by rule." It therefore contemplated that EPA could make the kind of change to the Ruling being made today.

(6) *Congress' definition of LAER implies that it chose the dual definition.*

The commenters claim that LAER is supposed to be applied to a "source," Sections 171(3), 173(2), yet LAER actually is applied to pieces of process equipment. In addition, the LAER definition references any applicable NSPS, and NSPS applies to pieces of process equipment. From this, the commenters infer that Congress intended "source" to be defined at least as a piece of process equipment.

This argument was implicitly rejected by *Alabama Power*. The PSD program requires that "sources" install the Best Available Control Technology (BACT). BACT is also applied to pieces of process equipment, and it also refers to any applicable NSPS. Yet *Alabama Power* authorized EPA to define "source" as in essence plant for PSD purposes. Consequently, the use of the term "source" in the definition of LAER does not necessarily mean that "source" must be defined narrowly for nonattainment purposes.

(7) *EPA's proposal treats reconstructions as modifications, yet the Act requires that they be treated as new sources.*

The commenters assert that Section 173 uses the phrase "by the time the source is to commence operation," which means Congress was referring only to new sources. Moreover, they argue that when a facility is replaced or rebuilt, it is first shut down, which means that there is no "source" to modify. As a result, reconstruction must obtain a NSR permit as new source, not modifications.

The language to which the commenters refer applies to *both* new sources and modifications, not solely to new sources as the commenters suggest. *See* Sections 172(b)(6), 173(1)(A). Any other reading of Section 173 would read all modifications out of the Act, which clearly is contrary to the statute. In addition, this argument begs the question, for it assumes that the "source" is a piece of process equipment. Yet the issue is precisely how to define "source," and this is a matter left to EPA's discretion.

(8) *EPA did not provide the factual basis for its proposal, as mandated by Section 307(d)(3)(A) of the Act.*

EPA does not believe that it is required to follow Section 307(d) in this rulemaking. That section only applies to particular types of EPA actions, of which only Section 307(d)(1)(B) is relevant here. That subsection requires Section 307(d) procedures for federal promulgation of a SIP. Here, EPA is modifying regulations codified at 40 CFR Part 51, which are minimum requirements for the content of SIPs, and not promulgation of SIPs themselves. Consequently, these rules clearly are not subject to Section 307(d). The construction moratorium, which is also the subject of today's action, is codified at 40 CFR Part 52, but it is a *generic* rulemaking, not a rulemaking for a particular SIP, and so is not subject to Section 307(d) either.[9]

IV. Conclusion

By today's action EPA is modifying the definition of "installation" to mean the same as "building, structure, and facility," and is deleting the definition of "reconstruction" and its supporting definition of "fixed capital cost." These actions apply to the Offset Ruling (codified at 40 CFR Part 51 Appendix S), 40 CFR 51.18(j) (requirements for new source review in nonattainment areas), and 40 CFR 52.24 (the construction moratorium). They will have the effect of defining a "source" for nonattainment purposes as in essence an entire plant, and of treating reconstruction and replacement as a modification to an existing source, rather than as a new source.

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[9] It should also be pointed out that the issue of the definition of "source" in nonattainment areas has been before the public for several years. EPA first solicited comments on its definition on January 16, 1979, when it modified the Offset Ruling. *See* 44 FR 3298. Many comments were received at that time. On September 5, 1979, EPA solicited further comments on this issue, when it proposed comprehensive amendments to its PSD and nonattainment regulations. *See* 44 FR 51924. Accordingly, even if Section 307(d) were applicable, the commenters have had adequate opportunity to raise their concerns to EPA and have presented no evidence that they were harmed by EPA's failure to follow precisely the procedures set out in that Section.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact upon a substantial number of small entities. These rules will reduce regulatory burdens since fewer sources will be subject to NSR and the construction moratorium. Since the requirements of the Clean Air Act apply to all sources defined as major, EPA did not have the additional flexibility to alter the applicability of these requirements to any small entities that meet the definition of major source.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it reduces the coverage of nonattainment area NSR and the construction moratorium and so lessens regulatory burdens.

This action was submitted to the Office of Management and Budget (OMB) for review as required by the Order. Any comments from OMB to EPA and any EPA response are available for public inspection at the Central Docket Section, U.S. Environmental Protection Agency, West Tower, 401 M Street, SW., Washington, D.C. 20460 (Docket A-81-14)

Pursuant to 5 U.S.C. 553(d)(1), this action is being made immediately effective because it relieves a restriction.

The rules being promulgated today are nationally applicable, and this action is based upon a determination of nationwide scope and effect. Under Section 307(b)(1) of the Clean Air Act, judicial review may only be sought in the United States Circuit Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before December 14, 1981.

(Secs. 110(a)(2)(I), 172(b)(6), 173, 301(a) of the Clean Air Act, as amended, (42 U.S.C. 7410(a)(2)(I), 7502(b)(6), 7503, 7601(a)); sec. 129(a)(1) of the Clean Air Act Amendments of 1977, Pub. L. No. 95-95, 91 Stat. 685 (August 7, 1977))

Dated: October 3, 1981.

Anne M. Gorsuch,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Appendix S [Amended]

1. Section II, Subsection A of the Emissions Offset Interpretative Ruling, 40 CFR Part 51 Appendix S, as revised 44 FR 3274 (January 16, 1979), 45 FR 31307 (May 13, 1980), 45 FR 52741 (August 7, 1980), and 45 FR 59879 (September 11, 1980) is amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of paragraph 2 to read "Building, structure, facility or installation";

b. By removing paragraph 3 and renumbering the succeeding paragraphs accordingly; and

c. By removing paragraphs 9 and 10 and renumbering the succeeding paragraphs accordingly.

§ 51.18 [Amended]

2. Section 40 CFR 51.18(j)(1) is amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of paragraph (j)(1)(ii) to read "Building, structure, facility or installation";

b. By removing paragraph (j)(1)(iii) and renumbering the succeeding subparagraphs accordingly; and

c. By removing paragraphs (j)(1)(ix) and (x) and renumbering the succeeding subparagraphs accordingly.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

§ 52.24 [Amended]

3. Section 40 CFR 52.24(f) is amended as follows:

a. By changing the words "Building, structure or facility" at the beginning of paragraph (f)(2) and to read "Building, structure, facility or installation";

b. By removing paragraph (f)(3) and renumbering the succeeding subparagraphs accordingly; and

c. By removing paragraphs (f)(9) and (10) and renumbering the succeeding subparagraphs accordingly.

[FR Doc. 81-29706 Filed 10-13-81; 8:45 am]

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federal register

Wednesday
October 14, 1981

Part VI

Department of the Interior

Fish and Wildlife Service

Export of Bobcat, Lynx, River Otter, Alaskan Gray Wolf, Alaskan Brown Bear, American Alligator, and American Ginseng Taken in 1981-82 Season

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Bobcat, Lynx, River Otter, Alaskan Gray Wolf, Alaskan Brown Bear, American Alligator, and American Ginseng Taken in 1981–82 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a treaty regulating the international shipment of certain wildlife and plant species. Exports of wildlife or plants listed in Appendix II of CITES may occur if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the wildlife or plants were not obtained in violation of laws for their protection.

This notice announces final findings by the Scientific and Management Authorities for the United States concerning the export of certain Appendix II species native to this country. These are final determinations on the export of specimens taken in the 1981–82 harvest season. Such findings are made annually on a state-by-state basis.

DATE: These findings are effective for all species except bobcat on October 14, 1981. Effectiveness of the bobcat findings is delayed at least 60 days so that the Service may seek vacation of the injunction issued by the United States District Court for the District of Columbia prohibiting the Service from authorizing export of bobcat until it promulgates new guidelines and makes findings on the basis for those guidelines.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 536, 1717 H Street, NW., Washington, D.C., or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Findings—Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority Findings—Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

Export Permits—Mr. Robert J. Batky, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION: This is the last of three notices concerning the Service's findings on export of bobcat, lynx, river otter, Alaskan gray wolf, Alaskan brown bear, American alligator, and American ginseng taken in the 1981–82 season. The first notice (46 FR 28192; May 26, 1981) announced the Service's intention to develop findings on export of specimens of these species, and invited comment on the new criteria, developed in part as a result of the ruling of the United States Court of Appeals in Defenders of Wildlife vs. Endangered Species Scientific Authority, that it proposed to use in making such findings. The second notice (46 FR 45172; September 10, 1981) discussed comments received on the criteria and announced the proposed export findings for each species on a state-by-state basis. The present notice establishes final export findings for these species, based on current information about their population status, management, and utilization.

Scientific Authority Advice

CITES regulates international trade in species included in Appendix II through a system of permits issued by designated Management Authorities in each party nation. Export permits are to be issued only if a Management Authority receives advice from a Scientific Authority that the export will not be detrimental to the survival of the species.

The Endangered Species Act of 1973, as amended in 1979, designates the Secretary of the Interior as both Management Authority and Scientific Authority of the United States, for purposes of CITES. These functions are carried out by the Fish and Wildlife Service. Management Authority responsibilities are delegated to the Associate Director—Federal Assistance. Scientific Authority responsibilities are delegated to the Associate Director—Research.

Criteria for Scientific Authority advice were elaborated in the May 26, 1981, **Federal Register**. Advice on the export of species addressed in these findings is given in a general way, applicable to any specimens harvested in particular states in a given season, rather than on a permit-by-permit basis. The reasons for this practice are that (1) the individual exporters who apply for permits are unable to supply much information about the sources of specimens or the effect of their harvest on the populations of the species, (2) the species in question are subject to commercial exploitation, and it would be burdensome to both the industry and the Service to make separate Scientific Authority decisions on each of the many permits, and (3) the development of general advice on a state-by-state basis enables the Service to conduct a comprehensive review of the status of the species in question and the effect of international trade on its survival. Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

Criteria used by the Service in determining if export of bobcat, lynx, river otter, American alligator, and American ginseng will not be detrimental to the survival of the species are as follows:

1. Whether similar export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem.

2. Whether life history parameters of the species and the structure and function of its ecosystem indicate that the present frequency of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem.

3. Whether such export is expected to increase, decrease, or remain constant in frequency.

In using these general criteria, the Service adopted minimum requirements, previously used by the ESSA, in giving such advice on export of bobcat, lynx, and river otter. These requirements were recommended by a working group of wildlife biologists convened by the ESSA in 1977 and are as follows:

A. Minimum requirements for biological information:

(1) Population trend information, the method of determination to be a matter of state choice.

(2) Information on total harvest of the species.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of state choice.

(2) All pelts should be registered and marked.

(3) Harvest level objective should be determined annually.

In the case of the bobcat, the Service is giving Scientific Authority advice in accordance with additional requirements established by the United States Court of Appeals for the District of Columbia Circuit. Defenders of Wildlife, Inc., challenged the use of criteria listed above for bobcat exports in a suit brought against the ESSA and the Department of the Interior. On February 3, 1981, the United States Court of Appeals for the District of Columbia Circuit held that the requirements set forth above are invalid to the extent they authorize findings that export of bobcats would not be detrimental to the survival of the species when such findings are not based on reliable estimates of the bobcat population and data showing the total number of bobcats to be killed, in each of the states involved. The Court of Appeals remanded the case to the District Court for findings of fact and conclusions of law consistent with its opinion.

On remand, with the agreement of the parties, the District Court dismissed the case as it pertained to export of bobcat taken during previous seasons and enjoined the Service from authorizing export of bobcat taken subsequent to July 1, 1981, until it promulgated guidelines consistent with the Court of Appeals decision and made findings based upon those guidelines.

In compliance with that injunction dated April 22, 1981, the Service's May 26, 1981, notice required the states to submit data necessary to obtain reliable population estimates and data concerning the number of bobcat to be killed. The Service noted, however, that advice based solely on the court's requirements would be incomplete and that it is important to consider certain other types of information that the Service has sought in the past. Scientific Authority advice on exports of bobcats taken in the 1981–82 season is, therefore, based both on an assessment of the size of the projected 1981–82 harvest in relation to total population size, and on the other criteria listed above.

The Defenders of Wildlife, Inc., submitted extensive comments on the proposed advice for the export of bobcats. The Service received no other comments on the proposed export findings. Defenders stated that the Service failed to establish guidelines for the proposed Scientific Authority advice or to explain the methods used in formulating this advice. Defenders had previously submitted comments, dated June 24, 1981, on the May 26, 1981, notice which similarly contended that the Service had not established the necessary guidelines. But, as the Service stated in response to Defenders' June comments, the May 26, 1981, notice did announce the Service's new export requirements and invited comments on them. The Service believes that the criteria discussed in the May 26, 1981, notice and specification of types of information needed from states provide the guidelines by the Appellate and District Courts.

The Service, in addition to its previous requirements, asked for the following specific information from each state and Indian Nation that exports bobcat pelts:

1. Biological Information

a. An estimate of the size of the statewide population, including a description of (i) how it is calculated, with an indication of the geographic areas where data used in the calculations were gathered, (ii) how it accommodates differences in abundance over the range of habitat occupied by the species, and (iii) the confidence limits on the estimate.

b. A description of any research being conducted to assess the distribution, abundance, or general condition of the species in the state. Please briefly summarize results so far obtained, including results of any analyses of age structure or reproductive parameters.

c. A description of any population models being used in the state to evaluate the status of the species.

d. An assessment of long-term population trends of the species in the state, and the relationship of these trends to habitat condition, management practices, harvesting pressure, prey abundance, or other factors.

2. Management Program

a. Harvest level objective for the 1981–82 season (anticipated total statewide harvest of the species). Please describe (i) how this figure is derived, and (ii) how biological information is used in setting the harvest level objective.

b. A description of methods used to insure that the actual harvest will not substantially exceed the harvest level objective.

c. A copy of current state regulations governing harvest, possession, transport, and sale of the species. Please indicate any changes to be made for the 1981–82 season.

3. Harvest Information for the Previous 1980–81 Season

a. Number of animals (listed by county or game management unit, if data are available at these local levels) that were (i) harvested, (ii) tagged, and (iii) bought by dealers operating in the state. Please also give the total number of animals that were harvested and tagged in the 1979–80 season in the state.

b. Number of licensed trappers in the state, and number of these trappers setting for the species in question. Please provide any available information on harvest per unit effort.

c. Prices paid to trappers for pelts of the species, including the average price and the range of extremes.

The Service also believes that data submitted by the states, as well as that collected by the Service, fully support its export findings. The Service has summarized this information in publically available documents explaining the Scientific Authority advice for each state.

The Service is confident that bobcat population and other relevant data obtained from the states or elsewhere enable sufficiently reliable population estimates. In population dynamics, many parameters, besides population size, have to be analyzed to determine the stability of a species. Biological data such as age class structure, reproductive parameters, and habitat evaluation, have to be taken into consideration in determining if export of bobcats will not be detrimental. The Service analyzed all of these parameters in determining whether the export of bobcat pelts would not be detrimental. The reliability of state bobcat population estimates was considered in relation to such biological data.

Defenders also stated that the Service failed to establish the number of bobcats which may be killed. The Court of Appeals stated "We do not see how, without adequate information on total bobcat populations and the number to be killed in a particular season, the Scientific Authority can make a valid determination of nondetriment." Most states set a harvest level objective for the 1981–82 season. Based on past harvest trends, available habitat, density and distribution information, states set their season lengths, bag limits, quotas, and restricted areas to limit the harvest. Each state allowing a harvest has established regulations and management programs to prevent the overharvest of bobcats. The states

usually set a harvest level objective that is equivalent to about 10% to 20% of the population. These figures on harvest level objective provide the best available measure of the number of bobcats to be harvested.

Defenders proposed their own guidelines for evaluating population estimates, of which one tenet is that a population estimate should be derived exclusive of harvest data. However, for the purpose of regulating the harvest of a wildlife population certain types of data, such as age/sex ratios, are very important and can be obtained only from harvested animals. Harvest data can be useful to predict trends of an expanding or shrinking population. Many states with a closed season lack useful population information of types gathered by other states in which a controlled harvest is allowed.

CITES provides that species may be listed in Appendix II for two reasons: because the species is potentially threatened by international trade, or because international trade in the species must be regulated in order to effectively control trade in another species. The latter type of listing is generally to control trade in species whose appearance either whole, in parts (skins, etc.), or as manufactured products closely resembles that of other endangered or potentially threatened species. The bobcat, lynx, river otter, and American alligator were listed for a combination of these two reasons. The Alaskan populations of gray wolf and brown bear were listed only for the latter reason (similarity in appearance). Accordingly, the Service has considered the impact of trade in these species on the effectiveness of CITES in controlling trade in other related species or populations, in determining conditions under which export may be allowed.

The Service has received no information to indicate that the export of species named above has reduced the effectiveness of CITES in controlling trade in other listed species or populations. Marking requirements, described below in connection with Management Authority findings, help to minimize problems of identification caused by similarity in appearance.

Scientific Authority criteria for the export of ginseng are described in the proposal (46 FR 45172; September 10, 1981). The Service is advising on whether export of ginseng will not be detrimental to the survival of the species by evaluating (1) information from each state on past, present, and potential geographic distribution, relative frequency, local abundance, population trends, and harvest intensities on a county-by-county basis, and (2) state research and management programs for this species, including a limited harvest season.

Management Authority Findings

Exports of Appendix II species are to be allowed under CITES only if a Scientific Authority has advised that they will not be detrimental to the survival of the species, and only if a Management Authority is satisified that the specimens were not obtained in contravention of laws for the protection of wildlife or plants.

The Service, therefore, must be satisfied that specimens were not obtained in violation of state or Federal law, in order to allow export. Evidence of legal taking for bobcat, lynx, river otter, Alaskan gray wolf, Alaskan brown bear, and American alligator is provided by state tagging systems. For the 1981–82 season, the Service has urged the use of locking globe-headed metal tags. The Service has arranged for the manufacturing of such tags for the majority of states. Other states already use similar tags. Those few states now able to use only other types of tags may use them for export this season, but must use tags of the specified type by next season.

The Management Authority criteria for approval of ginseng exports, on a state-by-state basis, are that the state has adopted the following measures: (1) State certification of dealers purchasing ginseng in the state, (2) state requirements that such dealers maintain records of their commerce in ginseng, (3) state requirements that dealers report ginseng commerce to qualify for state dealer certification, and (4) state certification to authenticate that the ginseng was lawfully taken from wild or cultivated sources.

Last year, the Service announced that the Management Authority would approve export of artificially propagated ginseng only from the states approved for export of wild-collected ginseng, because they had the programs necessary to document the source of the plants (45 FR 80444; December 4, 1980). The Service is continuing this practice, but it will also approve the export of artificially propagated ginseng from other states if those states can provide similar documentation to minimize the risk that wild-collected plants are exported as cultivated.

Export Approval

The Service approves exports of these species lawfully taken during the 1981–82 season in the following states, on the grounds that both Scientific Authority and Management Authority criteria have been met:

Bobcat—Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Klamath Tribe, Navajo Nation.

Lynx—Alaska, Idaho, Minnesota, Montana, Washington.

River otter—Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, Oregon, South Carolina, Vermont, Virginia, Washington, Wisconsin.

Alaskan gray wolf—Alaska.

Alaskan brown bear—Alaska.

American alligator—Florida and Louisiana.

American ginseng—Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont (artificially propagated ginseng only), Virginia, West Virginia, and Wisconsin.

The Service does not grant general approval for exports of these species taken from any other state during the 1981–82 season. Two states provided information that did not meet the Service's Scientific Authority criteria: North Dakota for bobcat and New York for ginseng. In the case of North Dakota, the state provided no bobcat population estimate, there has been a decrease in harvest, and age ratios indicate that too many adults are being removed from the population.

In the case of New York, there has been a substantial reduction in historical range and decline in populations of wild ginseng, including many countrywide extirpations, and there are no substantive data on current population status and trends.

For all other states not named above, either the taking of these species is not allowed by the state during the 1981–82 season, the species do not occur in the state, or the state did not provide the Service with information on which to base Scientific Authority and Management Authority findings. The Service does not grant general approval for international export of these species from such states.

Information from states and records of the Service's evaluation of it are available for public inspection at the Office of the Scientific Authority (for Scientific Authority advice) or at the Federal Wildlife Permit Office (for Management Authority findings).

The findings announced in this notice are effective immediately, because the harvest season has already begun in some states, and delaying issuance of

the findings could adversely impact state conservation programs for these species. The Service also considers a delay in the effective date to be unnecessary because the findings were preceded by an opportunity for comment and because they do not substantially modify an earlier procedure or practice.

This rule is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. et seq.; 87 Stat. 884 as amended), and was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, telephone (202) 653–5948.

Accordingly, Part 23 of Title 50, Code of Federal Regulations, is amended as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain Species

1. In § 23.51, add new paragraph (d) as follows:

§ 23.51 American ginseng (Panax quinquefolius).

* * * * *

(d) *1981 Harvest:* Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont (artificially propagated ginseng only), Virginia, West Virginia, Wisconsin.

Condition on findings: Roots must be documented as to state of origin and season of collecting. Wild and cultivated roots must be certified by the state as legally collected and such certification must be presented upon export. Vermont is approved for export of artificially propagated ginseng roots only.

2. In § 23.52, add new paragraph (e) as follows:

§ 23.52 Bobcat (Lynx rufus).

* * * * *

(e) *1981–82 Harvest:* Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Klamath Tribe, Navajo Nation.

Condition on findings: Pelts must be clearly identified as to state of origin and season of taking, including tagging according to conditions established by the Service. The States of Nebraska, New Mexico, North Carolina, and Utah should not exceed their harvest level objectives for the 1981–82 season.

3. In § 23.53, add new paragraph (e) as follows:

§ 23.53 River otter (Lutra canadensis).

* * * * *

(e) *1981–82 Harvest:* Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, Oregon, South Carolina, Vermont, Virginia, Washington, Wisconsin.

Condition on findings: Pelts must be clearly identified as to state of origin and season of taking, including tagging according to conditions established by the Service.

4. In § 23.54, add new paragraph (e) as follows:

§ 23.54 Lynx (Lynx canadensis).

* * * * *

(e) *1981–82 Harvest:* Alaska, Idaho, Minnesota, Montana, Washington.

Condition on findings: Pelts must be clearly identified as to state of origin and season of taking, including tagging according to conditions established by the Service.

5. In § 23.55, add new paragraph (e) as follows:

§ 23.55 Gray wolf (Canis lupus).

* * * * *

(e) *1981–82 Harvest:* Alaska.

Condition on findings: Pelts must be tagged as required by the State of Alaska.

6. In § 23.56, add new paragraph (e) as follows:

§ 23.56 Brown bear (Ursus arctos).

* * * * *

(e) *1981–82 Harvest:* Alaska.

Condition on findings: Pelts must be tagged as required by the State of Alaska.

7. In § 23.57, add new paragraph (c) as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(c) *1981–82 Harvest:* Florida, Louisiana.

Based on a review and evaluation of information contained in the attached Environmental Impact Assessments, I have determined that the final findings on the export of certain CITES Appendix II species taken in the 1981–82 season are not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this proposal is not required.

Note.—The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

Dated: October 8, 1981.

Ric Davidge,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-29789 Filed 10-13-81; 8:45 am]

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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.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	MSPB/OPM		DOT/FHWA	MSPB/OPM
DOT/FRA	LABOR		DOT/FRA	LABOR
DOT/MA	HHS/FDA		DOT/MA	HHS /FDA
DOT/NHTSA			DOT/NHTSA	
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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 Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Deadlines for Comments on Proposed Rules for the Week of October 18 through October 24, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

47588 9–29–81 / Milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas Marketing Areas; comments by 10–19–81

42487 8–21–81 / Establishment of United States Standards for grades of canned celery; comments by 10–20–81

42438 8–21–81 / Mediterranean fruit fly; designation of additional areas in Hillsborough Co., Fla., as regulated areas; emergency regulation; comments by 10–20–81

Food Safety and Quality Service—

42487 8–21–81 / Establishment of United States Standards for grades for canned celery; comments by 10–20–81

CIVIL AERONAUTICS BOARD

38930 7–30–81 / Tariffs; sum of segments fares; permission to use rather than higher through fare; reply comments by 10–19–81

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

44203 9–3–81 / Tanner crab off Alaska; fishery management plan; comments by 10–19–81

COMMODITY FUTURES TRADING COMMISSION

42463 8–21–81 / Large traders reporting requirements; routine filing of series '03 reports; comments by 10–20–81

DEFENSE DEPARTMENT

Office of the Secretary—

42876 8–25–81 / Discharge Review Boards; procedures and standards; comments by 10–18–81

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

47239 9–25–81 / High-cost gas produced from tight formations; Colorado; comments by 10–21–81

39445 8–3–81 / Inclusion of construction work in progress for public utilities; reply comments by 10–23–81

47466 9–28–81 / Natural Gas Policy Act of 1978; ceiling prices for high cost natural gas produced from tight formations; various States; comments by 10–22–81

ENVIRONMENTAL PROTECTION AGENCY

48720 10–2–81 / Benomyl; tolerances; comments by 10–19–81

49611 10–7–81 / Motor vehicle pollution control; waiver of oxides of nitrogen (NO_x) emission standard for light-duty diesel vehicles; comments by 10–23–81

FEDERAL COMMUNICATIONS COMMISSION

32888 6–25–81 / Amateur radio service provisions; reply comment period extended to 10–21–81

[*See also* 45 FR 83592; 12–19–80]

44793 9–8–81 / Amendment of the Commission's rules to reclassify coin-operated electronic games From Class B to Class A Computing Devices; reply comments by 10–20–81

43204 8–27–81 / FM broadcast station in Bismarck, N. Dak; changes in table of assignments; comments by 10–19–81

43215 8–27–81 / FM broadcast station in Blakely, Ga.; changes in table of assignments; comments by 10–20–81

39629 8–4–81 / FM broadcast station in Brookville and Versailles, Ind.; changes in table of assignments; reply comments by 10–19–81

43203 8–27–81 / FM broadcast station in Cape Coral, Fla.; changes in table of assignments; comments by 10–19–81

39627 8–4–81 / FM broadcast station in Carnelian Bay and South Lake Tahoe, Calif.; changes in table of assignments; reply comments by 10–19–81

44008 9–2–81 / FM broadcast station in Cheney, Grand Coulee, and Spokane, Wash.; changes in table of assignments; comments by 10–19–81

43202 8–27–81 / FM broadcast station in Durant, Okla.; changes in table of assignments; comments by 10–19–81

43201 8-27-81 / FM broadcast station in Ellijay, Ga.; changes in table of assignments; comments by 10-19-81

43209 8-27-81 / FM broadcast stations in Goose Creek, S.C.; changes in table of assignments; comments by 10-20-81

43208 8-27-81 / FM broadcast station in Kodiak, Alaska; changes in table of assignments; comments by 10-20-81

43212 8-27-81 / FM broadcast station in Kremmling, Colo.; changes in table of assignments; comments by 10-19-81

43207 8-27-81 / FM broadcast station in Las Vegas, Nev.; changes in table of assignments; comments by 10-20-81

43216 8-27-81 / FM broadcast station in Leoti, Kans.; changes in table of assignments; comments by 10-19-81

43206 8-27-81 / FM broadcast station in Naknek, Alaska; changes in table of assignments; comments by 10-20-81

43212 8-27-81 / FM broadcast station in Riverton, Wyo.; changes in table of assignments; comments by 10-20-81

43217 8-27-81 / FM broadcast station in Virginia Beach, Va.; changes in table of assignments; comments by 10-20-81

44019 9-2-81 / FM broadcast station in Winamac, Ind.; changes in table of assignments; comments by 10-20-81

43210 8-27-81 / FM broadcast station in Woodstock, Va.; changes in table of assignments; comments by 10-20-81

43715 8-31-81 / FM broadcast station; changes in table of assignments; Fairfield, Tex.; comments by 10-20-81

43717 8-31-81 / FM broadcast station; changes in table of assignments; Fairmont, W. Va.; comments by 10-19-81

43712 8-31-81 / FM broadcast station; changes in table of assignments; Palm Springs, Calif.; comments by 10-20-81

43714 8-31-81 / FM broadcast station; changes in table of assignments; Williston and Micanopy, Fla.; comments by 10-20-81

43211 8-27-81 / FM broadcast station in Sidney, Nebr.; changes in table of assignments; comments by 10-20-81

39185 7-31-81 / Inland expansion of non-government radiolocation in the 420-450 MHz frequency band including use of spread spectrum technology; reply comments by 10-21-81

43709 8-31-81 / Operation of computing equipment prior to certification or verification; reply comments by 10-19-81

47243 9-25-81 / Policy regarding character qualifications in broadcast licensing; reply comments by 10-23-81

44790 9-8-81 / Request to exempt medical diagnostic equipment from the commissions rules; reply comments by 10-20-81

47801 9-30-81 / Revision to permit inland assignment of frequencies in a certain MHz band for non-government radiolocation; comments extended to 10-21-81

[*See also* 16 FR 39185, 7-31-81]

46148 9-17-81 / Rule changes or deregulation in the field of medical emergency communications; comments by 10-23-81

[*See also* 46 FR 38390, 7-27-81]

37916 7-23-81 / TV auxiliary broadcast pickup stations on a secondary basis, allocating a certain frequency band; reply comments by 10-19-81

43716 8-31-81 / TV broadcast station; changes in table of assignments; Alvin, Tex.; comments by 10-20-81

FEDERAL TRADE COMMISSION

42681 8-24-81 / Tomy Corp.; prohibited trade practices; consent agreement with analysis to aid public comment; comments by 10-23-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

46314 9-18-81 / Antibiotic drugs; rifampim capsules; comments by 10-19-81

46311 9-18-81 / Antibiotic drugs; updating and technical changes; comments by 10-19-81

46795 9-22-81 / Food for human consumption, indirect food additives; comments by 10-22-81

Health Care Financing Administration—

42698 8-24-81 / Medicaid Programs; authorization for intermediate care facilities for the mentally retarded (ICFs/MR) to negotiate revisions to their 1977 plans of correction for Life Safety Code, living, dining and therapy area deficiencies under certain circumstances; comments by 10-23-81

42669 8-24-81 / Medicare and medicaid programs; reimbusement for clinical laboratory services (final rule); comments by 10-23-81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

46605 9-21-81 / Disposal of forfeited or abandoned property; comments by 10-21-81

Surface Mining Reclamation and Enforcement Office—

46744 9-21-81 / Procedures for regulatory and small operator assistance program; financial assistance; comments by 10-21-81

INTERSTATE COMMERCE COMMISSION

44013 9-2-81 / Motor carriers; lease and interchange of vehicles; comments by 10-19-81

JUSTICE DEPARTMENT

Attorney General's Office—

46968 9-23-81 / Rewards provisions under the Atomic Weapons and Special Nuclear Materials Rewards Act; comments by 10-23-81

NUCLEAR REGULATORY COMMISSION

46587 9-21-81 / Emergency planning and preparedness for production and utilization facilities; comments by 10-21-81

41786 8-18-81 / Financial qualifications; domestic licensing of production and utilization facilities; comments by 10-19-81

38081 7-24-81 / Licensing requirements for land disposal of radioactive waste; comments by 10-22-81

SECURITIES AND EXCHANGE COMMISSION

62418 9-19-80 / Confidential treatment procedures under the Freedom of Information Act; comments by 10-19-81

TRANSPORTATION DEPARTMENT

Coast Guard—

44779 9-8-81 / Anchorage grounds, port of New York and vicinity; comments by 10-23-81

Federal Aviation Administration—

46569 9-21-81 / Security control of air traffic; revocation of Panama Canal Air Defense Identification zone; comments by 10-21-81

12278 8-20-81 / Summary of petitions received and dispositions of petitions denied; comments by 10-19-81

National Highway Traffic Safety Administration—

19947 9-2-81 / Crashworthiness rating provisions; comment period extended to 10-22-81

[*See also* 46 FR 7025, 1-22-81]

46604 9-21-81 / Federal Motor Vehicle Safety Standards; fields of direct view; comments by 10-21-81

Research and Special Programs Administration—

45652 9-14-81 / Carriage of tear gas devices aboard aircraft; extension of comment period; comments by 10-19-81

47091 9-24-81 / Enforcement procedures and related miscellaneous proposals; comments by 10-22-81

37951 7-23-81 / Petition submitted by International Association of Fire Chiefs for removal of requirements for display of EMPTY placards on tank cars; comments by 10-20-81

TREASURY DEPARTMENT

Internal Revenue Service—

42286 8-20-81 / Mortgage subsidy bonds; outlines of oral comments by 10-23-81

Deadlines for Comments on Proposed Rules for the Week of October 25 through October 31, 1981

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

47585 9-29-81 / Onions grown in certain designated counties in Idaho and Malheur County, Oreg.; recommended decision

on proposed amendment of marketing agreement and order; comments by 10-29-81

43836 9-1-81 / U.S. Standards for grades of canned apple juice; comments by 10-30-81

43838 9-1-81 / U.S. Standards for grades of canned apple sauce; comments by 10-30-81

Animal and Plant Health Inspection Service—

43175 8-27-81 / Interstate movement of diseased animals and poultry; comments by 10-26-81

43650 8-31-81 / Restrictions on importation of horses from Austria; comments by 10-30-81

Food Safety and Inspection Service—

39274 7-31-81 / Meat and poultry; standards and labeling requirements for mechanically processd (species) product and products in which it is used; comments by 10-29-81

Food Safety and Quality Service—

43836 9-1-81 / U.S. Standards for grades of canned apple juice; comments by 10-30-81

43838 9-1-81 / U.S. Standards for grades of canned apple sauce; comments by 10-30-81

DEFENSE DEPARTMENT

Office of the Secretary—

43185 8-27-81 / Discharge Review Boards; procedures for obtaining copies of military records; comments by 10-26-81

46597 9-21-81 / Removal of RTCs as authorized providers of care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); comment period extended to 10-31-81

[*See also* 46 FR 39167, 7-31-81]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission—

48234 10-1-81 / High-cost gas produced from tight formations; Utah; comments by 10-28-81

[Corrected at 46 FR 49141, 10-6-81]

ENVIRONMENTAL PROTECTION AGENCY

47624 9-29-81 / Arizona State Implementation Plan revision; comments by 10-29-81

47242 9-25-81 / Glyphosate; tolerances; comments by 10-26-81

FEDERAL COMMUNICATIONS COMMISSION

49624 10-7-81 / FM broadcast stations in Brookville and Versailles, Indiana; table of assignments; comment period extended to 10-26-81

[*See also* 46 FR 39629, 7-22-81]

44010 9-2-81 / FM broadcast station in Spearfish, S. Dak.; table of assignments; comments by 10-26-81

40776 8-12-81 / FM broadcast stations in Tulsa, Okla.; changes in TV table of assignments; reply comments by 10-26-81

40709 8-11-81 / FM broadcast station in Vernal, Utah; changes in table of assignments; reply comments by 10-26-81

44012 9-2-81 / FM broadcast stations in Agana, Guam; table of assignments; comments by 10-26-81

49617 10-7-81 / Overseas Communications Services; reply comments extended to 10-28-81

[*See also* 45 FR 76498, 11-19-80]

46148 9-17-81 / Release of remaining 250 channels in the 800 MHz land mobile reserve band; comments by 10-30-81

[*See also* 46 FR 37927, 7-23-81]

40707 8-11-81 / TV broadcast station in Fort Walton Beach, Fla.; changes in table of assignments; reply comments by 10-26-81

40710 8-11-81 / TV broadcast station in Houston, Tex.; changes in table of assignments; reply comments by 10-26-81

FEDERAL DEPOSIT INSURANCE CORPORATION

43431 8-28-81 / Administrative proceedings; equal access to justice; comments by 10-27-81

FEDERAL ELECTION COMMISSION

48074 9-30-81 / Transfer of funds; collecting agents, joint fundraising; comments by 10-30-81

FEDERAL MARITIME COMMISSION

43474 8-28-81 / Per-container rates; tariff filing requirements applicable to carriers and conferences in the foreign commerce of the United States; petition filed by Sea-Land Service, Inc.; comments by 10-27-81

25326 5-6-81 / Regulatory flexibility agenda; comments by 10-31-81

43472 8-28-81 / Time limit for filing of overcharge claims; comments by 10-30-81

FEDERAL TRADE COMMISSION

47236 9-25-81 / Labeling and advertising of home insulation; comments by 10-26-81

[*See also* 44 FR 50218, 8-27-79; 44 FR 64402, 11-7-79; 44 FR 73017, 12-17-79; 45 FR 37674, 6-3-80 and 45 FR 54702, 8-15-80]

GENERAL SERVICES ADMINISTRATION

43973 9-2-81 / Property management; instruments and laboratory equipment costing over $10,000; purchase order copy submission requirement; temporary regulation; comments by 10-31-81

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

47532 9-29-81 / Grape Color Extract; listing of color additives exempt from certification; comments by 10-29-81

47217 9-25-81 / Indirect food additives; adjuvants, production aids, and sanitizers; objections by 10-26-81

47217 9-25-81 / Indirect food additives; adjuvants, production aids, and sanitizers; antioxidants and/or stabilizers for polymers; objections by 10-26-81

43465 8-28-81 / Inhalation anesthetic drug products; proposed revocation of requirements for studies of carcinogenic and teratogenic potential; comments by 10-27-81

Health Care Financing Administration—

48006 9-30-81 / Medicaid Program; offset based on third party liability recoveries against reductions in medicaid payments; comments by 10-30-81

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection Office—

43466 8-28-81 / Manufactured home construction; formaldehyde outgassing; comments by 10-27-81

INTERIOR DEPARTMENT

Fish and Wildlife Service—

46361 9-18-81 / Permit regulations for wildlife and plants; comments by 10-30-81

LABOR DEPARTMENT

Federal Contract Compliance Office—

42968 8-25-81 / Government contractors; affirmative action requirements; comments by 10-26-81

PERSONNEL MANAGEMENT OFFICE

42835 8–25–81 / Retirement; recovery of indebtedness owed by former Federal employees; comments by 10–26–81

SECURITIES AND EXCHANGE COMMISSION

42015 8–18–81 / Circumstances affecting the determination of what constitutes reasonable investigation and reasonable grounds by belief; comments by 10–30–81

42001 8–18–81 / Delayed or continuous offering and sale; comments by 10–30–81

42026 8–18–81 / Disclosure of security ratings in registration systems; comments by 10–30–81

42029 8–18–81 / Integrated disclosure; amendments to forms and recision of obsolete form; comments by 10–30–81

42042 8–18–81 / Integrated disclosure; amendments to rules and forms; clarification of safe Harbor rules; comments by 10–30–81

41971 8–18–81 / Regulation C, registration and regulation 12B, registration and reporting; comments by 10–30–81

41902 8–18–81 / Reproposal of comprehensive revision to system for registration of securities offerings; comments by 10–30–81

43457 8–28–81 / Self-underwriting by nonmember brokers or dealers; comments by 10–30–81

41925 8–18–81 / Standard instructions for filing forms and guides for preparation; comments by 10–30–81

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

43176 8–27–81 / Summary of petitions received and dispositions of petitions denied or withdrawn; comments by 10–26–81

Federal Highway Administration—

National Highway Traffic Safety Administration—

43692 8–31–81 / Highway Safety Programs; determination of effectiveness; comments by 10–29–81

45627 9–14–81 / Relocation assistance; revised interest payments; comments by 10–29–81

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms—

38536 7–28–81 / Cienega Valley Viticultural Area; comments by 10–26–81

Next Week's Meetings

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

49927 10–8–81 / Judicial Review Committee, Washington, D.C. (open), 10–23–81

[*See also* 46 FR 47803, 9–30–81]

AGRICULTURE DEPARTMENT

Science and Education Administration—

50090 10–9–81 / National Plant Genetic Resources Board, Washington, D.C. (open), 10–22 and 10–23–81

CIVIL RIGHTS COMMISSION

49927 10–8–81 / Ohio Advisory Committee, Columbus, Ohio (open), 10–24–81

45406 9–11–81 / Rhode Island Advisory Committee, Providence, R.I. (open), 10–21–81

COMMERCE DEPARTMENT

International Trade Administration—

48960 10–5–81 / East-West Trade Advisory Committee, Washington, D.C. (partially open), 10–20–81

National Oceanic and Atmospheric Administration—

48283 10–1–81 / New England Fishery Management Council, Danvers, Mass. (open), 10–20 and 10–21–81

[*See also* 46 FR 49938, 10–8–81]

DEFENSE DEPARTMENT

Defense Nuclear Agency—

45408 9–11–81 / Scientific Advisory Group on Effects, Fort Belvoir, Va. (closed), 10–20 through 10–22–81

Engineers Corps—

47651 9–29–81 / Flood control project on Prairie and Silver Creeks, Grand Island, Nebr. (open), 10–23–81

Navy Department—

46986 9–23–81 / Chief of Naval Operations Executive Panel Advisory Committee, Long Range Planning Sub-Panel, Alexandria, Va. (closed), 10–20–81

Office of the Secretary—

46820 9–22–81 / Defense Science Board, Arlington, Va. (closed), 10–22 and 10–23–81

48744 10–2–81 / Defense Science Board Task Force on Defense Nuclear Agency Technology Base Program, Washington, D.C. (closed), 10–25 and 10–26–81

48744 10–2–81 / Defense Science Board Task Force on Retention of Contractor Civilians on Critical Jobs Overseas During Hostilities, Washington, D.C. (closed), 10–21–81

43077 8–26–81 / DOD Advisory Group on Electronic Devices, Working Group B (Mainly Low Power Devices), Arlington, Va. (closed), 10–15–81

42327 8–20–81 / Wage Committee, Washington, D.C. (closed), 10–20–81

EDUCATION DEPARTMENT

50095 10–9–81 / Bilingual Education National Advisory Council, New York, N.Y. (open), 10–24–81

49634 10–7–81 / Financing Elementary and Secondary Education Advisory Panel, Washington, D.C. (open), 10–23–81

ENERGY DEPARTMENT

49635 10–7–81 / National Petroleum Council, Arctic Oil and Gas Resources Committee, Environmental Task Group, Anchorage, Alaska (open), 10–21–81

Energy Information Administration—

49638 10–7–81 / American Statistical Association Committee on Energy Statistics, Washington, D.C. (open), 10–22 and 10–23–81

ENVIRONMENTAL PROTECTION AGENCY

48318 10–1–81 / State FIFRA Issues Research and Evaluation Group, Working Group on Enforcement and Certification, Denver, Colo. (open), 10–20 and 10–21–81

49611 10–7–81 / Waiver of Oxides of Nitrogen [NO_x] Emission Standard for light-duty diesel vehicles; Chrysler Corp., Washington, D.C., 10–21–81

FEDERAL COMMUNICATIONS COMMISSION

47858 9–30–81 / Advisory Commmittee on Preparation for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference, Working Group, E, Washington, D.C., 10–22–81

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

48762 10–2–81 / Life Course Review Committee, Washington, D.C. (partially open), 10–22 through 10–24–81

47013 9–23–81 / National advisory bodies, Rockville, Md. (partially open), 10–19 through 10–23–81

Food and Drug Administration—

46391 9–18–81 / Circulatory System Devices Panel, Washington, D.C. (partially open), 10–23–81

46391 9–18–81 / General Medical Devices Panel, Gastroenerology and Urology Device Section, 10–22 and 10–23–81; General Hospital and Personal Use Device Section, 10–19–81; Silver Spring, Md. (both sessions partially open)

46391 9–18–81 / Immunology and Microbiology Devices Panel, Immunology Device Section, Silver Spring, Md. (partially open), 10–19 and 10–20–81

46391 9–18–81 / Ophthalmic; Ear, Nose, and throat; and Dental Device Panel, Ophthalmic Device Section, Washington, D.C. (partially open), 10–19 and 10–20–81

National Institutes of Health—

43883 9–1–81 / Bacteriology and Mycology–1 Study Section, Bethesda, Md. (partially open), 10–22 through 10–24–81

43884 9–1–81 / Behavioral Medicine, Washington, D.C. (partially open), 10–21 through 10–23–81

45200 9–10–81 / Board of Scientific Counselors, Division of Resources, Centers and Community Activities, Bethesda, Md. (open), 10–22 and 10–23–81

41563 8–17–81 / Cancer, Biology and Diagnosis Division, board of Scientific Counselors, Bethesda, Md. (open), 10–22 and 10–23–81

41564 8–17–81 / Cancer Control Grant Review Committee, Bethesda, Md. (partially open), 10–19 and 10–20–81

45198 9–10–81 / Cardiology Advisory Committee, Bethesda, Md. (open), 10–19 and 10–20–81

43884 9–1–81 / Endocrinology Study Section, Bethesda, Md. (partially open), 10–19 through 10–21–81

43884 9–1–81 / Epidemiology and Disease Study Section, Georgetown, D.C. (partially open), 10–20 through 10–23–81

43884 9–1–81 / Experimental Immunology Study Section, Washington, D.C. (partially open), 10–21 through 10–23–81

43884 9–1–81 / Experimental Therapeutics Study Section, Bethesda, Md. (partially open), 10–21 through 10–24–81

43884 9–1–81 / Experimental Virology Study Section, Bethesda, Md. (partially open), 10–18 through 10–21–81

43884 9–1–81 / Genetics Study Section, Bethesda, Md. (partially open), 10–22 through 10–24–81

43884 9–1–81 / Immunological Sciences Study Section, Bethesda, Md. (partially open), 10–21 through 10–23–81

43884 9–1–81 / Microbial Physiology Study Section, Bethesda, Md. (partially open), 10–21 through 10–23–81

43884 9–1–81 / Molecular Biology Study Section, Bethesda, Md. (partially open), 10–22 through 10–24–81

43884 9–1–81 / Molecular Cytology Study Section, Bethesda, Md. (partially open), 10–22 through 10–24–81

45199 9–10–81 / National Advisory Environmental Health Sciences Council, Research Triangle Park, N.C. (partially open), 10–19 and 10–20–81

45199 9–10–81 / National Advisory General Medical Sciences Council, Bethesda, Md. (partially open), 10–19 and 10–10–81

41567 8–17–81 / National High Blood Pressure Education Program Coordinating Committee, Bethesda, Md. (open), 10–23–81

43885 9–1–81 / Physical Biochemistry Study Section, Bethesda, Md. (partially open), 10–19 through 10–21–81

45201 9–10–81 / Pulmonary Diseases Advisory Committee, San Francisco, Calif. (open), 10–23 and 10–24–81

43885 9–1–81 / Reproductive Biology Study Section, Bethesda, Md. (partially open), 10–19 through 10–22–81

45201 9–10–81 / Sickle Cell Disease Advisory Committee, Bethesda, Md. (open), 10–19 and 10–20–81

43885 9–1–81 / Social Sciences and Population Study Section, Washington, D.C. (partially open), 10–23 through 10–25–81

43885 9–1–81 / Surgery Anesthesiology and Trauma Study Section, Rosslyn, Va. (partially open), 10–22 through 10–23–81

43885 9–1–81 / Virology Study Section, Bethesda, Md. (partially open), 10–22 through 10–24–81

Public Health Service—

46680 9–21–81 / Board of Scientific Counselors, National Toxicology Program, Cincinnati, Ohio (partially open), 10–22 and 10–23–81

47870 9–30–81 / National Advisory Bodies, Health Services Developmental Grants Review Subcommittee, Washington, D.C. (partially open), 10–22 and 10–23–81

HISTORIC PRESERVATION, ADVISORY COUNCIL

46367 9–18–81 / North Valley River Crossing, Albuquerque, N. Mex. (open), 10–21–81

INTERIOR DEPARTMENT

Land Management Bureau—

49212 10–6–81 / Albuquerque District Advisory Council, Santa Fe, N. Mex. (open), 10–22–81

46217 9–17–81 / Anchorage District Advisory Council, Anchorage, Ala. (open), 10–21–81

46218 9–17–81 / Ashley Creek and Duchesne Planning Units in northeastern Utah, management framework plan and rangeland management environmental impact statement, Vernal, Utah (open), 10–22–81

45430 9–11–81 / Coal Preference Right Lease Application, Richfield, Utah (open), 10–21–81

48773 10–2–81 / Craig District Advisory Council, Colorado locations (open), 10–20 and 10–22–81

47308 9–25–81 / Cross Mountain Wilderness Study Area, Denver, Colo., 10–20–81; Craig, Colo., 10–22–81 (all sessions open)

49961 10–8–81 / Cuyahoga Valley National Recreation Area Advisory Commission, Valley View, Ohio (open), 10–22–81

45431 9–11–81 / Ely District Advisory Council Ely, Nev. (open), 10–21–81

47306 9–25–81 / Lewistown District Advisory Council, Billings, Mont. (open), 10–21 and 10–22–81

47306 9–25–81 / Lewistown District Grazing Advisory Board, Billings, Mont. (open), 10–22 and 10–23–81

44291 9–3–81 / Montana and North Dakota environmental impact statements:

Circle, Mont. (open), 10–19–81

Sidney, Mont. (open), 10–20–81

Glendive, Mont. (open), 10–21–81

45431 9–11–81 / Phoenix District Advisory Council jointly with the Kingman Resource Area Grazing Advisory Board, Kingman, Ariz. (open), 10–22–81

45821 9–15–81 / Roseburg District Advisory Council, Roseburg, Oreg. (open), 10–20–81

45433 9–11–81 / Sleeping Bear Dunes National Lakeshore Advisory Commission, Thompsonville, Mich. (open), 10–23–81

National Park Service—

48326 10–1–81 / San Antonio Missions National Historical Park, San Antonio, Tex. (open), week of 10–19–81

46411 9–18–81 / Santa Monica Mountains National Recreation Area Advisory Commission, Santa Monica, Calif. (open), 10–20–81

Office of the Secretary—

48330 10–1–81 / Fiscal Accountability of Nation's Energy Resources Commission, New York, N.Y. (open), 10–19 and 10–20–81

LABOR DEPARTMENT

Labor Statistics Bureau—

47677 9–29–81 / Business Research Advisory Council, Washington, D.C. (open), 10–21–81

47677 9–29–81 / Business Research Advisory Council, Washington, D.C. (all sessions open):

—Employment and Unemployment Committee, 10–20–81;

—Occupational Safety and Health Committee, 10–15–81;

—Price Indexes Committee, 10–19–81;

—Wages and Industrial Relations Committee, 10–20–81

Pension and Welfare Benefit Program Office—

48802 10–2–81 / Employee Welfare and Pension Benefit Plans Advisory Council, Washington, D.C. (open), 10–20–81

MARINE MAMMAL COMMISSION

43912 9–1–81 / Scientific Advisors Committee on Marine Mammals, Seattle, Wash. (open), 10–22 through 10–24–81

METRIC BOARD

47032 9–23–81 / American National Metric Council, Data Processing/Office Equipment Sector Committee, Washington, D.C. (open), 10–20–81

NATIONAL SCIENCE FOUNDATION

48346 10–1–81 / Atmospheric Sciences Advisory Committee, Washington, D.C. (partially open), 10–19 through 10–21–81

46238 9–17–81 / Cellular Physiology Subcommittee, Washington, D.C. (closed), 10–19 through 10–21–81

46238 9–17–81 / Developmental Biology Subcommittee, Washington, D.C. (closed), 10–22 through 10–24–81

49236 10–6–81 / Engineering Advisory Committee, Electrical, Computer, and Systems Engineering, Washington, D.C. (partially open), 10–22 and 10–23–81

46704 9–21–81 / Environmental Biology Advisory Committee, Subcommittee on Population Biology and Physiological Ecology, Washington, D.C. (closed), 10–22 and 10–23–81

48347 10–1–81 / Materials Research Advisory Committee, Ceramics Programs Ad Hoc Oversight Subcommittee, Washington, D.C. (closed), 10–22 and 10–23–81

48348 10–1–81 / NSF Advisory Council, Task Group No. 17, Washington, D.C. (open), 10–19–81

48347 10–1–81 / Physics Advisory Committee, Washington, D.C. (open), 10–22 through 10–24–81

48347 10–1–81 / Physiology, Cellular, and Molecular Biology Advisory Committee, Molecular Biology, Group A Subcommittee, Washington, D.C. (closed), 10–22 and 10–23–81

NUCLEAR REGULATORY COMMISSION

49236 10–6–81 / Reactor Safeguards Advisory Committee, Argonne, Ill. (open), 10–22 and 10–23–81; Meetings, Washington, D.C. (closed), 10–22–81

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

49243 10–6–81 / Meetings, Washington, D.C. (closed), 10–22–81

PRESIDENTIAL ADVISORY COMMITTEE ON FEDERALISM

49692 10–7–81 / Washington, D.C. (open), 10–22–81

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

49237 10–6–81 / Meeting, Queenstown, Md. (open), 10–22 through 10–24–81

STATE DEPARTMENT

46265 9–17–81 / Safety of Life at Sea Subcommittee, Shipping Coordinating Committee, Washington, D.C. (open), 10–22–81

TRANSPORTATION DEPARTMENT

Coast Guard—

46269 9–17–81 / New York Harbor Vessel Traffic Service Advisory Committee, New York, N.Y. (open), 10–20–81

Federal Aviation Administration—

47523 9–28–81 / Radio Technical Commission for Aeronautics, Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment, Washington, D.C. (open), 10–20 through 10–22–81

Federal Highway Administration—

45722 9–14–81 / Bascule bridge highway project, Indianapolis, Ind. (open), 10–20–81

National Highway Traffic Safety Administration—

48958 10–5–81 / Bumper standards, Washington, D.C. (open), 10–22–81 (also 10–23–81 if necessary)

7123 1–22–81 / Safety Standards, International Harmonization; Program of Work of The WP29 Seventeenth Session, Ad Hoc Meeting; Geneva, Switzerland; 10–22 and 10–23–81

VETERANS ADMINISTRATION

49701 10–7–81 / Cooperative Studies Evaluation Committee, Washington, D.C. (partially open), 10–19 and 10–20–81

Next Week's Hearings

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

49626 10–7–81 / Public Access and Information Committee, Washington, D.C. (open), 10–21–81

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

47588 9–29–81 / Tennessee Valley, Louisville-Lexington-Evansville and Nashville, Tennessee, milk orders, Lousiville, Ky., 10–21–81

DEFENSE DEPARTMENT

Navy Department—

35141 7–7–81 / Naval Discharge Review Board, San Diego, Calif., 10–19 through 10–30–81

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

45818 9–15–81 / President's Commission on Housing, Washington, D.C. (open), 10–19 and 10–20–81

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

47467 9–28–81 / Indiana Permanent Regulatory Program, Vincennes, Ind., 10–23–81

46008 9–16–81 / Southeastern Montana Surface Coal Mining Operations, Ashland, Mont., 10–21 and 10–22–81

INTERNATIONAL TRADE COMMISSION

36780 7–15–81 / Steel units for electrical transmission towers from Italy, Washington, D.C., 10–23–81

[Rescheduled at 45 FR 45223, 9–10–81]

POSTAL RATE COMMISSION

48372 10–1–81 / Mail classification schedule, Washington, D.C., 10–21–81

List of Public Laws

Last Listing October 9, 1981

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.J. Res. 263 / Pub. L. 97–57 To designate May 6, 1982, as "National Recognition Day for Nurses". (Oct. 9, 1981; 95 Stat. 978) Price: $1.50.

H.R. 4084 / Pub. L. 97–58 To improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes. (Oct. 9, 1981; 95 Stat. 979) Price: $1.75.

S. 1033 / Pub. L. 97–59 Granting the consent of Congress to the agreement between the States of North Carolina and South Carolina establishing their lateral seaward boundary. (Oct. 9, 1981; 95 Stat. 988) Price: $1.50.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

DEADLINES FOR COMMENTS ON PROPOSED RULES

49546 10-6-81 / DOE—Nondiscrimination on the basis of age; comments by 11-5-81

49038 10-5-81 / DOT/UMTA—Advanced design buses specification ("White Book"); rescission of mandatory use policy; inquiry; comments by 1-4-82

APPLICATIONS DEADLINES

48963 10-5-81 / Commerce/MBDA—Portfolio Growth Company Program; apply by 10-30-81

49209 10-6-81 / HHS/HRA—Grants for Residency Training in General Internal Medicine or General Pediatrics; apply by 11-30-81

OTHER ITEMS OF INTEREST

49938 10-8-81 / Commerce/MBDA—Portfolio Growth Program; cancellation for Cleveland, Chicago, Detroit, and St. Louis

49211 10-6-81 / HHS/Sec'y—Statement of organization, functions and delegations of authority; Office of Community Services

49963 10-8-81 / NFAH—National Endowment for the Humanities; grant program announcement

49968 10-8-81 / NFAH—Performance Review Board; amendment of members

50270 10-9-81 / USDA/FNS—Food Stamp Program; photo identification requirements

50277 10-9-81 / USDA/FNS—Replacement of nondelivered, stolen or destroyed Food Stamp Authorizations and Food Stamp Coupons

MEETINGS

50095 10-9-81 / ED—National Advisory Council on Bilingual Education, New York, N.Y. (open), 10-24-81 through 10-27-81

49210 10-6-81 / HHS/NIH—General Clinical Research Centers Committee, Bethesda, Md. (partially open), 12-1 and 12-2-81

49210 10-6-81 / HHS/NIH—Heart, Lung, and Blood National Advisory Council, Bethesda, Md. (partially open), 11-23 and 11-24-81

49211 10-6-81 / HHS/NIH—Pharmacological Sciences Review Committee, Bethesda, Md. (partially open), 11-16 and 11-17-81

49236 10-6-81 / NSF—Engineering Advisory Committee, Electrical Computer, and Systems Engineering, Washington, D.C. (partially open), 10-22 and 10-23-81

49968 10-8-81 / NSF—Science and Engineering Education Advisory Committee, Washington, D.C. (open), 10-26 and 10-27-81

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